NOTICE OF MEETING
CITY COUNCIL OF THE CITY OF GALVESTON
THURSDAY - JUNE 25, 2020 - 1:15 P.M.
823 ROSENBERG, GALVESTON, TEXAS
TELEPHONE: (409) 797-3510

Notice is hereby given in accordance with Order of the Governor issued March 16, 2020, the City Council of the City of Galveston will conduct its Special Meeting by telephone/video conference in order to advance the public health goal of limiting face-to-face meetings (also called "social distancing") to slow the spread of the Corona Virus/COVID-19. There will be no public access to the location described above.

REGULAR MEETING AGENDA

1. DECLARATION OF A QUORUM AND CALL MEETING TO ORDER

2. ROLL CALL

3. CONFLICTS OF INTEREST

4. PRESENTATIONS/REPORTS OF COUNCIL, OFFICER BOARDS, AND CITY MANAGER

4.A. Pursuant To Texas Government Code Section 551.0415, The City Council May Report On Any Of The Following Items:

1. Expressions of thanks, gratitude, and condolences

2. Information regarding holiday schedules

3. Recognition of individuals

4. Reminders regarding City Council events

5. Reminders regarding community events

6. Health and safety announcement

4.B. The Investment Reports For Quarter Ended March 31, 2020 (M. Loftin)

Documents:

STAFF REPORT INVESTMENT REPORT 1ST QTR. 2020.DOC
GALVESTON 3-31-20 QTRLY SIGNED.PDF
GALVESTON PRESENTATION JUNE 2020 V2.PDF

5. COMMUNICATIONS AND PETITIONS

Claims: 20-041 - Holly Landry; 20-042 - James Wilson; 20-043 - Alicia Portilla; 20-044 - Barbi Manganile; 20-045 - Adele Leyver; 20-046 - Andy Keeton; 20-047 - Keith Becker; 20-048 - Gerado Acoster; 20-049 - Jacob Simon; 20-050 - Vincent Smith; 20-051 - Terry and Karen Burton; 20-052 - AT&T.

6. PUBLIC HEARINGS

6.A. Conduct A Public Hearing And Consider For Approval The 2020 Community Development Block Grant-CV (CDBG-CV) Coronavirus Aid, Relief, And Economic Security (CARES Act) Supplemental Funding In The Amount Of $271,736 And Amendment To The 2019 Consolidated Plan To Implement Coronavirus Pandemic

Disaster Projects And Allow For The Use Of The Urgent Need Project Benefit. Authorize The City Manager To File A Grant Application (Amendment) With The U.S. Department Of Housing And Urban Development (HUD) And Execute All Necessary Contracts, Certifications, And Documents For The Programs. (A. Law)

Documents:

STAFF REPORT 2020 CDBG-CV AND 2019 CONPLAN AMENDMENT 6-25-20.PDF

6.B. Consider For Approval An Ordinance Of The City Of Galveston, Texas, Designating The Property Located At 1521 Broadway / Avenue J, As A "Galveston Landmark", Property Is Legally Described As The East 2 Feet And 10 Inches Of Lot 2 And West 28 Feet And Seven Inches Of Lot 3 (2-1), Block 135, In The City And County Of Galveston, Texas; Requesting The Historic Preservation Officer Record The Property's Landmark Designation In The Official Public Records Of Real Property In Galveston County, The Tax Records Of The City Of Galveston And The Central Appraisal District, And The Official Zoning Maps Of The City Of Galveston, Texas; Planning Case Number 20P-009; Making Various Findings And Provisions Related To The Subject. (K. White)

Documents:

20P-009 STF PKT W ORD.PDF

7. PUBLIC COMMENT

Members of the public may submit a public comment using the web link below. All comments submitted prior to the meeting will be provided to the City Council.

https://forms.galvestontx.gov/Forms/PublicComment

A. Agenda Items
B. Non-Agenda Items

8. ORDINANCES (NOT REQUIRING PUBLIC HEARINGS)

8.A. Consider For Approval An Ordinance Of The City Of Galveston, Texas, Declaring A State Of Disaster And Emergency In The City Of Galveston Related To The Emergence Of The Corona Virus/COVID 19; Extending The State Of Disaster And Emergency In The City Of Galveston Until September 30, 2020; Extending Previously Approved Emergency Orders Within The City Until September 30, 2020, Making Various Findings And Provisions Related To The Subject, Providing For A Penalty And Providing For An Effective Date. (Legal)

Documents:

EXEND COVID EMERGENCY UNTIL SEPTEMBER 30 2020.PDF
EXEND COVID EMERGENCY UNTIL SEPTEMBER 30 2020.DOCX

8.B. Election Ordinance

Consider For Approval An Ordinance Of The City Of Galveston, Texas, Ordering And Calling An Election To Be Held In The City Of Galveston On The 3rd Day Of November, 2020, For The Purpose Of Electing A Mayor At-Large And Six (6) District Council Members, Each For A Two-Year Term; Making Provisions For The Conduct And Giving Notice Of The Election; Providing The Candidate Filings Received For The Postponed May 2, 2020 Election Remain Valid For The November 3 2020 Election And The Filing Period Will Not Be Re-Opened; Designating Polling Places; Designating Dates And Hours For Early Voting; Designating The Date And Hours Or The Election Day; Providing For Publication Of The Notice Of The Election; Providing

Bilingual Election Requirements; Providing For A Severability Clause; Providing An Open Meetings Clause; Providing A Savings Clause; Declaring Findings Of Fact; And Providing For An Effective Date. (Legal)

Documents:

GENERAL ELECTION ORDINANCE - NOVEMBER 2020.PDF

8.C. Consider For Approval An Ordinance Of The City Of Galveston, Texas, Amending Chapter 33, "Taxation" Of "The Code Of The City Of Galveston 1982, As Amended" By Amending The Procedures For Allocating Net Disbursible Funds To Eligible Groups By Allowing For Re-Allocation In The Event Of Significant Reductions To Hotel Occpancy Tax; Making Various Findings And Provisions Related To The Subject And Providing For An Effective Date.

Documents:

ARTS AND HISTORIC COVID PRO RATA ADJUSTMENT ORDINANCE.DOCX

8.D. City Code Review:

8.D.1. Consider For Approval An Ordinance Of The City Of Galveston, Texas, Amending The Code Of The City Of Galveston, As Amended, Chapter 11.5, "Clean Air: Smoking In Public Places", To Amend, Update Regulations, Standards, And Definitions; To Make Clarifications, Rename, Renumber And Rearrange The Chapter As Applicable; Providing For Penalties As Applicable; Making Various Findings And Provisions Related To The Subject; Providing For An Effective Date. (Legal)

Documents:

CHAPTER 11.5 - CLEAN AIR - SMOKING IN PUBLIC PLACES-ORDINANCE.DOC
CHAPTER 11-5 - CLEAN AIR-SMOKING -AMENDED FULL CHAPTER.DOCX

8.D.2. Consider For Approval An Ordinance Of The City Of Galveston, Texas, Amending The Code Of The City Of Galveston, As Amended, Chapter 22, "Municipal Court", To Amend, Update Regulations, Standards, And Definitions; To Make Clarifications, Rename, Renumber And Rearrange The Chapter As Applicable; Providing For Penalties As Applicable; Making Various Findings And Provisions Related To The Subject; Providing For An Effective Date. (Legal)

Documents:

CHAPTER 22 - MUNICIPAL COURT ORDINANCE.DOC
CHAPTER 22 - MUNICIPAL COURT AMENDED FULL CHAPTER.DOCX

9. CONSENT ITEMS

The following items shall be considered for action as a whole, unless one or more Council Members objects. The City Manager is authorized to execute all necessary documents upon final approval by the City Attorney.

9.A. Consider For Approval A Resolution Of The City Council Of The City Of Galveston, Texas, Waiving The City's Primary Jurisdiction Related To A Complaint Made By Citizen Dustin Thomas Related To The Billing Of Electric Services At Grand Beach Subdivision, To Allow The Citizen To Proceed With Filing His Complaint Directly With The State Of Texas Public Utility Commission, Authorizing The City Manager To Execute Any Necessary Documents To Give Effect To This Resolution Upon Final Approval By The

City Attorney; Providing For Findings Of Fact And For An Effective Date. (Legal)

Documents:

MEMORANDUM RELATED TO WAIVER OF PRIMARY JURISDICTION.DOCX
RESOLUTION WAIVING PRIMARY JURISDICTION OVER DUSTIN THOMAS PUC COMPLAINT(2).PDF
RESOLUTION WAIVING PRIMARY JURISDICTION OVER DUSTIN THOMAS PUC COMPLAINT(2).DOCX

9.B. Consider For Approval A Resolution Of The City Council Of The City Of Galveston, Texas, Authorizing The Approval Of A Contract For Collection Services Providing For The Collection Of Delinquent Taxes And Court Fines And Fees With Linebarger Goggan Blair & Sampson, LLP; And Making Certain Findings Associated With Texas Government Code §2254.1032; And Authorizing The Mayor To Execute The Contract; Making Various Findings And Provisions Related To The Subject; And Providing For An Effective Date. (M. Loftin)

Documents:

COLLECTION AGENCY SERVICES LINEBARGER.DOCX
RESOLUTION AUTHORIZING CONTINGENT FEE CONTRACT FOR COLLECTION SERVICES - JUNE 2020.DOCX
CONTRACT FOR COLLECTION SERVICES - JUNE 2020.DOCX

9.C. Consider For Action Adopting The 2020 Proposed Investment Policy. (M. Loftin)

Documents:

INVESTMENT POLICY 2020 GALVESTON PROPOSED.PDF
STAFF REPORT INVESTMENT POLICY 2020.PDF

9.D. Consider Action For Continuing With The Professional Services Of David Taussig & Associates Relating To The Administration Of Bayside At Waterman's Public Improvement District (PID). Authorizing The City Manager To Execute The Contract Upon Final Approval By The City Attorney.(M. Loftin)

Documents:

STAFF REPORT TAUSSIG PROFESSIONAL SERVICE CONTRACT.PDF

9.E. Consider For Approval An Economic Development Agreement Between The Industrial Development Corporation And The City Of Galveston To Fund A Match For The Pelican Island Bridge (G. McLeod)

Documents:

STAFF REPORT PELICAN ISLAND BRIDGE.DOCX
PELICAN ISLAND BRIDGE PROJECT RESOLUTION.PDF
PELICAN ISLAND BRIDGE AGREEMENT.PDF

9.F. Consider For Approval A Contract For Election Services Between The City Of Galveston And Galveston County For The Purpose Of Holding A City Election On November 3, 2020 And A Possible Runoff Election On December 15, 2020. (J. Williams)

Documents:

STAFF REPORT--ELECTION CONTRACT 2020.DOCX

ENTITY ELECTION SERVICES CONTRACT NOV 2020 ENTITY.DOCX

9.G. Consider For Approval Funding For Temporary Staffing From Robert Half International/AccounTemps In The Services Assistance For The Grants And Housing Department. (A. Law)

Documents:

STAFF REPORT ACCOUNTEMPS GRANTS AND HOUSING STAFF 6-25-20.PDF

9.H. Consider Approving A Contract With Kronos To Migrate The Time And Attendance Software System To A Cloud SaaS Solution And Authorizing The City Manager To Enter Into A Contract For A 60-Month Term In An Amount Not To Exceed $325,714 (H. Dean).

Documents:

KRONOS MIGRATION STAFF REPORT.PDF
KRONOS SALES ORDER CONTRACT.PDF

9.I. Consider For Approval The Purchase Of Sign Materials For Beach Access Signage From Trantex Transportation Product Through Buy Board (Contract #608-20). Funding For The Signage Materials Will Come From The Seawall Beach Urban Park Beach User Fees Account In The Amount Of $21,987.25. (D. Henry)

Documents:

2020-06-25 - COUNCIL STAFF REPORT - BEACH ACCESS SIGNAGE MATERIALS.PDF
CITY OF GALVESTON- SIGN BLANKS AND SHEETING (2).PDF

9.J. Consider For The Approval Allowing The Fleet Facility And Other City Departments To Purchase Assortments Of Tools And Supplies From Kimball Midwest Who Is A Member Of Buyboard, A Cooperative Purchasing Organization. The Funding Sources Will Be The User Department's Parts And Supplies Accounts. (D. Smith)

Documents:

KIMBALL MIDWEST PACKET.PDF

9.K. Consider Approval Of A Contract With Main Lane Industries, Ltd. For 18th Street Storm Sewer System (RFP #20-06) In The Amount Of $15,904,160.80 And Approval Of A Total Project Cost Of $16,314,160.80. Authorizing The City Manager To Execute All Necessary Documents Upon Final Approval By The City Attorney. (D. Anderson)

Documents:

MAIN LANE - 18TH STREET STORM SEWER SYSTEM RFP 20-06.PDF

9.L. Consider Approval Of Change Order #02 To The Agreement With E. P. Brady, Ltd., For The 24 Inch Water Transmission Line From 59th Street Pump Station To The Airport Pump Station (RFP #19-24) Increasing The Project Cost By $99,808.39. This Represents An Increase In The Total Project Cost Of 0.78% From The Original Amount Of $17,159,876.30 To The Amount Of $17,293,075.22. Authorizing The City Manager To Execute All Necessary Documents Upon Final Approval By The City Attorney. (D. Anderson)

Documents:

EP BRADY - 24-INCH WATER TRANSMISSION LINE FROM 59TH STREET PUMP STATION TO AIRPORT PUMP STATION - CHANGE ORDER 2.PDF

9.M. Consider For Approval, A Proposal From Freese And Nichols For The City Of Galveston American Water Infrastructure Act (AWIA) Of 2018 Risk And Resilience Assessment (RRA) And The Emergency Response Plan (ERP) Compliance Documentation For A Fee Not To Exceed $108,910. (D. Christodoss)

Documents:

AWIA COMPLIANCE CONTRACT STAFF REPORT-6.11.2020.PDF

9.N. Consider For Approval The Professional Engineering Services Proposal Addendum From Dannenbaum Engineering Corporation, To Perform The Airport Pump Station (PS) Disinfection Improvements Design, At A Cost Not To Exceed $54,461 (Includes 10% Contingency Of $4,951 For Power Supply Upgrade Design) Increasing The Existing Design Contract Of $900,159 To $954,620. (D. Christodoss)

Documents:

DESIGN ADDENDUM STAFF REPORT-PROPOSAL-EXHIBIT A-ORIGINAL CONTRACT NTP.PDF

9.O. Consider For The Approval A 3-Year Contract With Pay By Phone With The Option To Extend The Contract For Two One-Year Terms, For A Total Of Five Years, With No Cost To The City. This Contract Will Continue Giving People Options To Pay To Park Using A Smart Phone Or Other Electronic Device, Which The Marshals Office, Parking Enforcement Division, Already Have In Operation For Paying To Park And Authorize The City Manager To Execute The Contract Upon Final Approval By The City Attorney. (B. Stroud)

Documents:

PAYBYPHONE PACKET.PDF

9.P. Consider For The Approval A 3-Year Contract With Mitchell Time & Parking With The Option To Extend The Contract For Two One-Year Terms, For A Total Of Five Years. We Will Be Utilizing The National Cooperative Purchasing Alliance. This Contract Will Give The City Continued Support And Maintenance For The 16 Strada Pay Stations In The Downtown Area, Which The Marshals Office, Parking Enforcement Division, Already Have In Operation For Paying To Park And Authorize The City Manager To Execute The Contract Upon Final Approval By The City Attorney. Funding Will Be From The Parking Management Fund. (B. Stroud)

Documents:

MITCHELL TIME AND PARKING PACKET.PDF

9.Q. Consider For Approval The Purchase Of Fifteen (15) Vista HD Body Worn Cameras And Related Items To Supply Officers With Body Worn Cameras For A Total Price Of $20,025.00, Which Will Be Funded From The Police Academy Minor Equipment Fund. (V. Hale)

Documents:

WATCHGUARD BODY CAMERAS 6.25.20.PDF

9.R. Consider For Approval Minutes Of The April 23, 2020 Special Meeting, The April 30, 2020 Workshop And Regular Meeting, The May 28, 2020 Workshop And Regular Meeting, And The June 11, 2020 Special Meeting. (J. Williams)

Documents:

MINUTES - JUNE AGENDA.PDF

9.S. Consider Approval Of A Contract With RAC Industries, LLC For Teichman Road Waterline (RFP #20-09) In The Amount Of $2,551,033.65 And Approval Of A Total Project Cost Of $2,621,033.65. Authorizing The City Manager To Execute All Necessary Documents Upon Final Approval By The City Attorney. (D. Anderson)

Documents:

RAC INDUSTRIES LLC TEICHMAN ROAD.PDF

10. ACTION ITEMS

10.A. Consider For Approval A Resolution Of The City Council Of The City Of Galveston, Texas Related To The Ongoing Public Health Emergency In The State Of Texas And City Of Galveston, Acknowledging Increase Risk Of Spread Due To Large Crowds Of Visitors To The Island, Reiterating Recommendations To The Citizens Of This City To Protect Themselves From Infection, And Encouraging Employers To Take Any Feasible Protective Measures To Protect Their Employees From Exposure, And Providing For Findings Of Fact And For An Effective Date.

Documents:

RESOLUTION ON COVID CONTROL IN CITY.DOCX

10.B. Consideration Of Report On Litigation Seeking Injunctive Relief Related To The Unpermitted Conduct Of An Unpermitted Mass Gathering On The Galveston Seawall Known As Slab Beach Party And Taking Any Necessary Action Related Thereto. (Legal)

10.C. Consideration Of Report On Case No. 20-0134 In Re City Of Galveston Before The Texas Supreme Court And Take Any Necessary Action Related Thereto. (Legal)

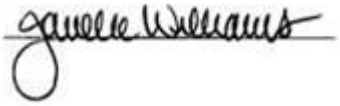
10.D. Discuss And Consider Appointments To The Following City Boards, Commission, And Committees:

1. Finance, Fiscal Affairs, and Investment Committee - District 2
2. Park Board of Trustees
3. Recycling Ad Hoc Committee - District 4
4. Zoning Board of Adjustments - Alternate 2 Position

11. CONCLUDING REMARKS RELATED TO MAYOR'S SERVICE

12. ADJOURNMENT

I certify that the above Notice of Meeting was posted in a place convenient to the public in compliance with Chapter 551 of the Texas Government Code on June 19, 2020 at 12:00 P.M.



Janelle Williams, City Secretary

IN ACCORDANCE WITH THE PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT (ADA), PERSONS IN NEED OF A SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHALL, WITHIN THREE (3) DAYS PRIOR TO ANY PROCEEDING, CONTACT THE CITY SECRETARY'S OFFICE, SUITE 201, 823 ROSENBERG, GALVESTON, TEXAS 77550 (409-797-3510).

City of Galveston

Finance Department
PO Box 779 | Galveston, TX 77553-0779
| 409-797-3562

June 25, 2020

To: Brian Maxwell, City Manager
Hon. Mayor and City Council Members

From: Michael Loftin, Assist. City Manager Finance

RE: The investment reports for quarter ended March 31, 2020 presented as part of the City Manager's report.

I. Background

As provided by state law and the City's local policy, not less than quarterly, the investment officers prepare and submit to the governing body of the City a written report of investment transactions for all funds covered by Texas Government Code Section 2256.023 for the preceding reporting period.

II. Current Situation

The City approved investment advisory consulting firm, Hilltop Securities Asset Management prepared and submitted the quarter reports at the Finance, Fiscal Affairs and Investment Advisory committee meeting held on June 17, 2020.

The City's investment portfolio market value totaled over $114M at March 31, 2020 down from the previous quarter by $56M as a result of the timing of a settlement for a transfer of funds from the LOGIC investment pool to the TexPool investment pool. The transfer settled on April 1, 2020.

The portfolio included U.S. Treasuries and Federal Agency securities along with balances in money market mutual funds and local government investment pools. The weighted average yield to maturity of the investment portfolio was 1.113% down from 1.73% at December 31, 2019 due to declining yields. Investments in the portfolio that matured this quarter were not replaced with new investments but deposited into overnight liquidity local government investment pool (TexPool).

III. Recommendations

Make available the City's quarter ending March 31, 2020 Investment Report.

IV. Fiscal Impact Report

None.

HilltopSecurities
Asset Management

Investment Portfolio Summary

City of Galveston

For the Quarter Ended

March 31, 2020

Prepared by
HilltopSecurities Asset Management

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Change in Value

Earned Income

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Projected Fixed Income Cash Flows

MARKET RECAP - MARCH 2020:

On February 24th the World Health Organization's director general told journalists that the COVID-19 virus was not yet a global pandemic and that "it is still possible to contain the virus." But within days, the reality could no longer be denied and on March 11th the WHO finally made it official. Financial markets had determined weeks earlier that the novel coronavirus was going to be a big problem and stocks around the world were hammered. The ensuing flight to safety rally sent U.S. Treasury yields to record lows. Meanwhile, other fixed income sectors came under enormous selling pressure as investors foresaw massive credit deterioration and companies worked to build up cash reserves to weather the storm. On March 3rd, in an emergency move, the Federal Reserve cut the fed funds target rate by 50 basis points, noting in typically understated fashion, "The coronavirus poses evolving risks to economic activity." At the time, many market participants saw the Fed's move as a panicked reaction and they responded by panicking themselves, sending stock markets tumbling. The hits kept coming: outbreaks of COVID-19 erupted in Seattle and New York and have now spread to most major metropolitan areas; sports leagues began suspending and then cancelling games, seasons, and tournaments; conference organizers around the nation cancelled events; schools sent students home; local governments started by ordering restaurants to close and banning public gatherings before eventually issuing mandatory "stay-at-home" orders for all non-essential activities." This list goes on and on.

With the economic engine switched to off, policy makers were forced to respond. On Sunday, March 15th, the Fed pulled out all the stops, slicing the fed funds rate by a full percentage point to a range of 0%-0.25%. The Fed also implemented massive quantitative easing, expanded repo operations, lowered the interest rate on excess reserves, and established a lending facility to support money market funds and the commercial paper market. There was more to come. By the third week of March, first time claims for unemployment benefits would skyrocket with nearly 3.3 million Americans filing for benefits. This would spur Congress to pass the Coronavirus Aid, Relief, and Economic Security Act, or "CARES Act", a massive $2 trillion relief package intended to cushion the blow for both employees and employers, as well as provide support for the many companies buckling under the strain of the sudden stoppage of business. Central banks and governments around the world would join the U.S. in cutting interest rates and passing relief measures.

We won't bother recapping March's slate of economic data. Suffice it to say, in the weeks and months ahead we will bear witness to an abrupt economic downturn unlike anything we have ever seen. While the data will be terrible, the impact on lives and livelihoods will be worse. The major U.S. stock indexes suffered declines of more than 30% from the record highs reached in mid-February, clawing back three years of gains. A post-CARES Act rally in the final week of the month would briefly stem the slide. U.S. Treasury yields plummeted during March with the two-year note closing the month at 0.25% and the 10-year at 0.67%. At one point in late March, much of the curve inside of a year was trading at negative yields. It appears a deep (hopefully short-lived) recession is imminent. A zero rate environment is the new norm for the foreseeable future.

HilltopSecurities
Asset Management

City of Galveston
Investment Officers' Certification

For the Quarter Ended
March 31, 2020

This report is prepared for the **City of Galveston** (the "Entity") in accordance with Chapter 2256 of the Texas Public Funds Investment Act ("PFIA"). Section 2256.023(a) of the PFIA states that: "Not less than quarterly, the investment officer shall prepare and submit to the governing body of the entity a written report of the investment transactions for all funds covered by this chapter for the preceding reporting period." This report is signed by the Entity's investment officers and includes the disclosures required in the PFIA. To the extent possible, market prices have been obtained from independent pricing sources.

The investment portfolio complied with the PFIA and the Entity's approved Investment Policy and Strategy throughout the period. All investment transactions made in the portfolio during this period were made on behalf of the Entity and were made in full compliance with the PFIA and the approved Investment Policy.

Officer Names and Titles:

Michael W. Loftin 6/17/20

Name: Michael W. Loftin — Title: Asst. City Manager-Finance

Tammy Y. Jacobs 6/17/20

Name: Tammy Y. Jacobs — Title: Executive Director & City Controller

6/17/20

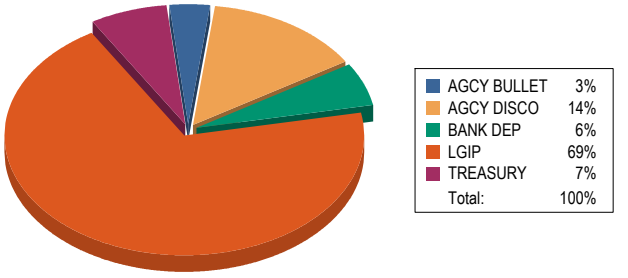
Name: Debbie Jordan — Title: Accounting Manager

City of Galveston
Executive Summary
As of 03/31/20

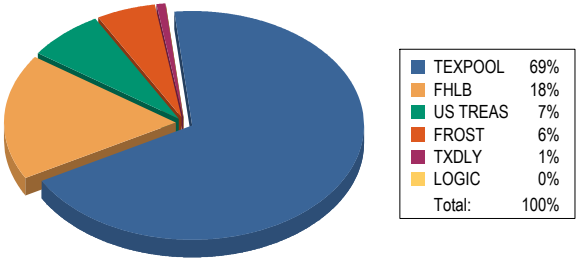
Account Summary

	Beginning Values as of 12/31/19	Ending Values as of 03/31/20
Par Value	170,690,672.35	114,714,890.78
Market Value	170,663,173.73	114,738,426.38
Book Value	170,640,410.24	114,696,490.51
Unrealized Gain /(Loss)	22,763.49	41,935.87
Market Value %	**100.01%**	**100.04%**
Weighted Avg. YTW	1.730%	1.113%
Weighted Avg. YTM	1.730%	1.113%

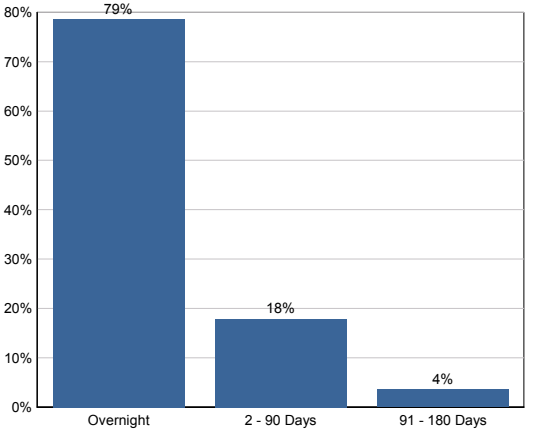
Allocation by Security Type



Allocation by Issuer

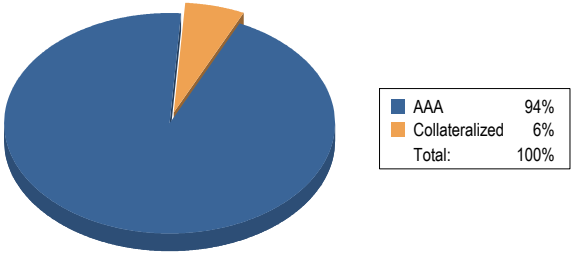


Maturity Distribution %

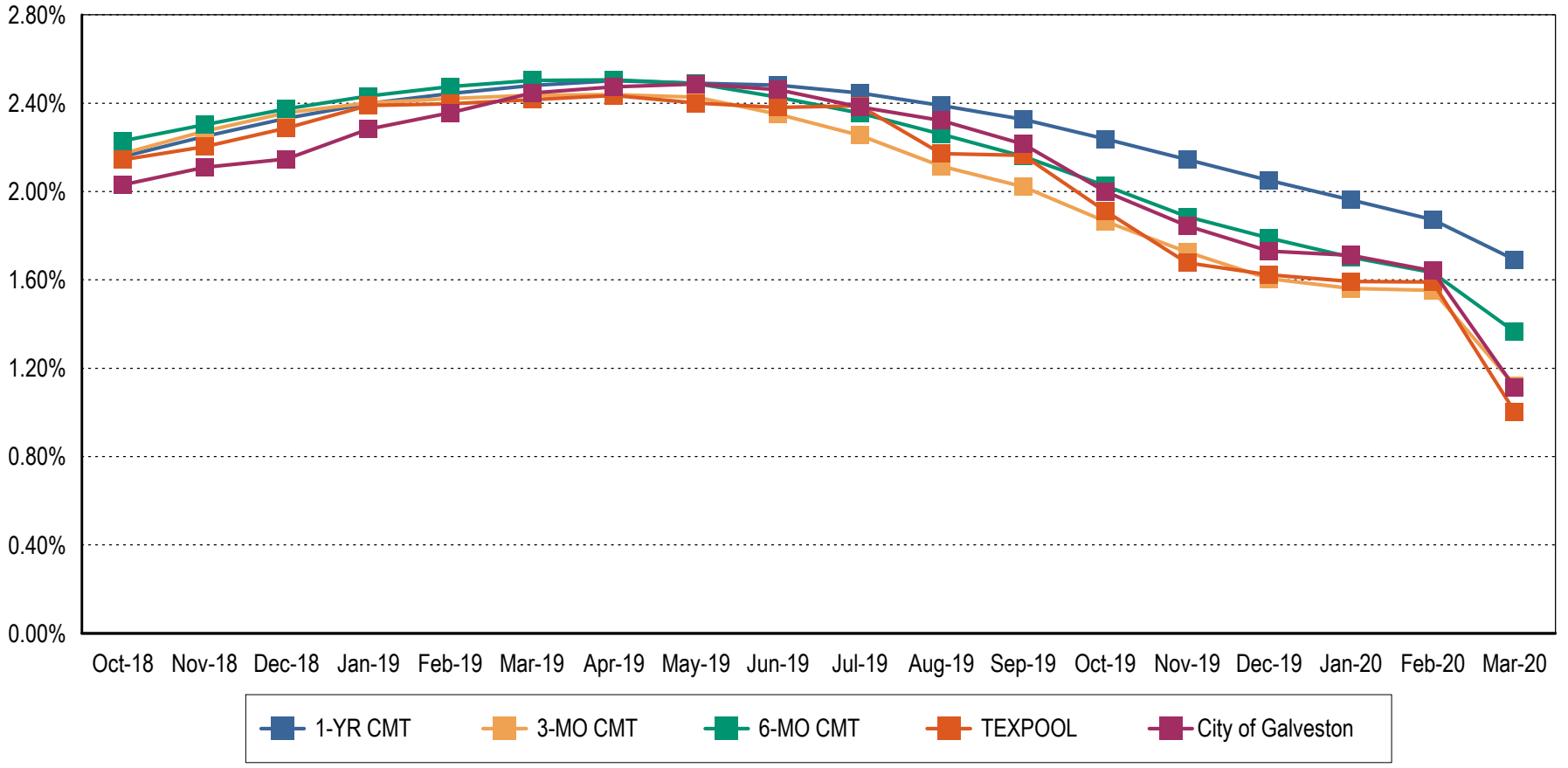


Weighted Average Days to Maturity: 10

Credit Quality



City of Galveston
Benchmark Comparison
As of 03/31/2020



Note 1: CMT stands for Constant Maturity Treasury. This data is published in Federal Reserve Statistical Release H.15 and represents an average of all actively traded Treasury securities having that time remaining until maturity. This is a standard industry benchmark for Treasury securities. The CMT benchmarks are moving averages. The 3-month CMT is the daily average for the previous 3 months, the 6-month CMT is the daily average for the previous 6 months, and the 1-year and 2-year CMT's are the daily averages for the previous 12-months.

Note 2: Benchmark data for TexPool is the monthly average yield.

City of Galveston
Detail of Security Holdings
As of 03/31/2020

CUSIP	Settle Date	Sec. Type	Sec. Description	CPN	Mty Date	Next Call	Call Type	Par Value	Purch Price	Orig Cost	Book Value	Mkt Price	Market Value	Days to Mty	Days to Call	YTM	YTW
Operating Fund																	
FROSTGLVS		BANK DEP	Frost Bk Sweep - Repo					6,578,000.00	100.000	6,578,000.00	6,578,000.00	100.000	6,578,000.00	1		0.293	0.293
LOGIC		LGIP	LOGIC					97.59	100.000	97.59	97.59	100.000	97.59	1		1.426	1.426
TEXPOOL		LGIP	TexPool					78,763,875.24	100.000	78,763,875.24	78,763,875.24	100.000	78,763,875.24	1		1.003	1.003
TXDAILY		LGIP	TexasDAILY					872,917.95	100.000	872,917.95	872,917.95	100.000	872,917.95	1		1.200	1.200
3130AHHQ9	11/04/19	AGCY BULET	FHLB	1.600	04/01/20			4,000,000.00	100.000	4,000,000.00	4,000,000.00	100.000	4,000,000.00	1		1.600	1.600
313384VN6	10/16/19	AGCY DISCO	FHLB		04/13/20			5,000,000.00	99.180	4,959,000.00	4,997,266.65	99.998	4,999,883.50	13		1.654	1.654
313384VX4	10/25/19	AGCY DISCO	FHLB		04/22/20			5,500,000.00	99.191	5,455,505.00	5,494,808.94	99.996	5,499,775.60	22		1.631	1.631
313384WW5	02/19/20	AGCY DISCO	FHLB		05/15/20			3,000,000.00	99.627	2,988,805.67	2,994,272.67	99.991	2,999,743.20	45		1.568	1.568
912828X96	01/02/20	TREAS NOTE	U.S. Treasury	1.500	05/15/20			4,000,000.00	99.973	3,998,906.25	3,999,640.84	100.170	4,006,814.40	45		1.572	1.572
313384XJ3	02/19/20	AGCY DISCO	FHLB		05/27/20			3,000,000.00	99.575	2,987,260.00	2,992,719.99	99.989	2,999,673.30	57		1.567	1.567
912828VJ6	01/02/20	TREAS NOTE	U.S. Treasury	1.875	06/30/20			4,000,000.00	100.145	4,005,781.25	4,002,890.64	100.441	4,017,645.60	91		1.580	1.580
Total for Operating Fund								**114,714,890.78**	**99.909**	**114,610,148.95**	**114,696,490.51**	**100.021**	**114,738,426.38**	**10**		**1.113**	**1.113**
Total for City of Galveston								**114,714,890.78**	**99.909**	**114,610,148.95**	**114,696,490.51**	**100.021**	**114,738,426.38**	**10**		**1.113**	**1.113**

City of Galveston
Change in Value
From 12/31/2019 to 03/31/2020

CUSIP	Security Type	Security Description	12/31/19 Book Value	Cost of Purchases	Maturities / Calls / Sales	Amortization / Accretion	Realized Gain/(Loss)	03/31/20 Book Value	12/31/19 Market Value	03/31/20 Market Value	Change in Mkt Value
Operating Fund											
FROSTGLVS	BANK DEP	Frost Bk Sweep - Repo	9,887,000.00	5,335,000.00	(8,644,000.00)	0.00	0.00	6,578,000.00	9,887,000.00	6,578,000.00	(3,309,000.00)
LOGIC	LGIP	LOGIC	55,545,068.39	13,692,509.71	(69,237,480.51)	0.00	0.00	97.59	55,545,068.39	97.59	(55,544,970.80)
TEXPOOL	LGIP	TexPool	52,531,028.98	26,232,846.26	0.00	0.00	0.00	78,763,875.24	52,531,028.98	78,763,875.24	26,232,846.26
TXDAILY	LGIP	TexasDAILY	1,137,574.98	7,473.00	(272,130.03)	0.00	0.00	872,917.95	1,137,574.98	872,917.95	(264,657.03)
3137EAEE5	AGCY BULET	FHLMC 1.500 01/17/20	7,997,682.48	0.00	(8,000,000.00)	2,317.52	0.00	0.00	7,999,212.80	0.00	(7,999,212.80)
3135G0A78	AGCY BULET	FNMA 1.625 01/21/20	4,998,627.90	0.00	(5,000,000.00)	1,372.10	0.00	0.00	5,000,135.50	0.00	(5,000,135.50)
912828MP2	TREAS NOTE	U.S. Treasury 3.625 02/15/20	4,608,688.19	0.00	(4,600,000.00)	(8,688.19)	0.00	0.00	4,610,660.50	0.00	(4,610,660.50)
912828W22	TREAS NOTE	U.S. Treasury 1.375 02/15/20	1,848,409.17	0.00	(1,850,000.00)	1,590.83	0.00	0.00	1,849,351.76	0.00	(1,849,351.76)
3130AFX77	AGCY BULET	FHLB 2.500 02/25/20	1,150,651.18	0.00	(1,150,000.00)	(651.18)	0.00	0.00	1,151,212.79	0.00	(1,151,212.79)
3135G0T29	AGCY BULET	FNMA 1.500 02/28/20	4,585,873.41	0.00	(4,590,000.00)	4,126.59	0.00	0.00	4,589,112.75	0.00	(4,589,112.75)
313378J77	AGCY BULET	FHLB 1.875 03/13/20	5,900,071.86	0.00	(5,900,000.00)	(71.86)	0.00	0.00	5,902,467.38	0.00	(5,902,467.38)
912828W63	TREAS NOTE	U.S. Treasury 1.625 03/15/20	2,998,453.47	0.00	(3,000,000.00)	1,546.53	0.00	0.00	2,999,765.70	0.00	(2,999,765.70)
9128284C1	TREAS NOTE	U.S. Treasury 2.250 03/31/20	3,002,427.12	0.00	(3,000,000.00)	(2,427.12)	0.00	0.00	3,004,218.90	0.00	(3,004,218.90)
3130AHHQ9	AGCY BULET	FHLB 1.600 04/01/20	4,000,000.00	0.00	0.00	0.00	0.00	4,000,000.00	4,005,229.20	4,000,000.00	(5,229.20)
313384VN6	AGCY DISCO	FHLB 0.000 04/13/20	4,976,538.90	0.00	0.00	20,727.75	0.00	4,997,266.65	4,977,758.50	4,999,883.50	22,125.00
313384VX4	AGCY DISCO	FHLB 0.000 04/22/20	5,472,314.21	0.00	0.00	22,494.73	0.00	5,494,808.94	5,473,375.60	5,499,775.60	26,400.00
313384WW5	AGCY DISCO	FHLB 0.000 05/15/20	0.00	2,988,805.67	0.00	5,467.00	0.00	2,994,272.67	0.00	2,999,743.20	2,999,743.20
912828X96	TREAS NOTE	U.S. Treasury 1.500 05/15/20	0.00	3,998,906.25	0.00	734.59	0.00	3,999,640.84	0.00	4,006,814.40	4,006,814.40
313384XJ3	AGCY DISCO	FHLB 0.000 05/27/20	0.00	2,987,260.00	0.00	5,459.99	0.00	2,992,719.99	0.00	2,999,673.30	2,999,673.30
912828VJ6	TREAS NOTE	U.S. Treasury 1.875 06/30/20	0.00	4,005,781.25	0.00	(2,890.61)	0.00	4,002,890.64	0.00	4,017,645.60	4,017,645.60
Total for Operating Fund			**170,640,410.24**	**59,248,582.14**	**(115,243,610.54)**	**51,108.67**	**0.00**	**114,696,490.51**	**170,663,173.73**	**114,738,426.38**	**(55,924,747.35)**
Total for City of Galveston			**170,640,410.24**	**59,248,582.14**	**(115,243,610.54)**	**51,108.67**	**0.00**	**114,696,490.51**	**170,663,173.73**	**114,738,426.38**	**(55,924,747.35)**

City of Galveston
Earned Income
From 12/31/2019 to 03/31/2020

CUSIP	Security Type	Security Description	Beg. Accrued	Interest Earned	Interest Rec'd / Sold / Matured	Interest Purchased	Ending Accrued	Disc Accr / Prem Amort	Net Income
Operating Fund									
FROSTGLVS	BANK DEP	Frost Bk Sweep - Repo	0.00	6,859.00	6,859.00	0.00	0.00	0.00	6,859.00
LOGIC	LGIP	LOGIC	0.00	277,228.09	277,228.09	0.00	0.00	0.00	277,228.09
TEXPOOL	LGIP	TexPool	0.00	232,846.26	232,846.26	0.00	0.00	0.00	232,846.26
TXDAILY	LGIP	TexasDAILY	0.00	3,884.87	3,884.87	0.00	0.00	0.00	3,884.87
3137EAEE5	AGCY BULET	FHLMC 1.500 01/17/20	54,666.67	5,333.33	60,000.00	0.00	0.00	2,317.52	7,650.85
3135G0A78	AGCY BULET	FNMA 1.625 01/21/20	36,111.11	4,513.89	40,625.00	0.00	0.00	1,372.10	5,885.99
912828MP2	TREAS NOTE	U.S. Treasury 3.625 02/15/20	62,984.38	20,390.62	83,375.00	0.00	0.00	(8,688.19)	11,702.43
912828W22	TREAS NOTE	U.S. Treasury 1.375 02/15/20	9,608.19	3,110.56	12,718.75	0.00	0.00	1,590.83	4,701.39
3130AFX77	AGCY BULET	FHLB 2.500 02/25/20	10,062.50	4,312.50	14,375.00	0.00	0.00	(651.18)	3,661.32
3135G0T29	AGCY BULET	FNMA 1.500 02/28/20	23,523.75	10,901.25	34,425.00	0.00	0.00	4,126.59	15,027.84
313378J77	AGCY BULET	FHLB 1.875 03/13/20	33,187.50	22,125.00	55,312.50	0.00	0.00	(71.86)	22,053.14
912828W63	TREAS NOTE	U.S. Treasury 1.625 03/15/20	14,464.29	9,910.71	24,375.00	0.00	0.00	1,546.53	11,457.24
9128284C1	TREAS NOTE	U.S. Treasury 2.250 03/31/20	17,151.64	16,598.36	33,750.00	0.00	0.00	(2,427.12)	14,171.24
3130AHHQ9	AGCY BULET	FHLB 1.600 04/01/20	10,133.33	16,000.00	0.00	0.00	26,133.33	0.00	16,000.00
313384VN6	AGCY DISCO	FHLB 0.000 04/13/20	0.00	0.00	0.00	0.00	0.00	20,727.75	20,727.75
313384VX4	AGCY DISCO	FHLB 0.000 04/22/20	0.00	0.00	0.00	0.00	0.00	22,494.73	22,494.73
313384WW5	AGCY DISCO	FHLB 0.000 05/15/20	0.00	0.00	0.00	0.00	0.00	5,467.00	5,467.00
912828X96	TREAS NOTE	U.S. Treasury 1.500 05/15/20	0.00	14,835.16	0.00	(7,912.09)	22,747.25	734.59	15,569.75
313384XJ3	AGCY DISCO	FHLB 0.000 05/27/20	0.00	0.00	0.00	0.00	0.00	5,459.99	5,459.99
912828VJ6	TREAS NOTE	U.S. Treasury 1.875 06/30/20	0.00	18,543.95	0.00	(412.09)	18,956.04	(2,890.61)	15,653.34
Total for Operating Fund			**271,893.36**	**667,393.55**	**879,774.47**	**(8,324.18)**	**67,836.62**	**51,108.67**	**718,502.22**
Total for City of Galveston			**271,893.36**	**667,393.55**	**879,774.47**	**(8,324.18)**	**67,836.62**	**51,108.67**	**718,502.22**

City of Galveston
Investment Transactions
From 01/01/2020 to 03/31/2020

Trade Date	Settle Date	CUSIP	Security Type	Security Description	Coupon	Mty Date	Call Date	Par Value	Price	Principal Amount	Int Purchased / Received	Total Amount	Realized Gain / Loss	YTM	YTW
Operating Fund															
Maturities															
01/17/20	01/17/20	3137EAEE5	AGCY BULET	FHLMC	1.500	01/17/20		8,000,000.00	100.000	8,000,000.00	0.00	8,000,000.00		2.159	
01/21/20	01/21/20	3135G0A78	AGCY BULET	FNMA	1.625	01/21/20		5,000,000.00	100.000	5,000,000.00	0.00	5,000,000.00		2.124	
02/15/20	02/15/20	912828MP2	TREAS NOTE	U.S. Treasury	3.625	02/15/20		3,000,000.00	100.000	3,000,000.00	0.00	3,000,000.00		2.056	
02/15/20	02/15/20	912828MP2	TREAS NOTE	U.S. Treasury	3.625	02/15/20		1,600,000.00	100.000	1,600,000.00	0.00	1,600,000.00		2.081	
02/15/20	02/15/20	912828W22	TREAS NOTE	U.S. Treasury	1.375	02/15/20		1,850,000.00	100.000	1,850,000.00	0.00	1,850,000.00		2.086	
02/25/20	02/25/20	3130AFX77	AGCY BULET	FHLB	2.500	02/25/20		1,150,000.00	100.000	1,150,000.00	0.00	1,150,000.00		2.119	
02/28/20	02/28/20	3135G0T29	AGCY BULET	FNMA	1.500	02/28/20		4,590,000.00	100.000	4,590,000.00	0.00	4,590,000.00		2.074	
03/13/20	03/13/20	313378J77	AGCY BULET	FHLB	1.875	03/13/20		5,900,000.00	100.000	5,900,000.00	0.00	5,900,000.00		1.869	
03/15/20	03/15/20	912828W63	TREAS NOTE	U.S. Treasury	1.625	03/15/20		3,000,000.00	100.000	3,000,000.00	0.00	3,000,000.00		1.881	
03/31/20	03/31/20	9128284C1	TREAS NOTE	U.S. Treasury	2.250	03/31/20		3,000,000.00	100.000	3,000,000.00	0.00	3,000,000.00		1.918	
Total for: Maturities								**37,090,000.00**		**37,090,000.00**	**0.00**	**37,090,000.00**		**2.039**	
Purchases															
12/31/19	01/02/20	912828VJ6	TREAS NOTE	U.S. Treasury	1.875	06/30/20		4,000,000.00	100.145	4,005,781.25	412.09	4,006,193.34		1.580	1.580
12/31/19	01/02/20	912828X96	TREAS NOTE	U.S. Treasury	1.500	05/15/20		4,000,000.00	99.973	3,998,906.25	7,912.09	4,006,818.34		1.572	1.572
02/18/20	02/19/20	313384XJ3	AGCY DISCO	FHLB		05/27/20		3,000,000.00	99.575	2,987,260.00	0.00	2,987,260.00		1.567	1.567
02/18/20	02/19/20	313384WW5	AGCY DISCO	FHLB		05/15/20		3,000,000.00	99.627	2,988,805.67	0.00	2,988,805.67		1.568	1.568
Total for: Purchases								**14,000,000.00**		**13,980,753.17**	**8,324.18**	**13,989,077.35**		**1.572**	**1.572**
Income Payments															
01/17/20	01/17/20	3137EAEE5	AGCY BULET	FHLMC	1.500	01/17/20				0.00	60,000.00	60,000.00			
01/21/20	01/21/20	3135G0A78	AGCY BULET	FNMA	1.625	01/21/20				0.00	40,625.00	40,625.00			
02/18/20	02/15/20	912828MP2	TREAS NOTE	U.S. Treasury	3.625	02/15/20				0.00	54,375.00	54,375.00			
02/18/20	02/15/20	912828MP2	TREAS NOTE	U.S. Treasury	3.625	02/15/20				0.00	29,000.00	29,000.00			
02/18/20	02/15/20	912828W22	TREAS NOTE	U.S. Treasury	1.375	02/15/20				0.00	12,718.75	12,718.75			
02/25/20	02/25/20	3130AFX77	AGCY BULET	FHLB	2.500	02/25/20				0.00	14,375.00	14,375.00			
02/28/20	02/28/20	3135G0T29	AGCY BULET	FNMA	1.500	02/28/20				0.00	34,425.00	34,425.00			
03/13/20	03/13/20	313378J77	AGCY BULET	FHLB	1.875	03/13/20				0.00	55,312.50	55,312.50			
03/16/20	03/15/20	912828W63	TREAS NOTE	U.S. Treasury	1.625	03/15/20				0.00	24,375.00	24,375.00			
03/31/20	03/31/20	9128284C1	TREAS NOTE	U.S. Treasury	2.250	03/31/20				0.00	33,750.00	33,750.00			

Trade Date	Settle Date	CUSIP	Security Type	Security Description	Coupon	Mty Date	Call Date	Par Value	Price	Principal Amount	Int Purchased / Received	Total Amount	Realized Gain / Loss	YTM	YTW
Operating Fund															
Total for: Income Payments										0.00	358,956.25	358,956.25			

Trade Date	Settle Date	CUSIP	Security Type	Security Description	Coupon	Mty Date	Call Date	Par Value	Price	Principal Amount	Int Purchased / Received	Total Amount	Realized Gain / Loss	YTM	YTW

Total for All Portfolios

Transaction Type	Quantity	Total Amount	Realized G/L	YTM	YTW
Total Maturities	37,090,000.00	37,090,000.00		2.039	
Total Purchases	14,000,000.00	13,989,077.35		1.572	1.572
Total Income Payments	0.00	358,956.25			

City of Galveston
Amortization and Accretion
From 12/31/2019 to 03/31/2020

CUSIP	Settle Date	Security Type	Security Description	Next Call Date	Purchase Qty	Orig Price	Original Cost	Amrt/Accr for Period	Total Amrt/Accr Since Purch	Remaining Disc / Prem	Book Value
Operating Fund											
3137EAEE5	06/20/19	AGCY BULET	FHLMC 1.500 01/17/20		0.00	99.625	0.00	2,317.52	0.00	0.00	0.00
3135G0A78	06/17/19	AGCY BULET	FNMA 1.625 01/21/20		0.00	99.706	0.00	1,372.10	0.00	0.00	0.00
912828MP2	07/19/19	TREAS NOTE	U.S. Treasury 3.625 02/15/20		0.00	100.855	0.00	(8,688.19)	0.00	0.00	0.00
912828W22	08/01/19	TREAS NOTE	U.S. Treasury 1.375 02/15/20		0.00	99.621	0.00	1,590.83	0.00	0.00	0.00
3130AFX77	08/01/19	AGCY BULET	FHLB 2.500 02/25/20		0.00	100.213	0.00	(651.18)	0.00	0.00	0.00
3135G0T29	07/15/19	AGCY BULET	FNMA 1.500 02/28/20		0.00	99.648	0.00	4,126.59	0.00	0.00	0.00
313378J77	09/06/19	AGCY BULET	FHLB 1.875 03/13/20		0.00	100.003	0.00	(71.86)	0.00	0.00	0.00
912828W63	09/12/19	TREAS NOTE	U.S. Treasury 1.625 03/15/20		0.00	99.871	0.00	1,546.53	0.00	0.00	0.00
9128284C1	09/26/19	TREAS NOTE	U.S. Treasury 2.250 03/31/20		0.00	100.168	0.00	(2,427.12)	0.00	0.00	0.00
3130AHHQ9	11/04/19	AGCY BULET	FHLB 1.600 04/01/20		4,000,000.00	100.000	4,000,000.00	0.00	0.00	0.00	4,000,000.00
313384VN6	10/16/19	AGCY DISCO	FHLB 0.000 04/13/20		5,000,000.00	99.180	4,959,000.00	20,727.75	38,266.65	2,733.35	4,997,266.65
313384VX4	10/25/19	AGCY DISCO	FHLB 0.000 04/22/20		5,500,000.00	99.191	5,455,505.00	22,494.73	39,303.94	5,191.06	5,494,808.94
313384WW5	02/19/20	AGCY DISCO	FHLB 0.000 05/15/20		3,000,000.00	99.627	2,988,805.67	5,467.00	5,467.00	5,727.33	2,994,272.67
912828X96	01/02/20	TREAS NOTE	U.S. Treasury 1.500 05/15/20		4,000,000.00	99.973	3,998,906.25	734.59	734.59	359.16	3,999,640.84
313384XJ3	02/19/20	AGCY DISCO	FHLB 0.000 05/27/20		3,000,000.00	99.575	2,987,260.00	5,459.99	5,459.99	7,280.01	2,992,719.99
912828VJ6	01/02/20	TREAS NOTE	U.S. Treasury 1.875 06/30/20		4,000,000.00	100.145	4,005,781.25	(2,890.61)	(2,890.61)	(2,890.64)	4,002,890.64
Total for Operating Fund					**28,500,000.00**		**28,395,258.17**	**51,108.67**	**86,341.56**	**18,400.27**	**28,481,599.73**
Total for City of Galveston					**28,500,000.00**		**28,395,258.17**	**51,108.67**	**86,341.56**	**18,400.27**	**28,481,599.73**

City of Galveston

Projected Cash Flows

Cash Flows for next 180 days from 03/31/2020

CUSIP	Security Type	Security Description	Pay Date	Interest	Principal	Total Amount
Operating Fund						
3130AHHQ9	AGCY BULET	FHLB 1.600 04/01/20	04/01/20	26,133.33	4,000,000.00	4,026,133.33
313384VN6	AGCY DISCO	FHLB 0.000 04/13/20	04/13/20	0.00	5,000,000.00	5,000,000.00
313384VX4	AGCY DISCO	FHLB 0.000 04/22/20	04/22/20	0.00	5,500,000.00	5,500,000.00
313384WW5	AGCY DISCO	FHLB 0.000 05/15/20	05/15/20	0.00	3,000,000.00	3,000,000.00
912828X96	TREAS NOTE	U.S. Treasury 1.500 05/15/20	05/15/20	30,000.00	4,000,000.00	4,030,000.00
313384XJ3	AGCY DISCO	FHLB 0.000 05/27/20	05/27/20	0.00	3,000,000.00	3,000,000.00
912828VJ6	TREAS NOTE	U.S. Treasury 1.875 06/30/20	06/30/20	37,500.00	4,000,000.00	4,037,500.00
Total for Operating Fund				**93,633.33**	**28,500,000.00**	**28,593,633.33**

CUSIP	Security Type	Security Description	Pay Date	Interest	Principal	Total Amount
Total for All Portfolios						
			April 2020	26,133.33	14,500,000.00	14,526,133.33
			May 2020	30,000.00	10,000,000.00	10,030,000.00
			June 2020	37,500.00	4,000,000.00	4,037,500.00
		Total Projected Cash Flows for City of Galveston		**93,633.33**	**28,500,000.00**	**28,593,633.33**

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June 17, 2020

City of Galveston, Texas

Economic Review and Investment Strategy

Events Driving the Market

- REOPENING OF THE ECONOMY: States are quickly reopening along with stores, services, restaurants and bars. Road traffic increasing; signs of normalization. *Holding our breath*.
- STOCK MARKET: Equity markets continue their climb, driven by the massive government support and optimism over reopening. This suggests a near-term and mostly complete economic recovery. While the economy will eventually improve, the damage has been severe and it's unclear if COVID-19 will reassert itself.
- ECONOMIC DATA: Q1 GDP was revised downward from -4.8% to -5.0%, *the sharpest contraction in the U.S. in more than 11 years*. Both ISM manufacturing and non-manufacturing surveys rose in May, but are still in contractionary territory, *just less bad*. Initial jobless claims came in under 2 million for the first time in 10 weeks, *still almost 25 times the pre-virus historical high*.
- ECONOMIC FORECASTS: While this environment is challenging to navigate, it's remarkable how wide the differences are from one economic forecast to another, and also how far off the actual data is from expectations. The miss on May's non-farm payroll data was 10 million jobs.

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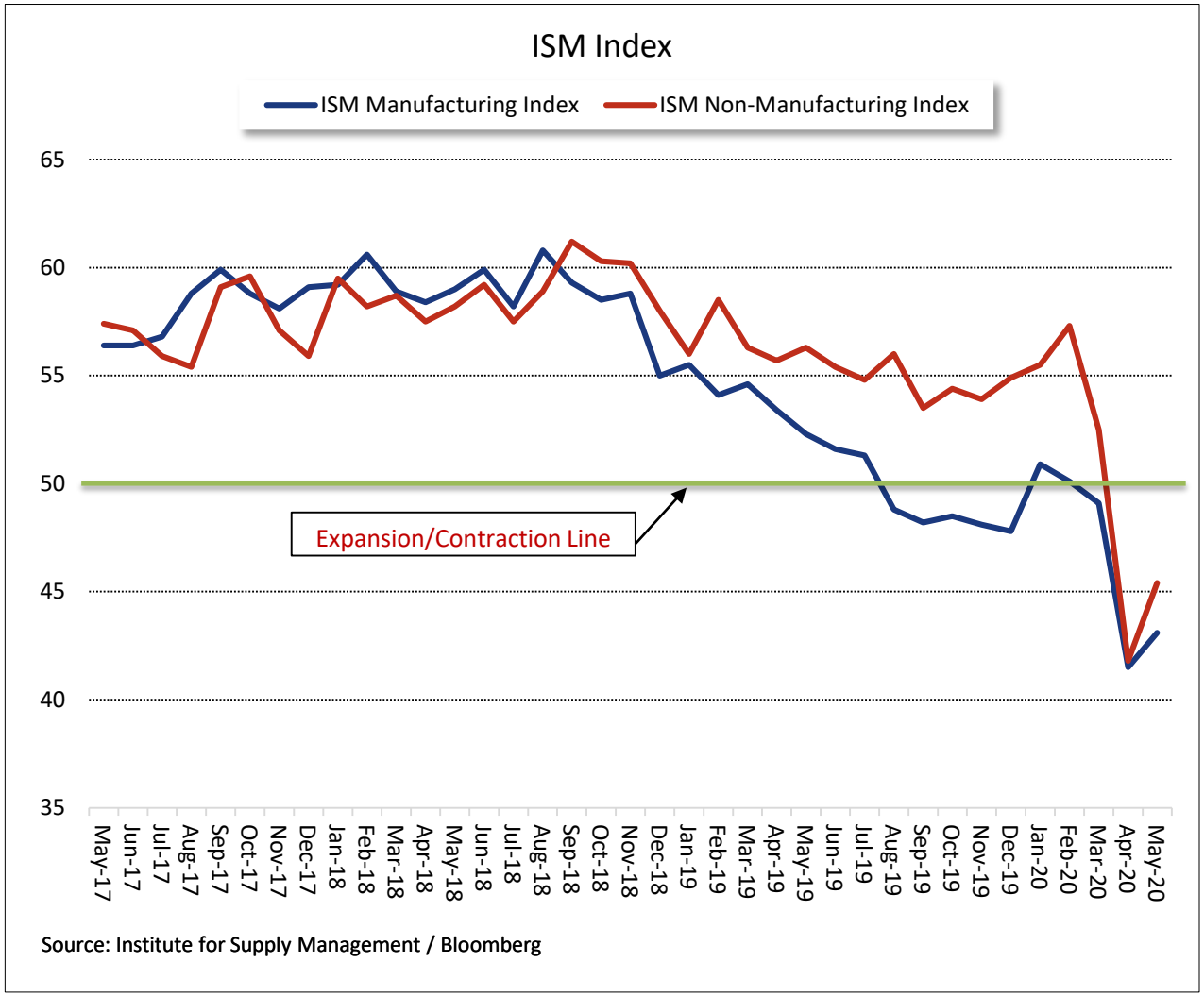
The Institute for Supply Management (ISM) Surveys

- The ISM manufacturing index for May rose from 41.5 to 43.1, still a number consistent with recession, but moving in the right direction.
- The ISM non-manufacturing (service sector) index climbed from 41.8 to 45.4. Remember, an ISM reading below the 50 mark still indicates contraction, but the purchasing manager's outlook is clearly improving as the economy reopens.
- As was the case in April, both the factory and service sector indexes would be lower if the supplier delivery indexes were not elevated by broken supply chains, but the improvement itself is what investors focused on.



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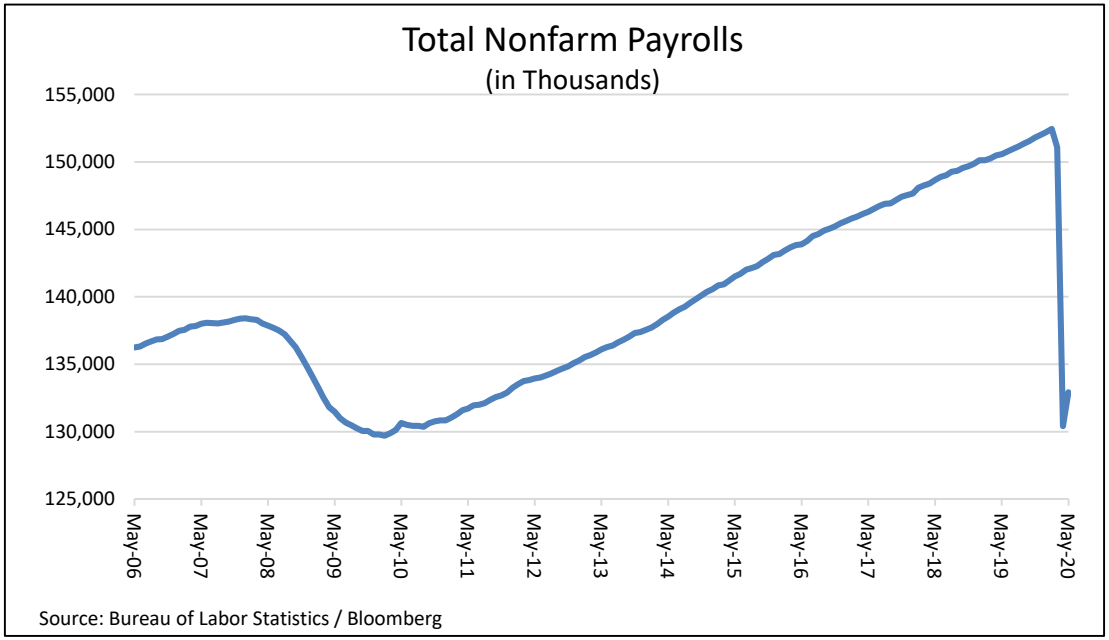
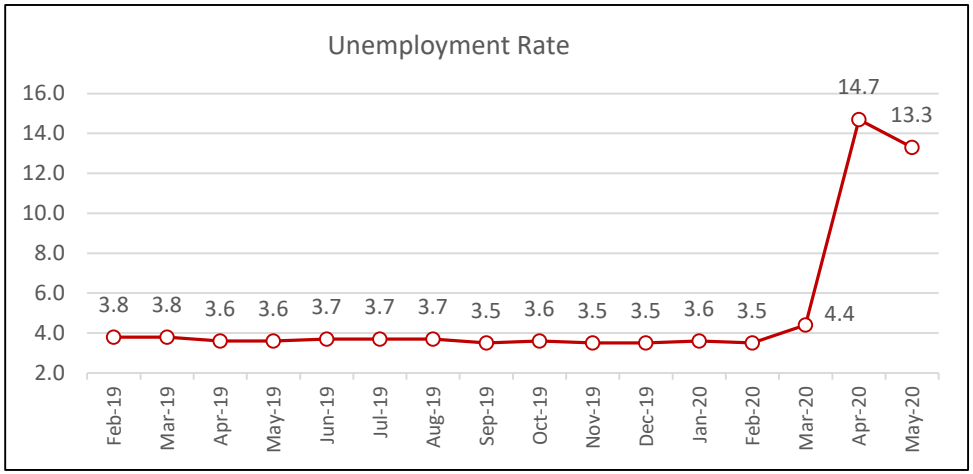
Employment

Labor market shocker hints at an early end to recession.

- Nonfarm payrolls were forecasted to shed another 7.5 million jobs, but instead shockingly gained 2.5 million. It was easily the largest single month increase in the history of the company survey going back to 1939.
- *Somehow, forecasters missed by around 10 million.*
- The headline unemployment rate fell from 14.7% in April to 13.3% in May, well below the 19% median forecast.
- The BLS reported that if the workers who were recorded as employed but absent from work due to "other reasons" had been correctly classified as "unemployed on temporary layoff," the unemployment rate would have been about 3% higher at 16.3%.





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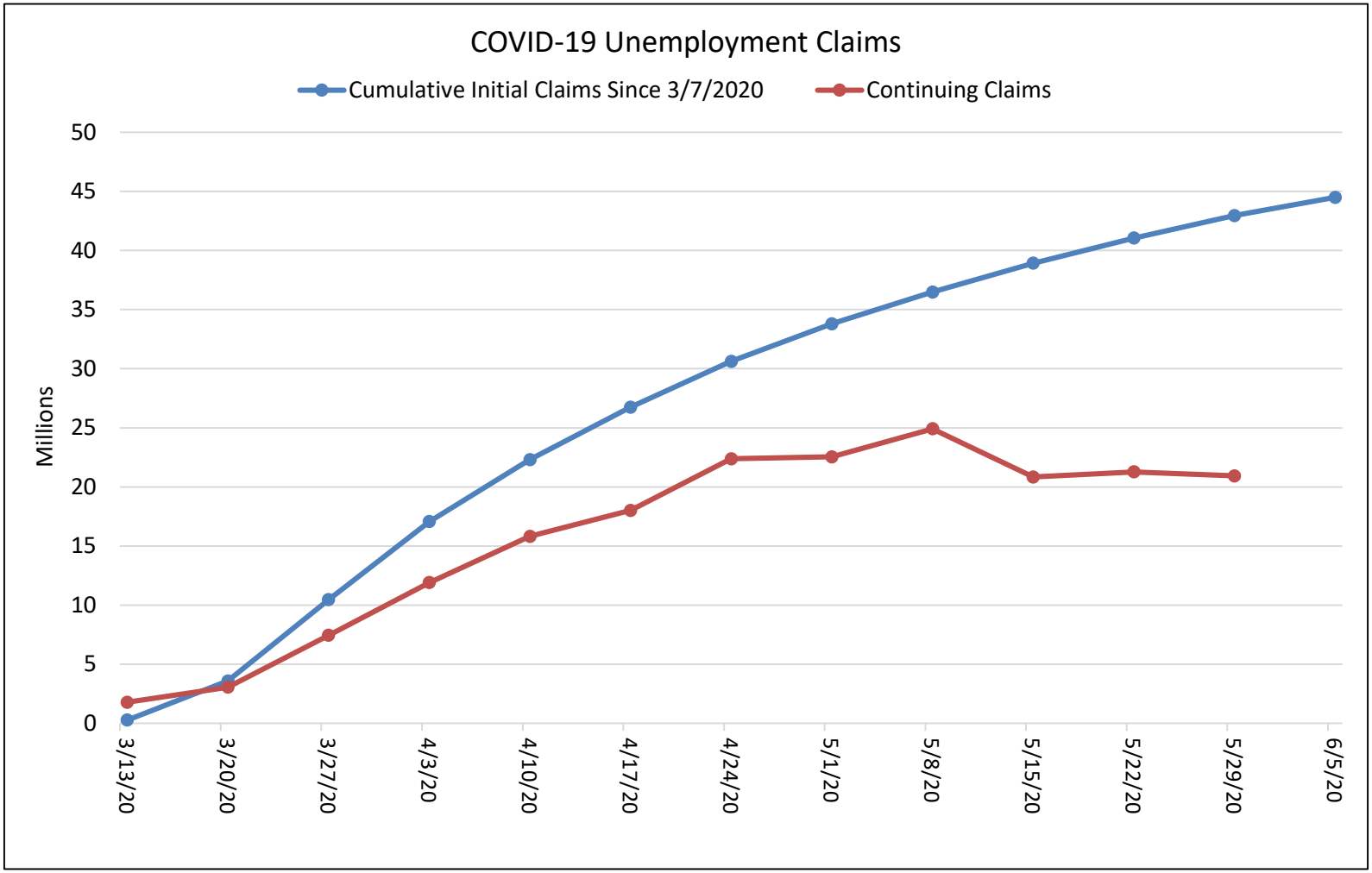
Unemployment Benefit Claims



Source: Bureau of Labor Statistics / Bloomberg

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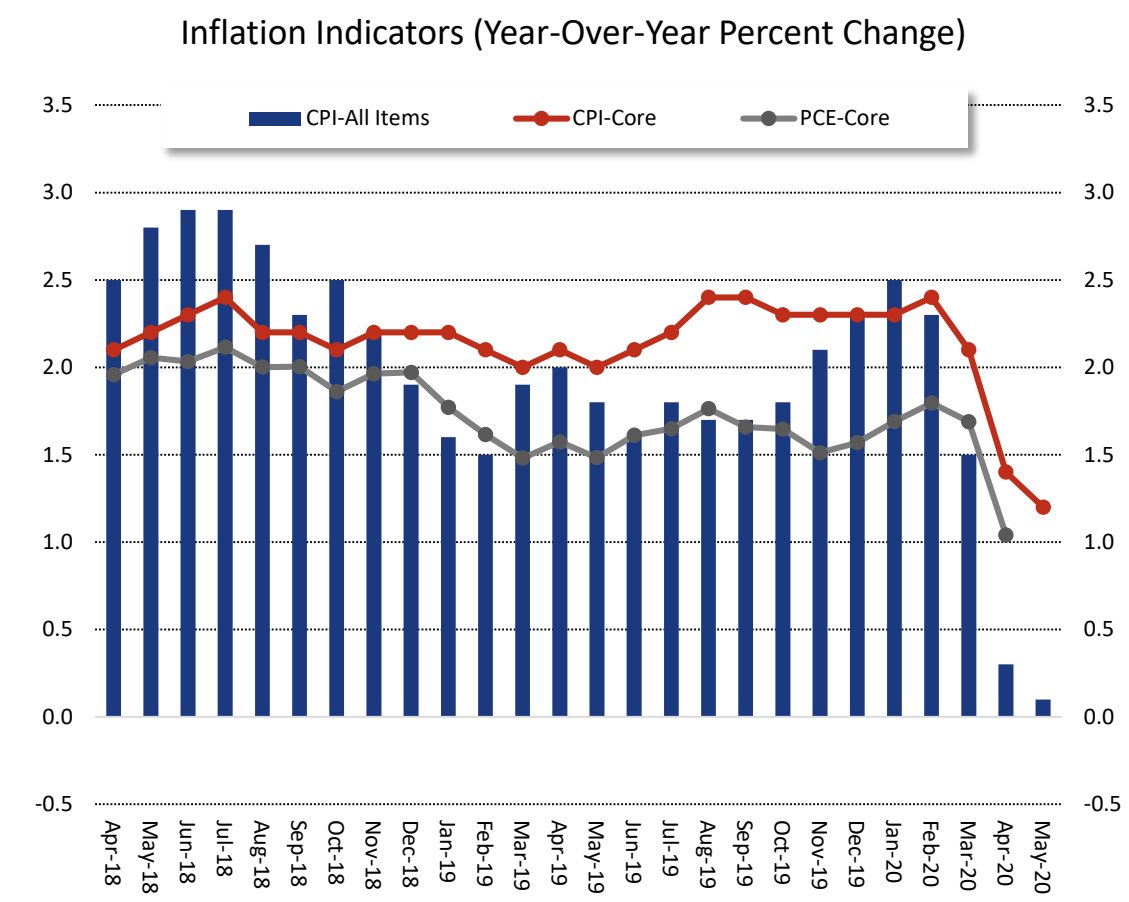
Inflation

The possibility of deflation will be a growing concern.

- Both the consumer price index (CPI) and core CPI for the month of May fell by -0.1%. *It was the first time in 60+ years of series history that core consumer prices declined over three consecutive months.*
- On a year-over-year basis, headline CPI rose +0.1% in May, down from +0.3 in April and +1.5% in March. The weakest pace since September 2015.
- The Fed favorite Core Personal Consumption Expenditures (PCE) fell 0.4% in April after being flat in March. Year-over-year through April, core inflation increased 1.0%, the weakest pace since December 2010.



Source: Bureau of Labor Statistics / Bureau of Economic Analysis / Bloomberg

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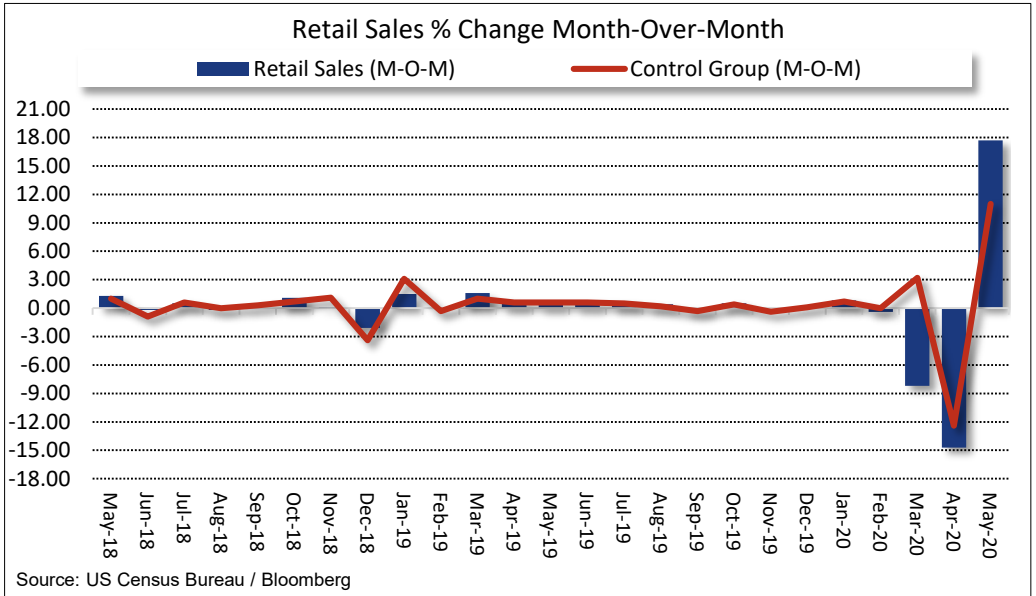
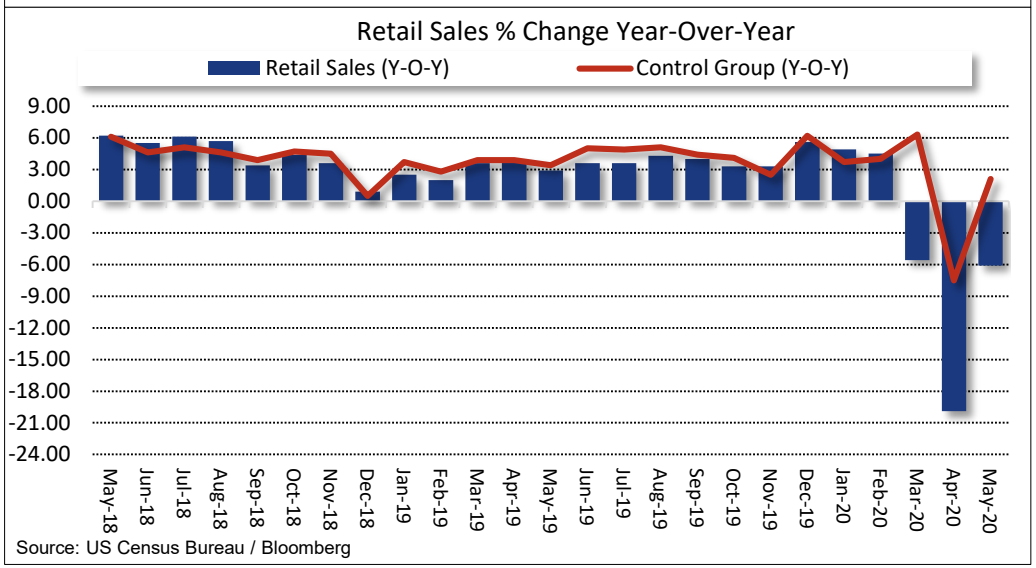
Retail Sales

Clearly reflects the April shutdown and May reopening

- May retail sales absolutely crushed all expectations. Sales surged +17.7% last month, more than doubling the median forecast.
- The record May increase follows a revised -14.7% April decline … which was also a record, and leaves retail sales just over 8% below pre-virus levels from earlier this year.
- The retail sales "control group," used in the GDP calculation, rose +11.0% in May after a -15.3% drop in April and has essentially returned to pre-pandemic levels. This strongly suggests the overly-dire second quarter economic growth forecasts will need to be recalculated to reflect the late quarter rebound.





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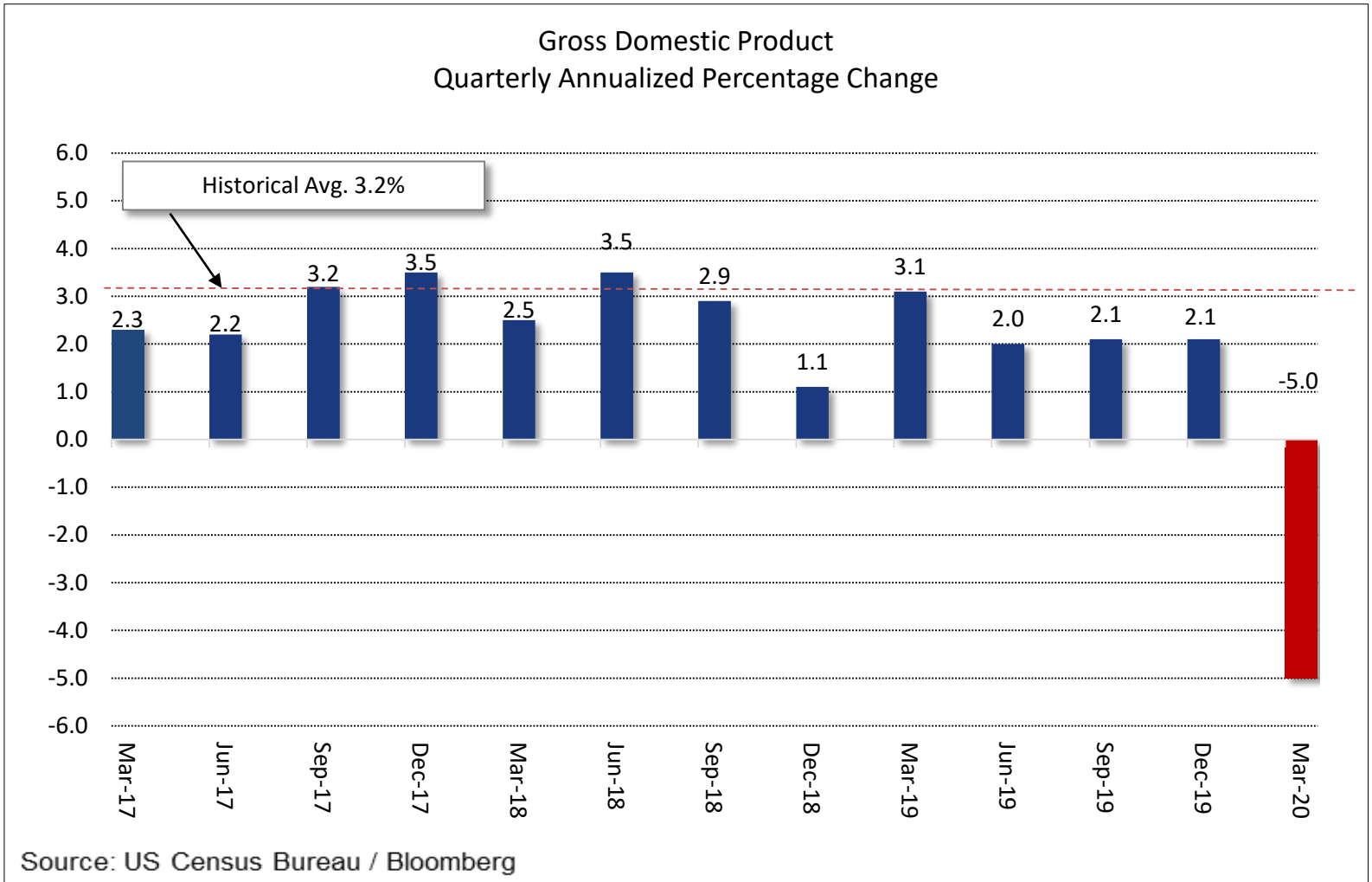
Economic Growth

Q1 GDP had the sharpest contraction in the U.S. in more than 11 years.



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Market Movement

EQUITY INDEXES			
	DOW	S&P 500	NASDAQ
12/31/2019	28,538	3,231	8,973
6/16/2020	26,290	3,119	9,896
YTD % Change	-7.9%	-3.5%	10.3%

6/17/2019	26,113	2,890	7,845
6/16/2020	26,290	3,121	9,896
Y-o-Y % Change	0.7%	8.0%	26.1%

2/14/2020	29,398	3,380	9,731
6/16/2020	26,290	3,125	9,896
% Change	-10.6%	-7.6%	1.7%

Stock markets are recovering from the huge blows in February and March, but they may be showing some irrational optimism.

INTEREST RATES							
	Date	Fed Funds	6 mo. T-bill	12 mo. T-bill	2 yr. T-note	5 yr. T-note	10 yr. T-note
Last	2/14/2020	1.50%-1.75%	1.55%	1.48%	1.43%	1.42%	1.59%
High			1.55%	1.48%	1.43%	1.42%	1.59%
Low			0.00%	0.10%	0.14%	0.30%	0.54%
End	6/16/2020	0.00%-0.25%	0.19%	0.19%	0.20%	0.34%	0.75%

The bond market is much more cautious with yields still hovering near recent lows.

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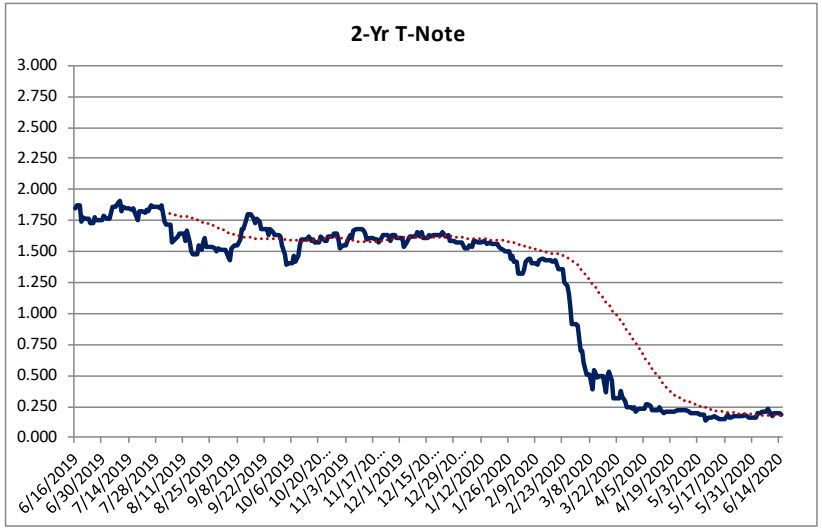
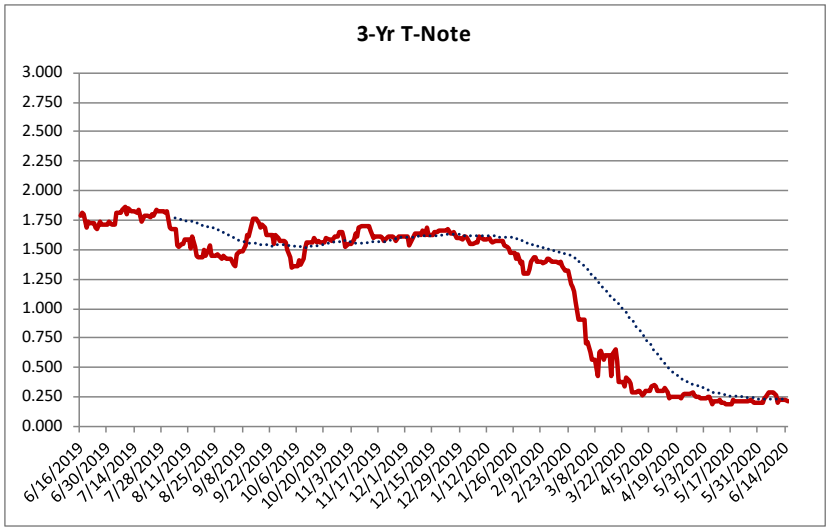
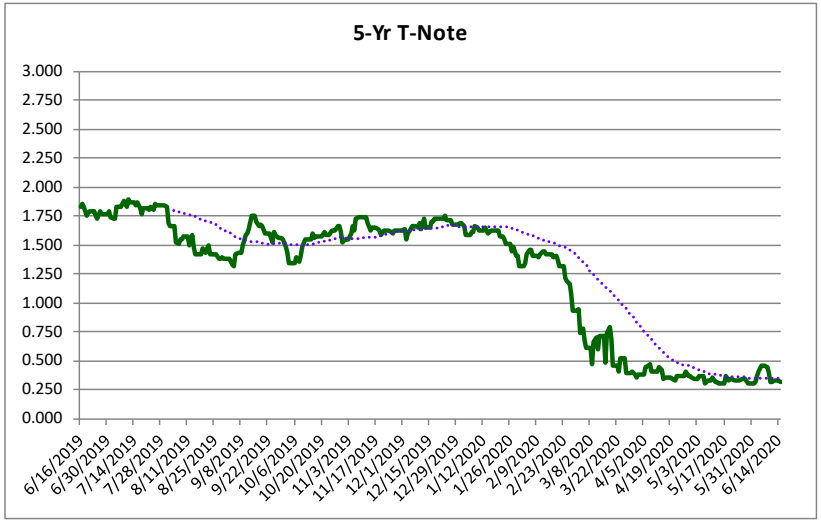
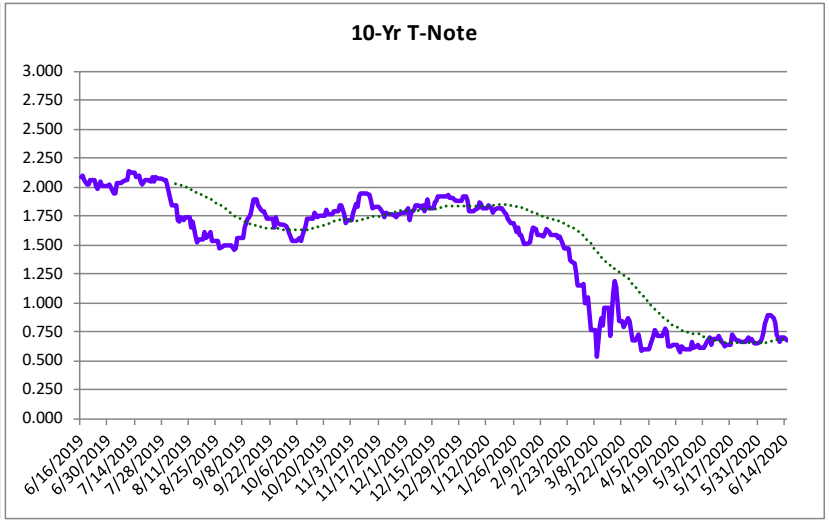
Selected U.S. Treasury Yield History (6/15/20)









Note: Dotted lines represent a 50-day moving average (trend line).

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Interest Rate Outlook

- In the first dot plot/interest rate forecast since December, FOMC members indicated *the overnight target would remain at the zero bound through at least 2022*. Not a single one of the 17 officials offering a forecast thinks there will be a rate hike this year or next. Only two of the 17 think there will be a rate hike in 2022.
- In his post-meeting press conference, Fed Chair Powell said *the FOMC is "…not even thinking about thinking about raising rates."*
- The Fed's updated economic projections were interesting. In particular:
  - The committee expects a -6.5% decline in GDP for 2020, which implies a fairly substantial second-half rebound in economic growth, followed by GDP gains of +5.0% in 2021 and +3.5% in 2022.
  - The Fed's forecast for unemployment shows a 9.3% rate at the end of 2020, declining to 6.5% in 2021 and 5.5% in 2022.
  - The inflation outlook is expected to follow a similar path to GDP, with the PCE core growth rate dropping to +1.0% in 2020 before climbing to +1.5% and +1.7% over the following two years.
- Notes from the post meeting press conference suggested the Fed remains cautious and would like to see Congress continue to spend.

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Bloomberg Yield Forecasts

Survey release date – **6/12/20**

	6/12/20 Most Current	Q2 20	Q3 20	Q4 20	Q1 21	Q2 21	Q3 21	Q4 21
Median Fed Funds (Upper Bound)	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
Median Fed Funds (Lower Bound)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Average US 2-Year	0.18	0.21	0.27	0.33	0.39	0.48	0.58	0.65
Average US 10-Year	0.68	0.77	0.84	0.93	1.05	1.14	1.25	1.34

Survey release date – **2/14/20**

	2/14/20	Q1 20	Q2 20	Q3 20	Q4 20	Q1 21	Q2 21	Q3 21
Median Fed Funds (Upper Bound)	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75
Median Fed Funds (Lower Bound)	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50
Average US 2-Year	1.43	1.54	1.59	1.63	1.66	1.69	1.74	1.76
Average US 10-Year	1.59	1.75	1.71	1.88	1.93	1.97	2.05	2.09

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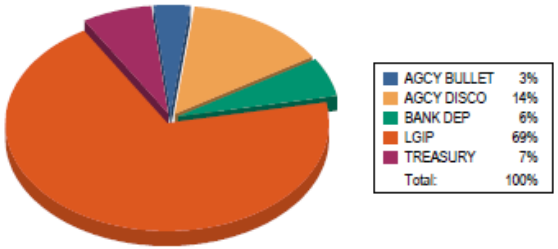
Current Portfolio Characteristics

As of 3/31/2020

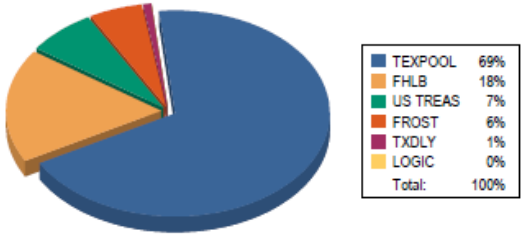
Account Summary

	Beginning Values as of 12/31/19	Ending Values as of 03/31/20
Par Value	170,690,672.35	114,714,890.78
Market Value	170,663,173.73	114,738,426.38
Book Value	170,640,410.24	114,696,490.51
Unrealized Gain /(Loss)	22,763.49	41,935.87
Market Value %	**100.01%**	**100.04%**
Weighted Avg. YTW	1.730%	1.113%
Weighted Avg. YTM	1.730%	1.113%

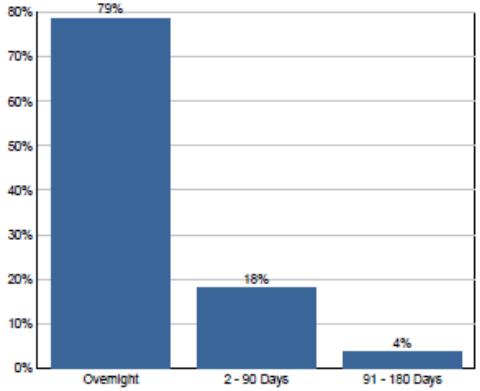
Allocation by Security Type



Allocation by Issuer

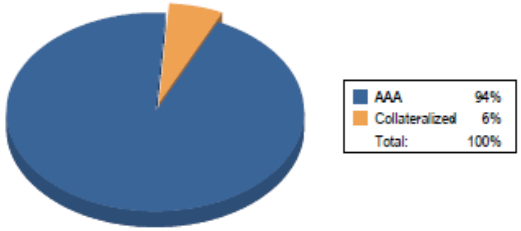


Maturity Distribution %



Weighted Average Days to Maturity: 10

Credit Quality



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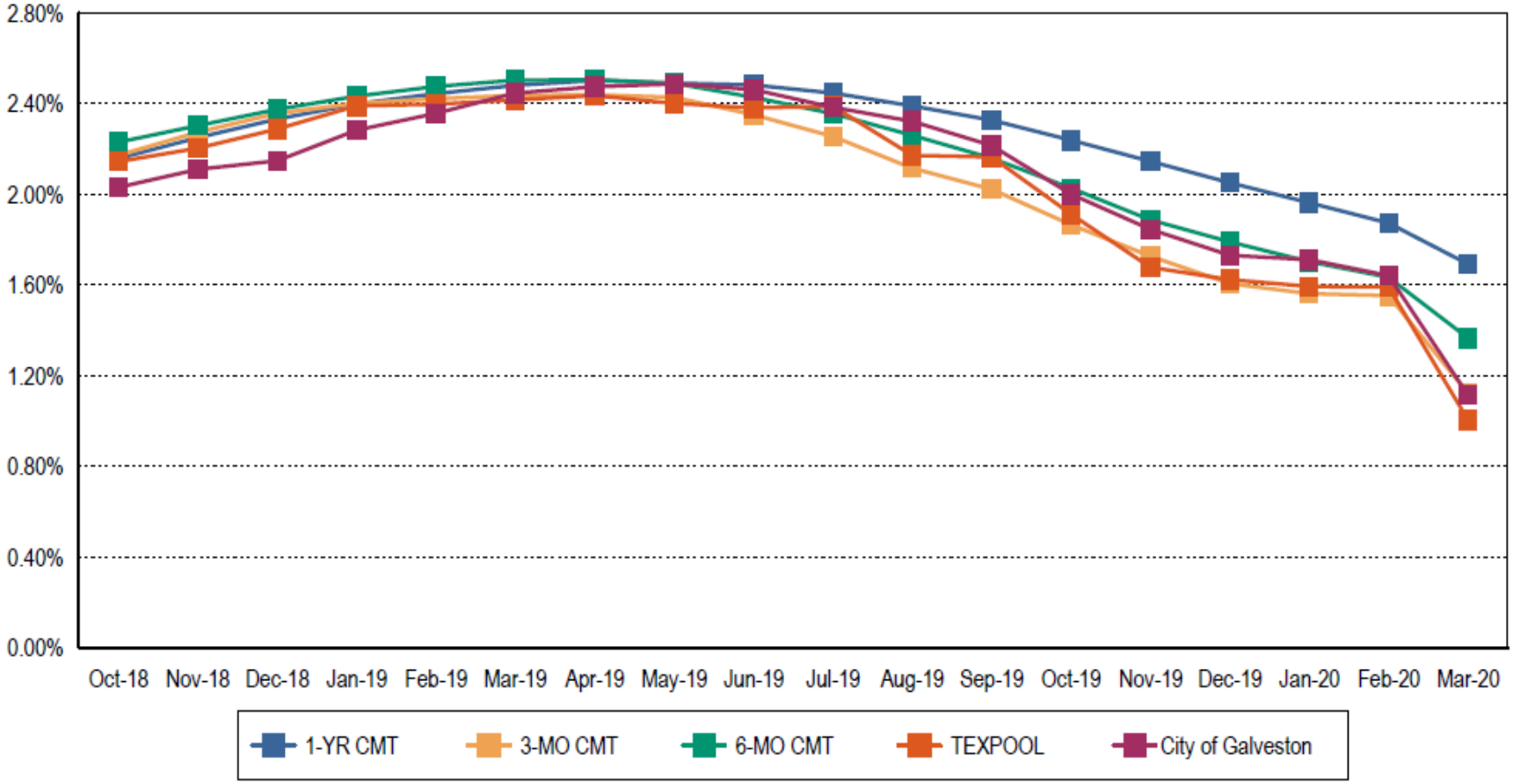
Benchmark Comparison



Note 1: CMT stands for Constant Maturity Treasury. This data is published in Federal Reserve Statistical Release H.15 and represents an average of all actively traded Treasury securities having that time remaining until maturity. This is a standard industry benchmark for Treasury securities. The CMT benchmarks are moving averages. The 3-month CMT is the daily average for the previous 3 months, the 6-month CMT is the daily average for the previous 6 months, and the 1-year and 2-year CMT's are the daily averages for the previous 12-months.

Note 2: Benchmark data for TexPool is the monthly average yield.

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Portfolio / Strategy Highlights

- First Quarter 2020 Activity:
  - 10 maturities totaling $37 million with an average yield of 2.04%
  - 4 purchases totaling $14 million with an average yield of 1.57% and an average maturity 129 days
- The weighted average maturity decreased from 20 days at 12/31/19 to 10 days at 3/31/20.
- Overall portfolio yield declined from 1.73% to 1.11% during the quarter.
- Portfolio earned $718,502 during the quarter ending 3/31/20, a 5% decline from the $755,530 earned in the prior quarter.

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Relative Value Report

HilltopSecurities Asset Management.

MATURITY DATE	SECURITY TYPE	DISCOUNT/ SPREAD	YIELD
Agency Discount Notes			
22-Jul-20	FHLB	0.120%	0.120%
18-Aug-20	FHLB	0.145%	0.145%
16-Sep-20	FHLB	0.165%	0.165%
13-Oct-20	FHLMC	0.155%	0.155%
17-Nov-20	FHLB	0.130%	0.130%
11-Dec-20	FHLB	0.170%	0.170%
15-Jan-21	NQ	NQ	NQ
15-Feb-21	FNMA	0.130%	0.130%
15-Mar-21	FNMA	0.130%	0.130%
15-Apr-21	FNMA	0.130%	0.130%
15-May-21	FNMA	0.130%	0.130%
15-Jun-21	NQ	NQ	NQ
Commercial Paper			
16-Jul-20	NQ	NQ	NQ
15-Aug-20	NQ	NQ	NQ
15-Sep-20	NQ	NQ	NQ
14-Oct-20	NQ	NQ	NQ
13-Nov-20	NQ	NQ	NQ
12-Dec-20	NQ	NQ	NQ
13-Mar-21	NQ	NQ	NQ
Agency Bullets (Non-Callable)			
15-Jun-21	FHLB 0.125	+1.0	0.193%
7-Oct-21	FNMA 1.375	+3.0	0.213%
20-Dec-21	FHLB 1.625	+2.5	0.208%
8-Apr-22	FFCB 0.375	+7.0	0.253%
22-Jun-22	FFCB 0.260	+9.5	0.278%
9-Dec-22	FHLB 1.875	+8.5	0.268%
9-Jun-23	FHLB 2.125***	+10.0	0.311%

*** Spread versus 3-Year Treasury (All others vs 2-Year)

Relative Value Report

Today's Date: 15-Jun-20

Settlement Date: **16-Jun-20**

DISCLAIMER: Securities listed here represent the best market offers as of early morning on this date. All information is subject to change at any time without notice. This report is intended for informational purposes only, and is in no way a solicitation or offer to sell any securities or services. This information has been obtained from sources believed to be reliable, but we do not warrant or guarantee the accuracy or timeliness of this information. There are no warranties, expressed or implied, as to accuracy, completeness, or results obtained from this information.

Fidelity Government Money Mkt (Institutional Class)

Daily Rate: 0.12%

7 Day Moving Avg: 0.12%

	Current	Week Ago	Month Ago
Agency Discount Note Yields			
1 Mo	0.120%	0.125%	0.090%
2 Mo	0.145%	0.125%	0.110%
3 Mo	0.165%	0.150%	0.120%
6 Mo	0.170%	0.120%	0.145%
9 Mo	0.130%	0.130%	0.120%
12 Mo	NQ	0.110%	0.140%
Commercial Paper			
	Current	Week Ago	Month Ago
1 Mo	NQ	NQ	NQ
2 Mo	NQ	NQ	NQ
3 Mo	NQ	NQ	NQ
4 Mo	NQ	NQ	NQ
5 Mo	NQ	NQ	NQ
6 Mo	NQ	NQ	NQ
9 Mo	NQ	NQ	NQ
Agency Bullet Yields			
	Current	Week Ago	Month Ago
1 Yr	0.193%	0.182%	0.151%
1.5 Yr	0.208%	0.237%	0.141%
2 Yr	0.278%	0.297%	0.221%
2.5 Yr	0.268%	0.292%	0.201%
3 Yr	0.311%	0.398%	0.277%

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City of Galveston

Grants & Housing Department
Staff Report

2508 Ball Avenue / Galveston, TX 77550
(409) 797-3820 / Fax (409) 291-4553

June 25, 2020

To: Brian Maxwell, City Manager
Hon. Mayor and City Council Members

From: Alice T. Law, Director of Grants & Housing

RE: Conduct a Public Hearing and Consider for Approval the 2020 Community Development Block Grant-CV (CDBG-CV) Coronavirus Aid, Relief, and Economic Security (CARES Act) supplemental funding in the amount of $271,736 and Amendment to the 2019 Consolidated Plan to implement coronavirus pandemic disaster projects and allow for the use of the Urgent Need project benefit. Authorize the City Manager to file a grant application (amendment) with the U.S. Department of Housing and Urban Development (HUD) and execute all necessary contracts, certifications, and documents for the Programs.

I. Background

A. The CARES Act made supplemental CDBG funding available through the U.S. Dept. of Housing and Urban Development (HUD) for grants to prevent, prepare for, and respond to the coronavirus. HUD has awarded the City $714,670 in CDBG-CV funding.

B. All activities or projects funded under the CDBG-CV Program must be in prevention and response to the coronavirus and be eligible CDBG activities.

C. The CARES Act allows waivers to the CDBG regulations to eliminate the 15% cap on public services activities, allow for a citizen participation period of no less than 5-days, and allow for virtual public hearings.

D. HUD is in the process of preparing requirements and waivers specific to the CDBG-CV and will allow amendments as needed to projects. HUD has directed cities to proceed with CDBG-CV approval of projects and submittal of amendments before the notice is published.

E. On May 28, 2020, the City Council approved projects totaling $442,934 for CDBG-CV funding to the UTMB COVID-19 Testing for $300,000 and CDBG-CV Administration for $142,934. These allocations left an unprogrammed balance of $271,736.

II. Current Situation

A. The City has developed the following CDBG-CV Projects for consideration of funding for the unprogrammed balance of $271,736. These Projects are under the HUD category of Public Services to assist in the prevention of and response to COVID-19 and provide for the health and safety of the citizens.

1. Galveston Health Services Tracer Work $125,000 - Provide funding for tracer work in coordination with the Galveston County Health District for COVID-19 cases in Galveston to more quickly identify contacts and isolate sick persons; project benefit of LMI and/or Urgent Need.
2. City Grants & Housing Income Subsistence Payments $100,000 - Provide LMI owner-occupied households with emergency mortgage assistance, based on documented payment amounts, payments limited to 3 months for an estimated 30 LMI households.
3. Non-Profit Homeless Assistance $46,736 - Provide funding for expenses related to non-profit homeless providers for sheltering, quarantining, and PPE for homeless persons to reduce the spread of COVID-19.

B. The City will amend its 2019 Consolidated Plan to implement coronavirus pandemic disaster projects and designation of the use of the Urgent Need National Objective for project benefit.

C. The City implemented the citizen participation process to allow for a citizen comment period of no less than the 5-days to be completed on June 24, 2020.

III. Issues

A. Consistency with HUD Consolidated Plan – All activities or projects funded under the CDBG-CV Program are in compliance with the City's Consolidated Plan. The amendment will provide the CDBG-CV Program implementation information.

B. Compliance with Regulatory Requirements – The City has met the regulatory requirements for these funds and amendment per the CARES Act and allow projects to assist with response to COVID-19.

C. Impact or Ramifications – Failure to approve the CDBG-CV Program and amendment will delay the implementation of programs.

IV. Recommendation

A. Approve the 2020 Community Development Block Grant-CV (CDBG-CV) Coronavirus Aid, Relief, and Economic Security (CARES Act) supplemental funding in the amount of $271,736 and Amendment to the 2019 Consolidated Plan to implement coronavirus pandemic disaster projects and allow for the use of the Urgent Need project benefit. Authorize the City Manager to file a grant application (amendment) with the U.S. Department of Housing and Urban Development (HUD) and execute all necessary contracts, certifications, and documents for the Programs.

V. Fiscal Impact Report

Requested by:	Alice T. Law, Director of Grants & Housing
Funding Source:	U.S. Dept. of Housing & Urban Development (HUD) 2020 Community Development Block Grant-CV Program
Costs of implementation:	Total $442,934

Respectfully Submitted,

Alice T. Law
Director of Grants & Housing

ORDINANCE NO. 20-__

AN ORDINANCE OF THE CITY OF GALVESTON, TEXAS, DESIGNATING THE PROPERTY LOCATED AT **1521 BROADWAY / AVENUE J,** AS A "GALVESTON LANDMARK", PROPERTY IS LEGALLY DESCRIBED AS THE EAST 2 FEET AND 10 INCHES OF LOT 2 AND WEST 28 FEET AND SEVEN INCHES OF LOT 3(2-1), BLOCK 135, IN THE CITY AND COUNTY OF GALVESTON, TEXAS; REQUESTING THE HISTORIC PRESERVATION OFFICER RECORD THE PROPERTY'S LANDMARK DESIGNATION IN THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY IN GALVESTON COUNTY, THE TAX RECORDS OF THE CITY OF GALVESTON AND THE CENTRAL APPRAISAL DISTRICT, AND THE OFFICIAL ZONING MAPS OF THE CITY OF GALVESTON, TEXAS; PLANNING CASE NUMBER **20P-009**; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT.

WHEREAS, on March 11, 1999, the Galveston City Council adopted Ordinance Number 99-14 creating the Landmark Designation Process requiring that a property requesting such designation must meet certain criteria and that the designation is considered a "change of zoning" for the property and is therefore treated as such; and,

WHEREAS, the Applicant and Property Owner, Louis and Susan Cutaia, requests that the structure located at **1521 Broadway / Avenue J,** and legally described as the east 2 feet and 10 inches of Lot 2 and west 28 feet and seven inches of Lot 3 (2-1), Block 135, in the City and County of Galveston, Texas, be officially designated as a Galveston Landmark; and,

WHEREAS, the subject structure, the "**Peter M. Gengler House**", was constructed in 1925. The **Gengler House** is a brick brick-veneer bungalow with National Folk and Craftsman stylistic influences, and it features an arched entry with brick piers; and,

WHEREAS, the **Gengler House** is within the designated East End Historic District and has been an established visual feature of the community since its construction in 1925. The house was featured on the Galveston Historical Foundation's Home Tour in 2006. The **Gengler House** retains its historic integrity, and retains its original location, design, setting, materials, workmanship, feeling and association; and,

WHEREAS, as set out in the Staff Report, attached as **Exhibit 1** and incorporated herein for all intents and purposes, the property was reviewed and met the criteria for Landmark Designation as set forth in Article 10 of the City's Land Development Regulations; and,

WHEREAS, the property is not eligible to participate in the City of Galveston's Local Tax Exemption for New Historic Districts and Galveston Landmarks Program; and,

WHEREAS, at its regular meeting of April 20, 2020, the Landmark Commission voted to recommend approval of the request; and,

WHEREAS, at its regular meeting of April 21, 2020, the Planning Commission voted to recommend approval of the request; and,

WHEREAS, Staff recommends that Planning Case Number 20P-009 request for Landmark Designation of the property located at **1521 Broadway / Avenue J,** be approved with the condition provided in Section 2 below; and,

WHEREAS, after notice and public hearing as required by law, the City Council finds that it is in the public's interest to approve the application and designate the structure located at **1521 Broadway / Avenue J,** and legally described as the east 2 feet and 10 inches of Lot 2 and west 28 feet and seven inches of Lot 3 (2-1), Block 135, in the City and County of Galveston, Texas, as a "Galveston Landmark".

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

SECTION 1. The findings and recitations set out in the preamble to this Ordinance are found true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2. After public hearing, the City Council approves the request for Landmark Designation of the property located at **1521 Broadway / Avenue J** and legally described as the east 2 feet and 10 inches of Lot 2 and west 28 feet and seven inches of Lot 3 (2-1), Block 135, in the City and County of Galveston, Texas, subject to the following condition:

Standard Condition:

1. As with all properties containing a Historic Overlay Designation, including Landmark Designations, exterior alterations to the property will be subject to review and approval by the Landmark Commission and must conform to the Design Standards for Historic Properties of Galveston, Texas.

SECTION 3. The City of Galveston Historic Preservation Officer will maintain all records and will record the property's Landmark Designation in the Official Public Records of Real Property of Galveston County, in the tax records of the City of Galveston and the Central Appraisal District, and in the Official Zoning Maps of the City of Galveston, Texas.

SECTION 4. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such

invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

SECTION 5. All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

SECTION 6. In accordance with the provisions of Sections 12 and 13 of Article II of The City Charter this Ordinance has been publicly available in the office of the City Secretary for not less than 72 hours prior to its adoption; that this Ordinance may be read and published by descriptive caption only.

SECTION 7. This Ordinance shall become effective upon its adoption and publication in accordance with the provisions of The Charter of the City of Galveston.

APPROVED AS TO FORM:

_____
DONNA M. FAIRWEATHER
ASSISTANT CITY ATTORNEY

I, Janelle Williams, Secretary of the City Council of the City of Galveston, do hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the City Council of the City of Galveston at its Regular Meeting held on May , 2020, as the same appears in records of this office.

IN TESTIMONY WHEREOF, I subscribe my name hereto officially under the corporate seal of the City of Galveston this _____, 2020.

_____
Secretary for the City Council
of the City of Galveston

City Council
Planning and Development Division
City of Galveston
June 25, 2020

20P-009

ADDRESS:
1521 Broadway/Avenue J

LEGAL DESCRIPTION:
Property is legally described as the east 25 feet and 10 inches of Lot 2 and west 28 feet and seven inches of Lot 3 (2-1), Block 135, in the City and County of Galveston, Texas.

APPLICANTS/REPRESENTATIVES:
Louis and Susan Cutaia

PROPERTY OWNERS:
Same

ZONING DISTRICT:
Residential, Single-Family, Historic District (R-3-H)

HISTORIC DISTRICT:
East End

REQUEST:
Request for designation as a Galveston Landmark

STAFF RECOMMENDATION:
Approval with Conditions

EXHIBITS:
A – Applicant's Submittal
B – Supplemental Research
C – Survey Sheet

STAFF:
Karen White
Planning Technician
409-797-3608
kwhite@galvestonTX.gov

Public Notice and Comment:

Sent	Returned	In Favor	Opposed	No Comment
16	1	1	0	0

Per Section 13.808 of the Land Development Regulations and state law, written public notice of this request is required. Public notices are sent to all property owners within 200 feet of the subject site and are sent to the address on file with the Galveston Central Appraisal District.

Zoning and Land Use

Location	Zoning	Land Use
Subject Site	Residential, Single-Family, Historic District (R-3-H)	Residential
North	Residential, Single-Family, Historic District (R-3-H)	Vacant
South	Urban Neighborhood, San Jacinto Neighborhood Conservation District (UN-NCD-1)	Residential
East	Residential, Single-Family, Historic District (R-3-H)	Residential
West	Residential, Single-Family, Historic District (R-3-H)	Residential

Executive Summary

The applicants are requesting designation of the above referenced address, as a Galveston Landmark.

Analysis

As per Article 10 of the Land Development Regulations, the following criteria should be considered during the Landmark Designation review process:

1. **The character, interest, or value as part of the development, heritage, or cultural characteristics of the City of Galveston, Galveston County, the State of Texas, or the United States.**
   The Peter M. Gengler House was built in 1925 and designed by architect R. R. Rapp. The house was owned by grocery company executive Peter M. Gengler until his death in 1945, then by his widow, Leoni Pauline Gengler until her death in 1968. The home was subsequently used as an office for a local contractor until it was purchased by its current owners in 1996. The current owners began restoring the property in 2002 (Jane Chapin, "On Candlelight Tour: Peter Gengler Home 1521 Broadway").

   The home is a brick-veneer bungalow with National Folk and Craftsman stylistic influences, and it features an arched entry with brick piers. According to the *Galveston Architecture Guidebook* (Stephen Fox and Ellen Beasley), during the late 19th century, Broadway was "the most valuable real estate in town not only because it fronted on the city's major east-west thoroughfare but also because it was on some of the highest ground that Galveston Island had to offer." The East End neighborhood attracted Galveston's most notable residents.

2. **Representative of an established and familiar visual feature of a neighborhood, community, or city.**
   The Peter M. Gengler House has been an established visual feature of the community since its construction in 1925. The house was featured on the Galveston Historical Foundation's Home Tour in 2006.

3. **Association with the lives of people significant in the city, region, state or national past.**

According to his obituary, Peter M. Gengler was born on February 17, 1868 to "pioneer Galvestonians" John and Margaret Gengler. John Gengler and his brother, Peter Gengler, had founded the Gengler Store in 1851. According to a write-up in The Daily News, Gengler's began as a fruit and vegetable cart and went on to become "one of the oldest groceries in the United States operated by the same family and in the same city" before shutting its doors in 1946.

In 1914, Peter M. and his brother, James Gengler, bought George D. Morgan's shares in Peter Gengler Co. In 1916, Joseph L. Gengler, a descendent of the elder Peter, also sold his shares to Peter M., who then served as the president of the firm until his death in 1945.

Peter M. was known for taking care of his employees and the Galveston community. He allowed employees to earn a commission on top of their salary and quietly donated bread and cake to the Galveston Orphans' Home and holiday food baskets to various community organizations including John Sealy Hospital, St. Mary's Infirmary, Ursuline Convent, and the Rosenberg Woman's Home (Casey Edward Greene, "Gengler's known for quality products good service").

Peter M. and his then-wife, Theresa Schulte, commissioned R. R. Rapp to design the two-bedroom, brick-veneer bungalow in 1925. According to an article provided by the applicants, the firm of R. R. Rapp was founded in 1921 and is one of the oldest architectural firms in Texas.

4. **Retention of historic integrity, meaning that the property possesses several, and usually most, of the following aspects of integrity: location, design, setting, materials, workmanship, feeling or association.**
   The Peter M. Gengler House retains its historic integrity and retains its original location, design, setting, materials, workmanship, feeling, and association. According to a script from 32nd Annual Galveston Historic Home Tour, original features include the oak floors, beveled glass in the entry door, living room fireplace, glass-fronted cabinets, picture molding, and kitchen vent hood.

Financial Incentives for Historic Properties

Due to the fact that it is located within the East End Historic District, the property is not eligible for the Financial Incentive for Historic Properties for new Galveston Landmarks.

Other Reviews

The Landmark Commission reviewed this request at the April 20, 2020 meeting, and the Planning Commission reviewed this request at the April 21, 2020 meeting. Both votes were unanimous.

Staff recommends approval with the following condition:

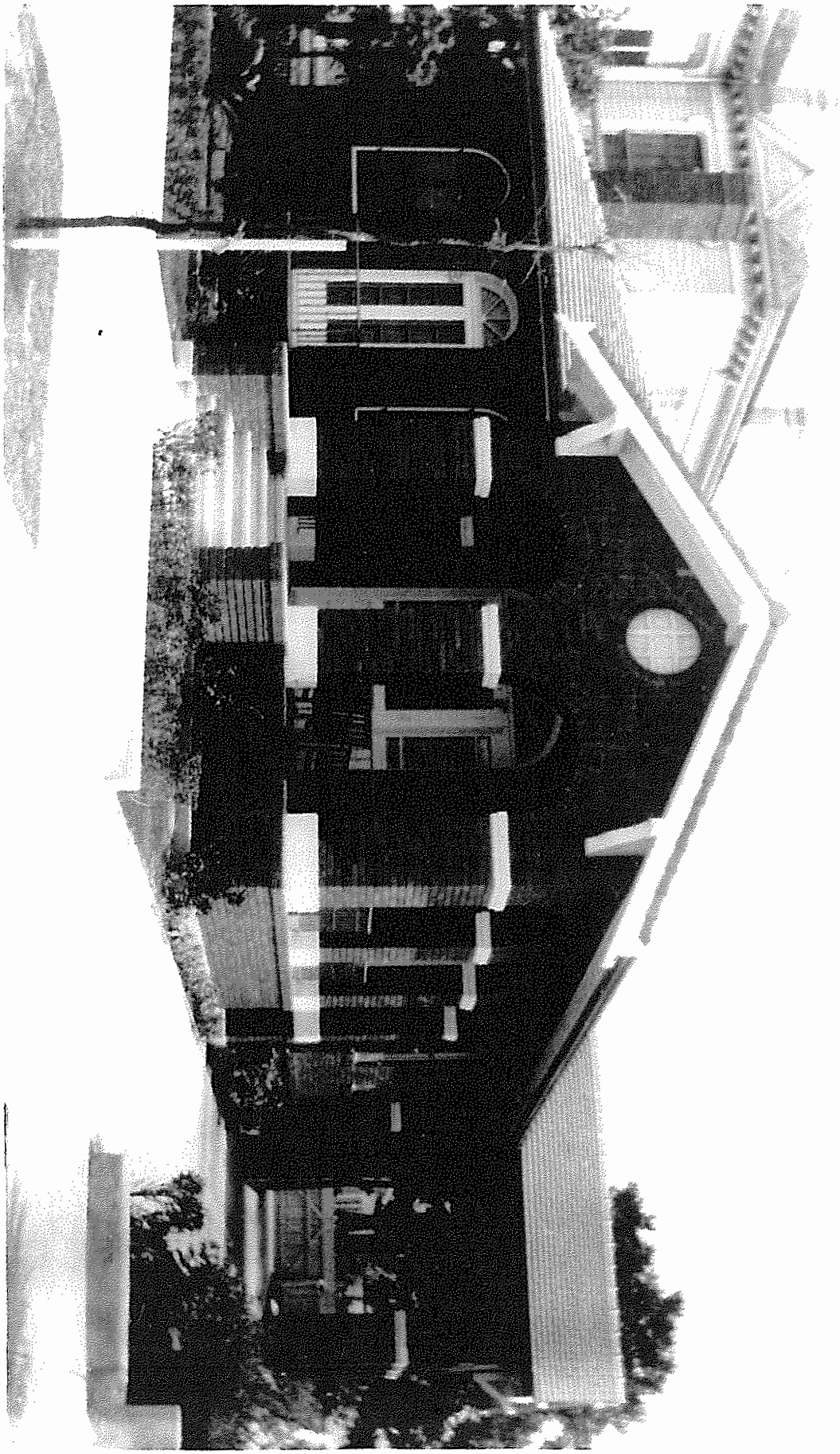
Standard Condition:

1. As with all properties containing a Historic Overlay Designation, including Landmark Designations, exterior alterations to the property will be subject to review and approval by the Landmark Commission and must conform to the Design Standards for Historic Properties of Galveston, Texas.

Respectfully Submitted:

_____	3/10/2020
Karen White Planning Technician	Date
_____	3/11/2020
Catherine Gorman, AICP Assistant Director/HPO	Date

Exhibit A



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East End Historical District Association

Vol 29 No.12 Donald Peak, Editor www.eastendhistoricgalveston.org Dec. 2003

DECEMBER EVENTS & MEETINGS

EAST END HISTORICAL DISTRICT BOARD OF DIRECTORS MEETING

Thursday, Dec. 4th, 2003

Meeting at our Cottage
1501 Postoffice
7:30PM
Reception 7:00PM
Everyone welcome!

* * * * * *

UNIVERSITY AREA ROUNDTABLE

5:30 .PM, Monday, Dec. 16, 427 Market Street University Episcopal Center. Program to be announced, call 762-8641 for details.

ART WALK
SATURDAY , 6-9PM JANUARY 24th
DOWNTOWN BOUTIQUES, GALLERIES
FREE FOOD, MUSIC, DRINKS. START YOUR NEW YEARS BY CELEBRATING THE WORLD OF ART.

DECEMBER 5TH CANDLELIGHT HOME TOUR

Volunteers & Docents Needed!

1621 Ball 1521 Broadway
1527 Postoffice 1702 Postoffice
East End Cottage, Postoffice & 15th
Sacred Heart Church, Broadway & 14th

Please contact Mike Gilbert at 763-2597
[See Peter Gengler Home story on Page 2 by Jane Chapin]

SAFEE PROGRAM NEEDS YOUR SUPPORT

RON GILROY, CHAIRMAN OF SAFFEE PROGRAM URGES SUPPORT OF THIS PROJECT DURING THE NEXT FISCAL YEAR OF 2004. THE SUCCESS OF THIS SERVICE IN PREVENTING CRIME IS SELF EVIDENT, AS SHOWN ONT HE CHART ON PAGE 2. SIGN UP NOW FOR THIS VITAL SURVEILLANCE SERVICE FOR THE EAST END DISTRICT

CARRIAGE HOUSE CLOCK SHOPPE
SPECIALIZE IN ANTIQUE CLOCKS
WORK GUARANTEED
CLOCK REPAIR
RON & CYNTHIA GILROY
NAWCC # 98464
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ON CANDLELIGHT TOUR: PETER GENGLER HOME 1521 BROADWAY

By Jane Chapin

In 1925 lifelong Galvestonian Peter M. Gengler commissioned architect Raymond R. Rapp to design the two bedroom brick bungalow at 1521 Broadway. Notice the arched windows, fanlight above the door and sidelights. Gengler's obituary printed in the Galveston News, 3 December, 1945, states he "was born February 17, 1868, the son of John and Margaret Gengler, pioneer Galvestonians. His father, with his brother, Peter Gengler, the elder, were original founders of the Gengler Store, which served the city continuously for the past 94 years. Peter, at age 12, gave up his schooling at St. Mary's University, to seek a job. His first job was at $8 per month as office boy, which allowed him time to play around his uncle's store. After the death of his uncle he and his brother James bought out the interest of George Morgan, secretary of the Gengler Store. Peter then became secretary of the firm. In 1916 Joseph L. Gengler, President of the company sold his interest to his cousins, Peter and James and Peter became President, a position he retained until his death." The Gengler Store was noted for extending credit, and had a large delivery service. Peter Gengler's widow, Leoni, remained owner of the bungalow until her death in 1968. The house was sold to a local contractor, Steve Malkin who used the home as office space. The current owners purchased the property in 2002 and began restoration.

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409.621.2878

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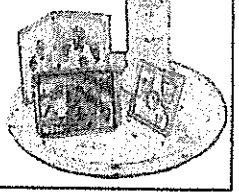
Reproduce Treasured Family Photos

* Enhance for fading and discoloration
* Remove scratches, spots and cracks
* Duplicate photos for family members

Bob Chapin
750-8232



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"Home Care Pros"
Restorations - Remodeling - New Construction

Kitchens
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Fireplaces
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30 years experience

409-762-5215

RAPP FASH SUNDIN/INCORPORATED has its origin in the firm of R.R. Rapp, Architect, founded in 1921. It is one of the oldest architectural firms in Texas.

Rapp, Sr. first rode to his projects in a Model T and had no radio.

The evolution of architecture and planning is equally as dramatic as that of transportation and communication.

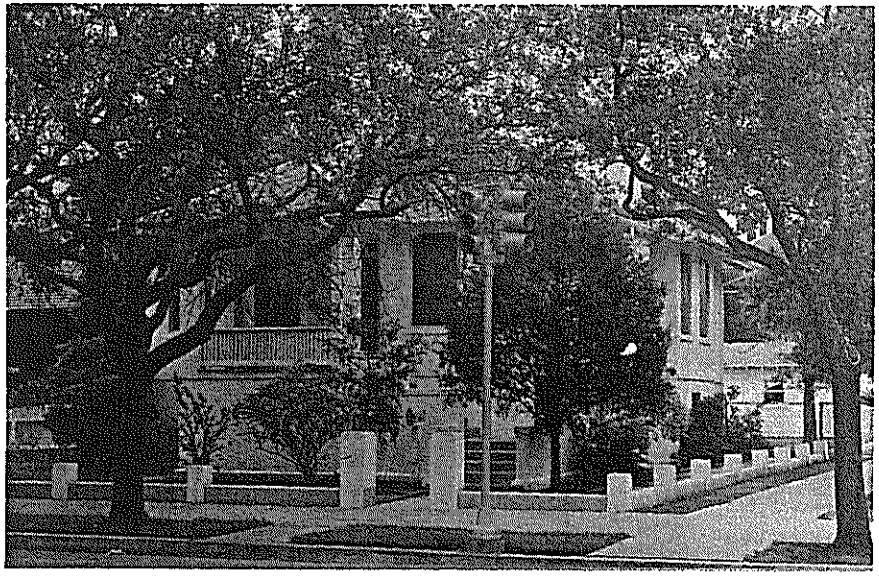
Clients expect more now than they did a half century ago. Expertise in management of the construction dollar is probably the top priority. Design sophistication follows closely in a technically oriented and concerned society.

RAPP FASH SUNDIN is dedicated to providing its Clients that same individual service and reliability as in the past.

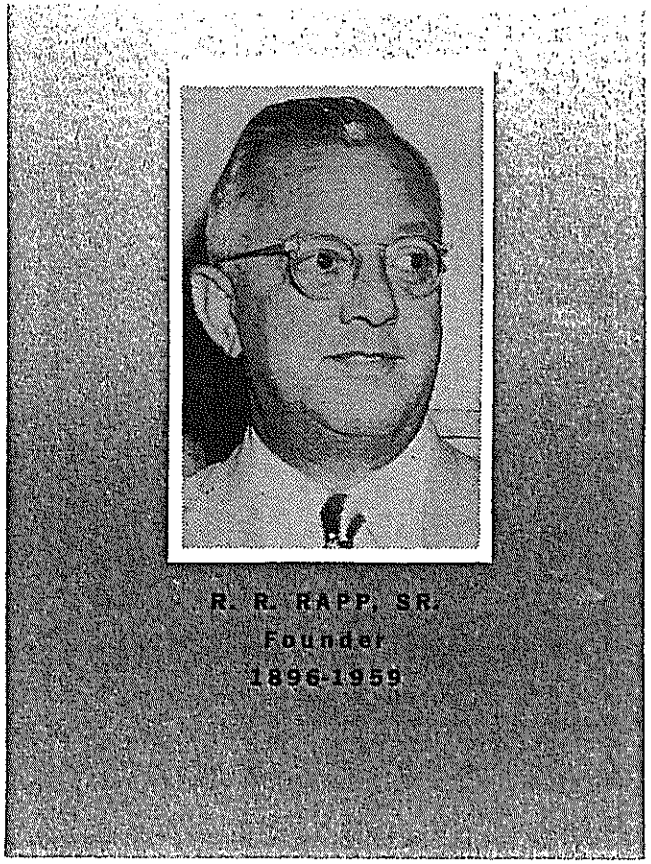
Each project begins with a basic understanding of the Client's requirements; functional, economic and esthetic.

Creative, imaginative design and management procedures are applied to bring about a unique solution that best serves the Client's need, within the budget and with shorter design and construction times.

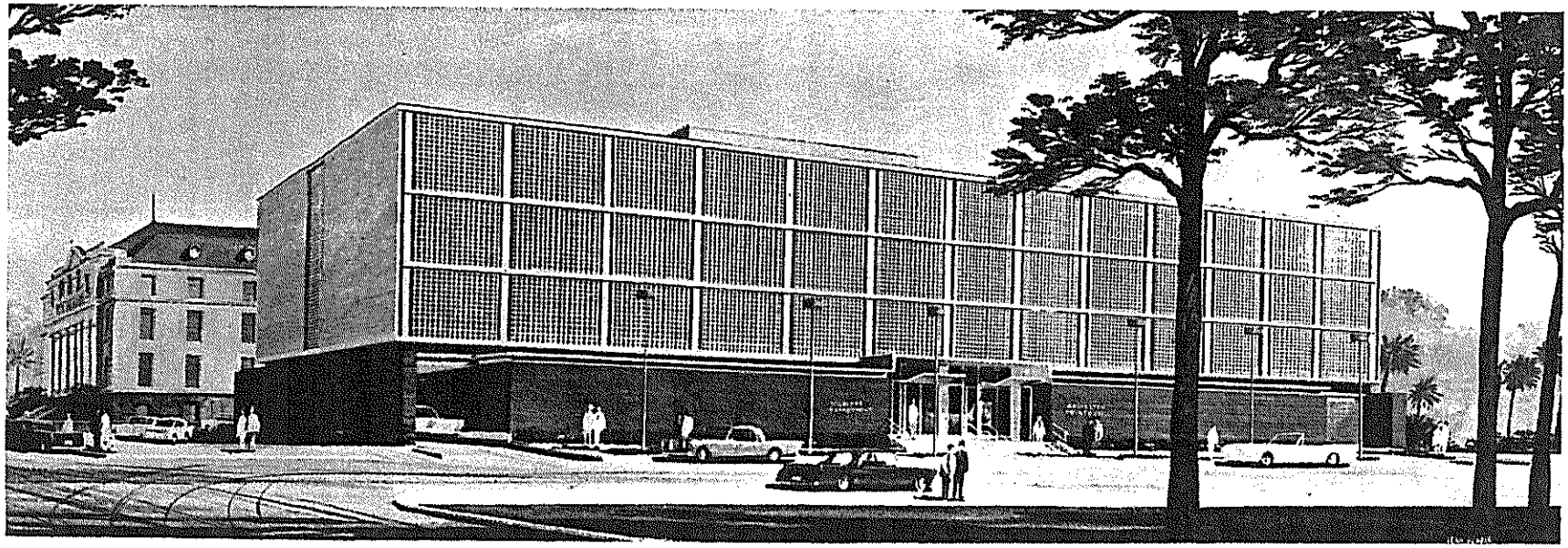
Each successfully completed project should draw its attractiveness from utility as well as appearance and thus be a small step in improving man's environment.



Residence for Jules Damiani, Galveston
Commission No. 1, 1921



County Jail, Galveston, 1961 - 1962



THE GENGLER HOME
1521 BROADWAY

This two bedroom Bungalow was built for Mr. and Mrs. P. M. Gengler in March 1925 by Architect Raymond R. Rapp, which at the time was one of the most complete architectural firms to be found in this section of the State. At the time Mr. Gengler contracted this house to be built he was the owner of the state's oldest and most famous grocery store located here in Galveston. The store was originally built by his grandfather, Peter Gengler in 1851. It developed to such an extent that it was ranked as one of the best stocked and equipped food emporiums in the United States by the 1880's.

Grandson and the original owner of this house Peter Gengler, was born here in Galveston in February, 1868, one of several children of John and Margaret Gengler. His father was one of the joint owners of the original Gengler store, but left this business during the Civil War, becoming a successful ship captain and blockade runner. Financial difficulties came to the Gengler family and at the age of 12 Peter gave up his schooling to go into the family business and later took complete control of the store.

Mrs. Peter Gengler lived in this house until the late 1960's long after Mr. Gengler's death. In 1996 the current owner Louis Cutaia purchased the house and in August 2002 started the restoration process with the help of Felipe Valencia. With only a few modern touches in the Kitchen and Bath the house was returned to its original look.

2-3. 135

DESCRIPTION AND ESTIMATE of the Present Cash Value

Of the 1 story Tile roofed B.V. frame building,
Situated on Lot No. 2-3 in Block No. 135 No. 519-21 (1521) J BROADWAY Street,
in the City of Galveston, owned by P. M. Gengler.

Occupancy:
Basement & cement for
First Floor by 102 Bowling Balls owned STEVEN MALKIN for display OFF. WOOD FL.
Second Floor by V for
Third Floor by for FILE BRD 10-1521

DESCRIPTION:

When built? Orig 1925 Last repaired or painted? ~~May today~~
Is it on leased ground? No. When does lease expire?
What is used for lighting? Elect. Is gasoline used?
Size of building? See dia. 32X60, 16X10, 16X7, 4X28 & 14X16 [30X58, 4X14 & 10X16 = 1956 SF.
Plastered 1 & Bath rm Plastered & Tile
Number of rooms Rough ceiled and papered 7 Halls 2 Bath room 1
Ceiled and painted
Number closets? 6 Porches? 2 & port. cochere Mantels and grates? 1
Number of flues and construction thereof? 2 Br. good.
Is public Fire Hydrant within 500 feet? ✓ Within 1000 feet?
The above described building would cost, at present value of materials and labor 1925 $
$ $
Deduct for depreciation from age, use or location per cent $
Making the present Cash Valuation $

OTHER IMPROVEMENTS:

1 Story Garage & Sect. house 9X10 & 18X20 ft. New 1923 $
$
$
$
$ $
Deduct for depreciation from age, use or location per cent $ $
Making the present Cash Value $

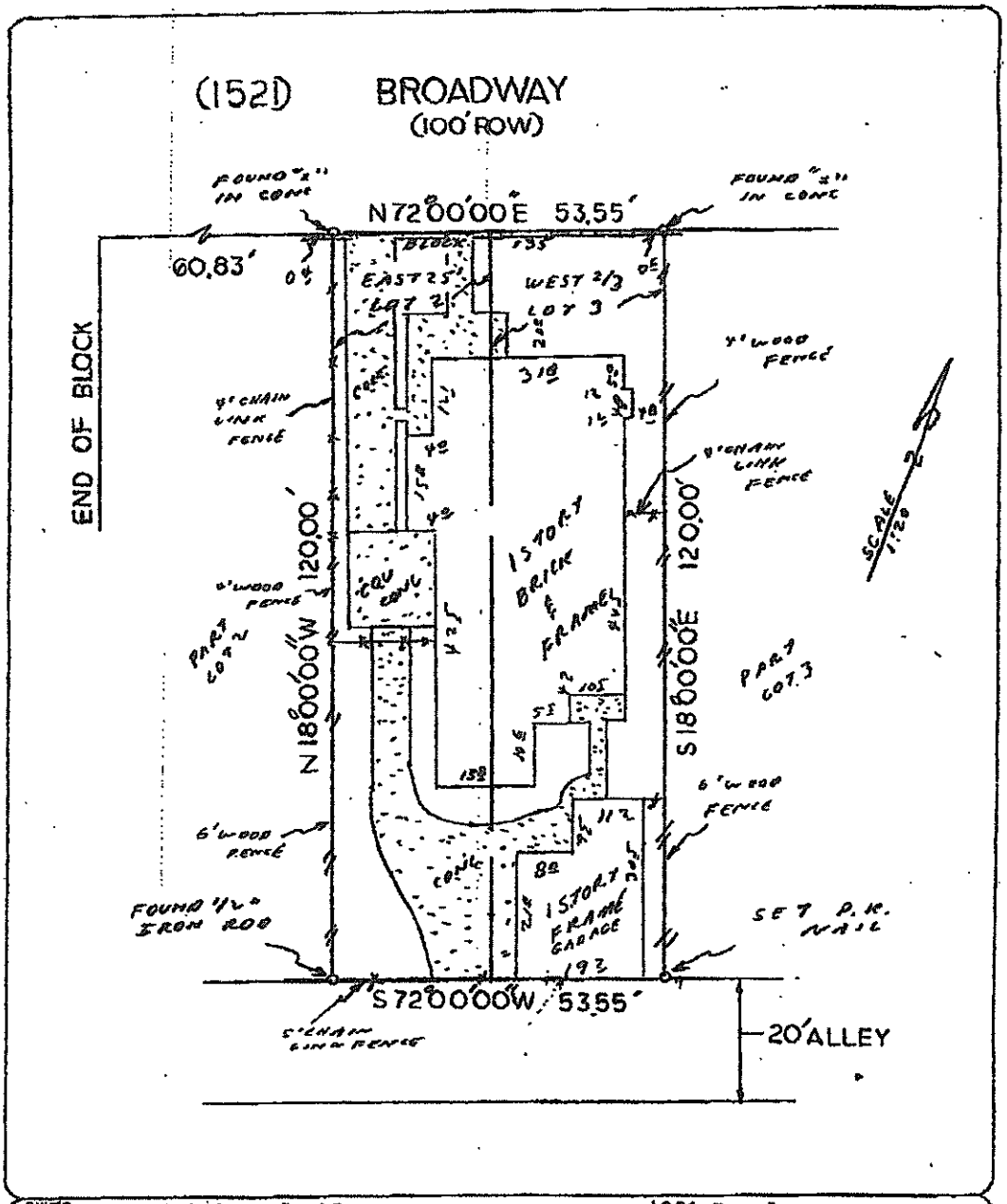
REMARKS:

G.A.X. 4/8/25 pay cost (16 c.c.m.) No roof tile or floor and some brickwork to be done
Sep 30 Day " " 15 c.c.m. including tax
" 9-3-40 " "

INSPECTOR.

Galveston, Texas, 5 day of May 1925

Gdd Fwd FM400 AK-2-22-83 Jeff-Dis



BUYER Louis Cutaia and wife, Charlene Cutaia

1521 Broadway

DESCRIBED PROPERTY

The East 25 feet of Lot 2 and the West 2/3rds of Lot 3, Block 135 located in the City and County of Galveston, Texas.

T.L.C. Inc.
P.O. Box 1697
Pearland, TX 77588

997-1565

G. F. 93205541
Date: 7-20-95
Inv. # 11079
JOB# 7-127-95

STATE OF TEXAS REGISTERED ROBERT ADAMS 1002 PROFESSIONAL LAND SURVEYOR

I do hereby certify that this survey was this day made on the ground of the property legally described hereon, (or on the attached sheet), and is correct, and there are no encroachments unless shown, and was done by me or under my supervision, and conforms to or exceeds the current standards as adopted by the Texas Board of Professional Land Surveying.

Note: There are no natural drainage courses on this property.

Note: This property does not lie in a flood hazard zone according to H.U.D./F.I.A. #485464 0026D 8-15-83 ZONE A12

Robert Adams

LB
LB
RA

Script
32nd Annual Galveston Historic Home Tour
May 6, 7, 13 & 14, 2006

1925 Peter M. Gengler Home
1521 Broadway

Front Porch:

- Peter M. Gengler was born in Galveston in 1868 to John and Margaret Schreiber Gengler. He would attend private schools, however, it seems that he left school at the age of 12 to get a job. Starting out as an office boy for the law firm of Wheeler and Rhodes, Gengler would eventually take over the family business, a well-known and profitable venture that his father and uncle, also named Peter, had founded.
- In 1914, Peter and his cousin James acquired controlling interest in the Gengler grocery store. Peter held the position of president until his death, and the Gengler store continued to expand, offering customers credit and building a large and efficient delivery service.
- Gengler served as district chairman of the "Liberty Loan Drives" and was a member of the American Defense Society during World War I. He would later serve as the president of the Galveston Merchants Association.
- Gengler commissioned Galveston architect Raymond R. Rapp to build his home at 1521 Broadway in 1925.
- His widow, Leoni Pauline Gengler remained in the bungalow until her death in 1968.

Please watch your step and enjoy the tour inside.

Entry Foyer:

- The Current homeowners purchased the home in 1995.
- The Oak floors are original.
- The beveled glass in the entry door is original.
- The wood on the closet door is rare Tiger Pine.
- The chairs are antique "king" and "queen" chairs from c. 1800. They were purchased at an estate auction.
- The watercolor on the wall was done by local artist, Carlotta Barker.
- The ornate coral vase on the table was purchased in Mexico in 1937.
- The icon on the wall by the door is from the Vatican.

Living Room:

- The fireplace is original and is in working condition
- The glass-fronted cabinets are original.
- Here and throughout the house, the picture molding is original.
- The table and chairs is made from recycled teak from Indonesia.
- The curio table holds a collection of toy soldiers.

Please watch your step and continue through the butler's pantry to the kitchen

- The wine closet was originally a closed-in closet.
- The butlers' pantry was originally the food pantry for the kitchen.

Kitchen:

- The vent hood is original to the house.
- The rest of the kitchen has been re-modeled, including enlarging the doorway from the breakfast room.
- The pelicans were painted by the next door neighbor.
- The homeowners' sister did the glass painting.
- The utility room was originally a screened porch. The current owners had it enclosed.

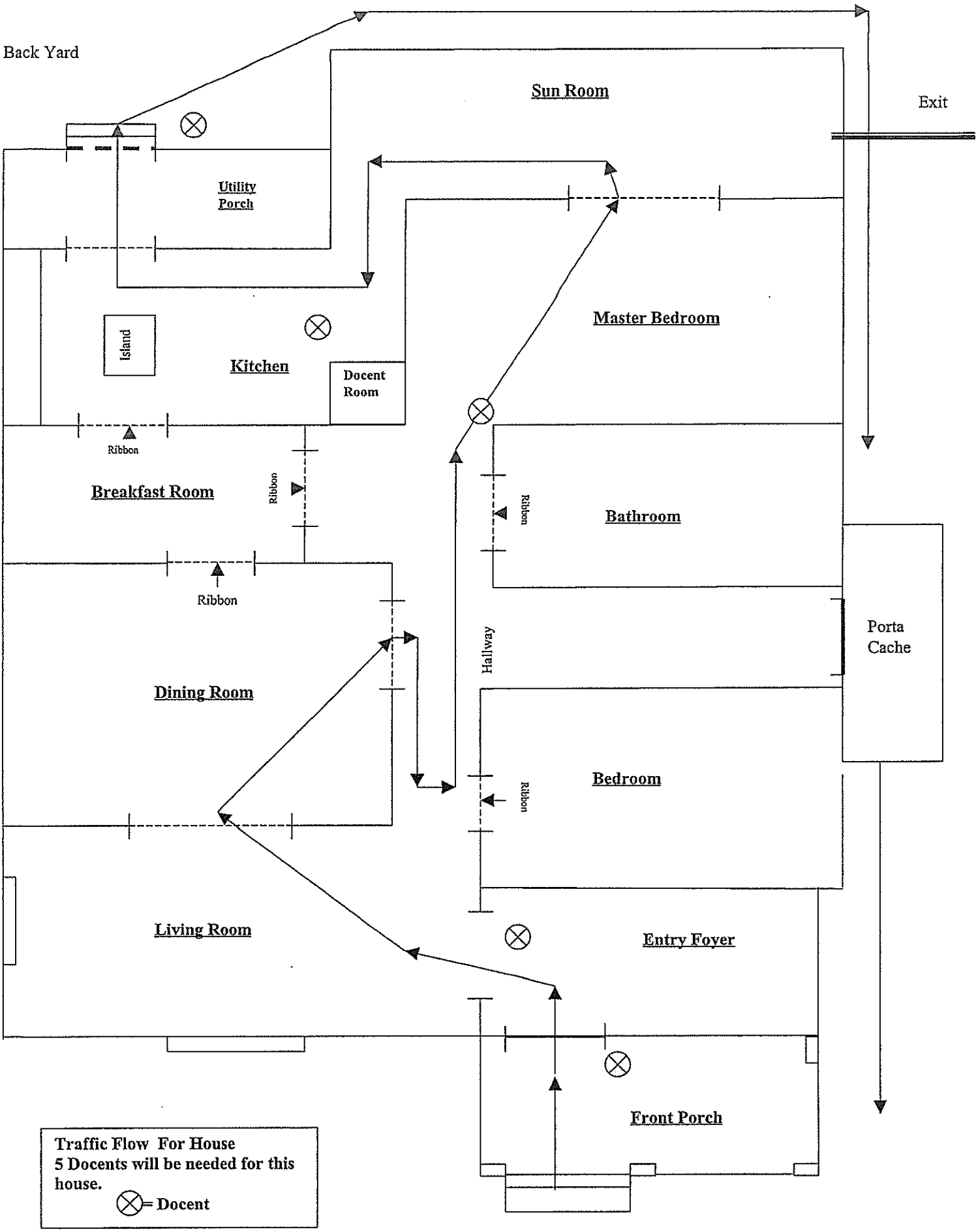
Please watch your step and exit to the backyard

Backyard:

- When the current owners purchased the house, there was a garage in the backyard. The building was removed and the lovely deck was built on its foundation.
- The columns are made from pinion clay from Mexico.
- The landscaping was done by the homeowners
- The fountain was purchased in Houston.

Please exit to the front of the house.

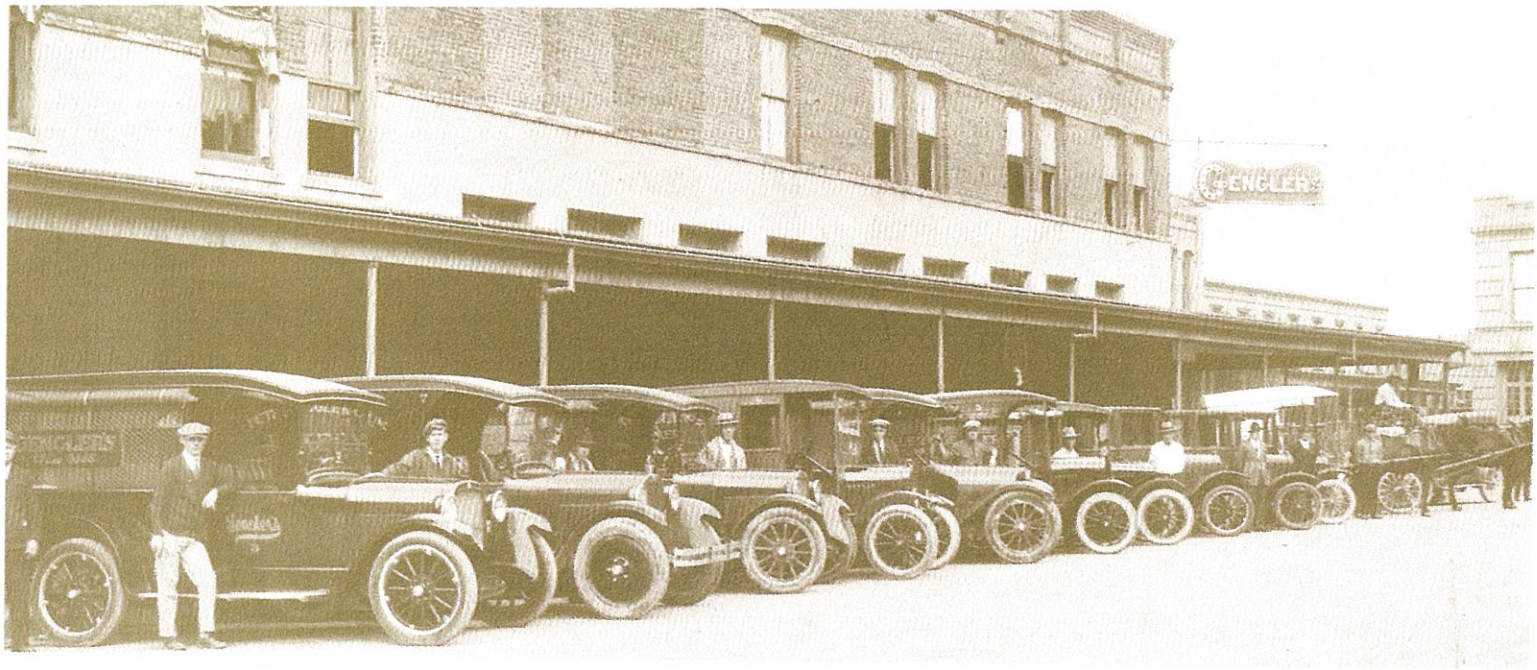
Enjoy the rest of your tour.



1925 Peter M. Gengler House 1521 Broadway

1940. Scottish Rite Temple Centennial. Names listed on Page 14

1926. Louis C. Van Name, Gengler's secretary-treasurer, in his office.



1922. Gengler's delivery force. The store delivered and extended credit.

1924. Interior of Gengler's, then the state's oldest and most famous grocery store.

1885 Peter Gengler Home
1428 Market ✓

By Jane Chapin
With compilations from History of Galveston and
Galveston Daily News, June 16, 1923

Galveston County Tax Assessors Records show that the property located at 1428 Market (lots 13,14 and West ½ 12) was owned by Peter Gengler from 1880 although he was not taxed for any structures on these lots. In 1886 Peter Gengler was taxed for an improvement valued at $6050. Research finds Peter Gengler engaged Nicholas J. Clayton in 1885 to design a home for his family at a cost of $8000. The Galveston Insurance Board Records show the house was built in the summer of 1885.

Peter and John Gengler immigrated from Bohlendorff, Germany and began their grocery business from a horse-drawn wagon. By 1851 they opened a wooden store which developed "to such an extent that it should rank as one of the best stocked and equipped food emporiums in the United States" by the 1880's.

Peter Gengler died in Boerne, Texas, in October, 1887, leaving his wife and four sons to carry on the business. His sons, Matt, Charles and Joseph managed the store after their father's death. In 1898, the company incorporated and this organization remained until 1914 when his nephews, Peter M. and James C. Gengler, bought controlling interest.

"Peter M. Gengler was born in Galveston, February, 1868, one of several children of John and Margaret (Schreiber) Gengler. His father was one of the joint owners of the original Gengler store, but left this business during the Civil War, becoming a successful ship captain and blockade runner." Financial difficulties came to the Gengler families and at age 12 Peter gave up his schooling to go into the family business. and

Peter's brother..."James, who by this time was already attending high school, found himself obliged to seek employment. His first job was as an office boy for Wheeler and Rhodes, a prominent law firm of that period...In 1888, he secured his first position in the District Clerk's office...in 1906, he ran for the first time and was successfully elected as District Clerk of Galveston County."

Exhibit B

Gengler's known for quality products good service

By Casey Edward Greene
Jun 21, 2010

GALVESTON — Customer loyalty may seem quaint and old fashioned today during the current recession when millions of employees have lost their jobs. Yet Peter M. Gengler Co. which operated in Galveston for almost a century (1851-1946) built its reputation and clientele on the basis of quality selection and excellent customer service.

Gengler's was one of the oldest groceries in the United States operated by the same family and in the same city. Historical sources preserved in the Rosenberg Library's Galveston and Texas History Center attest to the firm's excellence.

In 1851 Peter and John Gengler sold fruits and vegetables from a horse cart relying on word-of-mouth advertising. They were immigrants sons of Nicholas Gengler who arrived at Galveston in 1843 with his family from Prussia.

The brothers moved their business to a frame building at the northeast corner of 20th and Market streets in 1854. By the Civil War the firm was well known throughout Texas.

John Gengler left the business at that time to become a ship's captain and a successful blockade runner. After the war he returned to the grocery business working until paralysis set in several years before his death in 1897. Peter Gengler remained with his firm until his death in Boerne in 1887.

His sons Matthew Charles and Joe Gengler then took charge. The grocery was now called "Peter Gengler Dealer in Staple and Fancy Groceries Wines etc." according to an advertisement in The Daily News in January 1888.

The brothers opened a new two-story brick building in August 1893 at the original location. Their watchword was "business as usual" according to an advertisement in The Daily News: "The sons left on deck by their father are faithful to the charge and vie with each other to sustain the reputation achieved by him."

Before the advent of telephones employees visited households and took orders for groceries. Telephone service began in Galveston in 1878. The technology ultimately enabled linking customers' needs with business products and services. The telephone would prove essential

to Gengler's success.

In 1893 Gengler's built a new two-story brick building on the site of the original store. The new grocery featured attractive window displays.

The firm incorporated May 23 1898 under the name Peter Gengler Co. with $35000 in capital stock. Its officers were Joseph L. Gengler George D. Morgan and J.P. Alvey. It resumed operations quickly after the 1900 Storm for its downtown location had protected the business from destruction.

In 1908 Peter Gengler Co. opened a bakery. The firm advertised in 1914 that it was "the largest finest wholesale and retail grocery in Texas if not the entire South." It boasted the ability to deliver 500 to 600 orders daily and 800 to 900 orders on Saturdays. The grocery now owned 12 delivery wagons and two cars.

In 1916 Joseph L. Gengler sold his share in the firm to Peter M. Gengler who became president and served in this capacity until his death almost three decades later.

Born in Galveston in 1868 Peter M. Gengler was a nephew of the original Peter Gengler. He entered business at a young age. In 1914 he and his brother James purchased George D. Morgan's share of the business. Its motto was now "Galveston's Greatest Grocery."

The trade magazine Progressive Grocer March 1924 (preserved in the Galveston and Texas History Center) highlighted Peter M. Gengler Co. The article note the firm grossed more than $750000 it relied on the telephone to conduct 65 percent of its transactions and that it refused to engage in cost-cutting.

Peter Gengler Co. celebrated its 75th anniversary June 16 1926. The Daily News honored the firm with a special edition. Gengler's took out a full-page advertisement touting its "square and fair dealing" with the public and provision of fine products and superior customer service.

By its 75th anniversary Gengler's had refined customer service to an art. Three clerks called customers to take orders which they assembled in the shipping room. Clerks carefully reviewed orders before they were shipped. Delivery trucks each one assigned to a particular district shipped out orders. Gengler's reserved several delivery trucks for the sole purpose of handling rush orders.

The firm's bakery could produce 700 loaves of bread every 30 minutes. The cake department was an example of fine customer service. A customer phoned in his or her order the day before then awaited a van which delivered the cake.

Peter M. Gengler looked after his employees. Many worked there for decades an expression of their loyalty. The president allowed them to earn a percentage commission on sales above their regular salary.

Gengler's gave quietly to the local community. It donated bread and cake annually to the Galveston Oprhans' Home. It provided food baskets every Thanksgiving and Christmas to community organizations including John Sealy Hospital St. Mary's Infirmary Ursuline Convent and the Rosenberg Woman's Home.

However the grocery business nationally was changing. The supermarket arose during the Great Depression as a means of providing customers with convenience and lower prices under one roof. The first supermarket in the United States King Kullen appeared in New York City in 1930.

Its Galveston competitors now included multiple locations operated by A.&P. Food Stores and Piggly Wiggly (the latter chain founded by Galveston resident C.P. Evans). Continuing to portray itself as a venerable and dependable institution served to isolate Gengler's from thrifty shoppers who were demanding self-service convenience value and savings.

After World War II supermarkets continued to grow in popularity with the advent of suburbia. Peter M. Gengler died in December 1945 at age 77 and left no heirs. Gengler's lasted until the end of September 1946.

An editorial in The Daily News Dec. 9 1945 provided a fitting epitaph for both the man and his business:

"The career of Peter M. Gengler was all the more notable because he was a self-made man and it stands as an inspiration for all. His rise to a position of esteem and respect in the community not only paralleled but was a part of the rise and growth of Galveston itself."

Casey Edward Greene is head of special collections at Rosenberg Library.

(0) comments

Exhibit C

1521 BROADWAY, GALVESTON, TX 77550

HHM-12666

Parcel ID	689508	Year Built	1925	High = Individually Eligible/Listed; Contributing Medium = Contributing Low = Non-Contributing
District	East End Historic District	Priority Rating	High	
Building Faces	N	Architect	R.R. Rapp	

DESCRIPTION

Type	Single-Family House Massed Plan
Stylistic Influences	National Folk, Craftsman
Stories	1
Exterior Wall Materials	Brick
Foundation Type	Raised basement, Brick
Landscape Features	Concrete curb, Concrete wall
Description Notes	Porte Cochere attached

ROOF

Roof Shape	Hipped, Front-gabled
Roof Materials	Spanish tile
Roof Features	Exposed rafters, Wide eaves
Gable End Treatment	Same as wall treatment
Gable End Openings	Windows
Gable End Features	Decorative brackets

WINDOWS & DOORS

Window Types	Double-hung, Jalousie
Window Frame Materials	Wood
Window Light Configuration	6/6, 5
Window Features	Wood shutters, Transoms
Door Materials	Wood
Door Types	Single door primary entrance
Door Features	Sidelights, Transom light

CHIMNEYS

No. of Chimneys	1
Chimney Material	Brick
Chimney Placement	External, Central
Chimney Features	Chimney cap

PORCH

Porch Type	Partial width, One story, Wrap-around
Porch Location	Front
Porch Roof	Front gable
No. of Porch Bays	5
Porch Support Type	Brick piers
Porch Features	Metal balustrade
Porch Notes	Arched entry

INTEGRITY

Condition	Good

TX_GalvestonCounty_1521_Broadway_1.jpg

ORDINANCE NO. 20- ___

AN ORDINANCE OF THE CITY OF GALVESTON, TEXAS, DECLARING A STATE OF DISASTER AND EMERGENCY IN THE CITY OF GALVESTON RELATED TO THE EMERGENCE OF THE CORONA VIRUS/COVID 19; EXTENDING THE STATE OF DISASTER AND EMERGENCY IN THE CITY OF GALVESTON UNTIL SEPTEMBER 30, 2020; EXTENDING PREVIOUSLY APPROVED EMERGENCY ORDERS WITHIN THE CITY UNTIL SEPTEMBER 30, 2020, MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT, PROVIDING FOR A PENALTY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, City Council finds that the threat posed by the prevalence of the Coranavirus/Covid 19 is continuing within the entire State with a 2,504 of new cases reported on Wednesday June 10 a record single day increase; and

WHEREAS, while Galveston County has a total of 569 active cases of Covid-19; our neighbor Harris County has 9,223 active cases and thus the disease is a clear and present threat to the health and welfare of the citizens of the City of Galveston given the propensity of Harris County residents to crowd attractions in Galveston; and

WHEREAS, City Council finds that the threat posed by the prevalence of the Coranavirus/Covid 19 in adjoining Harris County, which has the highest reported number of cases in the entire state, according to data published on the Texas Department of Health and Human Services, is also a clear and present threat to the health and welfare of the citizens of the City of Galveston given the propensity of Harris County residents to crowd attractions in Galveston; and

WHEREAS, City Council finds the Center for Disease Control continues to urge that preventive measures be taken to control the spread of the disease through the implementation of control measures but that the ability but the State's limitation of local governments' ability to implement effective control measures makes it likely there will be additional cases occurring in the City of Galveston; and

WHEREAS, City Council finds the continued spread of the disease in this area requires ongoing extraordinary measures to preserve the public health, control the spread of the disease, and protect the welfare of the citizenry people and preserve the delivery of services; and

WHEREAS, the City of Galveston's Emergency Management Plan has previously been activated by Declaration of Local Disaster By Proclamation of the Mayor of the City of Galveston, dated March 16, 2020; and

WHEREAS, the Governor of the State of Texas has declared a state of disaster for the entire State of Texas which remains in effect; and

WHEREAS, Tex. Health & Safety Code §122.006 allows a home rule municipality to adopt rules to protect the health of persons in the municipality against communicable disease;

WHEREAS, the City Council has continuously and consistently extended the State of Disaster and Emergency in the City of Galveston and most recently under City Ordinance 20-036 has extended the State of Disaster and Emergency until June 30, 2020.

WHEREAS, the City Council has previously ratified the following Emergency Orders to remain in effect until June 30, 2020:

a) Order prohibiting the operation of electronic amusement machines in businesses in the City of Galveston;

b) Order granting City Staff Authority to Suspend the Application of Building Code and Flood Plan regulations to allow Construction and Placement of a Temporary Screening Facility by PHI Aviation LLC; and

WHEREAS, the City Council has previously ratified the following Emergency Orders to remain in effect until June 30, 2020: and

WHEREAS, the City Council finds, in light of continuing spread of the virus and, that extension of the State of Disaster and Emergency in the City of Galveston and certain Emergency Orders should be extended until September 30, 2020.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GALVESTON, TEXAS;

SECTION 1. The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2. In accordance with Section 418.108 of the Texas Disaster Act of 1975, and Article II, Section 15 of The City Charter of Ordinances, the City Council finds and declares a state of disaster and emergency continues to exist in the City of Galveston as a result of the prevalence of the Coronavirus/Covid 19 in Galveston City and County.

SECTION 3. The declaration of the State of Disaster and Emergency be and is hereby extended in the City of Galveston until September 30, 2020 subject to further action of Council.

SECTION 4. The Mayor, as Director of Emergency Management, by virtue of this Ordinance and the laws of the State, is hereby authorized to provide, or cause to be provided, all arrangements, provisions, and means necessary and proper to affect the coordination of relief and aid programs, and property restoration and rehabilitation programs, for the protection, preservation, and improvement of life and property within the City during the State of Emergency.

SECTION 5. This continued declaration of local disaster and emergency activates the recovery and rehabilitation aspects of all applicable local or interjurisdictional emergency management plans and authorizes the furnishing of aid and assistance under the declaration. All aspects of the City of Galveston Emergency Management Plan not already activated are hereby activated as provided in the plan.

SECTION 6. The following previously ratified the following Emergency Orders shall remain in effect until September 30, 2020; if marked ”No” the Order expires on June 30, 2020:

Yes/No

_____ Order prohibiting the operation of electronic amusement machines in businesses in the City of Galveston;

_____ Order granting City Staff Authority to Suspend the Application of Building Code and Flood Plan regulations to allow Construction and Placement of a Temporary Screening Facility by PHI Aviation LLC.

SECTION 7. A violation of an emergency order issued by the Mayor shall be a Class C misdemeanor punishable by fine as allowed by law and as set forth in the specific Order.

SECTION 8. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

SECTION 9. All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

SECTION 10. In accordance with the provisions of Sections 12 and 13 of Article II of the City Charter this Ordinance has been publicly available in the office of the City Secretary for not less than 72 hours prior to its adoption; that this Ordinance may be read and published by descriptive caption only.

SECTION 11. This Ordinance shall be and become effective from and after its adoption and publication in accordance with the provisions of the Charter of the City of Galveston.

(Remainder of page blank)

APPROVED AS TO FORM:

_____
DONALD S. GLYWASKY
CITY ATTORNEY

I, Janelle Williams, Secretary of the City Council of the City of Galveston, do hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the City Council of the City of Galveston at its regular meeting held on the 25th day of June, 2020, as the same appears in records of this office.

IN TESTIMONY WHEREOF, I subscribe my name hereto officially under the corporate seal of the City of Galveston this _____ day of _____, _____.

_____
JANELLE WILLIAMS
Secretary for the City Council
of the City of Galveston

ORDINANCE NO. 20- ___

AN ORDINANCE OF THE CITY OF GALVESTON, TEXAS, DECLARING A STATE OF DISASTER AND EMERGENCY IN THE CITY OF GALVESTON RELATED TO THE EMERGENCE OF THE CORONA VIRUS/COVID 19; EXTENDING THE STATE OF DISASTER AND EMERGENCY IN THE CITY OF GALVESTON UNTIL SEPTEMBER 30, 2020; EXTENDING PREVIOUSLY APPROVED EMERGENCY ORDERS WITHIN THE CITY UNTIL SEPTEMBER 30, 2020, MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT, PROVIDING FOR A PENALTY AND PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, while Galveston County has a total of 569 active cases of Covid-19; our neighbor Harris County has 9,223 active cases and thus the disease is a clear and present threat to the health and welfare of the citizens of the City of Galveston given the propensity of Harris County residents to crowd attractions in Galveston; and

WHEREAS, City Council finds that the threat posed by the prevalence of the Coranavirus/Covid 19 in adjoining Harris County, which has the highest reported number of cases in the entire state, according to data published on the Texas Department of Health and Human Services, is also a clear and present threat to the health and welfare of the citizens of the City of Galveston given the propensity of Harris County residents to crowd attractions in Galveston; and

WHEREAS, City Council finds the Center for Disease Control continues to urge that preventive measures be taken to control the spread of the disease through the implementation of control measures but that the ability but the State's limitation of local governments' ability to implement effective control measures makes it likely there will be additional cases occurring in the City of Galveston; and

WHEREAS, City Council finds the continued spread of the disease in this area requires ongoing extraordinary measures to preserve the public health, control the spread of the disease, and protect the welfare of the citizenry people and preserve the delivery of services; and

WHEREAS, the City of Galveston's Emergency Management Plan has previously been activated by Declaration of Local Disaster By Proclamation of the Mayor of the City of Galveston, dated March 16, 2020; and

WHEREAS, the Governor of the State of Texas has declared a state of disaster for the entire State of Texas which remains in effect; and

WHEREAS, Tex. Health & Safety Code §122.006 allows a home rule municipality to adopt rules to protect the health of persons in the municipality against communicable disease;

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WHEREAS, the City Council finds, in light of continuing spread of the virus and, that extension of the State of Disaster and Emergency in the City of Galveston and certain Emergency Orders should be extended until September 30, 2020.

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SECTION 1. The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2. In accordance with Section 418.108 of the Texas Disaster Act of 1975, and Article II, Section 15 of The City Charter of Ordinances, the City Council finds and declares a state of disaster and emergency continues to exist in the City of Galveston as a result of the prevalence of the Coronavirus/Covid 19 in Galveston City and County.

SECTION 3. The declaration of the State of Disaster and Emergency be and is hereby extended in the City of Galveston until September 30, 2020 subject to further action of Council.

SECTION 4. The Mayor, as Director of Emergency Management, by virtue of this Ordinance and the laws of the State, is hereby authorized to provide, or cause to be provided, all arrangements, provisions, and means necessary and proper to affect the coordination of relief and aid programs, and property restoration and rehabilitation programs, for the protection, preservation, and improvement of life and property within the City during the State of Emergency.

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SECTION 7. A violation of an emergency order issued by the Mayor shall be a Class C misdemeanor punishable by fine as allowed by law and as set forth in the specific Order.

SECTION 8. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

SECTION 9. All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

SECTION 10. In accordance with the provisions of Sections 12 and 13 of Article II of the City Charter this Ordinance has been publicly available in the office of the City Secretary for not less than 72 hours prior to its adoption; that this Ordinance may be read and published by descriptive caption only.

SECTION 11. This Ordinance shall be and become effective from and after its adoption and publication in accordance with the provisions of the Charter of the City of Galveston.

(Remainder of page blank)

APPROVED AS TO FORM:

_____
DONALD S. GLYWASKY
CITY ATTORNEY

I, Janelle Williams, Secretary of the City Council of the City of Galveston, do hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the City Council of the City of Galveston at its regular meeting held on the 25th day of June, 2020, as the same appears in records of this office.

IN TESTIMONY WHEREOF, I subscribe my name hereto officially under the corporate seal of the City of Galveston this _____ day of _____, _____.

_____
JANELLE WILLIAMS
Secretary for the City Council
of the City of Galveston

ORDINANCE NO. 20-___

AN ORDINANCE OF THE CITY OF GALVESTON, TEXAS, ORDERING AND CALLING AN ELECTION TO BE HELD IN THE CITY OF GALVESTON ON THE 3rd DAY OF NOVEMBER, 2020, FOR THE PURPOSE OF ELECTING A MAYOR AT-LARGE AND SIX (6) DISTRICT COUNCIL MEMBERS, EACH FOR A TWO-YEAR TERM; MAKING PROVISIONS FOR THE CONDUCT AND GIVING NOTICE OF THE ELECTION; PROVIDING THE CANDIDATE FILINGS RECEIVED FOR THE POSTPONED MAY 2, 2020 ELECTION REMAIN VALID FOR THE NOVEMBER 3 2020 ELECTION AND THE FILING PERIOD WILL NOT BE RE-OPENED; DESIGNATING POLLING PLACES; DESIGNATING DATES AND HOURS FOR EARLY VOTING; DESIGNATING THE DATE AND HOURS OR THE ELECTION DAY; PROVIDING FOR PUBLICATION OF THE NOTICE OF THE ELECTION; PROVIDING BILINGUAL ELECTION REQUIREMENTS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING AN OPEN MEETINGS CLAUSE; PROVIDING A SAVINGS CLAUSE; DECLARING FINDINGS OF FACT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the terms of office of the Mayor and six (6) Council Members of the City of Galveston, Texas expire upon the election and qualification of their successors; and

WHEREAS, Article III of the Galveston City Charter and sections 3.005, 41.001(a), and 41.005 of the Texas Election Code require an election to be held, ordered, and called for on Saturday, May 2, 2020, that being a uniform election date under the Texas Election Code, to fill the seats of the Mayor and six (6) Council Members; and

WHEREAS, given the advent of the Corona/Corvid-19 pandemic the Governor by Proclamation dated March 18, 2020 suspended provisions of the Election Code so as to allow home rule cities to conduct their elections on November 3, 2020; and

WHEREAS, on January 23, 2020, the Galveston City Council unanimously approved entering into a contract with the County of Galveston for the administration of election services pursuant to the applicable provisions of the Texas Election Code; and

WHEREAS, following the Governor's Proclamation of March 18, 2020 the County of Galveston County Clerk announced it would not conduct any elections on May 2, 2020 due and owing to the great risk attendant to the Corona/Corvid-19 pandemic; and

WHEREAS, under authority given under Texas Election Code §41.052 the governing body of a home rule municipality may change the date of its general election and given the public emergency attendant to the pandemic and the decision of the County Clerk not to conduct elections on behalf of entities in Galveston County for the May 2, 2020 election the City Council has determined to exercise its authority to change the date of its general election to November 3, 2020 as set forth herein; and

WHEREAS, under authority given under Texas Election Code §41.052 the City Council determines that present members of Council shall continue to hold office as a holdover and the

length of term for those elected on November 3, 2020, or in a required runoff election, shall hold office until May 7, 2022.

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

SECTION 1. The findings and recitations set out in the preamble to this Ordinance are found to be true and correct, and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2. Pursuant to the provisions of Article III of the Charter of the City of Galveston and section 3.005 of the Texas Election Code, the regular City election for the year 2020, is hereby called and ordered for the purpose of electing a Mayor at-large and six (6) District Council Members, each for a term of two (2) years, to be held in the City on Tuesday, November 3, 2020, between the hours of 7 o'clock a.m. and 7 o'clock p.m., as provided in section 41.031 of the Texas Election Code, as well as, a period of early voting in accordance with the provisions of the Texas Election Code.

SECTION 3. The election hereby called and ordered shall be conducted in accordance with the provisions of this Ordinance, the requirements of the Charter of the City of Galveston, the Constitution and laws of the State of Texas regulating the holding of elections. The election called and ordered shall be conducted in accordance with the provisions of the Election Services Agreement by and between the City and Galveston County approved by City Council on June 25, 2020.

SECTION 4. In accordance with Secretary of State Election Advisory 2020-12, the City Council confirms that candidate filings for the May 2, 2020 election will remain valid for the election held on November 3, 2020 and that the filing period will not be re-opened for the November election.

SECTION 5. In accordance with Chapter 43 and other applicable provisions of the Texas Election Code, this election shall be conducted utilizing countywide polling places as designated by the County of Galveston. The City Council hereby designates the locations listed in **Exhibit 1** as countywide polling places to be utilized for this election.

SECTION 6. The ballots shall conform to all requirements of the laws of the State of Texas governing the same. Such ballots shall contain the names of all eligible candidates for the respective offices of the Mayor and City Council Members of the City of Galveston.

SECTION 7. All qualified voters of the City of Galveston shall be entitled to vote at the election so hereby called and ordered. The election shall be conducted in accordance with the applicable laws of the State of Texas between the hours of 7 o'clock a.m. and 7 o'clock p.m. on Tuesday, November 3, 2020 ("Election Day").

SECTION 8. Voting machines and/or ballot boxes shall be used in the election in accordance with the provisions of the laws of the State of Texas relating to the use of voting machines, ballot boxes, and elections. Pursuant to the Election Services Agreement with the City

of Galveston, Hart Intercivic Direct Record Electronic (DRE) Voting Machines will be used during the conduct of the subject election being called by this Ordinance.

SECTION 9. (a) In compliance with Section 271.006 of the Texas Election Code, Dwight D. Sullivan, Galveston County Clerk, is appointed as the Early Voting Clerk. Other deputy early voting clerks shall be appointed as needed to process early voting mail and to conduct early voting by personal appearance. The main early voting polling place is designed as the Galveston County Justice Center, 600 – 59th Street, 2nd Floor Conference Room, Galveston, Texas 77551. Early voting by personal appearance is also available at the Galveston County Courthouse, 722 Moody (21st Street), 2nd Floor Mezzanine, Galveston, Texas 77550, and such other early voting polling places as designated by the Early Voting Clerk.

(b) Qualified electors voting early who are unable to vote in person shall vote by mail as prescribed by the laws of the State of Texas. Applications for ballots by mail may be sent to the Early Voting Clerk as follows:

- By Mail: Attn: Ballots by Mail, c/o Dwight D. Sullivan, Galveston County Clerk, P. O. Box 17253, Galveston, Texas 77552-7253;
- By Fax: 409.765.3249 (Please put "Attention Ballots By Mail" on the cover sheet); or
- By Email: absenteeballotapplications@co.galveston.tx.us (If this method is used, an application from the County Clerk's Elections Division website will need to be printed, filled out completely, signed, and scanned before submitting as an attachment to the email).

In accordance with Section 84.007 of the Texas Election Code, the first day to apply for a ballot by mail was January 1, 2020. The last day to apply for a ballot by mail is October 5, 2020 (received, not postmarked). The deadline for receipt of a Federal Post Card Application (FPCA) from a registered voter is October 5, 2020.

The Galveston County Clerk must physically receive marked ballots by the last mail delivery on Election Day which is Tuesday, November 3, 2020 at 3:00 o'clock p.m. If a marked ballot is being mailed from outside of the United States, the ballot must be received by the last mail delivery on the fifth day after Election Day. In addition, marked ballots from individuals voting by mail may be hand delivered in person only while polls are open on Election Day. Only the person casting the marked ballot may surrender the ballot in person. Such ballots will be accepted between the hours of 7:00 a.m. and 7:00 p.m. at the Galveston County Clerk's Office, Elections Division, 600 – 59th Street, 3rd Floor, Galveston, Texas 77551.

(c) Early voting by personal appearance shall begin on Monday, October 19, 2020, and end on Friday, October 30, 2020, and shall be conducted during the following hours:

Day	*Date*	*Hours of Operation*
Monday	October 19, 2020	7:00 am to 7:00 pm
Tuesday	October 20, 2020	7:00 am to 7:00 pm
Wednesday	October 21, 2020	7:00 am to 7:00 pm
Thursday	October 22, 2020	7:00 am to 7:00 pm
Friday	October 23, 2020	7:00 am to 7:00 pm
Monday	October 26, 2020	7:00 am to 7:00 pm
Tuesday	October 27, 2020	7:00 am to 7:00 pm
Wednesday	October 28, 2020	7:00 am to 7:00 pm
Thursday	October 29, 2020	7:00 am to 7:00 pm
Friday	October 30, 2020	7:00 am to 7:00 pm

There will be no early voting by personal appearance on Saturday, October 24, 2020 and Sunday, October 25, 2020.

(d) The City Council hereby appoints the County's duly appointed representatives to the Early Voting Ballot Board.

SECTION 10. (a) Notice of said election shall be given (1) by filing a copy of this election Ordinance with the City Secretary; and (2) by publication as required by state law. The notice shall be in accordance with state law.

(b) The Mayor is hereby authorized to sign an "Order of Election" and "Notice of General Election." Council directs the City Secretary to post the "Order of Election" and publish and post the "Notice of General Election," in both English and Spanish in accordance with state law.

SECTION 11. Officers of the election shall immediately at the close of the election return to the City Council the results of the election. The City Council shall canvass the returns and declare the results of the election as provided in the Agreement between the City and the County, and as permitted by law.

SECTION 12. The provisions of 42 U.S.C.A. § 1973aa-1a, 28 C.F.R. Part 55, and section 272.001 et seq. of the Texas Election Code, regarding members of a single-language minority, shall be observed with respect to printing, programming, and disseminating voting notices, forms, balloting materials, instructions, assistance or other materials or information relating to the electoral process, including ballots, and all such election materials shall be printed, programmed, processed, and/or provided in the Spanish language as well as the English language, and at each Election precinct there shall be a Judge, Alternate Judge, or Clerk who is fluent in the Spanish language and who shall be instructed and required to provide assistance to any voter desiring same.

SECTION 13. The County of Galveston shall appoint eligible persons in the following capacities in accordance with the Texas Election Code, and those persons shall have the duties and responsibilities as prescribed by state law:

Central Count Station Manager, Clerk, Tabulation Supervisor, Assistant to the Tabulation Supervisor, Judge of the Central Count Station, Clerks and Early Voting Ballot Board

SECTION 14. The City Secretary is hereby authorized and instructed to provide and furnish all necessary election supplies to conduct said election and to comply with federal, state, and local laws and in the conduct thereof. This will be provided through the Election Services of the County of Galveston.

SECTION 15. The City Council reserves the right to amend or modify this Ordinance, including, but not limited to, the Early Voting and Election Day polling locations.

SECTION 16. In the event any provision of the Election Services Agreement with the County conflicts with any provision of this Ordinance, the provisions of this Ordinance shall control with respect to the City election.

SECTION 17. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, because the same would have been enacted by the City Council without the incorporation in this Ordinance of any such invalid phrase, clause, sentence, paragraph or section.

SECTION 18. It is hereby officially found and determined that notice of the meeting at which this Ordinance is adopted was given as required by Chapter 551 of the Texas Government Code (the "Texas Open Meetings Act") and that such meeting has been open to the public at all times when this Ordinance was discussed and acted on.

SECTION 19. All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

SECTION 20. In accordance with the provisions of Sections 12 and 13 of Article II of the City Charter, this Ordinance has been publicly available in the Office of the City Secretary for not less than 72 hours prior to its adoption; and that this Ordinance may be read and published by descriptive caption only.

SECTION 21. This Ordinance shall be and become effective from and after its adoption and publication in accordance with the provisions of the Charter of the City of Galveston.

APPROVED AS TO FORM:

_____

DONALD S. GLYWASKY
CITY ATTORNEY

I, Janelle Williams, Secretary of the City Council of the City of Galveston, do hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the City Council of the City of Galveston at its Regular meeting held on the 25TH day of June, 2020, as the same appears in records of this office.

IN TESTIMONY WHEREOF, I subscribe my name hereto officially under the corporate seal of the City of Galveston this_____ day of June, 2020.

_____
City Secretary for the City Council
of the City of Galveston, Texas

Proposed To Be Amended

EXHIBIT 1

EARLY VOTING LOCATIONS

for

City of Galveston

MAIN EARLY VOTING POLLING PLACE

Galveston County Justice Center
600 – 59th Street
2nd Floor Conference Room
Galveston, Texas

Galveston County Courthouse
722 Moody St.
Galveston, Texas 77550

Seaside Baptist Church
16534 Termini-San Luis Pass Rd.
Jamaica Beach, TX 77554

Carver Park Community Center
6415 Park Ave.
Texas City, TX 77590

Santa Fe City Hall
12002 Highway 6
Santa Fe, TX 77510

Bacliff Community Center
4503 11th Street
Bacliff, Tx. 77518

La Marque Community Room
1109-B Bayou
La Marque, Tx 77568

Kemah Fire Station
905 Hwy 146
Kemah, Tx 77565

Moody Methodist Church
2803 53rd St
Galveston, TX 77551

Hitchcock City hall
7423 Highway 6
Hitchcock, Texas 77563

Nessler Center
2010 5th Ave. North
Texas City, TX 77591

Joe Faggard Building
1750 Hwy 87
Crystal Beach, Tx 77650

MUD 12 Building
2929 Hwy 6
Bayou Vista, Tx 77563

Clear Lake Shores
1006 South Shore Dr.
Clear Lake Shores, Tx 77565

Old Friendswood Jr. High
402 Laurel
Friendswood, Tx 77546

ELECTION DAY VOTING LOCATIONS
Tuesday, November 3, 2020
7:00 a.m. to 7:00 p.m.

for

City of Galveston

Galveston County Courthouse
722 Moody St.
Galveston, Texas 77550

Seaside Baptist Church
16534 Termini-San Luis Pass Rd.
Jamaica Beach, TX 77554

Carver Park Community Center
6415 Park Ave.
Texas City, TX 77590

Santa Fe City Hall
12002 Highway 6
Santa Fe, TX 77510

Bacliff Community Center
4503 11th Street
Bacliff, Tx. 77518

La Marque Community Room
1109-B Bayou
La Marque, Tx 77568

Kemah Fire Station
905 Hwy 146
Kemah, Tx 77565

GISD Admin Building
3904 Ave. T
Galveston, Tx 77551

Moody Methodist Church
2803 53rd St
Galveston, TX 77551

Hitchcock ISD Admin Building
7801 Neville, Building B
Hitchcock, Texas 77563

Nessler Center
2010 5th Ave. North
Texas City, TX 77591

Joe Faggard Building
1750 Hwy 87
Crystal Beach, Tx 77650

MUD 12 Building
2929 Hwy 6
Bayou Vista, Tx 77563

Clear Lake Shores Club House
931 Cedar
Clear Lake Shores, Tx 77565

Rebecca Sealy Hospital
404 8th St., Classroom 1st Floor
Galveston, Tx 77555

Texas A &M University-Galveston
200 Seawolf Parkway, Bldg. 3035
Suite 102
Galveston, Tx 77553

ORDINANCE NO. 20-___

AN ORDINANCE OF THE CITY OF GALVESTON, TEXAS, AMENDING CHAPTER 33, "TAXATION" OF "THE CODE OF THE CITY OF GALVESTON 1982, AS AMENDED" BY AMENDING THE PROCEDURES FOR ALLOCATING NET DISBURSIBLE FUNDS TO ELIGIBLE GROUPS BY ALLOWING FOR RE-ALLOCATION IN THE EVENT OF SIGNIFICANT REDUCTIONS TO HOTEL OCCPANCY TAX; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 33-95 of the Galveston City Code created the Arts and Historical Preservation Advisory Board which oversees and manages the Arts and Historic Distribution of HOT funds to applicant organizations; and,

WHEREAS, Section 33-92 of the Code contains the distribution and procedures for the Arts and Historic HOT funds; and,

WHEREAS, Hotel Occupancy Tax is being reduced significantly due to the COVID 19 pandemic related closured in the hotel industry; and,

WHEREAS, it is estimated that HOT revenue will be reduced by 10 to 35 percent of budgeted revenue for April through September 2020; and,

WHEREAS, the Arts and Historic Preservation 6/8 value of the penny could be potentially be reduced to as low as $756,000.00, short of its projected amount of $1,400,000.00 for Fiscal Year 2020; and,

WHEREAS, there is currently no methodology to allow for reallocation for awarded amounts to eligible entities when there is a significant reduction to the projected HOT revenue; and,

WHEREAS, staff is proposing the awarded amounts to organization be reduced by a pro rata adjustment of the reduced amount; and

WHEREAS, after due consideration, the City Council of the City of Galveston, Texas, finds it in the best interest of the public to amend the procedures located in Arts and Historic Fund Advisory Board Criteria and Selection Procedures to allow for reallocation for awarded amounts in the event of significant reductions in the projected amount of HOT revenue.

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

SECTION 1. The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2. The Arts and Historic Fund Advisory Board Criteria and Selection Procedures for Contributions of Hotel Occupancy Tax to Arts and Historical Preservation is hereby amended to read and provide as follows:

5. Allocations

Allocated funds will be disbursed on a fixed dollar amount for two year periods and will be based on a pro rata adjustment of the 6/8 made available, as provided in the City Code. The City will allocate up to ninety-five percent (95%) of available funds to qualifying organizations. Funds will be distributed on a monthly basis. No entity shall be awarded more than 25% of net disbursable funds in any fiscal year. Net disbursable funds is the gross projected amount of 6/8 of the penny minus the Arts Commission $50,000 and the 5 percent reserve.

Annually, $50,000 of available funds will be used to fund public art as recommended by the Arts Commission per fiscal year. The Arts Commission shall manage their own projects in compliance with state law.

The remaining five percent (5%) shall be placed in a reserve fund balance. Once this reserve fund reaches 15% of the projected 6/8 of the penny in any given year, the City Council and the Advisory Board may make interim grants out of any excess available funds.

Interim Grants are only available to entities who were grant recipients for previous standard award cycles. The Board may make recommendations for such interim grants, and City Council will make a final decision on whether to fund such application.

All forfeited and excess funds generated from an under estimate of the value of the HOT fund will be placed in the reserve fund for future use consistent with this program.

<u>In the event of a declared disaster or state of emergency, initiated by either the City of Galveston or the State of Texas, if there is projected to be a revenue shortfall of initial projection of HOT revenue as a result of the disaster or state of emergency, the City Council shall have the option and ability to reduce awarded amounts by a pro rata adjustment of the reduced amount. This adjustment would occur to all organizations awarded funds for the fiscal year which experience HOT revenue shortfalls. This adjustment would affect only upcoming disbursed funds. Should the City Council decide to reduce awarded amounts by a pro rata adjustment, the monthly disbursements would be reduced by that pro rata adjustment.</u>

SECTION 3. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final

judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 4. All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

SECTION 5. In accordance with the provisions of Sections 12 and 13 of Article II of the City Charter this Ordinance has been publicly available in the office of the City Secretary for not less than 72 hours prior to its adoption; that this Ordinance may be read and published by descriptive caption only.

SECTION 6. This Ordinance shall be and become effective from and after its adoption and publication in accordance with the provisions of the Charter of the City of Galveston.

APPROVED AS TO FORM:

_____
MEHRAN JADIDI
ASSISTANT CITY ATTORNEY

I, Janelle Williams, Secretary of the City Council of the City of Galveston, do hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the City Council of the City of Galveston at its regular meeting held on the 28th day of May, 2020, as the same appears in records of this office.

IN TESTIMONY WHEREOF, I subscribe my name hereto officially under the corporate seal of the City of Galveston this _____ day of _____, 2020.

_____
Secretary for the City Council
of the City of Galveston

ORDINANCE NO. 20- _____

AN ORDINANCE OF THE CITY OF GALVESTON, TEXAS, AMENDING THE CODE OF THE CITY OF GALVESTON, AS AMENDED, CHAPTER 11.5, "CLEAN AIR: SMOKING IN PUBLIC PLACES", TO AMEND, UPDATE REGULATIONS, STANDARDS, AND DEFINITIONS; TO MAKE CLARIFICATIONS, RENAME, RENUMBER AND REARRANGE THE CHAPTER AS APPLICABLE; PROVIDING FOR PENALTIES AS APPLICABLE; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Galveston City Council seeks to promote the public health, safety, morals and general welfare of the municipality and the safe, orderly, and healthful development of the municipality; and,

WHEREAS, staff has reviewed various Chapters of the City Code. Staff has made recommendations in order to update regulations, standards and procedures and make clarifications, and modifications, as applicable to the Chapter in furtherance of promoting the public health, safety, morals and general welfare of the municipality and the safe, orderly, and healthful development of the municipality; and,

WHEREAS, the City Council deems it in the public's interest to amend Chapter 11.5, "Clean Air: Smoking in Public Places", of "The Code of The City of Galveston 1982, as amended," as provided below.

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

SECTION 1. The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2. Chapter 11.5, "Clean Air: Smoking in Public Places", of "The Code of The City of Galveston 1982, as amended," is amended to provide as follows:

~~**Sec. 11.5-1. - Purpose.**~~

~~The purpose of this chapter is to:~~

~~(1) Improve and protect the public's health by eliminating smoking in public places and workplaces;~~

~~(2) Promote the right of nonsmokers to breathe smoke-free air; and~~

~~(3) Recognize that the need to breathe smoke-free air shall have priority over the choice of smoke~~.

Sec. 11.5-1. - Definitions.

Adult venue ~~means~~ - a bar that excludes minors and that meets the following requirements:

(1) The bar does not allow the entrance of minors, including without limitation any guests, patrons or employees that are minors;

(2) The bar is located in a separate building from any other public place or is independently ventilated- or completely separated from any other public place by impermeable ceilings and impermeable walls; and

(3) Has a sign conspicuously posted that meets the requirements of subsection 11.5-11(d).

Bar ~~means~~ - an area that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. A "bar" includes those facilities located within a restaurant, hotel, motel or other similar transient occupancy establishment and those establishments that allow guests to bring their own alcoholic beverages for consumption on premises. For purposes of this chapter, a bar includes any place where alcohol is consumed, whether purchased on or brought to the premises.

Business ~~means~~ - any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

City Park – A city owned facility exclusively managed by the city or its utilities, where members of the general public assemble to observe and/ or engage in recreational activity. The term shall include city owned playgrounds often frequented by minors engaged in play or similar activity.

E-cigarette - an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device. The term does not include a prescription medical device unrelated to the cessation of smoking. The term includes:

(A) a device described by this Chapter regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and

(B) a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

Employee ~~means~~ - a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a nonprofit entity.

Employer ~~means~~ - a person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one (1) or more persons.

Enclosed area ~~means~~ - a space that is enclosed on all sides by solid walls that extend from the floor to the ceiling (exclusive of windows, doors or passageways), including all space therein screened by partitions which do not extend to the ceiling or are not solid.

Enclosed Public Area - for purposes of this chapter shall include the following:

(1) Aquariums, galleries, libraries, and museums.

(2) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, hotels, and laundromats.

(3) Areas where prohibited by city fire code.

(4) Bars, including restaurant bars, lounge bars, and taverns that do not satisfy the adult venue requirements of this chapter.

(5) Bingo facilities.

(6) City facilities and vehicles.

(7) Convention facilities.

(8) Educational facilities, both public and private.

(9) Elevators.

(10) Theaters and other facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.

(11) Health care facilities.

(12) Licensed childcare and adult day care facilities.

(13) Lobbies or hallways, and other common areas in apartment buildings, condominiums, hotel, motel, and bed and breakfasts, retirement facilities, nursing homes, and other multiple-unit residential facilities.

(14) Polling places.

(15) Public transportation facilities, including buses, trolleys, taxicabs, ferries, cruise ship terminals and ticket, boarding, covered or enclosed waiting areas of public transit depots.

(16) Restaurants.

(17) Restrooms, lobbies, reception areas, hallways, and other common-use areas.

(18) Retail establishments.

(19) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the city or a political subdivision of the state, to the extent the place is subject to the jurisdiction of the city.

(20) Service lines.

(21) Shopping malls.

(22) Sports arenas, including enclosed places in outdoor arenas.

Fraternal organization ~~means~~ - a non-profit organization that:

(1) Is chartered by a national organization in existence since 1953;

(2) Is tax exempt under Section 501(c)(8), (10), or (19) of the Internal Revenue Code;

(3) Operates under a lodge system with a respective form of government; and

(4) Is organized for the exclusive benefit of the members of the organization and their dependents.

Health care facility ~~means~~ ~~-~~ an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

Minor ~~means~~ ~~-~~ an individual under the age of eighteen (18).

~~*Necessary steps*, as used in this chapter, means that the owner/operator shall take the first step listed, and so many of the subsequent steps as are necessary to prevent occupants from smoking:~~

~~(1) Post signs advising occupants that smoking is prohibited, and remove all ashtrays from the premises;~~

~~(2) Advise a smoking occupant that smoking is prohibited on the premises;~~

~~(3) Refuse to serve any occupant who persists in smoking despite the above;~~

~~(4) Ask any occupant who persists in smoking despite the above, to leave the premises;~~

~~(5) Follow standard business procedures taken when any occupant violates house rules;~~

~~(6) If none of the previous steps causes the occupant to leave or stop smoking, notify the police department~~.

Operator ~~means~~ ~~-~~ the owner or person in charge of a public place or workplace, including an employer.

Outdoor seating area ~~means~~ ~~-~~ any patio, sidewalk cafe, or similar unenclosed area in which a contiguously situated restaurant or bar provides outdoor service to its patrons.

Private club ~~means~~ ~~-~~ an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or, similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a

constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

Private place ~~means~~ - any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to, personal residences, or personal automobiles. A privately-owned business, open to the public, is not a "private place." A private residence used as child care, adult day care, or health care facility is not a private place.

~~*Public place* means – an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, cruise ship terminals, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters and waiting rooms.~~ A private residence is not a "public place" unless it is used as child care, adult day care, or health care facility.

Restaurant ~~means~~ - an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.

Retail tobacco store ~~means~~ - a retail store used primarily for the sale of tobacco products and smoking accessories and in which the sale of other non-tobacco products is incidental. Sales of incidental products shall not include the sale of alcohol regardless of percentage of total gross sales. A retail tobacco store:

(1) Must not allow the entrance of minors into the establishment, including without limitation any guest, patrons or employees that are minors;

(2) Must be located in a separate building from any other public place or independently ventilated and completely separated from any other public place by impermeable ceilings and impermeable walls; and

(3) Must have a sign conspicuously posted that meets the requirements of ~~section 11.5-11~~ the required signage herein.

Service line ~~means~~ - a line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Smoking ~~means~~ - inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, electronic cigarette (e-cigarette), pipe, weed, plant, or other combustible substance in any manner or in any form.

Sports arena ~~means~~ - sport pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Vapor products – "electronic cigarettes (e-cigarettes) or any other device that uses a mechanical heating element, battery, or electronic circuit to deliver vapor that may

include nicotine to the individual inhaling from the device, or any substance used to fill or refill the device.

Workplace ~~means~~ - an enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is a "workplace" if it is used as a child care, adult day care or health facility.

Sec. 11.5-2. - ~~Prohibition of smoking in~~ Enclosed public places.

(a). Smoking shall be prohibited in all enclosed public places within the city, except as provided in this Chapter or state law. ~~including but not limited to, the following places:~~

~~(1) Aquariums, galleries, libraries, and museums.~~

~~(2) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, hotels, and laundromats.~~

~~(3) Areas where prohibited by city fire code.~~

~~(4) Bars, including restaurant bars, lounge bars, and taverns that do not satisfy the adult venue requirements of this chapter.~~

~~(5) Bingo facilities.~~

~~(6) Bowling centers.~~

~~(7) City facilities and vehicles.~~

~~(8) Convention facilities.~~

~~(9) Educational facilities, both public and private.~~

~~(10) Elevators.~~

~~(11) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.~~

~~(12) Government facilities and vehicles.~~

~~(13) Health care facilities.~~

~~(14) Licensed childcare and adult day care facilities.~~

~~(15) Lobbies, hallways, and other common areas in apartment buildings, condominiums, hotel, motel, and bed and breakfasts, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.~~

~~(16) Polling places.~~

~~(17) Reserved.~~

~~(18) Public transportation facilities, including buses, trolleys, taxicabs, ferries, cruise ship terminals and ticket, boarding, covered or enclosed waiting areas of public transit depots.~~

~~(19) Restaurants.~~

~~(20) Restrooms, lobbies, reception areas, hallways, and other common-use areas.~~

~~(21) Retail establishments.~~

~~(22) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the city or a political subdivision of the state, to the extent the place is subject to the jurisdiction of the city.~~

~~(23) Service lines.~~

~~(24) Shopping malls.~~

~~(25) Sports arenas, including enclosed places in outdoor arenas.~~

Sec. 11.5-3. - Enclosed places of employment.

(~~b~~) Smoking shall be prohibited in an enclosed area of a workplace. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

~~(c) Smoking shall be prohibited within five (5) feet from an entrance, operable window, or ventilation system of an enclosed area in which smoking is prohibited.~~

~~(d) The owner or operator of a public place shall take necessary steps to prevent or stop another person from smoking in an enclosed area in a public place.~~

Sec. 11.5-4. - ~~Prohibition of~~ Smoking in outdoor areas.

Smoking shall be prohibited in the following outdoor areas:

(1) The seating area of an outdoor arena, stadium or amphitheater.

(2) In all outdoor service lines.

(3) In all outdoor public transportation stations, platforms, and shelters.

(4) City parks.

Sec. 11.5-5. - Reasonable distance.

Smoking is prohibited within a reasonable distance of not less than five (5) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

Sec. 11.5-6. - City-owned and public transportation facilities. ~~Application of chapter to City-owned facilities and public transportation facilities.~~

All facilities owned, leased or operated by the City, including but not limited to parks, playgrounds, transportation facilities including buses, trolleys, ticket, boarding, covered or enclosed waiting areas of public transit depots, buildings, and vehicles owned, leased or operated by the city, shall be subject to the provisions of this chapter.

Sec. 11.5-7. – Where smoking is not regulated. ~~Exceptions from prohibition~~.

Unless otherwise noted, this chapter does not apply to:

(1) Private residential property; a dwelling unit that is used exclusively for a residential use;

(2) Private vehicles, except when being used in the course of employment;

(3) A hotel or motel room designated as a smoking room and rented to a person, provided, however, that no more than twenty (20) percent of hotel and motel rooms rented to guests may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this chapter. That status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms;

(4) A private or semi-private room in a nursing home or long-term care facility that is occupied by individuals who smoke and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this chapter;

(5) A retail tobacco store;

(6) Outdoor seating areas as defined in this chapter;

(7) Bars that satisfy all adult venue requirements; or

(8) Private clubs.

Sec. 11.5-8. - Outdoor distance exceptions.

A person may smoke within five (5) feet of an entrance to a restricted smoking facility if:

(1) The entrance is not a primary public pedestrian entrance to the premises; or

(2) The distance between the entrance and the adjacent roadway is less than five (5) feet.

~~**Sec. 11.5-9. - Employer responsibilities**~~.

~~(a) Except as provided in subsection (b), an employer shall provide a smoke-free workplace for employees.~~

~~(b) If an employer requires employees to work in an area described in section 11.5-7 (exceptions from prohibition), the employer shall make reasonable accommodations for an employee who requests assignment to a smoke-free area. This subsection shall not apply to retail tobacco stores or adult venues.~~

~~(c) Each employer having any enclosed workplace located within the city shall adopt, implement and maintain a written smoke policy, which shall contain the following requirements:~~

~~(1) Smoking shall be prohibited in all enclosed facilities within a workplace. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.~~

~~(2) Additionally, smoking is prohibited with a reasonable distance of not less than five (5) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.~~

~~(d) The smoking policy shall be communicated to all employees within four (4) weeks of its adoption and posted conspicuously in all workplaces under the employer's jurisdiction.~~

~~(e) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employees.~~

Sec. 11.5-10. - Voluntary designation of a non-smoking facility.

~~Nothing in this chapter implies that the operator of any public or private place is prohibited from designating the entire facility as non-smoking~~. Notwithstanding any other provision of this Chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place, non-electronic cigarette (e-cigarette) use and vapor products facility. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this Chapter is posted.

Sec. 11.5-11. - Signs required.

(a) The ~~operator~~ owner, operator, manager of a public place shall conspicuously post a "No Smoking" or "No Vaping" sign, and/or the international "No Smoking" or "No Vaping" symbol (depiction of a burning cigarette or e-cigarette enclosed in a red circle with a red bar across it), or other sign containing words or pictures that reasonably prohibit smoking and vaping. The signs shall be written in contrasting colors with bold block lettering of not less than one (1) inch in height and must be conspicuously posted:

(1) In each public place and workplace where smoking is prohibited ~~by this chapter~~, and

(2) At each entrance to a public place or workplace.

(b) The ~~operator~~ owner, operator, manager of a public place shall conspicuously post signs in areas where smoking is permitted ~~under section 11.5-7 (exceptions from prohibition).~~

(c) The ~~operator~~ owner, operator, manager, or employer ~~of a public place and an employer~~ shall remove all ashtrays ~~any ashtray~~ or other smoking accessory from a place where smoking is prohibited.

(d) The ~~operator~~ owner, operator, manager of a retail tobacco store or an adult venue shall conspicuously post a sign stating:

"SMOKING IS PERMITTED IN THIS VENUE. NO PERSON UNDER THE AGE OF 18 MAY ENTER THIS VENUE."

(e) It is not a defense to prosecution under this chapter that an ~~operator~~ owner, operator, manager, or employer failed to post ~~a sign~~ signage as required under this section.

(f) Prevention Steps. The owner or operator of a public place shall take steps to prevent or stop another person from smoking in an enclosed area in a public place. Prevention steps include but are not limited to the following:

1. Posting signs advising occupants that smoking is prohibited, and
2. removing all ashtrays from the premises; and so many of the following to prevent occupants from smoking:
   - i. Advise a smoking occupant that smoking is prohibited on the premises;
   - ii. Refuse to serve any occupant who persists in smoking despite the above;
   - iii. Ask any occupant who persists in smoking despite the above, to leave the premises;
   - iv. Follow standard business procedures taken when any occupant violates house rules;
   - v. Notification of the police department.

~~Sec. 11.5-12. - Retaliation prohibited~~.

~~(a) A person commits an offense if the person discharges, refuses to hire, or retaliates against a customer, employee, or applicant for employment because the customer, employee or applicant for employment reports a violation of this chapter.~~

~~(b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.~~

~~Sec. 11.5-13. - Enforcement~~.

(a) ~~This section is cumulative of other laws regulating smoking, electronic cigarette or vapor products use providing enforcement authority.~~

(b) ~~This chapter shall be enforced by the fire department, police department, building inspections division, or code enforcement officers.~~

(c) ~~Any citizen may report a violation of this chapter to the city manager or his designee~~.

(d) ~~An owner, manager, operator, or employee of an establishment regulated by this chapter shall inform persons violating this chapter of the appropriate provisions thereof.~~

(e) ~~In addition to the remedies provided by the provisions of this section, the city may apply for injunctive relief to enforce these provisions in any court of competent jurisdiction.~~

Sec. 11.5-14. - Violation and penalties.

(a) A person who ~~smokes~~ commits an offense in violation of any provision of this chapter commits a class C misdemeanor, ~~punishable by a fine not to exceed five hundred dollars ($500.00). A culpable mental state is not required for a violation of this chapter, and need not be proved. However, if the violation was done intentionally, knowingly or recklessly, the offense is~~ punishable by a fine not to exceed two thousand dollars ($2,000.00).

(b) Whenever an act is prohibited or is made or declared to be unlawful or an offense or misdemeanor, or whenever in this Chapter the doing of any thing or act is required or the failure to do any thing or act is prohibited, the violation of the provision is a Class C misdemeanor punishable by a fine not to exceed two thousand dollars ($2,000.00).

~~Sec. 11.5-14. - Violation and penalties.~~

~~(a) A person who smokes in violation of any provision of this chapter commits a class C misdemeanor, punishable by a fine not to exceed five hundred dollars ($500.00). A culpable mental state is not required for a violation of this chapter, and need not be proved. However, if the violation was done intentionally, knowingly or recklessly, the offense is punishable by a fine not to exceed two thousand dollars ($2,000.00).~~

~~(b) An operator or employer who owns, manages, operates, or otherwise controls a public place or workplace and who fails to comply with the provisions of this chapter shall be guilty of a class C misdemeanor, punishable by:~~

~~(1) A fine not exceeding two hundred dollars ($200.00) for a first violation.~~

~~(2) A fine not exceeding four hundred dollars ($400.00) for a second violation within a period of twelve (12) consecutive months.~~

~~(3) A fine not exceeding five hundred dollars ($500.00) for each additional violation within a period of twelve (12) consecutive months.~~

~~(c) Violation of this chapter is hereby declared to be a public nuisance, which may be abated by restraining order, preliminary and permanent injunction, or other means provided for by law, and the city may recover the costs of the nuisance abatement.~~

~~(d) It shall be presumed that a violation of this chapter is intentional if a sign is posted near the main entrance of the premises, indicating that smoking is prohibited.~~

~~(e) Other violations.~~

~~(1) It shall be a violation of this chapter for the operator of a retail tobacco store or an adult venue to allow a minor to enter and remain in the retail tobacco store or adult venue.~~

~~(2) It shall be a violation of this chapter for any minor to enter or remain in a retail tobacco store or an adult venue.~~

~~**Sec. 11.5-15. - Public education**.~~

~~(a) The city manager, or designee, shall:~~

~~(1) Obtain or develop a comprehensive tobacco education program to educate the public about the harmful effect of tobacco and its addictive qualities.~~

~~(2) Conduct informational activities to notify and educate businesses and the public about this chapter; and~~

~~(3) Coordinate the city's tobacco education program with other civic or volunteer groups organized to promote smoking prevention and tobacco education.~~

~~(b) To implement this section, the city manager, or designee, may publish and distribute educational materials relating to this chapter to businesses, their employees, and the public.~~

~~Sec. 11.5-16. - Governmental agency cooperation~~.

~~The city manager, or designee, shall annually request that each federal, state, county, and school district agency with a facility in the city adopt local operating procedures and update its existing smoking control regulation in compliance with this chapter.~~

Sec. 11.5-17. - Application of other law.

This chapter is cumulative of other laws that regulate the use of smoking, electronic cigarette or vapor products (as described in this chapter). This chapter shall not be interpreted or construed to permit smoking, electronic cigarette or vapor products use where it is otherwise restricted by other applicable ordinances, laws or policies.

SECTION 3. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 4. All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

SECTION 5. In accordance with the provisions of Sections 12 and 13 of Article II of the City Charter this Ordinance has been publicly available in the office of the City Secretary for not less than 72 hours prior to its adoption; that this Ordinance may be read and published by descriptive caption only.

SECTION 6. This Ordinance shall be and become effective from and after its adoption and publication in accordance with the provisions of the Charter of the City of Galveston.

APPROVED AS TO FORM:

_____

DONNA M. FAIRWEATHER
ASSISTANT CITY ATTORNEY

I, Janelle Williams, Secretary of the City Council of the City of Galveston, do hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the

City Council of the City of Galveston at its Regular meeting held on June 25, 2020, as the same appears in records of this office.

IN TESTIMONY WHEREOF, I subscribe my name hereto officially under the corporate seal of the City of Galveston this _____ day of _____, 2020.

_____
Secretary for the City Council
Of the City of Galveston

Chapter 11.5 - CLEAN AIR: SMOKING IN PUBLIC PLACES

Sec. 11.5-1. - ~~Purpose~~.

~~The purpose of this chapter is to:~~

~~(1) Improve and protect the public's health by eliminating smoking in public places and workplaces;~~

~~(2) Promote the right of nonsmokers to breathe smoke-free air; and~~

~~(3) Recognize that the need to breathe smoke-free air shall have priority over the choice of smoke~~.

Sec. 11.5-2. - Definitions.

Adult venue ~~means~~ - a bar that excludes minors and that meets the following requirements:

(1) The bar does not allow the entrance of minors, including without limitation any guests, patrons or employees that are minors;

(2) The bar is located in a separate building from any other public place or is independently ventilated- or completely separated from any other public place by impermeable ceilings and impermeable walls; and

(3) Has a sign conspicuously posted that meets the requirements of subsection 11.5-11(d).

Bar ~~means~~ - an area that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. A "bar" includes those facilities located within a restaurant, hotel, motel or other similar transient occupancy establishment and those establishments that allow guests to bring their own alcoholic beverages for consumption on premises. For purposes of this chapter, a bar includes any place where alcohol is consumed, whether purchased on or brought to the premises.

Business ~~means~~ - any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

City Park – A city owned facility exclusively managed by the city or its utilities, where members of the general public assemble to observe and/ or engage in recreational activity. The term shall include city owned playgrounds often frequented by minors engaged in play or similar activity.

E-cigarette - an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device. The term does not include a prescription medical device unrelated to the cessation of smoking. The term includes:

(A) a device described by this Chapter regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and

(B) a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

Employee ~~means~~ - a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a nonprofit entity.

Employer ~~means~~ - a person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one (1) or more persons.

Enclosed area ~~means~~ - a space that is enclosed on all sides by solid walls that extend from the floor to the ceiling (exclusive of windows, doors or passageways), including all space therein screened by partitions which do not extend to the ceiling or are not solid.

Enclosed Public Area - for purposes of this chapter shall include the following:

(1) Aquariums, galleries, libraries, and museums.

(2) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, hotels, and laundromats.

(3) Areas where prohibited by city fire code.

(4) Bars, including restaurant bars, lounge bars, and taverns that do not satisfy the adult venue requirements of this chapter.

(5) Bingo facilities.

(6) City facilities and vehicles.

(7) Convention facilities.

(8) Educational facilities, both public and private.

(9) Elevators.

(10) Theaters and other facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.

(11) Health care facilities.

(12) Licensed childcare and adult day care facilities.

(13) Lobbies or hallways, and other common areas in apartment buildings, condominiums, hotel, motel, and bed and breakfasts, retirement facilities, nursing homes, and other multiple-unit residential facilities.

(14) Polling places.

(15) Public transportation facilities, including buses, trolleys, taxicabs, ferries, cruise ship terminals and ticket, boarding, covered or enclosed waiting areas of public transit depots.

(16) Restaurants.

(17) Restrooms, lobbies, reception areas, hallways, and other common-use areas.

(18) Retail establishments.

(19) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the city or a

political subdivision of the state, to the extent the place is subject to the jurisdiction of the city.

(20) Service lines.

(21) Shopping malls.

(22) Sports arenas, including enclosed places in outdoor arenas.

Fraternal organization ~~means~~ - a non-profit organization that:

(1) Is chartered by a national organization in existence since 1953;

(2) Is tax exempt under Section 501(c)(8), (10), or (19) of the Internal Revenue Code;

(3) Operates under a lodge system with a respective form of government; and

(4) Is organized for the exclusive benefit of the members of the organization and their dependents.

Health care facility ~~means~~ - an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

Minor ~~means~~ - an individual under the age of eighteen (18).

~~*Necessary steps,* as used in this chapter, means that the owner/operator shall take the first step listed, and so many of the subsequent steps as are necessary to prevent occupants from smoking:~~

~~(1) Post signs advising occupants that smoking is prohibited, and remove all ashtrays from the premises;~~

~~(2) Advise a smoking occupant that smoking is prohibited on the premises;~~

~~(3) Refuse to serve any occupant who persists in smoking despite the above;~~

~~(4) Ask any occupant who persists in smoking despite the above, to leave the premises;~~

~~(5) Follow standard business procedures taken when any occupant violates house rules;~~

~~(6) If none of the previous steps causes the occupant to leave or stop smoking, notify the police department~~.

Operator ~~means~~ - the owner or person in charge of a public place or workplace, including an employer.

Outdoor seating area ~~means~~ - any patio, sidewalk cafe, or similar unenclosed area in which a contiguously situated restaurant or bar provides outdoor service to its patrons.

Private club ~~means~~ - an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its

operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or, similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

Private place ~~means~~ - any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to, personal residences, or personal automobiles. A privately-owned business, open to the public, is not a "private place." A private residence used as child care, adult day care, or health care facility is not a private place.

~~*Public place* means - an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, cruise ship terminals, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters and waiting rooms.~~ A private residence is not a "public place" unless it is used as child care, adult day care, or health care facility.

Restaurant ~~means~~ - an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.

Retail tobacco store ~~means~~ - a retail store used primarily for the sale of tobacco products and smoking accessories and in which the sale of other non-tobacco products is incidental. Sales of incidental products shall not include the sale of alcohol regardless of percentage of total gross sales. A retail tobacco store:

(1) Must not allow the entrance of minors into the establishment, including without limitation any guest, patrons or employees that are minors;

(2) Must be located in a separate building from any other public place or independently ventilated and completely separated from any other public place by impermeable ceilings and impermeable walls; and

(3) Must have a sign conspicuously posted that meets the requirements of ~~section 11.5-11~~ the required signage herein.

Service line ~~means~~ - a line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Smoking ~~means~~ - inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, electronic cigarette (e-cigarette), pipe, weed, plant, or other combustible substance in any manner or in any form.

Sports arena ~~means~~ - sport pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Vapor products – "electronic cigarettes (e-cigarettes) or any other device that uses a mechanical heating element, battery, or electronic circuit to deliver vapor that may include nicotine to the individual inhaling from the device, or any substance used to fill or refill the device.

Workplace ~~means~~ ~~-~~ an enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is a "workplace" if it is used as a child care, adult day care or health facility.

Sec. 11.5-2. - ~~Prohibition of smoking in~~ Enclosed public places.

(a). Smoking shall be prohibited in all enclosed public places within the city, except as provided in this Chapter or state law. ~~including but not limited to, the following places:~~

~~(1) Aquariums, galleries, libraries, and museums.~~

~~(2) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, hotels, and laundromats.~~

~~(3) Areas where prohibited by city fire code.~~

~~(4) Bars, including restaurant bars, lounge bars, and taverns that do not satisfy the adult venue requirements of this chapter.~~

~~(5) Bingo facilities.~~

~~(6) Bowling centers.~~

~~(7) City facilities and vehicles.~~

~~(8) Convention facilities.~~

~~(9) Educational facilities, both public and private.~~

~~(10) Elevators.~~

~~(11) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.~~

~~(12) Government facilities and vehicles.~~

~~(13) Health care facilities.~~

~~(14) Licensed childcare and adult day care facilities.~~

~~(15) Lobbies, hallways, and other common areas in apartment buildings, condominiums, hotel, motel, and bed and breakfasts, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.~~

~~(16) Polling places.~~

~~(17) Reserved.~~

~~(18) Public transportation facilities, including buses, trolleys, taxicabs, ferries, cruise ship terminals and ticket, boarding, covered or enclosed waiting areas of public transit depots.~~

~~(19) Restaurants.~~

~~(20) Restrooms, lobbies, reception areas, hallways, and other common-use areas.~~

~~(21) Retail establishments.~~

~~(22) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the city or a political subdivision of the state, to the extent the place is subject to the jurisdiction of the city.~~

~~(23) Service lines.~~

~~(24) Shopping malls.~~

~~(25) Sports arenas, including enclosed places in outdoor arenas.~~

Sec. 11.5-3. - Enclosed places of employment.

~~(b)~~ Smoking shall be prohibited in an enclosed area of a workplace. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

~~(c) Smoking shall be prohibited within five (5) feet from an entrance, operable window, or ventilation system of an enclosed area in which smoking is prohibited.~~

~~(d) The owner or operator of a public place shall take necessary steps to prevent or stop another person from smoking in an enclosed area in a public place.~~

Sec. 11.5-4. - ~~Prohibition of~~ Smoking in outdoor areas.

Smoking shall be prohibited in the following outdoor areas:

(1) The seating area of an outdoor arena, stadium or amphitheater.

(2) In all outdoor service lines.

(3) In all outdoor public transportation stations, platforms, and shelters.

(4) City parks.

Sec. 11.5-5. - Reasonable distance.

Smoking is prohibited within a reasonable distance of not less than five (5) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

Sec. 11.5-6. - City-owned and public transportation facilities. ~~Application of chapter to City-owned facilities and public transportation facilities.~~

All facilities owned, leased or operated by the City, including but not limited to parks, playgrounds, transportation facilities including buses, trolleys, ticket, boarding, covered or

enclosed waiting areas of public transit depots, buildings, and vehicles owned, leased or operated by the city, shall be subject to the provisions of this chapter.

Sec. 11.5-7. – Where smoking is not regulated. ~~Exceptions from prohibition~~.

Unless otherwise noted, this chapter does not apply to:

(1) Private residential property; a dwelling unit that is used exclusively for a residential use;

(2) Private vehicles, except when being used in the course of employment;

(3) A hotel or motel room designated as a smoking room and rented to a person, provided, however, that no more than twenty (20) percent of hotel and motel rooms rented to guests may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this chapter. That status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms;

(4) A private or semi-private room in a nursing home or long-term care facility that is occupied by individuals who smoke and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this chapter;

(5) A retail tobacco store;

(6) Outdoor seating areas as defined in this chapter;

(7) Bars that satisfy all adult venue requirements; or

(8) Private clubs.

Sec. 11.5-8. - Outdoor distance exceptions.

A person may smoke within five (5) feet of an entrance to a restricted smoking facility if:

(1) The entrance is not a primary public pedestrian entrance to the premises; or

(2) The distance between the entrance and the adjacent roadway is less than five (5) feet.

~~**Sec. 11.5-9. - Employer responsibilities**.~~

~~(a) Except as provided in subsection (b), an employer shall provide a smoke-free workplace for employees.~~

~~(b) If an employer requires employees to work in an area described in section 11.5-7 (exceptions from prohibition), the employer shall make reasonable accommodations for an employee who requests assignment to a smoke-free area. This subsection shall not apply to retail tobacco stores or adult venues.~~

~~(c) Each employer having any enclosed workplace located within the city shall adopt, implement and maintain a written smoke policy, which shall contain the following requirements:~~

~~(1) Smoking shall be prohibited in all enclosed facilities within a workplace. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private~~

~~offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.~~

~~(2) Additionally, smoking is prohibited with a reasonable distance of not less than five (5) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.~~

~~(d) The smoking policy shall be communicated to all employees within four (4) weeks of its adoption and posted conspicuously in all workplaces under the employer's jurisdiction.~~

~~(e) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employees.~~

Sec. 11.5-10. - Voluntary designation of a non-smoking facility.

~~Nothing in this chapter implies that the operator of any public or private place is prohibited from designating the entire facility as non-smoking~~. Notwithstanding any other provision of this Chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place, non-electronic cigarette (e-cigarette) use and vapor products facility. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this Chapter is posted.

Sec. 11.5-11. - Signs required.

(a) The ~~operator~~ owner, operator, manager of a public place shall conspicuously post a "No Smoking" or "No Vaping" sign, and/or the international "No Smoking" or "No Vaping" symbol (depiction of a burning cigarette or e-cigarette enclosed in a red circle with a red bar across it), or other sign containing words or pictures that reasonably prohibit smoking and vaping. The signs shall be written in contrasting colors with bold block lettering of not less than one (1) inch in height and must be conspicuously posted:

(1) In each public place and workplace where smoking is prohibited ~~by this chapter~~, and

(2) At each entrance to a public place or workplace.

(b) The ~~operator~~ owner, operator, manager of a public place shall conspicuously post signs in areas where smoking is permitted ~~under section 11.5-7 (exceptions from prohibition).~~

(c) The ~~operator~~ owner, operator, manager, or employer ~~of a public place and an employer~~ shall remove all ashtrays ~~any ashtray~~ or other smoking accessory from a place where smoking is prohibited.

(d) The ~~operator~~ owner, operator, manager of a retail tobacco store or an adult venue shall conspicuously post a sign stating:

"SMOKING IS PERMITTED IN THIS VENUE. NO PERSON UNDER THE AGE OF 18 MAY ENTER THIS VENUE."

(e) It is not a defense to prosecution under this chapter that an ~~operator~~ owner, operator, manager, or employer failed to post ~~a sign~~ signage as required under this section.

(f) Prevention Steps. The owner or operator of a public place shall take steps to prevent or stop another person from smoking in an enclosed area in a public place. Prevention steps include but are not limited to the following:

1. Posting signs advising occupants that smoking is prohibited, and remove all ashtrays from the premises; and so many of the following to prevent occupants from smoking:

   i. Advise a smoking occupant that smoking is prohibited on the premises;

   ii. Refuse to serve any occupant who persists in smoking despite the above;

   iii. Ask any occupant who persists in smoking despite the above, to leave the premises;

   iv. Follow standard business procedures taken when any occupant violates house rules;

   v. Notification of the police department.

~~Sec. 11.5-12. - Retaliation prohibited~~.

~~(a) A person commits an offense if the person discharges, refuses to hire, or retaliates against a customer, employee, or applicant for employment because the customer, employee or applicant for employment reports a violation of this chapter.~~

~~(b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.~~

~~Sec. 11.5-13. - Enforcement~~.

(a) ~~This section is cumulative of other laws regulating smoking, electronic cigarette or vapor products use providing enforcement authority.~~

(b) ~~This chapter shall be enforced by the fire department, police department, building inspections division, or code enforcement officers.~~

(c) ~~Any citizen may report a violation of this chapter to the city manager or his designee~~.

(d) ~~An owner, manager, operator, or employee of an establishment regulated by this chapter shall inform persons violating this chapter of the appropriate provisions thereof.~~

(e) ~~In addition to the remedies provided by the provisions of this section, the city may apply for injunctive relief to enforce these provisions in any court of competent jurisdiction.~~

Sec. 11.5-14. - Violation and penalties.

(a) A person who ~~smokes~~ commits an offense in violation of any provision of this chapter commits a class C misdemeanor, ~~punishable by a fine not to exceed five hundred dollars ($500.00). A culpable mental state is not required for a violation of this chapter, and need not be proved. However, if the violation was done intentionally, knowingly or~~

~~recklessly, the offense is~~ punishable by a fine not to exceed two thousand dollars ($2,000.00).

(b) Whenever an act is prohibited or is made or declared to be unlawful or an offense or misdemeanor, or whenever in this Chapter the doing of any thing or act is required or the failure to do any thing or act is prohibited, the violation of the provision is a Class C misdemeanor punishable by a fine not to exceed two thousand dollars ($2,000.00).

~~Sec. 11.5-14. - Violation and penalties.~~

~~(a) A person who smokes in violation of any provision of this chapter commits a class C misdemeanor, punishable by a fine not to exceed five hundred dollars ($500.00). A culpable mental state is not required for a violation of this chapter, and need not be proved. However, if the violation was done intentionally, knowingly or recklessly, the offense is punishable by a fine not to exceed two thousand dollars ($2,000.00).~~

~~(b) An operator or employer who owns, manages, operates, or otherwise controls a public place or workplace and who fails to comply with the provisions of this chapter shall be guilty of a class C misdemeanor, punishable by:~~

~~(1) A fine not exceeding two hundred dollars ($200.00) for a first violation.~~

~~(2) A fine not exceeding four hundred dollars ($400.00) for a second violation within a period of twelve (12) consecutive months.~~

~~(3) A fine not exceeding five hundred dollars ($500.00) for each additional violation within a period of twelve (12) consecutive months.~~

~~(c) Violation of this chapter is hereby declared to be a public nuisance, which may be abated by restraining order, preliminary and permanent injunction, or other means provided for by law, and the city may recover the costs of the nuisance abatement.~~

~~(d) It shall be presumed that a violation of this chapter is intentional if a sign is posted near the main entrance of the premises, indicating that smoking is prohibited.~~

~~(e) Other violations.~~

~~(1) It shall be a violation of this chapter for the operator of a retail tobacco store or an adult venue to allow a minor to enter and remain in the retail tobacco store or adult venue.~~

~~(2) It shall be a violation of this chapter for any minor to enter or remain in a retail tobacco store or an adult venue.~~

~~**Sec. 11.5-15. - Public education**.~~

~~(a) The city manager, or designee, shall:~~

~~(1) Obtain or develop a comprehensive tobacco education program to educate the public about the harmful effect of tobacco and its addictive qualities.~~

~~(2) Conduct informational activities to notify and educate businesses and the public about this chapter; and~~

~~(3) Coordinate the city's tobacco education program with other civic or volunteer groups organized to promote smoking prevention and tobacco education.~~

~~(b) To implement this section, the city manager, or designee, may publish and distribute educational materials relating to this chapter to businesses, their employees, and the public.~~

~~**Sec. 11.5-16. - Governmental agency cooperation**.~~

~~The city manager, or designee, shall annually request that each federal, state, county, and school district agency with a facility in the city adopt local operating procedures and update its existing smoking control regulation in compliance with this chapter.~~

Sec. 11.5-17. - Application of other law.

This chapter is cumulative of other laws that regulate the use of smoking, electronic cigarette or vapor products (as described in this chapter). This chapter shall not be interpreted or construed to permit smoking, electronic cigarette or vapor products use where it is otherwise restricted by other applicable ordinances, laws or policies.

ORDINANCE NO. 20- _____

AN ORDINANCE OF THE CITY OF GALVESTON, TEXAS, AMENDING THE CODE OF THE CITY OF GALVESTON, AS AMENDED, CHAPTER 22, "MUNICIPAL COURT", TO AMEND, UPDATE REGULATIONS, STANDARDS, AND DEFINITIONS; TO MAKE CLARIFICATIONS, RENAME, RENUMBER AND REARRANGE THE CHAPTER AS APPLICABLE; PROVIDING FOR PENALTIES AS APPLICABLE; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Galveston City Council seeks to promote the public health, safety, morals and general welfare of the municipality and the safe, orderly, and healthful development of the municipality; and,

WHEREAS, staff has reviewed various Chapters of the City Code. Staff has made recommendations in order to update regulations, standards and procedures and make clarifications, and modifications, as applicable to the Chapter in furtherance of promoting the public health, safety, morals and general welfare of the municipality and the safe, orderly, and healthful development of the municipality; and,

WHEREAS, the City Council deems it in the public's interest to amend Chapter 22, "Municipal Court", of "The Code of The City of Galveston 1982, as amended," as provided below.

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

SECTION 1. The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2. Chapter 22, "Municipal Court", of "The Code of The City of Galveston 1982, as amended," is amended to read and provide as follows:

ARTICLE I. - IN GENERAL

Sec. 22-1. - ~~municipal court of record~~ <u>Municipal Court of Record</u> created.

(a) In accordance with the provisions of the City Charter and applicable state law, there is hereby created the "Municipal Court of Record in the City of Galveston, Texas." The municipal court of record shall be comprised of as many divisions as the city council deems as necessary.

i. <u>The Municipal Court of Record may be referenced as the Municipal Court for the City of Galveston.</u>

(b) The court shall have no term and may sit at any time for the transaction of business of the court. Where the term "municipal court" is used in the city's Charter or this Code it shall mean the municipal court of record ~~created herein.~~ Any provision of the city Charter, city ordinances, or state law that is applicable to a municipal court shall be applicable to the municipal court of record ~~created herein~~ unless the provision is in conflict or inconsistent with chapters 29 or 30 of the Texas Government Code, as amended, which governs municipal courts of record.

Sec. 22-2. - Additional jurisdiction.

The ~~**municipal court of record**~~ **Municipal Court of Record** shall also have:

(a) Concurrent jurisdiction with a justice court in any precinct in which the municipality is located in criminal cases that arise within the territorial limits of the city and are punishable by fine only;

(b) Civil jurisdiction for the purpose of enforcing municipal ordinances enacted under ~~subchapter~~ Subchapter A, ~~chapter~~ Chapter 214, Local Government Code, or ~~subchapter~~ Subchapter E, ~~chapter~~ Chapter 683, Transportation Code, as amended;

(c) Concurrent jurisdiction with a district court or a county court at law under ~~subchapter~~ Subchapter B, ~~chapter~~ Chapter 54, Texas Local Government Code, as amended, within the city's territorial limits and property owned by the city located in the city's extraterritorial jurisdiction for the purpose of enforcing health and safety and nuisance abatement ordinances; and

(d) Authority to issue:

(1) Search warrants for the purpose of investigating a health and safety or nuisance abatement ordinance violation; and

(2) Seizure warrants for the purpose of securing, removing, or demolishing the offending property and removing the debris from the premises.

ARTICLE II. MUNICIPAL COURT JUDGE

Sec. 22-3. – Municipal Judge

I. **Presiding Municipal Judge**.

a. The City Council shall appoint a Municipal Judge to be the Presiding Municipal Judge of the Municipal Court of Record for a term of two (2) years.

b. No person who has served for six (6) consecutive years as the Presiding Municipal Judge shall be reappointed to that position unless two (2) years shall have elapsed during which time such person shall not have served as presiding municipal judge; provided, however, any person who shall have completed six (6) years' consecutive service prior to the expiration of their present term shall be permitted to continue to serve for the duration of

such term, but shall not be eligible for reappointment except upon the expiration of two (2) years thereafter.

i. The term limit provisions of subsection (a)(1) shall not apply to associate municipal judge appointments governed by the City Charter or state law.

~~II.~~ **Municipal Judge Requirements**.

~~a.~~ A person may not serve as a municipal judge if the person is employed as an employee of the city. A municipal judge who accepts employment with the city vacates the judicial office.

~~b.~~ A person may not serve as a municipal judge and hold an elected position in the City of Galveston or in Galveston County.

c. Appointments of municipal judge by the city council shall be made on or before October 1, to correspond with the city fiscal year.

d. The municipal judge shall be a licensed attorney in good standing in the State of Texas.

e. The municipal judge shall be a citizen of the United States.

f. The municipal judge shall be a resident of and domiciled in the city for not less than three (3) years immediately prior to appointment and continue to reside and be domiciled in the city while serving as municipal court judge.

g. The municipal judge shall have five (5) or more years of experience in the practice of law in this state.

III. The Municipal Judges appointed hereunder are entitled to receive compensation and other benefits as set by the city council.

IV. The compensation of the Municipal Judges may not be diminished during the term of office and may not be based directly or indirectly on fines, fees, or other costs collected by the court.

V. A Municipal Judge may be removed from office by the City Council pursuant to the City Charter or as provided by Section 1-a, Article V, Texas Constitution.

VI. In the event a vacancy occurs in the office of Municipal Judge, the City Council shall appoint a qualified person to fill the office for the remainder of the unexpired term.

~~Sec. 22-3. - Municipal judge appointment.~~

~~(a) The municipal court of record is presided over by the presiding municipal judge who shall be appointed by the city council for a term of two (2) years. A person may not serve as a municipal judge if the person is employed as an employee of the city. A municipal judge who accepts employment with the city vacates the judicial office. The current judges shall continue in office through the expiration of their current terms.~~

~~(1) Initial presiding judge. Upon the adoption of the ordinance from which this section is derived, the presiding judge of the municipal court of the city shall become the presiding judge of the city municipal court of record. The initial~~

~~term of the presiding judge of the municipal court shall expire two (2) years from the date of his/her last appointment by the city council.~~

~~(2) Initial associate judge. Upon the adoption of the ordinance from which this section is derived, the associate judge of the municipal court of the city shall become the associate judge of the city municipal court of record. The initial term of the associate judge of the municipal court shall expire two (2) years from the date of his/her last appointment by the city council.~~

~~(3) At the conclusion of the initial terms described herein, all succeeding terms of a presiding judge and an associate judge shall be two (2) years from the date of their appointment by the city council.~~

~~(b) The municipal court judge must be a licensed attorney in good standing in the State of Texas; a citizen of the United States; a resident of and domiciled in the city for not less than three (3) years immediately prior to appointment and continue to reside and be domiciled in the city while serving as municipal court judge; and have five (5) or more years of experience in the practice of law in this state.~~

~~(c) The presiding judge and associate municipal judges appointed hereunder are entitled to receive compensation and other benefits as set by the city council.~~

~~(d) The compensation of the presiding judge and associate municipal judges may not be diminished during the term of office and may not be based directly or indirectly on fines, fees, or other costs collected by the court.~~

~~(e) A judge of a municipal court of record may be removed from office by the city council pursuant to the city Charter or as provided by Section 1-a, Article V of the Texas Constitution.~~

~~(f) In the event a vacancy occurs in the office of presiding judge or associate municipal judge, the city council shall appoint a qualified person to fill the office for the remainder of the unexpired term.~~

Sec. 22-4. - Powers and duties of municipal judges.

The duties of the judge of the municipal court of record shall be all those imposed by the laws of the state and this chapter.

(a) If more than one division of the municipal court of record is created, the judge of each division may at any time exchange benches and sit and act for each other in any pending case, matter, or proceeding.

(b) The presiding judge and associate municipal judges shall:

(1) Hold court within the city at a place designated by the city council;

(2) Follow all rules of procedure contained in the city ordinances and state law;

(3) Enter on the docket of the municipal court of record, over which the municipal judge presides, appropriate notations of the disposition of each case;

(4) Take judicial notice of state law, ordinances and corporate limits of the municipality;

(5) Have authority to preside over any municipal court of record of the city, and may exchange benches with other judges; and

(c) The presiding judge and the associate municipal judge have all other powers and duties assigned to a municipal judge by the city Charter, other city ordinance. Chapters 29 and 30 of the Texas Government Code, Chapter 45 of the Code of Criminal Procedure, or other state law.

(d) The presiding judge and associate municipal judge may grant writs of mandamus, attachment, or other writs necessary to the enforcement of ~~a~~ the jurisdiction of the court and may issue writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the court. A municipal judge is a magistrate and may issue administrative search warrants.

(e) The presiding judge shall have the following additional duties and powers:

(1) Provide for equal distribution of cases and work-load among the associate municipal judges;

(2) Have the power to transfer cases and to assign associate municipal judges to preside over various cases;

(3) While court is in session, during court proceedings will supervise and control the operation and clerical functions of the court, including the court's personnel.

(f) The Municipal Judge shall deal with the administrative services of the Municipal Court solely through the Clerk of the Municipal Court or the City Manager.

Sec. 22-5. - Temporary Municipal Court Judge.

The city council may appoint one or more temporary municipal judges. A temporary municipal judge must have the same qualifications as that is required for a municipal Judge and shall have the same powers and duties of a municipal judge in the municipal court.

ARTICLE III. COURT ADMINISTRATOR – CLERK OF THE MUNICIPAL COURT

Sec. 22-6. – Court Administrator – Clerk of the Municipal Court ~~Municipal court clerk appointment.~~

(a) The city manager or designee shall appoint a clerk of the municipal court of record who shall be known as the Court Administrator or the Clerk of the Municipal Court. The Court Administrator shall make those recommendations for hire of such other deputy clerks as may be deemed appropriate.

~~(a) The city manager shall appoint a clerk of the municipal court of record who shall be known as the court administrator, and shall recommend~~

~~appointment of such other municipal court clerks as may be deemed appropriate by the court administrator.~~

~~(b) During proceedings before the court, the court administrator and other court personnel will perform their court room duties under the direction and control of the presiding judge.~~

(c) The court administrator may hire and remove the personnel authorized in the city's annual budget for the municipal court clerk's office.

(d) The court administrator shall prepare a budget for the municipal court of record and carry out any other administrative functions deemed necessary by the city manager, or ~~his~~ designee.

Sec. 22-7. - Court Administrator - Municipal court clerk powers and duties.

(a) The court administrator or his/her deputy shall keep the records of the municipal court of record, issue process, and generally perform the duties ~~of the court~~ that a clerk of ~~the~~ a county court exercising criminal jurisdiction is required by law to perform for that court. The clerk shall also maintain an index of all court judgments in the same manner as county clerks are required by law to prepare for criminal cases arising in county courts. The clerk shall perform the duties in accordance with state law, city charter, and city ordinances.

(b) The court administrator or their designee, deputy clerk shall be present at all sessions of the municipal court and shall assist the judge of said court in the proper functions of the court.

(c) ~~(b)~~ The court administrator shall:

(1) Prepare and maintain accurate dockets and minutes for each municipal court of record created under this article;

(2) Have custody of all documents and papers relating to the business of the municipal court of record;

(3) Supervise the collections of fines imposed by the municipal court of record

(4) Maintain complaints for all cases in the municipal court of record for which a complaint is required by law;

(5) Be responsible for full and proper accounting of all fines collected and issue receipt to a person who pays a fine with cash money; and

(6) Preserve the records of the municipal court of record in accordance with the city records retention schedule; and

(7) Have all other powers and duties assigned to a court clerk by the city Charter, other city ordinances, Chapters 29 and 30 of the Texas Government Code, Chapter 45 of the Code of Criminal Procedure, or other state law.

(d)~~(c)~~The court~~ clerk~~ Administrator shall acquire and maintain a seal in conformance with state law for the municipal court of record in the city.

(e)(d) The court~~ clerk~~ Administrator clerk shall supervise the selection of persons for jury service in the municipal court of record.

(f) The Court Administrator or any of the deputy clerks shall have no authority to dismiss any case filed with the court, continue any case pending in the court, or accept any fines less than the minimum prescribed, except by written order of the judge of the municipal court.

Sec. 22-8. - Complaints.

Proceedings in the municipal court of record shall commence ~~by complaint~~, as provided by state law.

Sec. 22-9. - Costs for producing records.

The municipal court shall charge for producing records pursuant to a written request as provided by Rule 12 of the Texas ~~for~~ Rules of Judicial Administration. ~~Such charge shall be in conformance with charges established by the Texas General Services Commission.~~

Sec. 22-10. - Record of proceedings.

Upon request of the judge or upon written request of one of the parties to a trial, proceedings of the municipal court of record, limited to trial testimony and hearings on motions before the court, shall be recorded. For the purpose of recording the proceedings and preserving a record in cases tried before the municipal court of record, a good quality electronic recording device shall be used. When the recording device is used, a court reporter need not be present at the trial to certify the reporter's record. The recording shall be kept and stored for a ninety (90) day period beginning the day after the last day of the proceeding, trial or denial of motion for a new trial, whichever occurs last. If the case is appealed, the proceedings shall be transcribed by an official court reporter.

Sec. 22-11. - Appeal; appeal bond; fees.

(a) A defendant has the right of appeal from a judgment or conviction in the municipal court of record. The state has the right to an appeal as provided by Article 44.01, Texas Code of Criminal Procedure, as amended.

(b) Appeals shall be in accordance with Chapter 30 of the Texas Government Code, or other applicable state law.

~~(b) The appellate court shall determine each appeal from the court on the basis of the errors that are set forth in the appellant's motion and that are presented in the clerk's record and reporter's record, if any, prepared from the proceedings leading to the appeal. An appeal from the court shall not be by trial de novo.~~

~~(c) To perfect an appeal, the defendant must file a motion for new trial not later than the 10th after the date on which the judgment and sentence are rendered. The motion must set forth the points of error of which the appellant complains. The motion or an amended motion may be amended by leave of court at any time before action on the motion is taken, but not later than the 20th day after the date on which the original or amended motion is filed. The court may for good cause extend the time for filing or~~

~~amending, but the extension may not exceed ninety (90) days from the original deadline. If the court does not act on the motion before the expiration of the thirty (30) days allowed for determination of the motion the original or amended motion is overruled by operation of law.~~

~~(d) To perfect an appeal, the appellant must also give notice of the appeal. If the appellant requests a hearing on the motion for new trial, the appellant may give the notice of appeal orally in open court on the overruling of the motion. If there is no hearing, the appellant must give a written notice of appeal and must file the notice with the court not later than the 10th day after the date on which the motion is overruled. The court may for good cause extend that time period, but the extension may not exceed ninety (90) days from the original filing date.~~

~~(e) If the defendant is not in custody, the defendant may not take an appeal until the defendant files an appeal bond with the municipal court of record. The bond must be approved by the court and must be filed not later than the 10th day after the date on which the motion for new trial is overruled. If the defendant is in custody, the defendant shall be committed to jail unless the defendant posts the appeal bond.~~

~~(f) The appeal bond must be in the amount of one hundred dollars ($100.00) or double the amount of the fines and costs adjudged against the defendant, whichever is greater.~~

~~(g) The bond must:~~

~~(1) state that the defendant was convicted in the case and has appealed; and~~

~~(2) be conditioned on the defendant's immediate and daily personal appearance in the court to which the appeal is taken.~~

~~(h) After an order overruling a motion for new trial, the defendant shall give written notice of appeal and pay a fee for the preparation of the clerk's record of twenty-five dollars ($25.00) not later than ten (10) days after the date on which the motion is overruled. The court shall note the payment of the fee on the docket of the court. If the case is reversed on appeal, the fee shall be refunded to the defendant. The defendant shall pay the fee for the preparation of the clerk's record and the fee for an actual transcription of the proceedings.~~

~~(i) The appellant shall pay for any reporter's record containing a transcription of the proceedings unless the court finds, after a hearing in response to an affidavit by the defendant, that the defendant is unable to pay or provide security for the reporter's record. If the court so finds, the court shall order the reporter to prepare the record without charge to the defendant. Before the recorded proceedings are transcribed, the defendant shall, unless found by the court to be unable to pay for the reporter's record, post a cash deposit with the municipal court for the estimated cost of the record. The cash deposit shall be based on an estimate provided by the court reporter or the length of proceedings as indicated by the amount of tape used to electronically record the proceedings, if any, the cost of the court reporter. typing, and other incidental services. The municipal court may post a current schedule of the charges for transcription fees, including deposits. If the cash deposit exceeds the actual cost of the reporter's record, the court reporter shall refund the difference to the~~

~~defendant. If the cash deposit is insufficient to cover the actual cost of the transcription, the defendant must pay the additional amount to the court reporter before the transcription may be submitted. If a case is reversed on appeal, the court shall promptly refund to the defendant any amounts paid for the reporter's record.~~

~~(j) The record on appeal must substantially conform to the provisions relating to the preparation of a record on appeal in the Texas Rules of Appellate Procedure and the Texas Code of Criminal Procedure, as amended.~~

Sec. 22-12. - Seal.

The municipal court of record shall have a seal with a star of five (5) points in the center and the words "Municipal Court of Galveston, of/in Texas", the impress of which shall be attached to all papers issued out of said court except subpoenas and shall be used to authenticate the official acts of the clerk and of the judge. The court seal may be created by electronic means, including optical imaging, optical disk, or other electronic reproduction technique that does not permit changes, additions, or deletions to an original document created by the same type of system.

ARTICLE IV. MUNICIPAL COURT PROSECUTOR : DEPUTY CITY ATTORNEY

Sec. 22-13. - Municipal prosecutor; appointment of deputy.

(a) *Chief municipal prosecutor; appointment of deputy.* The city attorney shall be the chief municipal prosecutor for the trial of misdemeanor offenses and for purposes of matters related to code violations and compliance.

(b) Upon recommendation of the City Attorney, the city council may appoint one or more additional assistant city attorneys to act as deputy municipal prosecutors. Any such prosecutor serving under this section shall be independent of all other city departments and shall report directly to the city attorney.

(c) Such attorney(s) shall be licensed to practice law in the state but need not be employees of the city.

(d) The city attorney, all assistant city attorneys and the municipal court prosecutor are "Deputy City Attorneys" as referenced in the Texas Code of Criminal Procedure.

~~(a) *Chief municipal prosecutor; appointment of deputy.* The city attorney shall be the chief municipal prosecutor for the trial of misdemeanor offenses and for purposes of matters related to code violations and compliance but may, with the approval of the city council, appoint additional assistant city attorneys to act as deputy municipal prosecutors for such purposes. Any such prosecutor serving under this section shall be independent of all other city departments and shall report directly to the city attorney.~~

~~(b) *Term of office; scope of authority.* Pursuant to article V, section 6 of the city Charter, any deputy municipal prosecutor appointed under this section shall serve at the pleasure of city council as provided in this chapter and in accordance with state law.~~

~~**Secs. 22-13—22-19. - Reserved.**~~

~~**ARTICLE II. - CLERK**~~

~~**Sec. 22-20. - Attendance at all court sessions.**~~

~~The clerk of the municipal court, also known as court administrator or the clerk's designee, shall be present at all sessions of the municipal court and shall assist the judge of said court in the proper functions of the court.~~

~~**Sec. 22-21. - Powers**.~~

~~The clerk of the municipal court, or the clerk's designee, The court administrator or their designee shall have the power to administer oaths, make certificates, affix the seal of the court thereto, and otherwise perform any and all acts necessary in issuing process of said court in conducting the business thereof.~~

~~**Sec. 22-22. - Deputy clerks**.~~

~~The court administrator or their designee Deputy clerks shall have authority to act for and on behalf of the clerk of the municipal court in all matters wherein the clerk may act.~~

~~**Sec. 22-23. - Limitations on clerk, deputy clerks**.~~

~~The clerk of the municipal court or any of the deputy clerks shall have no authority to dismiss any case filed with the court, continue any case pending in the court, or accept any fines less than the minimum prescribed, except by written order of the judge of the municipal court.~~

~~**Secs. 22-24—22-39. - Reserved**~~**.**

ARTICLE V. __COURT PROCEDURE

~~**Sec. 22-40. - Generally**~~.
Sec. 22-14. – Generally

The judge of the municipal court shall hear all cases set for trial on the criminal and traffic dockets in accordance with the procedure as prescribed in the Code of Criminal Procedure and shall assess such punishment as is prescribed by law on all persons found guilty on the offense as charged.

~~**Sec. 22-41. - Reserved.**~~

Sec. 22. 15 - Criminal docket.

(a) Each day the clerk of the municipal court shall compile a court docket.

(b) The docket shall be subject to call by the judge of the municipal court at 8:00 a.m. each day Monday through Friday, except on legal holidays as designated by the city council.

~~**Sec. 22-43. - Reserved.**~~

Sec. 22-16. - Dismissal of cases.

(a) No case pending in municipal court shall be dismissed except upon motion of the city attorney or the city attorney's designee, the defendant or their ~~his~~ attorney, or on the judge's own motion for good cause shown.

(b) The municipal court is authorized to collect a ~~special expense~~ a fine for services performed for cases in which the laws of the state require that the case be dismissed because of action by or on behalf of the defendant which was subsequent to the date of the alleged offense. Said ~~special expense~~ fine shall be in the amount prescribed by state law.

Sec. 22-17. - Failure to appear in court - Violation of promise to appear.

1. Initial Court Setting:

(a) The judge may not issue an arrest warrant for the defendant's failure to appear at the initial court setting, unless:

(1) the judge provides by telephone or regular mail to the defendant notice that includes:

a. a date and time, occurring within the 30-day period following the date that notice is provided, when the defendant must appear before the judge;

b. the name and address of the court with jurisdiction in the case;

c. information regarding alternatives to the full payment of any fine or costs owed by the defendant, if the defendant is unable to pay that amount; and

d. an explanation of the consequences if the defendant fails to appear before the judge as required; and

(2) the defendant fails to appear before the judge as required.

(b) A defendant who receives notice pursuant to this section may request an alternative date or time to appear before the judge if the defendant is unable to appear on the date and time included in the notice.

(c) When any person charged with a violation fails to appear on the date and time as required, the Court Administrator or deputy clerk shall prepare and file in accordance with state law:

a. failure to appear;

b. a violation of a promise to appear;

c. a warrant issued for the failure to appear or the violation of a promise to appear.

2. When any person charged with a criminal offense and released on personal bond as prescribed in the Code of Criminal Procedure fails to appear at the time set in said bond, the Judge shall cause a warrant to be issued for the arrest of any such person.

3. When a warrant for arrest for any person is issued pursuant to any violation hereunder or otherwise pursuant to Texas Penal Code § 38.10 or the Texas Transportation Code § 543.009, such person shall be charged a warrant reimbursement fee in the amount prescribed by state law for the issuance and

service of such warrant, and such funds shall be expended by the city as required and permitted by law.

~~Sec. 22-45. - Failure to appear in court.~~

~~(a) When any person charged with a traffic violation fails to appear on the date set on the traffic citation issued to him, the clerk of the municipal court, or the clerk's designee, shall prepare and file a complaint for failure to appear or the violation of a promise to appear and have a warrant issued to arrest any such person.~~

~~(b) When any person charged with a criminal offense and released on personal bond as prescribed in the Code of Criminal Procedure fails to appear at the time set in said bond, the clerk of the municipal court, or the clerk's designee, shall cause a warrant to be issued for the arrest of any such person.~~

~~(c) When a warrant for arrest for any person is issued pursuant to any violation hereunder or otherwise pursuant to V.T.C.A., Penal Code § 38.10 or V.T.C.A., Transportation Code § 543.009, such person shall be charged an additional special expense in the amount prescribed by state law for the issuance and service of such warrant, and such funds shall be expended by the city as required and permitted by law.~~

~~**Sec. 22-46. - Jury charges**.~~

~~The judge need not charge the jury except upon charges requested in writing by the defendant or his attorney, and he may give or refuse such charges.~~

ARTICLE VI. ___ JUVENILE CASE MANAGER FUND.

Sec. 22-18. - Juvenile case manager fund.

The Municipal Court shall operate the Juvenile Case Manager fund in accordance with state law.

~~(a) As used in this section, the following terms shall have the meanings respectively ascribed to them as follows:~~

~~*Convicted* shall have the meaning as defined in V.T.C.A., Texas Code of Criminal Procedure § 102.0174(e), as amended.~~

~~*Fee* shall mean the juvenile case manager fee established under this section.~~

~~*Fund* shall mean the juvenile case manager fund established under this section.~~

~~(b) Pursuant to V.T.C.A., Code of Criminal Procedure § 102.0174, as amended, there is hereby established the juvenile case manager fund, which will be a separate fund in the city treasury, to be administered by or under the direction of the city council.~~

~~(c) Each defendant convicted of a fine-only misdemeanor offense in the municipal court shall pay a juvenile case manager fee of five dollars ($5.00) as a cost of court in addition to any other fines, penalties, or court costs required by city ordinance or state or federal law. A separate fee must be paid for each separate conviction of a fine-only misdemeanor offense.~~

~~(d) The municipal judge may waive the juvenile case manager fee in the case of financial hardship.~~

~~(e) The municipal court administrator shall collect the fee and pay it to the city treasury for deposit in the fund. The fund may be used only to finance the salary and benefits of a juvenile case manager employed under V.T.C.A., Code of Criminal Procedure § 45.056, as amended.~~

~~**Sec. 22-48. - Reserved.**~~

ARTICLE VII. MUNICIPAL COURT BUILDING SECURITY FUND

Sec. 22-19. - Municipal court building security fee.

(a) The Municipal Court shall operate the Municipal Court Building Security fund in accordance with state law

~~There is hereby created and established a municipal court building security fund, pursuant to V.T.C.A., Code of Criminal Procedure art. 102.017.~~

~~(b) The municipal court clerk of the city is authorized and required to assess a municipal court building security fee in the amount provided by state law against all defendants convicted in a trial of a misdemeanor offense each misdemeanor conviction shall be subject to a separate assessment of the fee.~~

~~(c) The municipal court clerk is authorized and required to collect the fee and to pay the fees collected to the treasury of the city. All fees collected shall be segregated in the fund designated as the municipal court building fund.~~

~~(d) The funds in the municipal court building security fund shall only be expended for the purchase of security devices and services for the building housing the municipal court of the city. Security devices and services shall include any and all items described in V.T.C.A., the Texas Code of Criminal Procedure art Art. 102.017(d). (d-1).~~

~~(e) The municipal court building security fund shall be administered by or under the direction of the city council.~~

~~**Secs. 22-58, 22-59. - Reserved.**~~

ARTICLE VIII. MUNICIPAL COURT TECHNOLOGY FUND

Sec. 22-20. - Establishment of Municipal Court Technology Fund.

Pursuant to ~~V.T.C.A~~., the Texas Code of Criminal Procedure ~~art~~ Art 102.0172, ~~as it exists now or may be amended, the city creates and establishes~~ the City has established a "municipal court technology fund" (technology fund). The Municipal Court shall operate the Municipal Court Technology fund in accordance with state law.

~~**Sec. 22-21. - Establishment of amount of fee Fee; assessment; collection.**~~

~~(a) The technology fee shall be assessed and collected from any defendant convicted for a misdemeanor offense in the municipal court. The fee shall be deemed a "cost of court." A defendant shall be considered convicted if:~~

(1) ~~The municipal court imposes a sentence on the defendant; a judgment, sentence or both imposed on the defendant or the person receives a Driving Safety Course, Deferred Disposition or some other deferral pursuant the Texas Code of Criminal Procedure.~~

~~(2) The municipal court places the defendant on community supervision, including deferred adjudication community supervision; or~~

~~(3) The municipal court defers final disposition of defendant case.~~

~~(b) The amount of the technology fee shall as provided by state law and shall be assessed for each offense for which a defendant is convicted. The fee shall be collected on conviction for any offense committed on or after September 1, 1999, or the effective date of the ordinance codified in this section, whichever is later.~~

~~(c) The municipal court clerk shall collect the fee and pay the fee to the director of finance, who shall deposit the fee into the municipal court technology fund.~~

~~**Sec. 22-22. - Designated use of the fund and administration**.~~

~~(a) The director of finance or designee may maintain the fund in an interest bearing account and in a general revenue account.~~

~~(b) The city shall use the fund to finance the purchase of technological enhancements for the municipal court of the city, including, but not limited to:~~

~~(1) Computer systems;~~

~~(2) Computer networks;~~

~~(3) Computer hardware;~~

~~(4) Computer software;~~

~~(5) Imaging systems;~~

~~(6) Electronic kiosks;~~

~~(7) Electronic ticket writers; or~~

~~(8) Docket management systems.~~

~~(c) The fund shall be administered by or under the direction of the city council.~~

~~ARTICLE VII. – MUNICIPAL COURT PROSECUTOR AND TEMPORARY MUNICIPAL COURT JUDGE~~

~~Sec. 22-63. - Appointment of temporary municipal court judge.~~

~~The city council may appoint one or more temporary judges to serve if it determines that a regular municipal court judge is temporarily unable to act. A temporary judge must have the same qualifications as the judge he replaces and has the same powers and duties as that judge.~~

~~Sec. 22-64. - Appointment of municipal court prosecutor.~~

~~The city council may appoint one or more attorneys to act as municipal court prosecutor upon recommendation of the city attorney. Such attorney(s) shall be licensed to practice law in the state but need not be employees of the city. The city attorney, all~~

~~assistant city attorneys and the municipal court prosecutor are "deputy city attorneys" as referenced in the Texas Code of Criminal Procedure.~~

SECTION 3. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 4. All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

SECTION 5. In accordance with the provisions of Sections 12 and 13 of Article II of the City Charter this Ordinance has been publicly available in the office of the City Secretary for not less than 72 hours prior to its adoption; that this Ordinance may be read and published by descriptive caption only.

SECTION 6. This Ordinance shall be and become effective on, from and after its adoption and publication in accordance with the provisions of the Charter of the City of Galveston.

APPROVED AS TO FORM:

_____
DONNA M. FAIRWEATHER
ASSISTANT CITY ATTORNEY

I, Janelle Williams, Secretary of the City Council of the City of Galveston, do hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the City Council of the City of Galveston at its Regular meeting held on June 25, 2020, as the same appears in records of this office.

IN TESTIMONY WHEREOF, I subscribe my name hereto officially under the corporate seal of the City of Galveston this _____ day of _____, 2020.

_____
Secretary for the City Council
Of the City of Galveston

Chapter 22 - MUNICIPAL COURT

ARTICLE I. - IN GENERAL

Sec. 22-1. - ~~municipal court of record~~ Municipal Court of Record created.

(a) In accordance with the provisions of the City Charter and applicable state law, there is hereby created the "Municipal Court of Record in the City of Galveston, Texas." The municipal court of record shall be comprised of as many divisions as the city council deems as necessary.

i. The Municipal Court of Record may be referenced as the Municipal Court for the City of Galveston.

(b) The court shall have no term and may sit at any time for the transaction of business of the court. Where the term "municipal court" is used in the city's Charter or this Code it shall mean the municipal court of record ~~created herein.~~ Any provision of the city Charter, city ordinances, or state law that is applicable to a municipal court shall be applicable to the municipal court of record ~~created herein~~ unless the provision is in conflict or inconsistent with chapters 29 or 30 of the Texas Government Code, as amended, which governs municipal courts of record.

Sec. 22-2. - Additional jurisdiction.

The ~~municipal court of record~~ Municipal Court of Record shall also have:

(a) Concurrent jurisdiction with a justice court in any precinct in which the municipality is located in criminal cases that arise within the territorial limits of the city and are punishable by fine only;

(b) Civil jurisdiction for the purpose of enforcing municipal ordinances enacted under ~~subchapter~~ Subchapter A, ~~chapter~~ Chapter 214, Local Government Code, or ~~subchapter~~ Subchapter E, ~~chapter~~ Chapter 683, Transportation Code, as amended;

(c) Concurrent jurisdiction with a district court or a county court at law under ~~subchapter~~ Subchapter B, ~~chapter~~ Chapter 54, Texas Local Government Code, as amended, within the city's territorial limits and property owned by the city located in the city's extraterritorial jurisdiction for the purpose of enforcing health and safety and nuisance abatement ordinances; and

(d) Authority to issue:

(1) Search warrants for the purpose of investigating a health and safety or nuisance abatement ordinance violation; and

(2) Seizure warrants for the purpose of securing, removing, or demolishing the offending property and removing the debris from the premises.

ARTICLE II. MUNICIPAL COURT JUDGE

Sec. 22-3. – Municipal Judge

I. Presiding Municipal Judge.
   a. The City Council shall appoint a Municipal Judge to be the Presiding Municipal Judge of the Municipal Court of Record for a term of two (2) years.
   b. No person who has served for six (6) consecutive years as the Presiding Municipal Judge shall be reappointed to that position unless two (2) years shall have elapsed during which time such person shall not have served as presiding municipal judge; provided, however, any person who shall have completed six (6) years' consecutive service prior to the expiration of their present term shall be permitted to continue to serve for the duration of such term, but shall not be eligible for reappointment except upon the expiration of two (2) years thereafter.
      i. The term limit provisions of subsection (a)(1) shall not apply to associate municipal judge appointments governed by the City Charter or state law.

~~II.~~ Municipal Judge Requirements.
   ~~a.~~ A person may not serve as a municipal judge if the person is employed as an employee of the city. A municipal judge who accepts employment with the city vacates the judicial office.
   ~~b.~~ A person may not serve as a municipal judge and hold an elected position in the City of Galveston or in Galveston County.
   c. Appointments of municipal judge by the City Council shall be made on or before October 1, to correspond with the city fiscal year.
   d. The municipal judge shall be a licensed attorney in good standing in the State of Texas.
   e. The municipal judge shall be a citizen of the United States.
   f. The municipal judge shall be a resident of and domiciled in the city for not less than three (3) years immediately prior to appointment and continue to reside and be domiciled in the city while serving as municipal court judge.
   g. The municipal judge shall have five (5) or more years of experience in the practice of law in this state.

III. The Municipal Judges appointed hereunder are entitled to receive compensation and other benefits as set by the city council.

IV. The compensation of the Municipal Judges may not be diminished during the term of office and may not be based directly or indirectly on fines, fees, or other costs collected by the court.

V. A Municipal Judge may be removed from office by the City Council pursuant to the City Charter or as provided by Section 1-a, Article V, Texas Constitution.

VI. In the event a vacancy occurs in the office of Municipal Judge, the City Council shall appoint a qualified person to fill the office for the remainder of the unexpired term.

~~Sec. 22-3. - Municipal judge appointment.~~

~~(a) The municipal court of record is presided over by the presiding municipal judge who shall be appointed by the city council for a term of two (2) years. A person may not serve as a municipal judge if the person is employed as an employee of the city. A municipal judge~~

~~who accepts employment with the city vacates the judicial office. The current judges shall continue in office through the expiration of their current terms.~~

~~(1) — Initial presiding judge. Upon the adoption of the ordinance from which this section is derived, the presiding judge of the municipal court of the city shall become the presiding judge of the city municipal court of record. The initial term of the presiding judge of the municipal court shall expire two (2) years from the date of his/her last appointment by the city council.~~

~~(2) — Initial associate judge. Upon the adoption of the ordinance from which this section is derived, the associate judge of the municipal court of the city shall become the associate judge of the city municipal court of record. The initial term of the associate judge of the municipal court shall expire two (2) years from the date of his/her last appointment by the city council.~~

~~(3) — At the conclusion of the initial terms described herein, all succeeding terms of a presiding judge and an associate judge shall be two (2) years from the date of their appointment by the city council.~~

~~(b) — The municipal court judge must be a licensed attorney in good standing in the State of Texas; a citizen of the United States; a resident of and domiciled in the city for not less than three (3) years immediately prior to appointment and continue to reside and be domiciled in the city while serving as municipal court judge; and have five (5) or more years of experience in the practice of law in this state.~~

~~(c) — The presiding judge and associate municipal judges appointed hereunder are entitled to receive compensation and other benefits as set by the city council.~~

~~(d) — The compensation of the presiding judge and associate municipal judges may not be diminished during the term of office and may not be based directly or indirectly on fines, fees, or other costs collected by the court.~~

~~(e) — A judge of a municipal court of record may be removed from office by the city council pursuant to the city Charter or as provided by Section 1-a, Article V of the Texas Constitution.~~

~~(f) — In the event a vacancy occurs in the office of presiding judge or associate municipal judge, the city council shall appoint a qualified person to fill the office for the remainder of the unexpired term.~~

Sec. 22-4. - Powers and duties of mMunicipal Jjudges.

The duties of the judge of the municipal court of record shall be all those imposed by the laws of the state and this chapter.

(a) If more than one division of the municipal court of record is created, the judge of each division may at any time exchange benches and sit and act for each other in any pending case, matter, or proceeding.

(b) The presiding judge and associate municipal judges shall:

(1) Hold court within the city at a place designated by the city council;

(2) Follow all rules of procedure contained in the city ordinances and state law;

(3) Enter on the docket of the municipal court of record, over which the municipal judge presides, appropriate notations of the disposition of each case;

(4) Take judicial notice of state law, ordinances and corporate limits of the municipality;

(5) Have authority to preside over any municipal court of record of the city, and may exchange benches with other judges; and

(c) The presiding judge and the associate municipal judge have all other powers and duties assigned to a municipal judge by the city Charter, other city ordinance. Chapters 29 and 30 of the Texas Government Code, Chapter 45 of the Code of Criminal Procedure, or other state law.

(d) The presiding judge and associate municipal judge may grant writs of mandamus, attachment, or other writs necessary to the enforcement of ~~a~~ the jurisdiction of the court and may issue writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the court. A municipal judge is a magistrate and may issue administrative search warrants.

(e) The presiding judge shall have the following additional duties and powers:

(1) Provide for equal distribution of cases and work-load among the associate municipal judges;

(2) Have the power to transfer cases and to assign associate municipal judges to preside over various cases;

(3) While court is in session, during court proceedings will supervise and control the operation and clerical functions of the court, including the court's personnel.

(f) The Municipal Judge shall deal with the administrative services of the Municipal Court solely through the Clerk of the Municipal Court or the City Manager.

Sec. 22-5. - Temporary Municipal Court Judge.

The city council may appoint one or more temporary municipal judges. A temporary municipal judge must have the same qualifications as that is required for a municipal Judge and shall have the same powers and duties of a municipal judge in the municipal court.

ARTICLE III. COURT ADMINISTRATOR – CLERK OF THE MUNICIPAL COURT

Sec. 22-6. – Court Administrator – Clerk of the Municipal Court ~~Municipal court clerk appointment.~~

(a) The city manager or designee shall appoint a clerk of the municipal court of record who shall be known as the Court Administrator or the Clerk of the Municipal Court. The Court Administrator shall make those recommendations for hire of such other deputy clerks as may be deemed appropriate.

~~(a) The city manager shall appoint a clerk of the municipal court of record who shall be known as the court administrator, and shall recommend appointment of such other municipal court clerks as may be deemed appropriate by the court administrator.~~

~~(b) During proceedings before the court, the court administrator and other court personnel will perform their court room duties under the direction and control of the presiding judge.~~

(c) The court administrator may hire and remove the personnel authorized in the city's annual budget for the municipal court clerk's office.

(d) The court administrator shall prepare a budget for the municipal court of record and carry out any other administrative functions deemed necessary by the city manager, or ~~his~~ designee.

Sec. 22-7. - Court Administrator - Municipal court clerk powers and duties.

(a) The court administrator or his/her deputy shall keep the records of the municipal court of record, issue process, and generally perform the duties ~~of the court~~ that a clerk of ~~the~~ a county court exercising criminal jurisdiction is required by law to perform for that court. The clerk shall also maintain an index of all court judgments in the same manner as county clerks are required by law to prepare for criminal cases arising in county courts. The clerk shall perform the duties in accordance with state law, city charter, and city ordinances.

(b) The court administrator or their designee, deputy clerk shall be present at all sessions of the municipal court and shall assist the judge of said court in the proper functions of the court.

(c) ~~(b)~~ The court administrator shall:

(1) Prepare and maintain accurate dockets and minutes for each municipal court of record created under this article;

(2) Have custody of all documents and papers relating to the business of the municipal court of record;

(3) Supervise the collections of fines imposed by the municipal court of record

(4) Maintain complaints for all cases in the municipal court of record for which a complaint is required by law;

(5) Be responsible for full and proper accounting of all fines collected and issue receipt to a person who pays a fine with cash money; and

(6) Preserve the records of the municipal court of record in accordance with the city records retention schedule; and

(7) Have all other powers and duties assigned to a court clerk by the city Charter, other city ordinances, Chapters 29 and 30 of the Texas Government Code, Chapter 45 of the Code of Criminal Procedure, or other state law.

(d)~~(c)~~ The court ~~clerk~~ Administrator shall acquire and maintain a seal in conformance with state law for the municipal court of record in the city.

(e)(d) The court- ~~clerk~~ Administrator clerk shall supervise the selection of persons for jury service in the municipal court of record.

(f) The Court Administrator or any of the deputy clerks shall have no authority to dismiss any case filed with the court, continue any case pending in the court, or accept any fines less than the minimum prescribed, except by written order of the judge of the municipal court.

Sec. 22-8. - Complaints.

Proceedings in the municipal court of record shall commence ~~by complaint~~, as provided by state law.

Sec. 22-9. - Costs for producing records.

The municipal court shall charge for producing records pursuant to a written request as provided by Rule 12 of the Texas ~~for~~ Rules of Judicial Administration. ~~Such charge shall be in conformance with charges established by the Texas General Services Commission.~~

Sec. 22-10. - Record of proceedings.

Upon request of the judge or upon written request of one of the parties to a trial, proceedings of the municipal court of record, limited to trial testimony and hearings on motions before the court, shall be recorded. For the purpose of recording the proceedings and preserving a record in cases tried before the municipal court of record, a good quality electronic recording device shall be used. When the recording device is used, a court reporter need not be present at the trial to certify the reporter's record. The recording shall be kept and stored for a ninety (90) day period beginning the day after the last day of the proceeding, trial or denial of motion for a new trial, whichever occurs last. If the case is appealed, the proceedings shall be transcribed by an official court reporter.

Sec. 22-11. - Appeal; appeal bond; fees.

(a) A defendant has the right of appeal from a judgment or conviction in the municipal court of record. The state has the right to an appeal as provided by Article 44.01, Texas Code of Criminal Procedure, as amended.

(b) Appeals shall be in accordance with Chapter 30 of the Texas Government Code, or other applicable state law.

~~(b) The appellate court shall determine each appeal from the court on the basis of the errors that are set forth in the appellant's motion and that are presented in the clerk's record and reporter's record, if any, prepared from the proceedings leading to the appeal. An appeal from the court shall not be by trial de novo.~~

~~(c) To perfect an appeal, the defendant must file a motion for new trial not later than the 10th after the date on which the judgment and sentence are rendered. The motion must set forth the points of error of which the appellant complains. The motion or an amended motion may be amended by leave of court at any time before action on the motion is taken, but not later than the 20th day after the date on which the original or amended motion is filed. The court~~

~~may for good cause extend the time for filing or amending, but the extension may not exceed ninety (90) days from the original deadline. If the court does not act on the motion before the expiration of the thirty (30) days allowed for determination of the motion the original or amended motion is overruled by operation of law.~~

~~(d) To perfect an appeal, the appellant must also give notice of the appeal. If the appellant requests a hearing on the motion for new trial, the appellant may give the notice of appeal orally in open court on the overruling of the motion. If there is no hearing, the appellant must give a written notice of appeal and must file the notice with the court not later than the 10th day after the date on which the motion is overruled. The court may for good cause extend that time period, but the extension may not exceed ninety (90) days from the original filing date.~~

~~(e) If the defendant is not in custody, the defendant may not take an appeal until the defendant files an appeal bond with the municipal court of record. The bond must be approved by the court and must be filed not later than the 10th day after the date on which the motion for new trial is overruled. If the defendant is in custody, the defendant shall be committed to jail unless the defendant posts the appeal bond.~~

~~(f) The appeal bond must be in the amount of one hundred dollars ($100.00) or double the amount of the fines and costs adjudged against the defendant, whichever is greater.~~

~~(g) The bond must:~~

~~(1) state that the defendant was convicted in the case and has appealed; and~~

~~(2) be conditioned on the defendant's immediate and daily personal appearance in the court to which the appeal is taken.~~

~~(h) After an order overruling a motion for new trial, the defendant shall give written notice of appeal and pay a fee for the preparation of the clerk's record of twenty-five dollars ($25.00) not later than ten (10) days after the date on which the motion is overruled. The court shall note the payment of the fee on the docket of the court. If the case is reversed on appeal, the fee shall be refunded to the defendant. The defendant shall pay the fee for the preparation of the clerk's record and the fee for an actual transcription of the proceedings.~~

~~(i) The appellant shall pay for any reporter's record containing a transcription of the proceedings unless the court finds, after a hearing in response to an affidavit by the defendant, that the defendant is unable to pay or provide security for the reporter's record. If the court so finds, the court shall order the reporter to prepare the record without charge to the defendant. Before the recorded proceedings are transcribed, the defendant shall, unless found by the court to be unable to pay for the reporter's record, post a cash deposit with the municipal court for the estimated cost of the record. The cash deposit shall be based on an estimate provided by the court reporter or the length of proceedings as indicated by the amount of tape used to electronically record the proceedings, if any, the cost of the court reporter. typing, and other incidental services. The municipal court may post a current schedule of the charges for transcription fees, including deposits. If the cash deposit exceeds the actual cost of the reporter's record, the court reporter shall refund the difference to the defendant. If the cash deposit is insufficient to cover the actual cost of the transcription, the defendant must pay the additional amount to the court reporter before the transcription may~~

~~be submitted. If a case is reversed on appeal, the court shall promptly refund to the defendant any amounts paid for the reporter's record.~~

~~(j) The record on appeal must substantially conform to the provisions relating to the preparation of a record on appeal in the Texas Rules of Appellate Procedure and the Texas Code of Criminal Procedure, as amended.~~

Sec. 22-12. - Seal.

The municipal court of record shall have a seal with a star of five (5) points in the center and the words "Municipal Court of Galveston, of/in Texas", the impress of which shall be attached to all papers issued out of said court except subpoenas and shall be used to authenticate the official acts of the clerk and of the judge. The court seal may be created by electronic means, including optical imaging, optical disk, or other electronic reproduction technique that does not permit changes, additions, or deletions to an original document created by the same type of system.

ARTICLE IV. MUNICIPAL COURT PROSECUTOR : DEPUTY CITY ATTORNEY

Sec. 22-13. - Municipal prosecutor; appointment of deputy.

(a) *Chief municipal prosecutor; appointment of deputy.* The city attorney shall be the chief municipal prosecutor for the trial of misdemeanor offenses and for purposes of matters related to code violations and compliance.

(b) Upon recommendation of the City Attorney, the city council may appoint one or more additional assistant city attorneys to act as deputy municipal prosecutors. Any such prosecutor serving under this section shall be independent of all other city departments and shall report directly to the city attorney.

(c) Such attorney(s) shall be licensed to practice law in the state but need not be employees of the city.

(d) The city attorney, all assistant city attorneys and the municipal court prosecutor are "Deputy City Attorneys" as referenced in the Texas Code of Criminal Procedure.

~~(a) *Chief municipal prosecutor; appointment of deputy.* The city attorney shall be the chief municipal prosecutor for the trial of misdemeanor offenses and for purposes of matters related to code violations and compliance but may, with the approval of the city council, appoint additional assistant city attorneys to act as deputy municipal prosecutors for such purposes. Any such prosecutor serving under this section shall be independent of all other city departments and shall report directly to the city attorney.~~

~~(b) *Term of office; scope of authority.* Pursuant to article V, section 6 of the city Charter, any deputy municipal prosecutor appointed under this section shall serve at the pleasure of city council as provided in this chapter and in accordance with state law.~~

~~**Secs. 22-13—22-19. - Reserved.**~~

~~**ARTICLE II. - CLERK**~~

~~**Sec. 22-20. - Attendance at all court sessions.**~~

~~The clerk of the municipal court, also known as court administrator or the clerk's designee, shall be present at all sessions of the municipal court and shall assist the judge of said court in the proper functions of the court.~~

~~**Sec. 22-21. - Powers**.~~

~~The clerk of the municipal court, or the clerk's designee, The court administrator or their designee shall have the power to administer oaths, make certificates, affix the seal of the court thereto, and otherwise perform any and all acts necessary in issuing process of said court in conducting the business thereof.~~

~~**Sec. 22-22. - Deputy clerks**.~~

~~The court administrator or their designee Deputy clerks shall have authority to act for and on behalf of the clerk of the municipal court in all matters wherein the clerk may act.~~

~~**Sec. 22-23. - Limitations on clerk, deputy clerks**.~~

~~The clerk of the municipal court or any of the deputy clerks shall have no authority to dismiss any case filed with the court, continue any case pending in the court, or accept any fines less than the minimum prescribed, except by written order of the judge of the municipal court.~~

~~**Secs. 22-24—22-39. - Reserved**~~**.**

ARTICLE V. __COURT PROCEDURE

~~**Sec. 22-40. - Generally**~~.

Sec. 22-14. - Generally

The judge of the municipal court shall hear all cases set for trial on the criminal and traffic dockets in accordance with the procedure as prescribed in the Code of Criminal Procedure and shall assess such punishment as is prescribed by law on all persons found guilty on the offense as charged.

~~**Sec. 22-41. - Reserved.**~~

Sec. 22. 15 - Criminal docket.

(a) Each day the clerk of the municipal court shall compile a court docket.

(b) The docket shall be subject to call by the judge of the municipal court at 8:00 a.m. each day Monday through Friday, except on legal holidays as designated by the city council.

~~**Sec. 22-43. - Reserved.**~~

Sec. 22-16. - Dismissal of cases.

(a) No case pending in municipal court shall be dismissed except upon motion of the city attorney or the city attorney's designee, the defendant or their ~~his~~ attorney, or on the judge's own motion for good cause shown.

(b) The municipal court is authorized to collect a ~~special expense~~ a fine for services performed for cases in which the laws of the state require that the case be dismissed because of action by or on behalf of the defendant which was subsequent to the date of the alleged offense. Said ~~special expense~~ fine shall be in the amount prescribed by state law.

Sec. 22-17. - Failure to appear in court - Violation of promise to appear.

1. Initial Court Setting:

(a) The judge may not issue an arrest warrant for the defendant's failure to appear at the initial court setting, unless:

(1) the judge provides by telephone or regular mail to the defendant notice that includes:

a. a date and time, occurring within the 30-day period following the date that notice is provided, when the defendant must appear before the judge;

b. the name and address of the court with jurisdiction in the case;

c. information regarding alternatives to the full payment of any fine or costs owed by the defendant, if the defendant is unable to pay that amount; and

d. an explanation of the consequences if the defendant fails to appear before the judge as required; and

(2) the defendant fails to appear before the judge as required.

(b) A defendant who receives notice pursuant to this section may request an alternative date or time to appear before the judge if the defendant is unable to appear on the date and time included in the notice.

(c) When any person charged with a violation fails to appear on the date and time as required, the Court Administrator or deputy clerk shall prepare and file in accordance with state law:

a. failure to appear;

b. a violation of a promise to appear;

c. a warrant issued for the failure to appear or the violation of a promise to appear.

2. When any person charged with a criminal offense and released on personal bond as prescribed in the Code of Criminal Procedure fails to appear at the time set in said bond, the Judge shall cause a warrant to be issued for the arrest of any such person.

3. When a warrant for arrest for any person is issued pursuant to any violation hereunder or otherwise pursuant to Texas Penal Code § 38.10 or the Texas Transportation Code § 543.009, such person shall be charged a warrant reimbursement fee in the amount prescribed by state law for the issuance and service of such warrant, and such funds shall be expended by the city as required and permitted by law.

~~Sec. 22-45. - Failure to appear in court.~~

~~(a) When any person charged with a traffic violation fails to appear on the date set on the traffic citation issued to him, the clerk of the municipal court, or the clerk's designee, shall prepare and file a complaint for failure to appear or the violation of a promise to appear and have a warrant issued to arrest any such person.~~

~~(b) When any person charged with a criminal offense and released on personal bond as prescribed in the Code of Criminal Procedure fails to appear at the time set in said bond, the~~

~~clerk of the municipal court, or the clerk's designee, shall cause a warrant to be issued for the arrest of any such person.~~

~~(c) When a warrant for arrest for any person is issued pursuant to any violation hereunder or otherwise pursuant to V.T.C.A., Penal Code § 38.10 or V.T.C.A., Transportation Code § 543.009, such person shall be charged an additional special expense in the amount prescribed by state law for the issuance and service of such warrant, and such funds shall be expended by the city as required and permitted by law.~~

~~Sec. 22-46. - Jury charges~~.

~~The judge need not charge the jury except upon charges requested in writing by the defendant or his attorney, and he may give or refuse such charges.~~

ARTICLE VI. ___ JUVENILE CASE MANAGER FUND.

Sec. 22-18. - Juvenile case manager fund.

The Municipal Court shall operate the Juvenile Case Manager fund in accordance with state law.

~~(a) As used in this section, the following terms shall have the meanings respectively ascribed to them as follows:~~

~~*Convicted* shall have the meaning as defined in V.T.C.A., Texas Code of Criminal Procedure § 102.0174(e), as amended.~~

~~*Fee* shall mean the juvenile case manager fee established under this section.~~

~~*Fund* shall mean the juvenile case manager fund established under this section.~~

~~(b) Pursuant to V.T.C.A., Code of Criminal Procedure § 102.0174, as amended, there is hereby established the juvenile case manager fund, which will be a separate fund in the city treasury, to be administered by or under the direction of the city council.~~

~~(c) Each defendant convicted of a fine-only misdemeanor offense in the municipal court shall pay a juvenile case manager fee of five dollars ($5.00) as a cost of court in addition to any other fines, penalties, or court costs required by city ordinance or state or federal law. A separate fee must be paid for each separate conviction of a fine-only misdemeanor offense.~~

~~(d) The municipal judge may waive the juvenile case manager fee in the case of financial hardship.~~

~~(e) The municipal court administrator shall collect the fee and pay it to the city treasury for deposit in the fund. The fund may be used only to finance the salary and benefits of a juvenile case manager employed under V.T.C.A., Code of Criminal Procedure § 45.056, as amended.~~

~~Sec. 22-48. - Reserved.~~

ARTICLE VII. MUNICIPAL COURT BUILDING SECURITY FUND

Sec. 22-19. - Municipal court building security fee.

(a) The Municipal Court shall operate the Municipal Court Building Security fund in accordance with state law

There is hereby created and established a municipal court building security fund, pursuant to V.T.C.A., Code of Criminal Procedure art. 102.017.

(b) The municipal court clerk of the city is authorized and required to assess a municipal court building security fee in the amount provided by state law against all defendants convicted in a trial of a misdemeanor offense each misdemeanor conviction shall be subject to a separate assessment of the fee.

(c) The municipal court clerk is authorized and required to collect the fee and to pay the fees collected to the treasury of the city. All fees collected shall be segregated in the fund designated as the municipal court building fund.

(d) The funds in the municipal court building security fund shall only be expended for the purchase of security devices and services for the building housing the municipal court of the city. Security devices and services shall include any and all items described in V.T.C.A., the Texas Code of Criminal Procedure art Art. 102.017(d). (d-1).

(e) The municipal court building security fund shall be administered by or under the direction of the city council.

Secs. 22-58, 22-59. - Reserved.

ARTICLE VIII. MUNICIPAL COURT TECHNOLOGY FUND

Sec. 22-20. - Establishment of Municipal Court Technology Fund.

Pursuant to V.T.C.A., the Texas Code of Criminal Procedure art Art 102.0172, as it exists now or may be amended, the city creates and establishes the City has established a "municipal court technology fund" (technology fund). The Municipal Court shall operate the Municipal Court Technology fund in accordance with state law.

Sec. 22-21. - Establishment of amount of fee Fee; assessment; collection.

(a) The technology fee shall be assessed and collected from any defendant convicted for a misdemeanor offense in the municipal court. The fee shall be deemed a "cost of court." A defendant shall be considered convicted if:

(1) The municipal court imposes a sentence on the defendant; a judgment, sentence or both imposed on the defendant or the person receives a Driving Safety Course, Deferred Disposition or some other deferral pursuant the Texas Code of Criminal Procedure.

(2) The municipal court places the defendant on community supervision, including deferred adjudication community supervision; or

(3) The municipal court defers final disposition of defendant case.

(b) The amount of the technology fee shall as provided by state law and shall be assessed for each offense for which a defendant is convicted. The fee shall be collected on conviction for

~~any offense committed on or after September 1, 1999, or the effective date of the ordinance codified in this section, whichever is later.~~

~~(c) The municipal court clerk shall collect the fee and pay the fee to the director of finance, who shall deposit the fee into the municipal court technology fund.~~

~~**Sec. 22-22. – Designated use of the fund and administration**.~~

~~(a) The director of finance or designee may maintain the fund in an interest bearing account and in a general revenue account.~~

~~(b) The city shall use the fund to finance the purchase of technological enhancements for the municipal court of the city, including, but not limited to:~~

~~(1) Computer systems;~~

~~(2) Computer networks;~~

~~(3) Computer hardware;~~

~~(4) Computer software;~~

~~(5) Imaging systems;~~

~~(6) Electronic kiosks;~~

~~(7) Electronic ticket writers; or~~

~~(8) Docket management systems.~~

~~(c) The fund shall be administered by or under the direction of the city council.~~

~~ARTICLE VII. – MUNICIPAL COURT PROSECUTOR AND TEMPORARY MUNICIPAL COURT JUDGE~~

~~Sec. 22-63. – Appointment of temporary municipal court judge.~~

~~The city council may appoint one or more temporary judges to serve if it determines that a regular municipal court judge is temporarily unable to act. A temporary judge must have the same qualifications as the judge he replaces and has the same powers and duties as that judge.~~

~~Sec. 22-64. – Appointment of municipal court prosecutor.~~

~~The city council may appoint one or more attorneys to act as municipal court prosecutor upon recommendation of the city attorney. Such attorney(s) shall be licensed to practice law in the state but need not be employees of the city. The city attorney, all assistant city attorneys and the municipal court prosecutor are "deputy city attorneys" as referenced in the Texas Code of Criminal Procedure.~~

MEMORANDUM

TO: MEMBERS OF CITY COUNCIL

FROM: DONALD GLYWASKY
CITY ATTORNEY

RE: RESOLUTION WAIVING PRIMARY JURISDICTION OF THE CITY RELATED TO HOA ELECTRIC COMPLAINT OF DUSTIN THOMAS

DATE: JUNE 15, 2020

1) Mr. Dustin Thomas is a resident of the Preserve at Grand Beach in Galveston. He has a dispute with his HOA over the billing practices it uses to allocate the cost of electric service to common areas of the subdivision among residents. He wishes to file his complaint with the Public Utility Commission.

2) The City of Galveston has primary jurisdiction over electric services, including complaints. According to our utility counsel, the City must waive its primary jurisdiction to allow Mr. Thomas to proceed to the PUC,

3) I recommend the Council do so. The PUC doubtless has greater experience with these matters and is better suited to handle this complaint with dispatch. The waiver is limited to this single complaint and will not affect the City's jurisdiction in other matters.

4) I expect the Resolution itself will be sufficient for the PUC, but if they require further evidence of the City's waiver the Resolution provides the City Manager may sign additional documents after approval of the City Attorney.

5) Please contact me with any questions.

RESOLUTION NO. 19-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GALVESTON, TEXAS, WAIVING THE CITY'S PRIMARY JURISDICTION RELATED TO A COMPLAINT MADE BY CITIZEN DUSTIN THOMAS RELATED TO THE BILLING OF ELECTRIC SERVICES AT GRAND BEACH SUBDIVISION, TO ALLOW THE CITIZEN TO PROCEED WITH FILING HIS COMPLAINT DIRECTLY WITH THE STATE OF TEXAS PUBLIC UTILITY COMMISSION, AUTHORIZING THE CITY MANAGER TO EXECUTE ANY NECESSARY DOCUMENTS TO GIVE EFFECT TO THIS RESOLUTION UPON FINAL APPROVAL BY THE CITY ATTORNEY; PROVIDING FOR FINDINGS OF FACT AND FOR AN EFFECTIVE DATE.

WHEREAS, the City of Galveston retains primary jurisdiction over the regulation of electric services, including complaints, within the City of Galveston; and

WHEREAS, citizen Dustin Thomas has certain complaints related to the billing of common electric services by his homeowner's association at the Preserve at Grand Beach in Galveston he wishes to pursue before the Texas Public Utility Commission; and

WHEREAS, the City must waive its primary jurisdiction over electric services to allow Mr. Thomas to pursue his complaint with the Public Utility Commission; and

WHEREAS, it appears that given the expertise of the Public Utility Commission in these matters it is in the interest of all involved for the City to waive its primary jurisdiction related to electric services in the single instance of the consideration of Mr. Thomas' complaint related to his billing issue; and

WHEREAS, the City will continue to assert primary jurisdiction over all other matters related to electric service and the waiver of primary jurisdiction over the matter asserted by Mr. Thomas shall in no way be deemed a waver of the City's primary jurisdiction in all other instances,

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

SECTION 1. The findings and recitations set out in the preamble to this Resolution are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2. The City Council of the City of Galveston, Texas hereby expresses its consent to waive primary jurisdiction over this billing complaint urged by Dustin Thomas so as to allow him to proceed to the Public Utility Commission; however the City shall retain its primary jurisdiction over electric services in all other instances.

SECTION 3. The City Manager is authorized to sign any additional documents required to give effect to this Resolution upon approval of the City Attorney.

SECTION 4. This Resolution shall be and become effective from and after the date of its adoption.

APPROVED AS TO FORM:

_____
DONALD S. GLYWASKY
CITY ATTORNEY

I, Janelle Williams, Secretary of the City Council of the City of Galveston, do hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the City Council of the City of Galveston at its Regular Meeting held on the 25th day of June, 2020, as the same appears in records of this office.

IN TESTIMONY WHEREOF, I subscribe my name hereto officially under the corporate seal of the City of Galveston this _____ day of _____, 2020.

_____
Secretary for the City Council
of the City of Galveston

RESOLUTION NO. 19-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GALVESTON, TEXAS, WAIVING THE CITY'S PRIMARY JURISDICTION RELATED TO A COMPLAINT MADE BY CITIZEN DUSTIN THOMAS RELATED TO THE BILLING OF ELECTRIC SERVICES AT GRAND BEACH SUBDIVISION, TO ALLOW THE CITIZEN TO PROCEED WITH FILING HIS COMPLAINT DIRECTLY WITH THE STATE OF TEXAS PUBLIC UTILITY COMMISSION, AUTHORIZING THE CITY MANAGER TO EXECUTE ANY NECESSARY DOCUMENTS TO GIVE EFFECT TO THIS RESOLUTION UPON FINAL APPROVAL BY THE CITY ATTORNEY; PROVIDING FOR FINDINGS OF FACT AND FOR AN EFFECTIVE DATE.

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WHEREAS, citizen Dustin Thomas has certain complaints related to the billing of common electric services by his homeowner's association at the Preserve at Grand Beach in Galveston he wishes to pursue before the Texas Public Utility Commission; and

WHEREAS, the City must waive its primary jurisdiction over electric services to allow Mr. Thomas to pursue his complaint with the Public Utility Commission; and

WHEREAS, it appears that given the expertise of the Public Utility Commission in these matters it is in the interest of all involved for the City to waive its primary jurisdiction related to electric services in the single instance of the consideration of Mr. Thomas' complaint related to his billing issue; and

WHEREAS, the City will continue to assert primary jurisdiction over all other matters related to electric service and the waiver of primary jurisdiction over the matter asserted by Mr. Thomas shall in no way be deemed a waver of the City's primary jurisdiction in all other instances,

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APPROVED AS TO FORM:

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DONALD S. GLYWASKY
CITY ATTORNEY

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IN TESTIMONY WHEREOF, I subscribe my name hereto officially under the corporate seal of the City of Galveston this _____ day of _____, 2020.

_____
Secretary for the City Council
of the City of Galveston

City of Galveston

Finance Department
PO Box 779 | Galveston, TX 77553-0779
| 409-797-3562

June 25, 2020

To: Brian Maxwell, City Manager
Hon. Mayor and City Council

From: Michael W. Loftin, Assistant City Manager Finance

RE: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GALVESTON, TEXAS, AUTHORIZING THE APPROVAL OF A CONTRACT FOR COLLECTION SERVICES PROVIDING FOR THE COLLECTION OF DELINQUENT TAXES AND COURT FINES AND FEES WITH LINEBARGER GOGGAN BLAIR & SAMPSON, LLP; AND MAKING CERTAIN FINDINGS ASSOCIATED WITH TEXAS GOVERNMENT CODE §2254.1032; AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND PROVIDING FOR AN EFFECTIVE DATE.

I. Background

A. The City requires the service of an agency firm for the collection of delinquent real and personal property taxes as well as municipal court accounts.

B. The city's current service provider, Linebarger Goggan Blair & Sampson, LLP, has served in this capacity since for twenty-one years for the collection of delinquent real and personal property taxes and ten years for municipal court fines and fees.

C. The City advertised a formal solicitation (RFQ 20-01) on March 9, 2020 for collection services. The services will include collection of delinquent real and personal property taxes, utility accounts, municipal court accounts and other various service fees (including but not limited to various Planning and Zoning permits and fees, Fire Inspection fees, code enforcement violations, etc.). The City received a response on March 30, 2020 from the incumbent firm only. The failure of other firms to respond is not troubling in view of the level of service rendered in the past by the Linebarger Goggan Blair & Sampson firm.

D. City staff evaluated the proposal and deemed the proposal responsive and qualified and therefore was in the best interest of the City to accept the sole proposal.

II. Current Situation

Linebarger Goggan Blair & Sampson, LLP's proposal demonstrated an impressionable combination of experience and expertise as a firm and consultants and as well as price. The firm operates an office in Galveston County. Mark Ciavaglia and Richard Hill are the engagement partners to remain in charge for the City and both have a long familiarity with the City's structure and environment.

Linebarger understands the complexities of public service, particularly in the area of collection of municipal warrants and traffic fines. Many of Linebarger's attorneys and managerial personal have worked in the public sector and understand the challenges public servants face in recovering delinquent monies owed by the citizens they also serve.

III. Issues

1. Cost – The contract is contingency fee based.
   a. Linebarger will provide ad valorem tax collection services for twenty percent (20%) of the total tax, penalty and interest collected. Pursuant to the Texas Property Tax Code, the 20% fee will be added to each delinquent tax bill and borne entirely by the delinquent taxpayers.
   b. Linebarger has an Oracle-based system for their client's use in the area of special assessment liens. Special assessment liens secure the city's claims for sums expended when code enforcement staff oversees demolitions, grass cutting, debris removal, and general clean up measures for blighted properties. Linebarger will provide this system at no cost to the City of Galveston.
   c. Linebarger will represent the City in the collection of its municipal court fines and fees and a variety of other receivables, including utilities, planning and zoning accounts and fire inspection fees. The rate is 30% of the total amount of all fines and fees collected, regardless of the age of the account or the type of delinquent accounts.
2. Timing – effective upon approval of the City Council.
3. Impact or ramifications – The City does not have the resources or expertise to facilitate an internal collections division. Continuing such efforts through an external agency provides greater financial and fiscal efficiency.
4. Term and termination – The agreement will run for three years with the option to extend for two one-year terms.

IV. Alternatives in order of priority

A. Reject the proposal and re-solicit for collection services of an external firm.
B. Engage with Linebarger Goggan Blair & Sampson, LLP as the best firm available to the City considering their history with the City, municipal government experience and cost.

V. Recommendation

Concur with Alternative B and approve to authorize the City Manager to execute a contract with Linebarger Goggan Blair & Sampson, LLP for delinquent account collection services.

VI. Fiscal Impact Report

Requested by:	Michael W. Loftin Assistant City Manager Finance
Funding Source:	The originating source of revenue will be reduced by the firm's fees.
Cost of implementation:	None

City of Galveston

Finance Department
PO Box 779 | Galveston, TX 77553-0779
| 409-797-3562

THIRD PAGE NO LETTERHEAD

RESOLUTION NO. 20-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GALVESTON, TEXAS, AUTHORIZING THE APPROVAL OF A CONTRACT FOR COLLECTION SERVICES PROVIDING FOR THE COLLECTION OF DELINQUENT TAXES AND COURT FINES AND FEES WITH LINEBARGER GOGGAN BLAIR & SAMPSON, LLP; AND MAKING CERTAIN FINDINGS ASSOCIATED WITH TEXAS GOVERNMENT CODE §2254.1032; AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Galveston desires to approve a contract for collection services of delinquent taxes and court fees and fines with Linebarger Goggan Blair & Sampson, LLP;

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

Section 1. After having provided adequate notice as required by Sec. 2254.1036 of the Texas Government Code, the Contract for Collection Services with Linebarger Goggan Blair & Sampson, LLP is approved and the Mayor is authorized to execute this Agreement.

After exercising its due diligence, the City of Galveston finds:

Section 2. That there is a substantial need for the legal services to be provided pursuant to the Contract for Collection Services;

Section 3. That these legal services cannot be adequately performed by the attorneys and supporting personnel of the City at a reasonable cost;

Section 4. That these legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of these receivables as provided by Texas Tax Code Sections 6.30, 33.07, 33.08, 33.11, and 33.48 and Texas Code of Criminal Procedure Art. 103.0031 and because the City of Galveston does not have the funds to pay the estimated amounts required under a contract only for the payment of hourly fees;

Section 5. That Linebarger Goggan Blair & Sampson, LLP, is well qualified and competent to perform the legal services required to comply with the terms of this contract;

Section 6. That Linebarger Goggan Blair & Sampson, LLP has provided these specialized legal services to the City of Galveston in the past and the City of Galveston has been well satisfied with the quality and outcome of the legal services provided.

Section 7. That the contract with Linebarger Goggan Blair & Sampson, LLP is the result of an arm's length transaction between the City of Galveston and Linebarger Goggan Blair & Sampson, LLP and is fair and reasonable.

Section 8. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED on this _____ day of _____, 2020.

_____
James D. Yarbrough, Mayor
City of Galveston, Texas

APPROVED AS TO FORM:

_____
Don Glywasky

I, Janelle Williams, Secretary of the City Council of the City of Galveston, Texas, do hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the City Council of the City of Galveston at its Regular Meeting held on the _____ day of _____, 2020, as the same appears in records of this office.

IN TESTIMONY WHEREOF, I subscribed my name hereto officially under the corporate seal of the City of Galveston this _____ day of _____, 2020.

_____
Secretary for the City Council
of the City of Galveston

Contract for Collection Services

This Contract is made between Linebarger Goggan Blair & Sampson, LLP (hereinafter referred to as the "Firm") and City of Galveston (hereinafter referred to as the "Client").

Article 1 – Nature of Relationship

1.01 The parties hereto acknowledge that this Contract creates an attorney-client relationship.

1.02 The Client hereby employs the Firm to provide the services hereinafter described for compensation hereinafter provided.

1.03 This Contract is entered into pursuant to and as authorized by Texas law, including Texas Tax Code §6.30 and Subsection (a) of ART. 103.0031, Texas Code of Criminal Procedure.

Article 2 – Scope of Services

2.01 *Delinquent Property Tax Collections* - The Firm shall take reasonable and necessary actions to enforce collection of delinquent property taxes that are owed to the Client and that are subject to this Contract, as hereinafter provided and allowed by law.

2.02 The Client may from time-to-time specify, in writing, additional actions to be taken by the Firm in connection with the collection of taxes that are owed to the Client. Client further constitutes and appoints the Firm as Client's attorneys to sign all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to prosecute the Client's claim for taxes.

2.03 Taxes owed to the Client shall become subject to this Contract upon the following dates, whichever occurs first:

(a) On February 1 of the year in which the taxes become delinquent if a previously filed tax suit is then pending against the property subject to the tax and attorney's fees are recovered and paid pursuant to a delinquent tax suit;

(b) On the date any lawsuit is filed with respect to the recovery of the tax or estimated tax along with attorney's fees awarded and paid pursuant to a lawsuit, in accordance with the Texas Property Tax Code;

(c) On the date of filing any application for tax warrant where recovery of the tax or estimated tax is sought;

(d) On the date of filing any claim in bankruptcy where recovery of the tax is sought; or

(e) On July 1 of the year in which the taxes become delinquent.

2.04 *Delinquent Municipal Court Fees and Fines* - The Firm shall take reasonable and necessary actions to enforce the collection of delinquent municipal court fees and fines. Fees and fines that are subject to this Contract are those that are more than sixty (60) days past due as of the effective date hereof and those that become more than sixty (60) days past due during the term hereof. As used in this section, "more than 60 days past due" has that meaning assigned by Subsection (f) of Art. 103.0031, Texas Code of Criminal Procedure [as amended by Senate Bill 782, 78th Legislature (2003), effective June 18, 2003]. The meaning assigned to the phrase "more than 60 days past due" shall, for the term and purposes of this Contract, survive any future amendments to, or repeal of, Article 103.0031, Texas Code of Criminal Procedure, or any parts thereof.

2.05 The Client may from time-to-time specify in writing additional actions that should be taken by the Firm in connection with the collection of the receivables that are subject to this Contract. Client further constitutes and appoints the Firm as Client's attorneys to sign all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to pursue collection of the Client's claims.

2.06 Such legal services shall include but not be limited to recommendations and legal advice to Client to take legal enforcement action; representing Client in any dispute or legal challenge over authority to collect such receivables; defending Client in litigation or challenges of its collection authority; and representing Client in collection interests in bankruptcy matters as determined by Firm and Client. For the purposes of this Contract, the term 'representing Client in bankruptcy matters' shall be defined as filing claims and prosecuting such claims in proceedings in United States Bankruptcy Courts on behalf of Client for delinquent taxes, special assessment liens, utility liens and unpaid utility receivables for which Client has received a bankruptcy notice. Such bankruptcy notices received by Client shall be promptly forwarded to Firm to enable Firm to assert and prosecute any such bankruptcy claim. The bankruptcy services as described will be provided to Client by the Firm at no cost to Client. This Contract supersedes all prior oral and written Contracts between the parties regarding such receivables, and can only be amended if done so in writing and signed by all parties. Furthermore, this contract cannot be transferred or assigned by either party without the written consent of all parties.

2.07 The Client agrees to provide to the Firm data regarding any receivables that are subject to this Contract. The data shall be provided by electronic medium in a file format specified by the Firm. The Client and the Firm may from time-to-time agree in writing to modify this format. The Client shall provide the data to the Firm not less frequently than monthly for delinquent fees and fines.

2.08 The Firm, in all communications seeking the fee and fine receivables subject to the Contract, shall direct all payments for fees and fines directly to the Client at an address designated by the Client. If any receivables are paid to the Firm, said payments shall be expeditiously turned over to the Client.

Article 3 - Compensation

3.01 *Delinquent Tax Collections* - Client agrees to pay the Firm, as compensation for the delinquent tax collection services, twenty (20%) percent of the amount of all delinquent taxes, penalty and interest, subject to the terms of this contract as set forth in Paragraph 2.03 above, collected and paid to the collector of taxes during the term of this contract, as and when collected.

3.02 *Delinquent Fees and Fines* - The Client agrees to pay the Firm thirty (30%) percent of the total amount of all the fines and fees [exclusive of any collection fee assessed by the Client pursuant to Subsection (b) of Article 103.0031, Texas Code of Criminal Procedure] subject to the terms of this Contract as set forth in Section 2.04 above that are collected by the Client during the term of this Contract.

3.03 The Client, through its Interlocal Contract with Galveston County for tax collection services, shall pay the Firm compensation owed for tax collection services by the twentieth (20th) day of each month, all compensation earned by the Firm for the previous month as provided in this Article 3. All compensation above provided for shall become the property of the Firm at the time payment of the taxes, penalty and interest is made to the collector.

3.04 The Client shall pay the Firm by the twentieth day of each month all compensation earned by the Firm for delinquent fees and fines collections and special assessment liens for the previous month as provided in this Article 3. The Client shall provide an accounting showing all collections for the previous month with the remittance. All compensation shall become the property of the Firm at the time payment of the receivable is made to the Client.

Article 4 - Retention of Files and Intellectual Property Rights

4.01 The Firm recognizes and acknowledges that all items contained in the Firm's litigation files related to the Firm's representation of the Client are the property of the Client. The Firm agrees to retain and safeguard such files on behalf of the Client, provided that, the Client agrees that such files may, from time to time, be disposed pursuant to the File Retention Policy attached hereto as Schedule 'A' File Retention.

4.02 The Client recognizes and acknowledges that the Firm owns all right, title and interest in certain proprietary software that the Firm may utilize in conjunction with performing the services provided in this Contract. The Client agrees and hereby grants to the Firm the right to use and incorporate any information provided by the Client ("Client Information") to update the databases in this proprietary software, and, notwithstanding that

Client Information has been or shall be used to update the databases in this proprietary software, further stipulates and agrees that the Client shall have no rights or ownership whatsoever in and to the software or the data contained therein, except that the Client shall be entitled to obtain a copy of such data that directly relates to the Client's accounts at any time.

4.03 The Firm agrees that it will not share or disclose any specific confidential Client Information with any other company, individual, organization or agency, without the prior written consent of the Client, except as may be required by law or where such information is otherwise publicly available. It is agreed that the Firm shall have the right to use Client Information for internal analysis, purposes of improving the proprietary software and database, and to generate aggregate data and statistics that may inherently contain Client Information. These aggregate statistics are owned solely by the Firm and will generally be used internally, but may be shared with the Firm's affiliates, partners or other third parties for purposes of improving the Firm's software and services.

Article 5 - Costs

5.01 The Firm and Client recognize that certain costs, *e.g.*, publication costs and title research fees, *etc.*, will be incurred in the process of providing the services contemplated in this Contract. The Firm will either: (i) advance such costs on behalf of the Client, or (ii) arrange with the vendor or agency providing the service that the costs of services will not be paid unless and until such costs are recovered from the delinquent taxpayer. All such costs incurred will be wholly advanced by Firm and Firm will seek reimbursement of such advanced costs through legal remedies allowed by law. Client has no liability for any such advanced cost.

5.02 The Client acknowledges that the Firm may provide services, such as title research, with its own employees or with other entities or individuals who may be affiliated with the Firm, but the Firm agrees that any charges for such services will be reasonable and consistent with what the same services would cost if obtained from a third party.

Article 6 - Term and Termination

6.01 The effective date of this Contract is June 25, 2020. The Initial Term of this Contract shall expire on June 30, 2025, (the "Expiration Date") unless extended as hereinafter provided.

6.02 Unless prior to thirty (30) days before the Expiration Date of the Initial Term of this contract, the Client or the Firm notifies the other in writing that it does not wish to continue this Contract beyond its Initial Term, this Contract shall be automatically extended for an additional one (1) year period without the necessity of any further action by either party. Unless prior to thirty (30) days before the expiration of the additional one (1) year renewal period, the Client or the Firm notifies the other in writing that it does not wish to continue this Contract beyond its one (1) year renewal term, this Contract shall renew automatically for

additional one (1) year periods in the same manner at the end of each one (1) year successive renewal period, without the necessity of any further action by either party.

6.03 If at any time during the initial term of this Contract or any extension hereof, the Client determines that the Firm's performance under this Contract is unsatisfactory, the Client shall notify the Firm in writing of the Client's determination. The notice from the Client shall specify the particular deficiencies that the Client has observed in the Firm's performance. The Firm shall have sixty (60) days from the date of the notice to cure any such deficiencies. If at the conclusion of that sixty (60) day remedial period, the Client remains unsatisfied with the Firm's performance, the Client may terminate this Contract effective upon the expiration of ten (10) days following the date of written notice to the Firm of such termination ("Termination Date").

Notwithstanding the foregoing, if at any time during the term of this Contract there is a change of attorneys associated with the Firm's performance of this Contract, Client may terminate this Contract effective upon the expiration of thirty (30) days written notice of such termination.

6.04 Whether this Contract expires or is terminated, the Firm shall be entitled to continue to prosecute any tax suits, applications for tax warrants or bankruptcy claims pending on the Termination Date or Expiration Date for an additional six (6) months following termination or expiration. The Client agrees that the Firm shall be compensated as provided by Article 3 for any base tax, penalties and interest collected in the pending matters during the six (6) month period.

6.05 The Client agrees that the Firm shall be reimbursed for any costs advanced and shall be paid for any services performed pursuant to Article 5 when such costs are recovered by or on behalf of the Client, regardless of the date recovered. It is expressly agreed that neither the expiration nor the termination of this Contract constitutes a waiver by the Firm of its entitlement to be reimbursed for such costs and to be paid for such services. It is further expressly agreed that the expiration of any six (6) month period under Section 6.04 does not constitute any such waiver by the Firm.

Article 7 – Miscellaneous

7.01 *Assignment and Subcontracting.* This Contract is not assignable, provided however, the Firm may from time-to-time obtain co-counsel or subcontract some of the services provided for herein to other law firms or entities. In such cases, the Firm will retain supervisory control and responsibility for any services provided by such co-counsel or subcontractors and shall be responsible to pay any compensation due to any such co-counsel or subcontractor.

7.02 *Mediation and Venue.* Any controversy between the parties to this Contract involving the construction or application of any of the terms, covenants, or conditions of this Contract shall, on the written request of one party served on the other, be submitted to

mediation. In the event mediation is unsuccessful, the parties are free to pursue their right in a court of competent jurisdiction. Any legal proceedings relative to this Contract or the obligations thereunder shall be in Galveston County, Texas.

7.03 *Integration.* This Contract contains the entire Contract between the parties hereto and supersedes all previous oral or written Contracts. This Contract may only be modified in a written amendment, executed by both parties.

7.04 *Representation of Other Taxing Entities.* The Client acknowledges and consents to the representation by the Firm of other taxing entities that may be owed taxes or other claims and be secured by the same property as the Client's claim.

7.05 *Compliance with Texas Government Code §2270.022.* In compliance with Texas Government Code §2270.002, the Firm verifies that it does not boycott Israel and will not boycott Israel during the term of this contract.

IN CONSIDERATION OF THE TERMS AND COMPENSATION HEREIN STATED, the Firm hereby accepts said employment and undertakes the performance of this Contract as above written. This Contract is executed on behalf of the Firm and of the Client by the duly authorized persons whose signatures appear below.

CITY OF GALVESTON	LINEBARGER GOGGAN BLAIR & SAMPSON, LLP
BY:_____	BY: _____ Partner
_____ Name	
_____ Title	
Date:_____	Date:_____

ATTEST:

_____
City Secretary

SCHEDULE 'A' – FILE RETENTION

DELINQUENT TAX SUIT FILES

(a) Cases in which non-suits are taken, dismissals are granted, or judgments are vacated, may be destroyed upon the expiration of five (5) years following the date of non-suit or dismissal or one (1) year after a judgment is taken on the same property in a subsequent suit, whichever first occurs.

(b) Cases in which judgments are taken, followed by satisfaction of the judgment by any means other than foreclosure sale, may be destroyed upon the expiration of five (5) years following satisfaction of the judgment.

(c) Cases in which real property judgments are taken or real property seizures conducted under tax warrant, followed by tax sale, are destroyed upon the expiration of twenty-five (25) years following the date of original tax sale.

(d) Cases in which judgments are taken for personal property taxes, followed by abstract of judgment, are destroyed upon the expiration of twenty (20) years following the filing of the abstract or one (1) year following satisfaction of the judgment, whichever first occurs.

PERSONAL PROPERTY TAX WARRANT FILES

(a) Cases in which non-suits are taken, dismissals are granted, or dissolution of warrant occurs prior to a seizure of any property are destroyed upon the expiration of one (1) year following the date of non-suit, dismissal, dissolution.

(b) Cases in which seizures under a warrant occurs, regardless of whether actual sale of property occurs, are destroyed upon the expiration of four (4) years following the date of seizure.

BANKRUPTCY FILES

(a) Cases that have been dismissed are destroyed upon the expiration of one (1) year following the date of dismissal.

(b) "No Asset Chapter 7" cases in which a discharge has been granted to the debtor are destroyed upon the expiration of one (1) year following the date of discharge or final payment, whichever occurs earlier.

(c) "Chapter 13" cases in which a discharge has been granted to the debtor are destroyed upon the expiration of one (1) year following the date of discharge.

(d) "Chapter 7 Asset" cases are destroyed upon the expiration of one (1) year following the filing of the Trustee's Final Report.

(e) "Chapter 11" cases in which there is a Confirmed Plan are destroyed upon the expiration of eight (8) years following the date of Confirmation, unless the plan has not been completed. In the event payment under the plan is not complete following eight (8) years, then the file shall be destroyed upon the expiration of one (1) year following receipt of the final payment under the plan.

THE CITY OF GALVESTON

INVESTMENT POLICY

XXXXXXX 2020
(City Council Approved XXXXXXXXXX NN, 2020 Item XX.X)

PROPOSED

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PROPOSED

Investment Policy
City of Galveston, Texas

Policy Statement

The Investment Policy, known as "The Investment Policy of the City of Galveston" (the "Investment Policy") complies with and incorporates the Public Funds Investment Act, (the "Act"), Chapter 2256, Texas Government Code and the Public Funds Collateral Act, Chapter 2257, Texas Government Code.

All applicable provisions of the Act, as amended, are adopted by incorporation of Appendix A, the Act, in its entirety.

In the event of a conflict with these investment policies and the Act, the more restrictive of the two shall control.

All participants in the investment process shall act responsibly as custodians of the public trust.

It is the policy of the City of Galveston (the "City") that the administration and investment of its funds shall be handled as its highest public trust. Investments shall be made in a manner which will provide the maximum security of principal through risk management and diversification while meeting the daily cash flow needs of the City and conforming to all applicable state and local statues, rules and regulations governing the investment of public funds.

The Investment Policy is based on standards of prudent money management. Effective cash flow management and cash investment practices are recognized as essential to good fiscal management and have been incorporated into the investment program.

I. Scope

The Investment Policy shall apply to all financial assets and pooled funds of the City and govern the management of Investments by the Finance Department of the City of Galveston. The Investment Policy shall govern the investment management process with respect to investments managed by the Finance Department of the City of Galveston for the General Fund, Special Revenue Funds, Debt Service Funds, Capital Project Funds and Enterprise Funds. The investments will meet the cash flow requirements of the City as established by City Council and City management. These funds are defined in the City's Comprehensive Annual Financial Report (CAFR). This Investment Policy applies to any new fund created by the City unless specifically exempted by the City Council and this Investment Policy.

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II. General Objectives

(1) The emphasis of all investment activity shall be safety, liquidity, diversification and yield.

a. **Safety.** The primary objective shall be on safety and preservation of principal. Adherence to the permitted investments listed in the Investment Policy will maximize safety. Whenever practical, assets held in the common investment portfolio shall be diversified to minimize the risk of loss resulting from one concentration of assets in a specific maturity, a specific issuer, or a specific class of securities. Whenever possible, the City will purchase non-callable securities in order to best ensure the laddering of maturities and balancing of classes of securities. The City's investments shall be reviewed and rebalanced with respect to diversification at least once per calendar quarter. The emphasis shall be on maintaining a prudent level of cash (money market and investment pool) balances, relative to security types and maturities.

b. **Liquidity.** The goal of liquidity is to maintain available cash balances sufficient to cover anticipated and unexpected cash demands. The City's investment portfolio will remain sufficiently liquid to meet all daily operating requirements.

c. **Diversification.** Whenever practical, assets held in the portfolio(s) shall be diversified to minimize the risk of loss resulting from the concentration of assets in a specific maturity, a specific issuer, or a specific market sector. The City's investments shall be reviewed and rebalanced with respect to diversification at least once per calendar quarter.

d. **Yield.** Yield considerations shall be subordinate to safety and liquidity requirements, but shall be maximized within those constraints through prudent and active management.

(2) **Loss of Required Ratings**. The Investment Officers shall take all prudent measures consistent with this Investment Policy to liquidate an investment that does not meet any minimum specified rating. Investment Officers or the Advisor will monitor the credit ratings of all rated investments at all times. Should any investment requiring minimum ratings be placed on market watch, downgraded or placed on credit watch by any nationally recognized rating agency, Investment Officers shall notify the Finance Director immediately. Liquidation of the security may, but need not be, effected. Evaluation of the cause of the action, the maturity of the security, and the position of the security in the portfolio will be considered and prudent measures taken to protect City funds.

(3) **Prudent Person Rule.** The standard of prudence to be used in the investment function shall be the "prudent person" standard and

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shall be applied in the context of managing the overall portfolio. This standard states:

> "Investments shall be made with judgement 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."

In determining whether investment personnel exercised prudence with respect to an investment decision, the determination shall be made taking into consideration:

a. the investment of all funds over which investment personnel had responsibility rather than a consideration as to the prudence of a single investment, and
b. whether the investment decision was consistent with the written Investment Policy.

Investment personnel involved in investment decisions, when acting in accordance with this Investment Policy and exercising due diligence, shall not be held responsible for a change in a specific investment's credit risk or market price, provided deviation from expectations are reported in a timely manner and appropriate action is taken to control adverse developments.

III. Investment Strategy

The City commingles its operating and reserve funds into one investment portfolio for investment purposes of efficiency, accurate distribution of interest, and maximum investment opportunity. Bond funds are managed separately in accordance with their anticipated expenditure schedule. Although commingled, the City recognizes the unique characteristics and needs of the individual funds in its strategy statement and management of the funds. The maximum dollar weighted average maturity of the entire portfolio shall be no greater than 18 months.

(1) **Operating Funds.** The investment strategy for operating funds has as its primary objective assurance that anticipated liabilities are matched and adequate investment liquidity provided. This may be accomplished by purchasing high quality, short- to medium-term maturity securities, which will complement each other in a laddered maturity structure permitting some extension for yield enhancement.

(2) **Debt Service Funds**. The investment strategy for debt service funds shall have as its primary objective the assurance of available funds adequate to fund the debt service obligations on a timely

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basis. Successive debt service dates will be fully funded before extension.

(3) **Bond Reserve Funds.** The investment strategy for bond reserve funds shall have as its primary objective the ability to generate a revenue stream to the bond reserve funds from high quality securities with a low degree of volatility. Securities should be high credit quality and, except as may be required by a bond ordinance specific to an individual issue, of short to intermediate-term maturities. Reserve portfolios will utilize securities with a maximum maturity of five years and have a maximum weighted average maturity, if managed as a separate portfolio, not to exceed three years.

(4) **Capital Project Funds**. The investment strategy for capital project funds will have as its primary objective assurance that anticipated expenditures are matched with maturing investments for adequate liquidity. The stated final maturity dates of securities held may not exceed the estimated project completion date.

Separately managed portfolios are to be managed with the specific expenditure schedules and legal requirements of those funds. The portfolios will be guided by the provisions of this Investment Policy.

Cash Management

Effective cash management is recognized as essential to a prudent investment strategy and overall fiscal management. Cash management is defined as the process of managing monies in order to ensure maximum cash availability and use. The City shall maintain a comprehensive cash management program, which includes collection of accounts receivable, prudent investment of its available cash, disbursement of payments in accordance with invoice terms and the management of banking services.

As a part of this comprehensive cash management program, the City recognizes that there is the potential need for unexpected cash drawdowns during the hurricane season which commences in June and concludes in November of each year. The portfolio should be structured so that adequate investments mature during this period.

IV. Suitable and Authorized Investments

Authorized investments shall be limited to the following, as further defined by the Act:

(1) Obligations of the United States or its agencies and instrumentalities to include obligations in which the principal and interest are unconditionally guaranteed or insured by, or backed by the full faith and credit of, this state or the United States or their respective agencies and instrumentalities, including obligations that are fully

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guaranteed or insured by the Federal Deposit Insurance Corporation ("FDIC"), National Credit Union Share Insurance Fund ("NCUSIF") or by the explicit full faith and credit of the United States per Texas State Code 2256.009.

(2) Obligations of the Federal Home Loan Bank (FHLB) per Texas State Code 2256.009.

(3) Municipal Securities per Texas State Code 2256.009

(4) Fully insured or collateralized certificates of deposit at commercial banks, savings banks and credit unions per Texas State Code 2256.010.

(5) Repurchase agreements collateralized by U.S. Treasury or U.S. Government Agency securities per Texas State Code 2256.011

(6) Securities and Exchange Commission (the "SEC") registered, no load money market funds as permitted by Texas State Code 2256.014.

(7) Texas local government investment pools per Texas State Code 2256.016. Although this Investment Policy does not permit direct purchase of commercial paper, investment pools that contain commercial paper as well as any investment specifically authorized within the Act are permitted.

The City's ownership share of any public funds investment pool shall be limited to 10% of the overall pool balance.

Exemption of Existing Investments

The City is not required to liquidate investments that were authorized investments at the time of purchase. Any investments held that do not meet the guidelines of the Investment Policy shall be reviewed to determine ability to liquidate. If the security cannot be liquidated because of material adverse changes in value since the time of purchase, and holding the security to maturity does not negatively affect disbursement or cash flow, a recommendation of holding the security to maturity is acceptable. At all times, liquidations shall be effected taking into account the prudent person standard.

Certain Prohibited Investments

The City is prohibited from investing in companies that do business in Sudan, Iran, or with Foreign Terrorist Organizations (collectively known as "Listed Companies").

V. Incorporation of the Public Funds Investment Act

(1) **Competitive Bidding.** All individual security transactions shall require at least three competitive bids/offers where practicable.

(2) **Delivery versus Payment**. Transactions must be settled on a delivery-versus-payment (DVP) basis to a City approved depository except for transactions involving mutual funds or investment pool

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funds. This assures City control of all its funds and assets. No securities shall be held by transaction counterparty.

(3) **Independent Third-Party Safekeeping**. Collateral provided for bank time and demand deposits as well as repurchase agreements will be held by an independent third-party safekeeping agent approved by the City and providing the City with original safekeeping receipts. Authorized collateral will include:

a. Obligations of the U.S. Government and its agencies and instrumentalities, including mortgage-backed securities.
b. Municipal obligations of any state or subdivision, rated no less than AA or equivalent by a Nationally Recognized Statistical Rating Organization ("NRSRO").

All City-owned securities will be registered and held in the name of the City in a segregated third-party safekeeping account through the City's contracted depository. Financial institutions serving as City depositories will be required to sign a tri-party depository agreement with the City and the independent safekeeping agent (custodian) in compliance with the Financial Institutions reform, Recover, and Enforcement Act ("FIRREA"). The agreement shall define the collateral and City rights to the collateral in case of default, bankruptcy, or closing and shall establish a perfected security interest in compliance with Federal and State regulations, which require that:

a. The Agreement be in writing;
b. The Agreement be approved by the Board of Directors or the Loan Committee of the Depository and a copy of the meeting minutes or resolution reference must be delivered to the City; and
c. No listing of pledged collateral shall be part of the written agreement.

(4) **Collateral Policy**. Collateralization is required for all uninsured collected balances. Collateral will be equal to or exceed 110% of the total deposit amount of all operating accounts, with accrued interest, if any. Substitution will be granted with prior City approval. Counterparties will be contractually liable for monitoring and maintaining the required margin levels on all collateral at all times. The City will value the collateral securities monthly unless market conditions warrant more frequent valuation. If the market value of collateral is deficient, additional collateral must be requested.

Collateral will be equal to or exceed 102% of the daily repurchase sweep agreement amount.

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VI. Diversification and Maximum Maturities

(1) **Diversification**. Diversification will be used to minimize risk of loss by over-investment in a particular market sector, maturity or security. The City will strive for portfolios with laddered maturities and securities in accordance with the authorized investments and maximum maturity constraints. To assure diversification in the portfolio the following limits will be imposed:

Investment Type	Max. % in Portfolio
US Treasury Obligations	100%
US Agency and Instrumentality Obligations	80%
SEC Registered Money Market Funds	50%
Repurchase Agreements	50%
Flex Repurchase (Bond Funds)	50%
Municipal Securities	20%
Local Government Investment Pools	100%
Collateralized, FDIC or NCUSIF-insured CDs	50%

(2) **Maximum Maturities.** The maximum maturity for investments designated for operations, current debt service, and construction funds shall not exceed 36 months. The maturity for debt service reserve holdings can be extended to the life of the bond maturity or five years, whichever is less.

(3) **Weighted Average Maturity for Pooled Fund Groupings.** The maximum dollar weighted average maturity of the entire portfolio shall be no greater than 18 months based on the stated maturity date.

VII. Finance, Fiscal Affairs and Investment Advisory Committee (the "Committee")

Ordinance No. 19-042 established the reconstituted Finance and Fiscal Affairs Committee which is now charged with the duties of the Investment Advisory Committee. The committee shall be composed of seven voting members, and one non-voting ex-officio member of city council. All members shall be appointed by the city council. There shall be appointed additional non-voting, advisory members as deemed necessary and as appointed by the city council.

The committee is established to review and evaluate for the purpose of making recommendations to council, review of the city's financial statements and reports, audit, budget and budget performance, fund accounting and fund balances, and financial management policies. The Committee's responsibilities also include the review of the City's Investment Policy annually, review investment recommendations, review investment reports, oversee the City's investment portfolio to ensure compliance with State law, adopt a list of qualified brokers authorized to engage in investment

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transactions and approve the independent source providing state mandated investment training.

VIII. Designation of Investment Officers

(1) **Delegation of Investment Authority**. The Assistant City Manager of Finance, Executive Director/City Controller and Accounting Manager shall be designated as Investment Officers to execute the investment management process of local revenues. Investments of five (5) million or more will require authorization by two investment officers. The Assistant City Manager of Finance may temporarily designate another qualified staff individual to function as Investment Officer in his or her place if and when necessary. That individual will also attend the state mandated training described below.

The Investment Officers shall review investment positions at least once per quarter for conformance to this Investment Policy and the needs of the City.

The Investment Officers shall develop and maintain written administrative procedures for the operation of the investment program, which are consistent with this Investment Policy. Procedures will include safekeeping, settlement, documentation, agreements, contracts, and other investment related activities.

(2) **Investment Training**. The Investment Officers shall attend ten (10) hours of investment training within twelve (12) months of assuming duties, and subsequently shall attend 10 hours of training within every succeeding two-year period following the initial 10 hours of training completed within the first 12 months of assuming duties, as required by the Act. The training cycle becomes concurrent with the City's fiscal year.

The training sessions shall be provided by the Texas Municipal League, the Government Finance Officers Association of Texas (GFOAT), the Government Treasurers Organization of Texas (GTOT), the University of North Texas Center for Public Management, the Texas Society of Certified Public Accountants, or any other independent source approved by the Committee.

Training must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with PFIA.

Capability of Investment Management. Professional services may be used to provide expertise in the areas of Investments, cash management, bonded indebtedness, and other areas deemed appropriate by City Council and the Executive Management Team

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(EMT). The EMT addresses quality and capability of investment management through the utilization of State laws pertaining to these services. These services shall be subordinate to City Management and this Investment Policy, as applicable.

The City may contract with an Investment Advisor, who shall adhere to the spirit, philosophy and specific term of this Investment Policy and shall invest within the same standard of prudence. The Investment Advisor must be registered with the SEC under the Investment Advisor's Act of 1940 as well as with the Texas State Securities Board. Advisors may assist the City with the management of its funds and other responsibilities including, but not limited to: review of investment policy, development of appropriate investment strategies, security analysis, trade execution, security clearance, broker dealer compliance, investment reporting and security documentation.

(3) **Ethics Disclosure and Conflicts of Interest.** If an Investment Officer has a personal business relationship as defined in the Act, with a business organization engaging in investment transactions with the City or, the officer is related within the second degree by affinity or consanguinity to an individual seeking to transact with the City, the Investment Officer must disclose the relationship and file a disclosure with the City Secretary and the Texas Ethics Commission.

IX. Establishment and Annual Review of Qualified Bidders list

Investments shall be executed through broker/dealers and/or banks only. The Committee will review, revise and approve the list of authorized broker/dealers annually. The Investment Officers or investment advisor will obtain and maintain information on each authorized broker/dealer.

Securities broker/dealers must meet certain criteria as determined by the Investment Officers. The following criteria must be met by firms on the list:

- provision of an audited financial statement for the most recent period,
- proof of registration with the Financial Industry Regulatory Authority (FINRA), and
- proof of current registration with the Texas State Securities Commission.

If the City has contracted with an Investment Advisor, the Advisor shall be responsible for performing due diligence on broker/dealers and shall provide a list of approved broker/dealers to the City no less than annually. The Investment Advisor shall meet the requirements of Texas State Code 2256.003.

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X. Investment Policy Certification

The City shall present a copy of this Investment Policy to any business organization offering to engage in an investment transaction with the City. An authorized representative of an investment pool or Investment Advisory firm acting in a discretionary capacity shall execute a Policy Certification form substantially to the effect that the representative has received and thoroughly reviewed the Investment Policy, and acknowledged that the organization has implemented reasonable procedures and controls in an effort to preclude investment transactions that are not authorized by this Investment Policy, except to the extent that the authorization is dependent on an analysis of the makeup of the City's primary commingled portfolio or requires an interpretation of subjective investment standards.

XI. Investment Reporting

Quarterly Reporting. The Investment Officers and Investment Advisor shall provide to City Council, not less than quarterly, a written report of investment positions and activity in accordance with Section 2256.023 of the Act.

Marking to Market. The quarterly investment report shall include the market value of the portfolio. Market values shall be obtained from the Investment Advisor or other independent sources such as a safekeeping institution or industry publications. If market values are unavailable from independent sources, the City may obtain market values from its authorized brokers, provided the broker providing the market price is not the same broker that sold the security to the City. The market price of investments acquired with public funds is monitored by a third party Investment Advisor firm (engaged by the City) with access to pricing applications (e.g. Bloomberg).

XII. Internal Controls

The Assistant City Manager of Finance shall establish a system of internal controls designed to prevent losses due to fraud, employee error, negligence, collusion, third party misrepresentation, and unanticipated market changes as well as other foreseeable circumstances arising in the investment function. The controls are to safeguard City assets and securities throughout the investment process. The internal control structure shall be designed to provide reasonable assurance that these Investment Policy objectives are met and controls shall be reviewed annually with the independent auditor of the City.

Transactions shall, in all cases, comply with established internal controls especially as regards the transfer of funds.

The concept of reasonable assurance recognizes that:

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a. The cost of a control should not exceed the benefits likely to be derived, and
b. The valuation of costs and benefits requires estimates and judgments by management.

The controls shall address, at a minimum, the functions of documentation; competitive bidding practices; delivery and custody of securities; perfected ownership; collateralization; timely reconciliation of transactions, receipts and statements; required audits; and financial counter-parties. The controls shall address these functions with attention to potential collusion, separation of duties, and clear delegation of authority.

XIII. Review by Independent Auditor

The City's audit engagement shall include a compliance audit of management controls on investments and adherence to the City's established investment policies. The compliance audit shall be performed annually in conjunction with the City's financial audit and will include a review of the quarterly reports.

XIV. Annual Review and Adoption of Investment Policy and Strategies

The City Council of the City of Galveston shall review and adopt this Investment Policy and its incorporated investment strategies not less than annually. The approving resolution will list all changes being made to the Policy.

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Appendix A – Texas Government Code 2256

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GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT

CHAPTER 2256. PUBLIC FUNDS INVESTMENT

SUBCHAPTER A. AUTHORIZED INVESTMENTS FOR GOVERNMENTAL ENTITIES

Sec. 2256.001. SHORT TITLE. This chapter may be cited as the Public Funds Investment Act.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.002. DEFINITIONS. In this chapter:

(1) "Bond proceeds" means the proceeds from the sale of bonds, notes, and other obligations issued by an entity, and reserves and funds maintained by an entity for debt service purposes.

(2) "Book value" means the original acquisition cost of an investment plus or minus the accrued amortization or accretion.

(3) "Funds" means public funds in the custody of a state agency or local government that:

(A) are not required by law to be deposited in the state treasury; and

(B) the investing entity has authority to invest.

(4) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(5) "Investing entity" and "entity" mean an entity subject to this chapter and described by Section 2256.003.

(6) "Investment pool" means an entity created under this code to invest public funds jointly on behalf of the entities that participate in the pool and whose investment objectives in order of priority are:

(A) preservation and safety of principal;

(B) liquidity; and

(C) yield.

(7) "Local government" means a municipality, a county, a school district, a district or authority created under Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution, a fresh water supply district, a hospital district, and any political subdivision, authority, public corporation, body politic, or instrumentality of the

State of Texas, and any nonprofit corporation acting on behalf of any of those entities.

(8) "Market value" means the current face or par value of an investment multiplied by the net selling price of the security as quoted by a recognized market pricing source quoted on the valuation date.

(9) "Pooled fund group" means an internally created fund of an investing entity in which one or more institutional accounts of the investing entity are invested.

(10) "Qualified representative" means a person who holds a position with a business organization, who is authorized to act on behalf of the business organization, and who is one of the following:

(A) for a business organization doing business that is regulated by or registered with a securities commission, a person who is registered under the rules of the National Association of Securities Dealers;

(B) for a state or federal bank, a savings bank, or a state or federal credit union, a member of the loan committee for the bank or branch of the bank or a person authorized by corporate resolution to act on behalf of and bind the banking institution;

(C) for an investment pool, the person authorized by the elected official or board with authority to administer the activities of the investment pool to sign the written instrument on behalf of the investment pool; or

(D) for an investment management firm registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or, if not subject to registration under that Act, registered with the State Securities Board, a person who is an officer or principal of the investment management firm.

(11) "School district" means a public school district.

(12) "Separately invested asset" means an account or fund of a state agency or local government that is not invested in a pooled fund group.

(13) "State agency" means an office, department, commission, board, or other agency that is part of any branch of state government, an institution of higher education, and any nonprofit corporation acting on behalf of any of those entities.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 1, eff. Sept. 1, 1999.

Sec. 2256.003. AUTHORITY TO INVEST FUNDS; ENTITIES SUBJECT TO THIS CHAPTER. (a) Each governing body of the following entities may purchase, sell, and invest its funds and funds under its control in investments authorized under this subchapter in compliance with investment policies approved by the governing body and according to the standard of care prescribed by Section 2256.006:

(1) a local government;

(2) a state agency;

(3) a nonprofit corporation acting on behalf of a local government or a state agency; or

(4) an investment pool acting on behalf of two or more local governments, state agencies, or a combination of those entities.

(b) In the exercise of its powers under Subsection (a), the governing body of an investing entity may contract with an investment management firm registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or with the State Securities Board to provide for the investment and management of its public funds or other funds under its control. A contract made under authority of this subsection may not be for a term longer than two years. A renewal or extension of the contract must be made by the governing body of the investing entity by order, ordinance, or resolution.

(c) This chapter does not prohibit an investing entity or investment officer from using the entity's employees or the services of a contractor of the entity to aid the investment officer in the execution of the officer's duties under this chapter.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1454, Sec. 2, eff. Sept. 1, 1999.

Sec. 2256.004. APPLICABILITY. (a) This subchapter does not apply to:

(1) a public retirement system as defined by Section 802.001;

(2) state funds invested as authorized by Section 404.024;

(3) an institution of higher education having total endowments of at least $150 million in book value on September 1, 2017;

(4) funds invested by the Veterans' Land Board as authorized by Chapter 161, 162, or 164, Natural Resources Code;

(5) registry funds deposited with the county or district clerk under Chapter 117, Local Government Code; or

(6) a deferred compensation plan that qualifies under either Section 401(k) or 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 1 et seq.), as amended.

(b) This subchapter does not apply to an investment donated to an investing entity for a particular purpose or under terms of use specified by the donor.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 505, Sec. 24, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1421, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 8.21, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1454, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 773 (H.B. 1003), Sec. 1, eff. June 14, 2017.

Sec. 2256.005. INVESTMENT POLICIES; INVESTMENT STRATEGIES; INVESTMENT OFFICER. (a) The governing body of an investing entity shall adopt by rule, order, ordinance, or resolution, as appropriate, a written investment policy regarding the investment of its funds and funds under its control.

(b) The investment policies must:

(1) be written;

(2) primarily emphasize safety of principal and liquidity;

(3) address investment diversification, yield, and maturity and the quality and capability of investment management; and

(4) include:

(A) a list of the types of authorized investments in which the investing entity's funds may be invested;

(B) the maximum allowable stated maturity of any individual investment owned by the entity;

(C) for pooled fund groups, the maximum dollar-weighted average maturity allowed based on the stated maturity date for the portfolio;

(D) methods to monitor the market price of investments acquired with public funds;

(E) a requirement for settlement of all transactions, except investment pool funds and mutual funds, on a delivery versus payment basis; and

(F) procedures to monitor rating changes in investments acquired with public funds and the liquidation of such investments consistent with the provisions of Section 2256.021.

(c) The investment policies may provide that bids for certificates of deposit be solicited:

(1) orally;

(2) in writing;

(3) electronically; or

(4) in any combination of those methods.

(d) As an integral part of an investment policy, the governing body shall adopt a separate written investment strategy for each of the funds or group of funds under its control. Each investment strategy must describe the investment objectives for the particular fund using the following priorities in order of importance:

(1) understanding of the suitability of the investment to the financial requirements of the entity;

(2) preservation and safety of principal;

(3) liquidity;

(4) marketability of the investment if the need arises to liquidate the investment before maturity;

(5) diversification of the investment portfolio; and

(6) yield.

(e) The governing body of an investing entity shall review its investment policy and investment strategies not less than annually. The governing body shall adopt a written instrument by rule, order, ordinance, or resolution stating that it has reviewed the investment policy and investment strategies and that the written instrument so adopted shall record any changes made to either the investment policy or investment strategies.

(f) Each investing entity shall designate, by rule, order, ordinance, or resolution, as appropriate, one or more officers or employees of the state agency, local government, or investment pool as investment officer to be responsible for the investment of its funds consistent with the investment policy adopted by the entity. If the governing body of an investing entity has contracted with another investing entity to invest its funds, the investment officer of the other investing entity is considered to be the investment officer of the first investing entity for purposes of this chapter. Authority granted to a person to invest an entity's funds is effective until rescinded by the investing entity, until the expiration of the officer's term or the termination of the person's employment by the

investing entity, or if an investment management firm, until the expiration of the contract with the investing entity. In the administration of the duties of an investment officer, the person designated as investment officer shall exercise the judgment and care, under prevailing circumstances, that a prudent person would exercise in the management of the person's own affairs, but the governing body of the investing entity retains ultimate responsibility as fiduciaries of the assets of the entity. Unless authorized by law, a person may not deposit, withdraw, transfer, or manage in any other manner the funds of the investing entity.

(g) Subsection (f) does not apply to a state agency, local government, or investment pool for which an officer of the entity is assigned by law the function of investing its funds.

Text of subsec. (h) as amended by Acts 1997, 75th Leg., ch. 685, Sec. 1

(h) An officer or employee of a commission created under Chapter 391, Local Government Code, is ineligible to be an investment officer for the commission under Subsection (f) if the officer or employee is an investment officer designated under Subsection (f) for another local government.

Text of subsec. (h) as amended by Acts 1997, 75th Leg., ch. 1421, Sec. 3

(h) An officer or employee of a commission created under Chapter 391, Local Government Code, is ineligible to be designated as an investment officer under Subsection (f) for any investing entity other than for that commission.

(i) An investment officer of an entity who has a personal business relationship with a business organization offering to engage in an investment transaction with the entity shall file a statement disclosing that personal business interest. An investment officer who is related within the second degree by affinity or consanguinity, as determined under Chapter 573, to an individual seeking to sell an investment to the investment officer's entity shall file a statement disclosing that relationship. A statement required under this subsection must be filed with the Texas Ethics Commission and the governing body of the entity. For purposes of this subsection, an investment officer has a personal business relationship with a business organization if:

(1) the investment officer owns 10 percent or more of the voting stock or shares of the business organization or owns $5,000 or more of the

fair market value of the business organization;

(2) funds received by the investment officer from the business organization exceed 10 percent of the investment officer's gross income for the previous year; or

(3) the investment officer has acquired from the business organization during the previous year investments with a book value of $2,500 or more for the personal account of the investment officer.

(j) The governing body of an investing entity may specify in its investment policy that any investment authorized by this chapter is not suitable.

(k) A written copy of the investment policy shall be presented to any business organization offering to engage in an investment transaction with an investing entity. For purposes of this subsection and Subsection (l), "business organization" means an investment pool or investment management firm under contract with an investing entity to invest or manage the entity's investment portfolio that has accepted authority granted by the entity under the contract to exercise investment discretion in regard to the investing entity's funds. Nothing in this subsection relieves the investing entity of the responsibility for monitoring the investments made by the investing entity to determine that they are in compliance with the investment policy. The qualified representative of the business organization offering to engage in an investment transaction with an investing entity shall execute a written instrument in a form acceptable to the investing entity and the business organization substantially to the effect that the business organization has:

(1) received and reviewed the investment policy of the entity; and

(2) acknowledged that the business organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the entity and the organization that are not authorized by the entity's investment policy, except to the extent that this authorization:

(A) is dependent on an analysis of the makeup of the entity's entire portfolio;

(B) requires an interpretation of subjective investment standards; or

(C) relates to investment transactions of the entity that are not made through accounts or other contractual arrangements over which the business organization has accepted discretionary investment authority.

(l) The investment officer of an entity may not acquire or otherwise obtain any authorized investment described in the investment policy of the investing entity from a business organization that has not delivered to the entity the instrument required by Subsection (k).

(m) An investing entity other than a state agency, in conjunction with its annual financial audit, shall perform a compliance audit of management controls on investments and adherence to the entity's established investment policies.

(n) Except as provided by Subsection (o), at least once every two years a state agency shall arrange for a compliance audit of management controls on investments and adherence to the agency's established investment policies. The compliance audit shall be performed by the agency's internal auditor or by a private auditor employed in the manner provided by Section 321.020. Not later than January 1 of each even-numbered year a state agency shall report the results of the most recent audit performed under this subsection to the state auditor. Subject to a risk assessment and to the legislative audit committee's approval of including a review by the state auditor in the audit plan under Section 321.013, the state auditor may review information provided under this section. If review by the state auditor is approved by the legislative audit committee, the state auditor may, based on its review, require a state agency to also report to the state auditor other information the state auditor determines necessary to assess compliance with laws and policies applicable to state agency investments. A report under this subsection shall be prepared in a manner the state auditor prescribes.

(o) The audit requirements of Subsection (n) do not apply to assets of a state agency that are invested by the comptroller under Section 404.024.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 685, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1421, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 785, Sec. 41, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 1, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 149 (H.B. 1701), Sec. 1, eff. September 1, 2017.

Sec. 2256.006. STANDARD OF CARE. (a) Investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived. Investment of funds shall be governed by the following investment objectives, in order of priority:

(1) preservation and safety of principal;

(2) liquidity; and

(3) yield.

(b) In determining whether an investment officer has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration:

(1) the investment of all funds, or funds under the entity's control, over which the officer had responsibility rather than a consideration as to the prudence of a single investment; and

(2) whether the investment decision was consistent with the written investment policy of the entity.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.007. INVESTMENT TRAINING; STATE AGENCY BOARD MEMBERS AND OFFICERS. (a) Each member of the governing board of a state agency and its investment officer shall attend at least one training session relating to the person's responsibilities under this chapter within six months after taking office or assuming duties.

(b) The Texas Higher Education Coordinating Board shall provide the training under this section.

(c) Training under this section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with this chapter.

(d) An investment officer shall attend a training session not less than once each state fiscal biennium and may receive training from any independent source approved by the governing body of the state agency. The investment officer shall prepare a report on this subchapter and deliver the report to the governing body of the state agency not later than the 180th day after the last day of each regular session of the legislature.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 73, Sec. 1, eff. May 9, 1997; Acts 1997, 75th Leg.,

ch. 1421, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 5, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 2, eff. June 17, 2011.

Sec. 2256.008. INVESTMENT TRAINING; LOCAL GOVERNMENTS.

(a) Except as provided by Subsections (a-1), (b), (b-1), (e), and (f), the treasurer, the chief financial officer if the treasurer is not the chief financial officer, and the investment officer of a local government shall:

(1) attend at least one training session from an independent source approved by the governing body of the local government or a designated investment committee advising the investment officer as provided for in the investment policy of the local government and containing at least 10 hours of instruction relating to the treasurer's or officer's responsibilities under this subchapter within 12 months after taking office or assuming duties; and

(2) attend an investment training session not less than once in a two-year period that begins on the first day of that local government's fiscal year and consists of the two consecutive fiscal years after that date, and receive not less than 10 hours of instruction relating to investment responsibilities under this subchapter from an independent source approved by the governing body of the local government or a designated investment committee advising the investment officer as provided for in the investment policy of the local government.

(a-1) Except as provided by Subsection (g), the treasurer, or the chief financial officer if the treasurer is not the chief financial officer, and the investment officer of a school district or a municipality, in addition to the requirements of Subsection (a)(1), shall attend an investment training session not less than once in a two-year period that begins on the first day of the school district's or municipality's fiscal year and consists of the two consecutive fiscal years after that date, and receive not less than eight hours of instruction relating to investment responsibilities under this subchapter from an independent source approved by the governing body of the school district or municipality, or by a designated investment committee advising the investment officer as provided for in the investment policy of the school district or municipality.

(b) An investing entity created under authority of Section 52(b), Article III, or Section 59, Article XVI, Texas Constitution, that has

contracted with an investment management firm under Section 2256.003(b) and has fewer than five full-time employees or an investing entity that has contracted with another investing entity to invest the entity's funds may satisfy the training requirement provided by Subsection (a)(2) by having an officer of the governing body attend four hours of appropriate instruction in a two-year period that begins on the first day of that local government's fiscal year and consists of the two consecutive fiscal years after that date. The treasurer or chief financial officer of an investing entity created under authority of Section 52(b), Article III, or Section 59, Article XVI, Texas Constitution, and that has fewer than five full-time employees is not required to attend training required by this section unless the person is also the investment officer of the entity.

(b-1) A housing authority created under Chapter 392, Local Government Code, may satisfy the training requirement provided by Subsection (a)(2) by requiring the following person to attend, in each two-year period that begins on the first day of that housing authority's fiscal year and consists of the two consecutive fiscal years after that date, at least five hours of appropriate instruction:

(1) the treasurer, or the chief financial officer if the treasurer is not the chief financial officer, or the investment officer; or

(2) if the authority does not have an officer described by Subdivision (1), another officer of the authority.

(c) Training under this section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with this chapter.

(d) Not later than December 31 each year, each individual, association, business, organization, governmental entity, or other person that provides training under this section shall report to the comptroller a list of the governmental entities for which the person provided required training under this section during that calendar year. An individual's reporting requirements under this subsection are satisfied by a report of the individual's employer or the sponsoring or organizing entity of a training program or seminar.

(e) This section does not apply to a district governed by Chapter 36 or 49, Water Code.

(f) Subsection (a)(2) does not apply to an officer of a municipality or housing authority if the municipality or housing authority:

(1) does not invest municipal or housing authority funds, as applicable; or

(2) only deposits those funds in:

(A) interest-bearing deposit accounts; or

(B) certificates of deposit as authorized by Section 2256.010.

(g) Subsection (a-1) does not apply to the treasurer, chief financial officer, or investment officer of a school district if:

(1) the district:

(A) does not invest district funds; or

(B) only deposits those funds in:

(i) interest-bearing deposit accounts; or

(ii) certificates of deposit as authorized by Section 2256.010; and

(2) the treasurer, chief financial officer, or investment officer annually submits to the agency a sworn affidavit identifying the applicable criteria under Subdivision (1) that apply to the district.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 69, Sec. 4, eff. May 14, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 3, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 222 (H.B. 1148), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1248 (H.B. 870), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 8.015, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1000 (H.B. 1238), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1000 (H.B. 1238), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 477 (H.B. 293), Sec. 1, eff. June 7, 2019.

Sec. 2256.009. AUTHORIZED INVESTMENTS: OBLIGATIONS OF, OR GUARANTEED BY GOVERNMENTAL ENTITIES. (a) Except as provided by Subsection (b), the following are authorized investments under this subchapter:

(1) obligations, including letters of credit, of the United States or its agencies and instrumentalities, including the Federal Home

Loan Banks;

(2) direct obligations of this state or its agencies and instrumentalities;

(3) collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;

(4) other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, this state or the United States or their respective agencies and instrumentalities, including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation or by the explicit full faith and credit of the United States;

(5) obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent;

(6) bonds issued, assumed, or guaranteed by the State of Israel;

(7) interest-bearing banking deposits that are guaranteed or insured by:

(A) the Federal Deposit Insurance Corporation or its successor; or

(B) the National Credit Union Share Insurance Fund or its successor; and

(8) interest-bearing banking deposits other than those described by Subdivision (7) if:

(A) the funds invested in the banking deposits are invested through:

(i) a broker with a main office or branch office in this state that the investing entity selects from a list the governing body or designated investment committee of the entity adopts as required by Section 2256.025; or

(ii) a depository institution with a main office or branch office in this state that the investing entity selects;

(B) the broker or depository institution selected as described by Paragraph (A) arranges for the deposit of the funds in the banking deposits in one or more federally insured depository institutions, regardless of where located, for the investing entity's account;

(C) the full amount of the principal and accrued interest of the banking deposits is insured by the United States or an instrumentality

of the United States; and

(D) the investing entity appoints as the entity's custodian of the banking deposits issued for the entity's account:

(i) the depository institution selected as described by Paragraph (A);

(ii) an entity described by Section 2257.041(d); or

(iii) a clearing broker dealer registered with the Securities and Exchange Commission and operating under Securities and Exchange Commission Rule 15c3-3 (17 C.F.R. Section 240.15c3-3).

(b) The following are not authorized investments under this section:

(1) obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;

(2) obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;

(3) collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and

(4) collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1454, Sec. 7, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 558, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 4, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 773 (H.B. 1003), Sec. 2, eff. June 14, 2017.

Acts 2017, 85th Leg., R.S., Ch. 863 (H.B. 2647), Sec. 1, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 874 (H.B. 2928), Sec. 1, eff. September 1, 2017.

Sec. 2256.010. AUTHORIZED INVESTMENTS: CERTIFICATES OF DEPOSIT AND SHARE CERTIFICATES. (a) A certificate of deposit or share certificate is an authorized investment under this subchapter if the certificate is issued by a depository institution that has its main office or a branch office in this state and is:

(1) guaranteed or insured by the Federal Deposit Insurance Corporation or its successor or the National Credit Union Share Insurance Fund or its successor;

(2) secured by obligations that are described by Section 2256.009(a), including mortgage backed securities directly issued by a federal agency or instrumentality that have a market value of not less than the principal amount of the certificates, but excluding those mortgage backed securities of the nature described by Section 2256.009(b); or

(3) secured in accordance with Chapter 2257 or in any other manner and amount provided by law for deposits of the investing entity.

(b) In addition to the authority to invest funds in certificates of deposit under Subsection (a), an investment in certificates of deposit made in accordance with the following conditions is an authorized investment under this subchapter:

(1) the funds are invested by an investing entity through:

(A) a broker that has its main office or a branch office in this state and is selected from a list adopted by the investing entity as required by Section 2256.025; or

(B) a depository institution that has its main office or a branch office in this state and that is selected by the investing entity;

(2) the broker or the depository institution selected by the investing entity under Subdivision (1) arranges for the deposit of the funds in certificates of deposit in one or more federally insured depository institutions, wherever located, for the account of the investing entity;

(3) the full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States; and

(4) the investing entity appoints the depository institution selected by the investing entity under Subdivision (1), an entity described by Section 2257.041(d), or a clearing broker-dealer registered with the Securities and Exchange Commission and operating pursuant to Securities and Exchange Commission Rule 15c3-3 (17 C.F.R. Section 240.15c3-3) as custodian for the investing entity with respect to the certificates of deposit issued for the account of the investing entity.

Amended by Acts 1995, 74th Leg., ch. 32, Sec. 1, eff. April 28, 1995; Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 6, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 128 (H.B. 256), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 5, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 874 (H.B. 2928), Sec. 2, eff. September 1, 2017.

Sec. 2256.011. AUTHORIZED INVESTMENTS: REPURCHASE AGREEMENTS. (a) A fully collateralized repurchase agreement is an authorized investment under this subchapter if the repurchase agreement:

(1) has a defined termination date;

(2) is secured by a combination of cash and obligations described by Section 2256.009(a)(1) or 2256.013 or, if applicable, Section 2256.0204;

(3) requires the securities being purchased by the entity or cash held by the entity to be pledged to the entity, held in the entity's name, and deposited at the time the investment is made with the entity or with a third party selected and approved by the entity; and

(4) is placed through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in this state.

(b) In this section, "repurchase agreement" means a simultaneous agreement to buy, hold for a specified time, and sell back at a future date obligations described by Section 2256.009(a)(1) or 2256.013 or, if applicable, Section 2256.0204, at a market value at the time the funds are disbursed of not less than the principal amount of the funds disbursed. The term includes a direct security repurchase agreement and a reverse security repurchase agreement.

(c) Notwithstanding any other law, the term of any reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered.

(d) Money received by an entity under the terms of a reverse security repurchase agreement shall be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

(e) Section 1371.059(c) applies to the execution of a repurchase agreement by an investing entity.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 6, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 773 (H.B. 1003), Sec. 3, eff. June 14, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1133 (H.B. 2706), Sec. 1, eff. September 1, 2019.

Sec. 2256.0115. AUTHORIZED INVESTMENTS: SECURITIES LENDING PROGRAM. (a) A securities lending program is an authorized investment under this subchapter if it meets the conditions provided by this section.

(b) To qualify as an authorized investment under this subchapter:

(1) the value of securities loaned under the program must be not less than 100 percent collateralized, including accrued income;

(2) a loan made under the program must allow for termination at any time;

(3) a loan made under the program must be secured by:

(A) pledged securities described by Section 2256.009;

(B) pledged irrevocable letters of credit issued by a bank that is:

(i) organized and existing under the laws of the United States or any other state; and

(ii) continuously rated by at least one nationally recognized investment rating firm at not less than A or its equivalent; or

(C) cash invested in accordance with Section:

(i) 2256.009;

(ii) 2256.013;

(iii) 2256.014; or

(iv) 2256.016;

(4) the terms of a loan made under the program must require that the securities being held as collateral be:

(A) pledged to the investing entity;

(B) held in the investing entity's name; and

(C) deposited at the time the investment is made with the entity or with a third party selected by or approved by the investing entity;

(5) a loan made under the program must be placed through:

(A) a primary government securities dealer, as defined by 5 C.F.R. Section 6801.102(f), as that regulation existed on September 1, 2003; or

(B) a financial institution doing business in this state; and

(6) an agreement to lend securities that is executed under this section must have a term of one year or less.

Added by Acts 2003, 78th Leg., ch. 1227, Sec. 1, eff. Sept. 1, 2003.

Sec. 2256.012. AUTHORIZED INVESTMENTS: BANKER'S ACCEPTANCES. A bankers' acceptance is an authorized investment under this subchapter if the bankers' acceptance:

(1) has a stated maturity of 270 days or fewer from the date of its issuance;

(2) will be, in accordance with its terms, liquidated in full at maturity;

(3) is eligible for collateral for borrowing from a Federal Reserve Bank; and

(4) is accepted by a bank organized and existing under the laws of the United States or any state, if the short-term obligations of the bank, or of a bank holding company of which the bank is the largest subsidiary, are rated not less than A-1 or P-1 or an equivalent rating by at least one nationally recognized credit rating agency.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.013. AUTHORIZED INVESTMENTS: COMMERCIAL PAPER. Commercial paper is an authorized investment under this subchapter if the commercial paper:

(1) has a stated maturity of 365 days or fewer from the date of its issuance; and

(2) is rated not less than A-1 or P-1 or an equivalent rating by at least:

(A) two nationally recognized credit rating agencies; or

(B) one nationally recognized credit rating agency and is fully secured by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any state.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1133 (H.B. 2706), Sec. 2, eff. September 1, 2019.

Sec. 2256.014. AUTHORIZED INVESTMENTS: MUTUAL FUNDS.

(a) A no-load money market mutual fund is an authorized investment under this subchapter if the mutual fund:

(1) is registered with and regulated by the Securities and Exchange Commission;

(2) provides the investing entity with a prospectus and other information required by the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) or the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.); and

(3) complies with federal Securities and Exchange Commission Rule 2a-7 (17 C.F.R. Section 270.2a-7), promulgated under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.).

(b) In addition to a no-load money market mutual fund permitted as an authorized investment in Subsection (a), a no-load mutual fund is an authorized investment under this subchapter if the mutual fund:

(1) is registered with the Securities and Exchange Commission;

(2) has an average weighted maturity of less than two years; and

(3) either:

(A) has a duration of one year or more and is invested exclusively in obligations approved by this subchapter; or

(B) has a duration of less than one year and the investment portfolio is limited to investment grade securities, excluding asset-backed securities.

(c) An entity is not authorized by this section to:

(1) invest in the aggregate more than 15 percent of its monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service, in mutual funds described in Subsection (b);

(2) invest any portion of bond proceeds, reserves and funds held for debt service, in mutual funds described in Subsection (b); or

(3) invest its funds or funds under its control, including bond proceeds and reserves and other funds held for debt service, in any one mutual fund described in Subsection (a) or (b) in an amount that exceeds 10 percent of the total assets of the mutual fund.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 8, eff. Sept. 1, 1999.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 773 (H.B. 1003), Sec. 4, eff. June 14, 2017.

Sec. 2256.015. AUTHORIZED INVESTMENTS: GUARANTEED INVESTMENT CONTRACTS. (a) A guaranteed investment contract is an authorized investment for bond proceeds under this subchapter if the guaranteed investment contract:

(1) has a defined termination date;

(2) is secured by obligations described by Section 2256.009(a)(1), excluding those obligations described by Section 2256.009(b), in an amount at least equal to the amount of bond proceeds invested under the contract; and

(3) is pledged to the entity and deposited with the entity or with a third party selected and approved by the entity.

(b) Bond proceeds, other than bond proceeds representing reserves and funds maintained for debt service purposes, may not be invested under this subchapter in a guaranteed investment contract with a term of longer than five years from the date of issuance of the bonds.

(c) To be eligible as an authorized investment:

(1) the governing body of the entity must specifically authorize guaranteed investment contracts as an eligible investment in the order, ordinance, or resolution authorizing the issuance of bonds;

(2) the entity must receive bids from at least three separate providers with no material financial interest in the bonds from which proceeds were received;

(3) the entity must purchase the highest yielding guaranteed investment contract for which a qualifying bid is received;

(4) the price of the guaranteed investment contract must take into account the reasonably expected drawdown schedule for the bond proceeds to be invested; and

(5) the provider must certify the administrative costs reasonably expected to be paid to third parties in connection with the guaranteed investment contract.

(d) Section 1371.059(c) applies to the execution of a guaranteed investment contract by an investing entity.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 8, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 9, 10, eff. Sept. 1, 1999.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 773 (H.B. 1003), Sec. 5, eff. June 14, 2017.

Sec. 2256.016. AUTHORIZED INVESTMENTS: INVESTMENT POOLS. (a) An entity may invest its funds and funds under its control through an eligible investment pool if the governing body of the entity by rule, order, ordinance, or resolution, as appropriate, authorizes investment in the particular pool. An investment pool shall invest the funds it receives from entities in authorized investments permitted by this subchapter. An investment pool may invest its funds in money market mutual funds to the extent permitted by and consistent with this subchapter and the investment policies and objectives adopted by the investment pool.

(b) To be eligible to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must furnish to the investment officer or other authorized representative of the entity an offering circular or other similar disclosure instrument that contains, at a minimum, the following information:

(1) the types of investments in which money is allowed to be invested;

(2) the maximum average dollar-weighted maturity allowed, based on the stated maturity date, of the pool;

(3) the maximum stated maturity date any investment security within the portfolio has;

(4) the objectives of the pool;

(5) the size of the pool;

(6) the names of the members of the advisory board of the pool and the dates their terms expire;

(7) the custodian bank that will safekeep the pool's assets;

(8) whether the intent of the pool is to maintain a net asset value of one dollar and the risk of market price fluctuation;

(9) whether the only source of payment is the assets of the pool at market value or whether there is a secondary source of payment, such as insurance or guarantees, and a description of the secondary source of payment;

(10) the name and address of the independent auditor of the pool;

(11) the requirements to be satisfied for an entity to deposit funds in and withdraw funds from the pool and any deadlines or other operating policies required for the entity to invest funds in and withdraw funds from the pool;

(12) the performance history of the pool, including yield, average dollar-weighted maturities, and expense ratios; and

(13) the pool's policy regarding holding deposits in cash.

(c) To maintain eligibility to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must furnish to the investment officer or other authorized representative of the entity:

(1) investment transaction confirmations; and

(2) a monthly report that contains, at a minimum, the following information:

(A) the types and percentage breakdown of securities in which the pool is invested;

(B) the current average dollar-weighted maturity, based on the stated maturity date, of the pool;

(C) the current percentage of the pool's portfolio in investments that have stated maturities of more than one year;

(D) the book value versus the market value of the pool's portfolio, using amortized cost valuation;

(E) the size of the pool;

(F) the number of participants in the pool;

(G) the custodian bank that is safekeeping the assets of the pool;

(H) a listing of daily transaction activity of the entity participating in the pool;

(I) the yield and expense ratio of the pool, including a statement regarding how yield is calculated;

(J) the portfolio managers of the pool; and

(K) any changes or addenda to the offering circular.

(d) An entity by contract may delegate to an investment pool the authority to hold legal title as custodian of investments purchased with its local funds.

(e) In this section, for purposes of an investment pool for which a $1.00 net asset value is maintained, "yield" shall be calculated in accordance with regulations governing the registration of open-end management investment companies under the Investment Company Act of 1940, as promulgated from time to time by the federal Securities and Exchange Commission.

(f) To be eligible to receive funds from and invest funds on behalf of an entity under this chapter:

(1) a public funds investment pool that uses amortized cost or fair value accounting must mark its portfolio to market daily; and

(2) if the investment pool uses amortized cost:

(A) the investment pool must, to the extent reasonably possible, stabilize at a $1.00 net asset value, when rounded and expressed

to two decimal places;

(B) the governing body of the investment pool must, if the ratio of the market value of the portfolio divided by the book value of the portfolio is less than 0.995 or greater than 1.005, take action as the body determines necessary to eliminate or reduce to the extent reasonably practicable any dilution or unfair result to existing participants, including a sale of portfolio holdings to attempt to maintain the ratio between 0.995 and 1.005; and

(C) the investment pool must, in addition to the requirements of its investment policy and any other forms of reporting, report yield to its investors in accordance with regulations of the federal Securities and Exchange Commission applicable to reporting by money market funds.

(g) To be eligible to receive funds from and invest funds on behalf of an entity under this chapter, a public funds investment pool must have an advisory board composed:

(1) equally of participants in the pool and other persons who do not have a business relationship with the pool and are qualified to advise the pool, for a public funds investment pool created under Chapter 791 and managed by a state agency; or

(2) of participants in the pool and other persons who do not have a business relationship with the pool and are qualified to advise the pool, for other investment pools.

(h) To maintain eligibility to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must be continuously rated no lower than AAA or AAA-m or at an equivalent rating by at least one nationally recognized rating service.

(i) If the investment pool operates an Internet website, the information in a disclosure instrument or report described in Subsections (b), (c)(2), and (f) must be posted on the website.

(j) To maintain eligibility to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must make available to the entity an annual audited financial statement of the investment pool in which the entity has funds invested.

(k) If an investment pool offers fee breakpoints based on fund balances invested, the investment pool in advertising investment rates must include either all levels of return based on the breakpoints provided or state the lowest possible level of return based on the smallest level of funds invested.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 9, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 7, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 773 (H.B. 1003), Sec. 6, eff. June 14, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1133 (H.B. 2706), Sec. 3, eff. September 1, 2019.

Sec. 2256.017. EXISTING INVESTMENTS. Except as provided by Chapter 2270, an entity is not required to liquidate investments that were authorized investments at the time of purchase.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.46(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1421, Sec. 10, eff. Sept. 1, 1997.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 2, eff. May 23, 2017.

Sec. 2256.019. RATING OF CERTAIN INVESTMENT POOLS. A public funds investment pool must be continuously rated no lower than AAA or AAA-m or at an equivalent rating by at least one nationally recognized rating service.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1421, Sec. 11, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 8, eff. June 17, 2011.

Sec. 2256.020. AUTHORIZED INVESTMENTS: INSTITUTIONS OF HIGHER EDUCATION. In addition to the authorized investments permitted by this subchapter, an institution of higher education may purchase, sell, and invest its funds and funds under its control in the following:

(1) cash management and fixed income funds sponsored by organizations exempt from federal income taxation under Section 501(f), Internal Revenue Code of 1986 (26 U.S.C. Section 501(f));

(2) negotiable certificates of deposit issued by a bank that has a certificate of deposit rating of at least 1 or the equivalent by a nationally recognized credit rating agency or that is associated with a

holding company having a commercial paper rating of at least A-1, P-1, or the equivalent by a nationally recognized credit rating agency; and

(3) corporate bonds, debentures, or similar debt obligations rated by a nationally recognized investment rating firm in one of the two highest long-term rating categories, without regard to gradations within those categories.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.0201. AUTHORIZED INVESTMENTS; MUNICIPAL UTILITY. (a) A municipality that owns a municipal electric utility that is engaged in the distribution and sale of electric energy or natural gas to the public may enter into a hedging contract and related security and insurance agreements in relation to fuel oil, natural gas, coal, nuclear fuel, and electric energy to protect against loss due to price fluctuations. A hedging transaction must comply with the regulations of the Commodity Futures Trading Commission and the Securities and Exchange Commission. If there is a conflict between the municipal charter of the municipality and this chapter, this chapter prevails.

(b) A payment by a municipally owned electric or gas utility under a hedging contract or related agreement in relation to fuel supplies or fuel reserves is a fuel expense, and the utility may credit any amounts it receives under the contract or agreement against fuel expenses.

(c) The governing body of a municipally owned electric or gas utility or the body vested with power to manage and operate the municipally owned electric or gas utility may set policy regarding hedging transactions.

(d) In this section, "hedging" means the buying and selling of fuel oil, natural gas, coal, nuclear fuel, and electric energy futures or options or similar contracts on those commodities and related transportation costs as a protection against loss due to price fluctuation.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 48, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 7 (S.B. 495), Sec. 1, eff. April 13, 2007.

Sec. 2256.0202. AUTHORIZED INVESTMENTS: MUNICIPAL FUNDS FROM MANAGEMENT AND DEVELOPMENT OF MINERAL RIGHTS. (a) In addition to other investments authorized under this subchapter, a municipality may invest funds received by the municipality from a lease or contract for the management and development of land owned by the municipality and leased for

oil, gas, or other mineral development in any investment authorized to be made by a trustee under Subtitle B, Title 9, Property Code (Texas Trust Code).

(b) Funds invested by a municipality under this section shall be segregated and accounted for separately from other funds of the municipality.

Added by Acts 2009, 81st Leg., R.S., Ch. 1371 (S.B. 894), Sec. 1, eff. September 1, 2009.

Sec. 2256.0203. AUTHORIZED INVESTMENTS: PORTS AND NAVIGATION DISTRICTS. (a) In this section, "district" means a navigation district organized under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(b) In addition to the authorized investments permitted by this subchapter, a port or district may purchase, sell, and invest its funds and funds under its control in negotiable certificates of deposit issued by a bank that has a certificate of deposit rating of at least 1 or the equivalent by a nationally recognized credit rating agency or that is associated with a holding company having a commercial paper rating of at least A-1, P-1, or the equivalent by a nationally recognized credit rating agency.

Added by Acts 2011, 82nd Leg., R.S., Ch. 804 (H.B. 2346), Sec. 1, eff. September 1, 2011.

Sec. 2256.0204. AUTHORIZED INVESTMENTS: INDEPENDENT SCHOOL DISTRICTS. (a) In this section, "corporate bond" means a senior secured debt obligation issued by a domestic business entity and rated not lower than "AA-" or the equivalent by a nationally recognized investment rating firm. The term does not include a debt obligation that:

(1) on conversion, would result in the holder becoming a stockholder or shareholder in the entity, or any affiliate or subsidiary of the entity, that issued the debt obligation; or

(2) is an unsecured debt obligation.

(b) This section applies only to an independent school district that qualifies as an issuer as defined by Section 1371.001.

(c) In addition to authorized investments permitted by this subchapter, an independent school district subject to this section may purchase, sell, and invest its funds and funds under its control in corporate bonds that, at the time of purchase, are rated by a nationally

recognized investment rating firm "AA-" or the equivalent and have a stated final maturity that is not later than the third anniversary of the date the corporate bonds were purchased.

(d) An independent school district subject to this section is not authorized by this section to:

(1) invest in the aggregate more than 15 percent of its monthly average fund balance, excluding bond proceeds, reserves, and other funds held for the payment of debt service, in corporate bonds; or

(2) invest more than 25 percent of the funds invested in corporate bonds in any one domestic business entity, including subsidiaries and affiliates of the entity.

(e) An independent school district subject to this section may purchase, sell, and invest its funds and funds under its control in corporate bonds if the governing body of the district:

(1) amends its investment policy to authorize corporate bonds as an eligible investment;

(2) adopts procedures to provide for:

(A) monitoring rating changes in corporate bonds acquired with public funds; and

(B) liquidating the investment in corporate bonds; and

(3) identifies the funds eligible to be invested in corporate bonds.

(f) The investment officer of an independent school district, acting on behalf of the district, shall sell corporate bonds in which the district has invested its funds not later than the seventh day after the date a nationally recognized investment rating firm:

(1) issues a release that places the corporate bonds or the domestic business entity that issued the corporate bonds on negative credit watch or the equivalent, if the corporate bonds are rated "AA-" or the equivalent at the time the release is issued; or

(2) changes the rating on the corporate bonds to a rating lower than "AA-" or the equivalent.

(g) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1133 (H.B. 2706), Sec. 5, eff. September 1, 2019.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1347 (S.B. 1543), Sec. 1, eff. June 17, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1133 (H.B. 2706), Sec. 5, eff. September 1, 2019.

Sec. 2256.0205. AUTHORIZED INVESTMENTS; DECOMMISSIONING TRUST. (a) In this section:

(1) "Decommissioning trust" means a trust created to provide the Nuclear Regulatory Commission assurance that funds will be available for decommissioning purposes as required under 10 C.F.R. Part 50 or other similar regulation.

(2) "Funds" includes any money held in a decommissioning trust regardless of whether the money is considered to be public funds under this subchapter.

(b) In addition to other investments authorized under this subchapter, a municipality that owns a municipal electric utility that is engaged in the distribution and sale of electric energy or natural gas to the public may invest funds held in a decommissioning trust in any investment authorized by Subtitle B, Title 9, Property Code.

Added by Acts 2005, 79th Leg., Ch. 121 (S.B. 1464), Sec. 1, eff. September 1, 2005.

Sec. 2256.0206. AUTHORIZED INVESTMENTS: HEDGING TRANSACTIONS. (a) In this section:

(1) "Eligible entity" means a political subdivision that has:

(A) a principal amount of at least $250 million in:

(i) outstanding long-term indebtedness;

(ii) long-term indebtedness proposed to be issued; or

(iii) a combination of outstanding long-term indebtedness and long-term indebtedness proposed to be issued; and

(B) outstanding long-term indebtedness that is rated in one of the four highest rating categories for long-term debt instruments by a nationally recognized rating agency for municipal securities, without regard to the effect of any credit agreement or other form of credit enhancement entered into in connection with the obligation.

(2) "Eligible project" has the meaning assigned by Section 1371.001.

(3) "Hedging" means acting to protect against economic loss due to price fluctuation of a commodity or related investment by entering into an offsetting position or using a financial agreement or producer price agreement in a correlated security, index, or other commodity.

(b) This section prevails to the extent of any conflict between this section and:

(1) another law; or

(2) an eligible entity's municipal charter, if applicable.

(c) The governing body of an eligible entity shall establish the entity's policy regarding hedging transactions.

(d) An eligible entity may enter into hedging transactions, including hedging contracts, and related security, credit, and insurance agreements in connection with commodities used by an eligible entity in the entity's general operations, with the acquisition or construction of a capital project, or with an eligible project. A hedging transaction must comply with the regulations of the federal Commodity Futures Trading Commission and the federal Securities and Exchange Commission.

(e) An eligible entity may pledge as security for and to the payment of a hedging contract or a security, credit, or insurance agreement any general or special revenues or funds the entity is authorized by law to pledge to the payment of any other obligation.

(f) Section 1371.059(c) applies to the execution by an eligible entity of a hedging contract and any related security, credit, or insurance agreement.

(g) An eligible entity may credit any amount the entity receives under a hedging contract against expenses associated with a commodity purchase.

(h) An eligible entity's cost of or payment under a hedging contract or agreement may be considered:

(1) an operation and maintenance expense of the eligible entity;

(2) an acquisition expense of the eligible entity;

(3) a project cost of an eligible project; or

(4) a construction expense of the eligible entity.

Added by Acts 2017, 85th Leg., R.S., Ch. 773 (H.B. 1003), Sec. 7, eff. June 14, 2017.

Sec. 2256.0207. AUTHORIZED INVESTMENTS: PUBLIC JUNIOR COLLEGE DISTRICT FUNDS FROM MANAGEMENT AND DEVELOPMENT OF MINERAL RIGHTS. (a) In addition to other investments authorized under this subchapter, the governing board of a public junior college district may invest funds received by the district from a lease or contract for the management and development of land owned by the district and leased for oil, gas, or other mineral development in any investment authorized to be made by a trustee under Subtitle B, Title 9, Property Code (Texas Trust Code).

(b) Funds invested by the governing board of a public junior college district under this section shall be segregated and accounted for separately from other funds of the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 344 (H.B. 1472), Sec. 1, eff. September 1, 2017.
Redesignated from Government Code, Section 2256.0206 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(34), eff. September 1, 2019.

Sec. 2256.0208. LOCAL GOVERNMENT INVESTMENT OF BOND PROCEEDS AND PLEDGED REVENUE. (a) In this section, "pledged revenue" means money pledged to the payment of or as security for:

(1) bonds or other indebtedness issued by a local government;

(2) obligations under a lease, installment sale, or other agreement of a local government; or

(3) certificates of participation in a debt or obligation described by Subdivision (1) or (2).

(b) The investment officer of a local government may invest bond proceeds or pledged revenue only to the extent permitted by this chapter, in accordance with:

(1) statutory provisions governing the debt issuance or the agreement, as applicable; and

(2) the local government's investment policy regarding the debt issuance or the agreement, as applicable.

Added by Acts 2019, 86th Leg., R.S., Ch. 1133 (H.B. 2706), Sec. 4, eff. September 1, 2019.

Sec. 2256.021. EFFECT OF LOSS OF REQUIRED RATING. An investment that requires a minimum rating under this subchapter does not qualify as an authorized investment during the period the investment does not have the minimum rating. An entity shall take all prudent measures that are consistent with its investment policy to liquidate an investment that does not have the minimum rating.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.022. EXPANSION OF INVESTMENT AUTHORITY. Expansion of investment authority granted by this chapter shall require a risk assessment by the state auditor or performed at the direction of the state

auditor, subject to the legislative audit committee's approval of including the review in the audit plan under Section 321.013.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 785, Sec. 42, eff. Sept. 1, 2003.

Sec. 2256.023. INTERNAL MANAGEMENT REPORTS. (a) Not less than quarterly, the investment officer shall prepare and submit to the governing body of the entity a written report of investment transactions for all funds covered by this chapter for the preceding reporting period.

(b) The report must:

(1) describe in detail the investment position of the entity on the date of the report;

(2) be prepared jointly by all investment officers of the entity;

(3) be signed by each investment officer of the entity;

(4) contain a summary statement of each pooled fund group that states the:

(A) beginning market value for the reporting period;

(B) ending market value for the period; and

(C) fully accrued interest for the reporting period;

(5) state the book value and market value of each separately invested asset at the end of the reporting period by the type of asset and fund type invested;

(6) state the maturity date of each separately invested asset that has a maturity date;

(7) state the account or fund or pooled group fund in the state agency or local government for which each individual investment was acquired; and

(8) state the compliance of the investment portfolio of the state agency or local government as it relates to:

(A) the investment strategy expressed in the agency's or local government's investment policy; and

(B) relevant provisions of this chapter.

(c) The report shall be presented not less than quarterly to the governing body and the chief executive officer of the entity within a reasonable time after the end of the period.

(d) If an entity invests in other than money market mutual funds, investment pools or accounts offered by its depository bank in the form of certificates of deposit, or money market accounts or similar accounts, the reports prepared by the investment officers under this section shall be

formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the governing body by that auditor.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1421, Sec. 12, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 9, eff. June 17, 2011.

Sec. 2256.024. SUBCHAPTER CUMULATIVE. (a) The authority granted by this subchapter is in addition to that granted by other law. Except as provided by Subsection (b) and Section 2256.017, this subchapter does not:

(1) prohibit an investment specifically authorized by other law; or

(2) authorize an investment specifically prohibited by other law.

(b) Except with respect to those investing entities described in Subsection (c), a security described in Section 2256.009(b) is not an authorized investment for a state agency, a local government, or another investing entity, notwithstanding any other provision of this chapter or other law to the contrary.

(c) Mortgage pass-through certificates and individual mortgage loans that may constitute an investment described in Section 2256.009(b) are authorized investments with respect to the housing bond programs operated by:

(1) the Texas Department of Housing and Community Affairs or a nonprofit corporation created to act on its behalf;

(2) an entity created under Chapter 392, Local Government Code; or

(3) an entity created under Chapter 394, Local Government Code.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 3, eff. May 23, 2017.

Sec. 2256.025. SELECTION OF AUTHORIZED BROKERS. The governing body of an entity subject to this subchapter or the designated investment committee of the entity shall, at least annually, review, revise, and adopt a list of qualified brokers that are authorized to engage in investment transactions with the entity.

Added by Acts 1997, 75th Leg., ch. 1421, Sec. 13, eff. Sept. 1, 1997.

Sec. 2256.026. STATUTORY COMPLIANCE. All investments made by entities must comply with this subchapter and all federal, state, and local statutes, rules, or regulations.

Added by Acts 1997, 75th Leg., ch. 1421, Sec. 13, eff. Sept. 1, 1997.

SUBCHAPTER B. MISCELLANEOUS PROVISIONS

Sec. 2256.051. ELECTRONIC FUNDS TRANSFER. Any local government may use electronic means to transfer or invest all funds collected or controlled by the local government.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.052. PRIVATE AUDITOR. Notwithstanding any other law, a state agency shall employ a private auditor if authorized by the legislative audit committee either on the committee's initiative or on request of the governing body of the agency.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.053. PAYMENT FOR SECURITIES PURCHASED BY STATE. The comptroller or the disbursing officer of an agency that has the power to invest assets directly may pay for authorized securities purchased from or through a member in good standing of the National Association of Securities Dealers or from or through a national or state bank on receiving an invoice from the seller of the securities showing that the securities have been purchased by the board or agency and that the amount to be paid for the securities is just, due, and unpaid. A purchase of securities may not be made at a price that exceeds the existing market value of the securities.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 8.67, eff. Sept. 1, 1997.

Sec. 2256.054. DELIVERY OF SECURITIES PURCHASED BY STATE. A security purchased under this chapter may be delivered to the comptroller, a bank, or the board or agency investing its funds. The delivery shall be made

under normal and recognized practices in the securities and banking industries, including the book entry procedure of the Federal Reserve Bank.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 8.68, eff. Sept. 1, 1997.

Sec. 2256.055. DEPOSIT OF SECURITIES PURCHASED BY STATE. At the direction of the comptroller or the agency, a security purchased under this chapter may be deposited in trust with a bank or federal reserve bank or branch designated by the comptroller, whether in or outside the state. The deposit shall be held in the entity's name as evidenced by a trust receipt of the bank with which the securities are deposited.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 8.69, eff. Sept. 1, 1997.

Attachment A - Policy Certification

PROPOSED

Government Treasurers' Organization of Texas

August 29, 2019

Tammy Jacobs
City of Galveston
823 Rosenberg
Galveston, TX 77550

Dear Ms. Jacobs:

On behalf of the Investment Policy Review Committee, I am pleased to inform you that the Government Treasurers' Organization of Texas (GTOT) has awarded the **Certificate of Distinction** to the City of Galveston for its Investment Policy.

Members of the Review Committee congratulate the City for its commitment to maintaining a comprehensive written investment policy that meets the criteria set forth in the GTOT Investment Policy Review Checklist.

Congratulations once again on an excellent policy and thank you for participating in our certification program. Your certificate is being mailed under separate cover and is good for a two-year period ending August 31, 2021.

Sincerely,

Myra Conklin

Myra Conklin, Chairperson
GTOT Investment Policy Review Committee

1155 Union Circle #305129
Denton, TX 76203-5017

www.gtot.net
940-369-7843 940-369-8771 fax

An Affiliate of the Association of Public Treasurers United States and Canada

GTOT
Government Treasurers' Organization of Texas
Est. 1987

Government Treasurers' Organization of Texas

Certification of Investment Policy

Presented to the

City of Galveston

for developing an investment policy that meets the requirements of the Public Funds Investment Act and the standards for prudent public investing established by the Government Treasurers' Organization of Texas.

Government Treasurers' Organization of Texas
President

Investment Policy Review Committee
Chairperson

For the two-year period ending August 31, 2021

PROPOSED

City of Galveston

Finance Department
PO Box 779 | Galveston, TX 77553-0779
| 409-797-3562

July 23, 2020

To: Brian Maxwell, City Manager
Hon. Mayor and City Council Members

From: Michael Loftin, Assistant City Manager Finance

RE: Consider for action adopting the 2020 Proposed Investment Policy.

I. Background

The Investment Policy governs the investment management process with respect to investments managed by the Finance Department of the City of Galveston for the General Fund, Special Revenue Funds, Debt Service Funds, Capital Project Funds and Enterprise Funds. The Policy shall comply with and incorporate the Public Funds Investment Act, (the "Act"), Chapter 2256, Texas Government Code and the Public Funds Collateral Act, Chapter 2257, Texas Government Code. All participants in the investment process shall act responsibly as custodians of the public trust.

The Investment Policy is based on standards of prudent money management. Effective cash flow management and cash investment practices are recognized as essential to good fiscal management and have been incorporated into the investment program.

II. Current Situation

The City Council of the City of Galveston last reviewed and adopted the Investment Policy and its investment strategies on December 12, 2019. The proposed 2020 policy remains substantially the same with the following modification.

a. Added language in Section IV. Suitable and Authorized Investments on page 7 of the policy to clarify the table on page 9. The paragraph reads "The City's ownership share of any public funds investment pool shall be limited to 10% of the overall pool balance."

The City of Galveston Finance, Fiscal Affairs and Investment Committee reviewed the policy in a meeting held on June 7, 2020. The committee approved a recommendation for City Council to accept the proposed 2020 Investment Policy.

III. Issues

It is the policy of the City of Galveston to review and adopt the Investment Policy not less than annually.

IV. Recommendation

Review and adopt the proposed 2020 Investment Policy.

V. Fiscal Impact Report

None.

City of Galveston

FINANCE DEPARTMENT

Michael W. Loftin, Assistant City Manager
MLoftin@GalvestonTx.gov | 409.797.3562 | www.galvestontx.gov

June 25, 2020

To: Brian Maxwell, City Manager
Hon. Mayor and City Council Members

From: Michael W. Loftin

RE: Consider action for continuing with the professional services of David Taussig & Associates relating to the administration of Bayside at Waterman's Public Improvement District (PID). Authorizing the City Manager to execute the contract upon final approval by the City Attorney.

I. Background

On May 22, 2014 the City Council adopted a resolution accepting a petition for the creation of the Bayside at Waterman's Public Improvement District within the City of Galveston pursuant to Chapter 372 of the Texas Local Government Code.

On December 11, 2014 the City Council approved and authorized the issuance and sale of the City of Galveston Special Assessment Revenue Bonds, Series 2014 (Bayside at Waterman's PID).

A line item was included in the issuance of the bonds for proceeds to fund a third party administrator to assist the City and perform various tasks associated compliance requirements.

On March 12, 2015 City Council approved a contract agreement with David Taussig & Associates as the third party administrator to render professional services including administrative assessment services, delinquent assessment installment management, calculation of lump sum assessment payoff amounts, disclosure and dissemination agent services and arbitrage/rebate calculations. Due to the nature and extent of the project, the term of the agreement was for the life of the bond.

II. Current Situation

David Taussig & Associates prepare the annual Service and Assessment Plan updates, send out annual assessment notices and prepare the financial continuing disclosures. The cost of performing these tasks are covered in an administrative line item reserved from the collection of the assessments. The City needs a resource to continue performing services through the end of the bond payment period which is 2044.

Michael W. Loftin, Assistant City Manager
MLoftin@GalvestonTx.gov | 409.797.3562 | www.galvestontx.gov

III. Issues

1. **Cost:** The annual cost to continue with the professional services of David Taussig & Associates is $24,000 plus related expenses not to exceed $1,500. The annual professional service fee is paid from the Administrative Reserves which are allocated from the collection of assessments and therefore is no direct cost to the City.
2. **Timing:** The City Charter allows for a contractual agreement term up to five years. The David Taussig & Associates contract reached the five year limit on May 8, 2020. An additional five year extension will become effective upon City Council's approval authorizing the City Manager to execute the contract upon final approval by the City Attorney.
3. **Impact or ramifications:** If the contract with David Taussig & Associates is discontinued, the City will need to evaluate the alternatives to accomplishing the tasks required for compliance.
4. **Departmental issues:** None.

IV. Alternatives

A. City Council approves extending the contract with David Taussig & Associates for an additional five years.

B. City Council does not extend the contract with David Taussig & Associates and evaluate other alternatives.

V. Recommendation

Concur with Alternative A and approve the contract extension with David Taussig & Associates for an additional five years upon execution by the City Manager.

www.FinanceDTA.com

AGREEMENT FOR CONSULTING SERVICES

CITY OF GALVESTON

BAYSIDE AT WATERMAN'S PUBLIC IMPROVEMENT DISTRICT

PUBLIC IMPROVEMENT DISTRICT ADMINISTRATION

June 25, 2020

Public Finance
Public-Private Partnerships
Development Economics
Clean Energy Bonds

Newport Beach | San Jose | San Francisco | Riverside
Dallas | Houston | Raleigh | Tampa

www.FinanceDTA.com

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT is made and entered into this ____ day of June of 2020, by and between the City of Galveston at 823 Rosenberg Galveston, TX 77550, herein called "City" or "Client," and DTA at 8117 Preston Road, Suite 300, Dallas, TX 75225, herein after called "DTA" or "Consultant." The Client and the Consultant in consideration of the mutual promises and conditions herein contained agree as follows.

ARTICLE I
DISCLOSURES AND TERM OF CONTRACT

Section 1.1 As of the date of this Agreement, there are no actual or potential conflicts of interest that DTA is aware of that might impair its ability to render unbiased and competent advice or to fulfill its fiduciary duty. If DTA becomes aware of any potential conflict of interest that arise after this disclosure, DTA will disclose the detailed information in writing to the Client in a timely manner.

Section 1.2 DTA, a Securities and Exchange Commission ("SEC") and MSRB registered firm, does not have any legal events and disciplinary history on its Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation. The Client may electronically access DTA's most recent Form MA and each most recent Form MA-I filed with the Commission at the following website:

https://www.sec.gov/edgar/searchedgar/companysearch.html

Section 1.3 This Agreement shall become effective on the date stated above and will continue in effect until the earlier of (i) that day when the services provided for herein have been performed or (ii) until terminated as provided in Article 6 below, with a maximum of a 5-year term.

ARTICLE II
SERVICES TO BE PERFORMED BY CONSULTANT

Section 2.1 Consultant agrees to perform the professional services for the Client for the Bayside at Waterman's Public Improvement District, herein after called "Project" in accordance with the applicable professional standard of care and to deliver the work products to the Client as described in the Scope of Work statement attached as Exhibit "A" hereto. Such professional services and work products, as from time to time modified in accordance with Section 2.3 hereof, are collectively referred to as the "Consulting Services."

Section 2.2 Instruments of Service. All computer software (including without limitation financial models, compilations of formulas and spreadsheet models), inventions, designs, programs, improvements, processes and methods (collectively, the "Proprietary Models"), reports, drawings, specifications, computer files, field data, notes and other documents and instruments prepared by Consultant are Instruments of Service of Consultant and shall remain the property of Consultant. Consultant shall likewise retain all common law, statutory and other reserved rights, including the copyright thereto. Client acknowledges and agrees that the consideration paid by Client herein only entitles Client to a license to use the hard copy or electronically transmitted reports generated pursuant to the Consulting Services and that any Proprietary Model that Consultant uses to generate such reports is owned by, or is duly licensed from a third party to Consultant and is not being provided to Client hereunder. The reports and models used to generate such reports are for use on this Project only. The Client shall not reuse or make any modification to the hard copy or electronically transmitted reports generated pursuant to the Consulting Services without the prior written authorization of the Consultant. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its shareholders, officers, directors, employees and subconsultants (collectively, Consultant's) against any damages, liabilities or costs, including reasonable attorneys' par fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized use, reuse or modification of the hard copy or electronically transmitted reports generated pursuant to the Consulting Services or any of Consultant's Instruments of Service, including models, by the Client or any person or entity that acquires or obtains the reports from or through the Client without the written authorization of the Consultant. Client acknowledges that Consultant may have used reports and analyses that Consultant authored for other clients as base works or templates for the reports and analyses prepared for Client pursuant to this Agreement, and Client acknowledges and agrees that Consultant has the right to use the reports and analyses that it authors pursuant to this Agreement as base works or templates for reports and analyses that Consultant authors for Consultant's other clients, provided, however that Consultant shall not use any confidential information provided by Client in such future reports and analyses. Client further acknowledges and agrees that Consultant has spent substantial time and effort in collection and compiling data and information (the "Data Compilations") in connection with the Consulting Services and that such Data Compilations may be used by Consultant for its own purposes, including, without limitation, sale or distribution to third parties; provided, however, that Consultant will not sell or distribute any of Client's confidential information that may be contained in such Data Compilations, unless such confidential information is used only on an aggregated and anonymous basis.

Section 2.3 Any proposed changes in the Consulting Services hereunder shall be submitted to the other party hereto, and any such changes agreed to by the parties shall be reflected in an amendment to Exhibit "A" in accordance with Section 7.2 hereto.

Section 2.4 Nothing in this Agreement shall give the Consultant possession of authority with respect to any Client decision beyond the rendition of information, advice, recommendation, or counsel.

ARTICLE III
COMPENSATION

Section 3.1 Client agrees to pay Consultant for its Consulting Services in accordance with this Agreement, a professional fee computed according to the Professional Fee Schedule attached as Exhibit "B" hereto and incorporated herein by reference (the "**Fee Schedule**"). Client acknowledges and agrees that portions of Consultant's professional fees and expenses may have been incurred by Consultant prior to the execution of this Agreement (the "**Pre-Agreement Fees**") and Client agrees to pay such Pre-Agreement Fees in accordance with this Agreement.

The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed **$24,000 annually, plus related expenses not to exceed $1,500 each year**. Invoices are submitted by the Consultant each month (not necessarily falling on the first or last day of the month). Amounts indicated on invoices are due and payable immediately upon receipt. The Client's account will be considered delinquent if the Consultant does not receive full payment within 30 days after the invoice date. All invoices shall be submitted to the following address:

City of Galveston
Attn: Accounts Payable
PO Box 779
Galveston, TX 77553
(Via E-mail to AccountsPayable@GalvestonTX.gov)

Section 3.2 The Client shall not be responsible for payment to the Consultant for any additional services or expenses not specifically included in Exhibit "A," except upon execution of an amendment to this Agreement in writing by both parties. Parties shall attempt to resolve any payment disputes within 60 days, or the matter may be submitted to mediation.

Section 3.3 On or about the first two weeks of each month during which Consulting Services are rendered hereunder, Consultant shall present to Client an invoice covering the current Consulting Services performed and the reimbursable expenses incurred pursuant to this Agreement and exhibits thereto. Such invoices shall be paid by Client within thirty (30) days of the date of each invoice. A 1.2% charge may be imposed against accounts which are not paid within 30 days of the date of each invoice.

Section 3.4 The maximum total fee amount set forth in Exhibit "B" may be increased as a result of any expansion of the Consulting Services to be rendered hereunder pursuant to Section 2.3 or as provided in Exhibit "A" hereto.

Section 3.5 Records of the Consultant's costs relating to (i) Consulting Services performed under this Agreement and (ii) reimbursable expenses shall be kept and be

available to the Client or to Client's authorized representative at reasonable intervals during normal business hours.

ARTICLE IV
OTHER OBLIGATIONS OF CONSULTANT

Section 4.1 Consultant agrees to perform the Consulting Services in accordance with Exhibit "A" and the applicable standard of care. Should any errors caused by Consultant's negligence be found in such services or products, Consultant will correct them at no additional charge by revising the work products called for in Exhibit "A" to eliminate the errors.

Section 4.2 Consultant will supply all tools and instrumentalities required to perform the Consulting Services under the Agreement.

Section 4.3 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Consultant without the prior written consent of Client. However, Consultant may subcontract portions of the work to be performed hereunder to other persons or concerns provided Consultant notifies Client of the name and address of said proposed subcontractor and Client either consents or fails to respond to notification with respect to the use of any particular proposed subcontractor.

Section 4.4 In the performance of its Consulting Service hereunder, Consultant is, and shall be deemed to be for all purposes, an independent contractor (and not an agent, officer, employee or representative of Client) under any and all laws, whether existing or future. Consultant is not authorized to make any representation, contract, or commitment on behalf of Client.

ARTICLE V
OTHER OBLIGATIONS OF CLIENT

Section 5.1 The Client shall provide full information in a timely manner regarding requirements for and limitations on the Project. Client agrees to comply with all reasonable requests of Consultant and provide access to all documents reasonably necessary to the performance of Consultant's duties under this Agreement with the exception of those documents which Exhibit "A" calls upon the Consultant to prepare.

Section 5.2 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Client without the prior written consent of Consultant.

Section 5.3 The Client shall provide prompt written notice to the Consultant if the Client becomes aware of any fault or defect in the Project, including any errors, omissions, or inconsistencies in the Consultant's Instruments of Service.

Section 5.4 Client, public agencies, landowners, consultants and other parties dealing with Client or involved in the subject development project referred to in Exhibit "A" will be furnishing to Consultant various data, reports, studies, computer printouts and other information and representations as to the facts involved in the project which Client understands Consultant will be using and relying upon in preparing the reports, studies, computer printouts and other work products called for by Exhibit "A." Consultant shall not be obligated to establish or verify the accuracy of the information furnished by or on behalf of Client, nor shall Consultant be responsible for the impact or effect on its work products of the information furnished by or on behalf of Client, in the event that such information is in error and therefore introduces error into Consultant's work products.

Section 5.5 In the event that court appearances, testimony or depositions are required of Consultant by Client in connection with the services rendered hereunder, Client shall compensate Consultant at a rate of $400 per hour and shall reimburse Consultant for out-of-pocket expenses on a cost basis.

ARTICLE VI
TERMINATION OF AGREEMENT

Section 6.1 Either party may terminate or suspend this Agreement upon thirty (30) days written notice. Unless terminated as provided herein, this Agreement shall continue in force until the Consulting Services set forth in Exhibit "A" have been fully and completely performed and all proper invoices have been rendered and paid.

Section 6.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party at its option may terminate this Agreement by giving written notification to the defaulting party. Such termination shall be effective upon receipt by the defaulting party, provided that the defaulting party shall be allowed ten (10) days in which to cure any default following receipt of notice of same.

Section 6.3 In the event of any termination that is not the fault of the Consultant, the Client shall pay the Consultant, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by the Consultant in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

Section 6.4 Suspension and Termination for Non-Payment. (i) In addition to any other provisions in this Agreement regarding breach of the Agreement, if the Client fails to make payments when due, the Consultant may suspend performance of services upon ten (10) calendar days' notice to the Client. The Consultant shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Upon payment in full by the Client, the Consultant shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for the Consultant to resume performance. (ii) If the Client fails to make payment to the Consultant in accordance with the payment terms herein, and/or Client has failed to cure its breach or default following a suspension of services as set forth above, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by the Consultant upon seven (7) days written notice to the Client. (iii) Payment of invoices shall not be subject to any discounts or set-offs by the Client, unless agreed to in writing by the Consultant. Payment to the Consultant for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.

Section 6.5 The covenants contained in Sections 3.1, 3.2, 4.4, 5.3, 5.4, and all of Article VII shall survive the termination of this Agreement.

ARTICLE VII
GENERAL PROVISIONS

Section 7.1 Any notices to be given hereunder by either party to the other may be affected either by personal delivery in writing or by mail. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change the address by written notice in accordance with the first sentence of this Section 7.1. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of two (2) days after mailing.

Section 7.2 This Agreement and exhibits hereto supersede any and all agreements, either oral or written, between the parties hereto with respect to the rendering of service by Consultant for Client and contains all of the covenants and agreements between the parties with respect to the rendering of such services. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement (including any exhibit hereto) will be effective if it is in writing and signed by the party against whom it is sought to be enforced.

Section 7.3 If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Section 7.4 The prevailing party in any arbitration or legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorneys' fees. The non-prevailing party shall be liable, to the extent allowable under law, for all fees and expenses of the arbitrator(s) and all costs of the arbitration.

Section 7.5 This Agreement will be governed by and construed in accordance with the laws of the State of Texas.

Section 7.6 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder.

Section 7.7 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Consultant nor the Client, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other for, or shall make, any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.

Section 7.8 It is intended by the parties to this Agreement that the Consultant's services in connection with the Project shall not subject the Consultant's individual shareholders, officers, directors, members, managers or employees to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, Client agrees that as Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Consultant and not against any of the individual shareholders, officers, directors, members, managers or employees.

Section 7.9 Limitation of Liability – for available insurance: In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant to the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the

Consultant to the Client shall not exceed the sum of insurance coverage available at the time of settlement or judgment. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, except for Consultant's willful misconduct or unless otherwise prohibited by law.

IN WITNESS WHEREOF, this Agreement has been executed on the date and year first above written.

CONSULTANT:	CLIENT:
David Taussig and Associates, Inc. d/b/a DTA	**City of Galveston**
By: Nathan Perez, Managing Director	By:
Date: June 9, 2020	Date:

www.FinanceDTA.com

SCOPE OF WORK

DTA will provide Administrative Assessment, Delinquent Assessment Management, Collection, Lump Sum Assessment Payment, and Continuing Disclosure Services for the City of Galveston Bayside at Waterman's Public Improvement District (the "Bayside at Waterman's PID"). The following tasks are included:

A Administrative Assessment Services

1. District Tax Parcel Database

   DTA will establish and maintain a database of all County TPNs within the PID. The TPN database will include the lot type, original lien amount, outstanding balance, installment payment status, and record owner information for each TPN to the extent readily available from the County.

   a. Plats of Subdivision and Assessment Apportionments

      DTA will calculate the assessment amount to be apportioned to each lot within all approved preliminary plats, prepare an amended assessment roll, develop assessment installment payment schedules for the new lots, and prepare assessment payoff amounts in accordance with Section VI of the Service and Assessment Plan (the "SAP"). DTA will distribute these calculations to the City and developer for review and use in any notices recorded in connection with the recordation of the final plat. DTA will coordinate with the City and/or developer to obtain preliminary plats following their approval and final plats after their recordation.

   b. Tax Parcel Research

      DTA will coordinate with the County to determine TPNs assigned to and obtain new TPN maps for any parcels created by the filing of a final plat with the County. DTA will obtain the appraisal roll following its certification to determine which TPNs will be valid for the coming tax year.

   c. Record Owner Research

      DTA will import record owner information from the County appraisal roll into the TPN database.

2. District Budget and Assessment Installment Calculation

   a. District Budget

      DTA will determine the annual district budget by identifying scheduled interest and principal payments on the bonds, prepayment and delinquency reserve requirements, administrative expenses and collection costs, investment earnings, and funds available to be applied as a credit as discussed in Task A.2.c below.

b. Assessment Installments

DTA will calculate the assessment installment amounts, including the 50 basis points of additional interest in excess of interest paid on the bonds authorized pursuant to 372.018 of the Public Improvement District Act (the "PID Act") for each Tax Parcel Number ("TPN") in accordance with the Bayside at Waterman's Public Improvement District SAP. DTA will distribute these calculations to the City for review prior to the final approval by ordinance.

c. Assessment Installment Credits

DTA will approve a year-end reconciliation of the prior year's budgeted and actual revenues and expenditures in order to determine the unencumbered funds, if any, that may be applied as a credit against the assessment installment payments. DTA will reconcile assessment installments billed, collected, and deposited with the trustee; partial or full lump sum payments of the assessments; paid and pending payments of interest and principal on the bonds; collection costs incurred and paid; and accrued, anticipated, and deposited investment earnings. Typically, the district budget and corresponding annual assessment installments are adjusted for funds attributable to reserve fund earnings, budgeted but unrealized collection expenses, and revenues attributable to interest and penalties received from the payment of delinquent assessment installments.

3. Updated Service and Assessment Plan

Pursuant to Sections 372.013 and 372.014 of the PID Act, DTA will prepare an annual update of the SAP.

a. Service Plan Update

The Service Plan update shall indicate any change in the amount and timing of bonds issued or anticipated to be issued, as well as the improvements to be funded from each bond issue. The current estimated cost and completion status for each such improvement shall also be indicated.

b. Assessment Plan Update

The Assessment Plan update shall include a discussion of any changes to the assessment amounts and an updated Assessment Roll with all current County TPNs. The Assessment Plan update will also include a discussion of the assessment allocation methodology.

4. Assessment Installment Billing

a. Coordinate Assessment Billing with the County

This task involves coordinating with the County on the billing of the annual assessment installments along with regular property taxes. DTA will transmit

the annual assessment installments to the County in hard copy and/or electronic format as specified and follow up to ensure the assessment installment amounts are properly enrolled and billed.

b. District Assessment Billing Without the County's Assistance

In the event that the County is unwilling to include the Bayside at Waterman's PID assessment installments on the regular property tax bill, DTA will coordinate with the City to determine direct assessment billing procedures, schedule, and bill format. DTA will prepare and mail assessments to the owner of record, as indicated by the County.

c. Administrative Review of Assessment Installments

DTA will promptly review any written notice submitted by an owner of a TPN claiming that a calculation error has been made in the amount of the assessment installment and, if necessary, meet with the property owner, consider written and oral evidence regarding the alleged error, and decide whether, in fact, such an error occurred. If it is determined that an error did occur and that an adjustment to the assessment installment should be made, DTA will determine the method and means for making the appropriate adjustment.

5. Trust Account Analysis and Reconciliation

DTA will maintain its own database of trust account activity to facilitate indenture compliance review the reconciliation of actual to budgeted revenues and expenditures. Findings of non-compliance and/or inconsistencies with the trust indenture will be communicated to the City and trustee.

6. Property Owner Inquiries

This task involves responding to telephone calls from prospective or current property owners or other interest parties who have questions regarding the PID and the assessment installments. This task includes brief written responses to property owners, as necessary. DTA may be reached by property owners or other interested parties by using its toll-free number.

B Delinquent Assessment Installment Management

1. Assessment Installment Payment Monitoring

DTA will prepare a report of the paid and unpaid assessment installments, along with penalties and interest due, for distribution to the appropriate parties based upon the collection data/reports provided by the County, as applicable. The initial report will be prepared following each February 1 and then updated monthly or quarterly as needed.

2. Delinquent Assessment Installment Follow-Up

   DTA will coordinate with the City to establish follow-up procedures for delinquent assessment installments . DTA anticipates that such follow-up procedures may include the preparation and mailing of periodic delinquent assessment installment notices.

3. Foreclosure Assistance

   This task involves assistance with the foreclosure of the assessment installments that remain delinquent after the follow-up process. DTA assumes that at this stage in the collection process, the City will retain legal counsel to pursue foreclosure. Therefore, DTA's services under this subtask will consist of the preparation of materials detailing the delinquent assessment installments, penalties, and interest. DTA will apprise the trustee and the City of special circumstances regarding the collection of delinquent assessment installments, such as bankruptcy filings by and/or foreclosure actions commenced in connection with property owners that are delinquent in the payment of assessment installments.

C Lump Sum Payment of Assessments ("Prepayment")

This task entails the calculation of assessment payoff amounts, coordination with the trustee, and associated recordkeeping in the event any assessment is paid off in lump sum. The following subtasks are included:

1. Payment in Lump Sum

   Upon request, DTA will calculate the amount needed to pay off the assessment pursuant to the formula set forth in the Service and Assessment Plan. The assessment payoff amount, including payoff instructions, will be mailed to the appropriate party.

2. Bond Redemption

   DTA will prepare a letter to the trustee indicating the principal amount and maturity date of the bonds to be redeemed and the sources and application of funds for the bond redemption. DTA will indicate (i) the portion of the assessment payoff amount to be applied to the redemption of bond principal, (ii) the portion of the assessment payoff amount to be applied to interest on the bonds, (iii) the amount of the reserve fund credit, if any, to be applied to the redemption of bond principal, and (iv) the amount of prepayment account funds to be applied to pay for interest from the date of the payoff to the bond redemption date.

3. Release of Lien

   DTA will coordinate with the City in the preparation and recordation of the release of lien with respect to each TPN for which a lump sum payment in full has been made.

D Disclosure and Dissemination Agent Services

Disclosure and dissemination agent services will include the tasks below.

1. Annual "Issuer" Report

   DTA will compile, assemble, and file an Annual Report containing the annual financial information specified in the Continuing Disclosure Agreement for the bonds with the Municipal Securities Rulemaking Boards' Electronic Municipal Market Access website.

2. Significant Event Notices

   As DTA is made aware, it will also file notice of the occurrence of "Significant Events" as described in the Continuing Disclosure Agreement with the Municipal Securities Rulemaking Boards' Electronic Municipal Market Access website.

E Arbitrage/Rebate Calculation

This task encompasses those activities associated with computing the rebate liability of the bonds and begins with a review of key bond documents, such as the Nonarbitrage Certificate, IRS Information Form 8038 or 8038-G, and Limited Offering Memorandum. Assuming that a rebate determination is required, the yield on the bond issue is calculated and then an accounting of the investment and expenditure of all proceeds is prepared. Finally, the excess investment earnings (in other words, the rebate liability), taking into account the credits and rounding allowed by the regulations, is determined. Additional steps may be required if rebate payments are past due (either to provide for, or to avoid, penalties for late payment) or if the City is entitled to recover prior overpayments of rebate.

Annual and 5-year rebate determinations will be prepared and presented in a readable and fully documented report. The step-by-step report will explain how the rebate determination was reached and identifies the amount that is subject to rebate. The rebate determination follows the actuarial method prescribed by the arbitrage rebate rules. Each report includes a legal opinion that the report complies with the requirements imposed by the statute and regulations. The required federal tax form to accompany any payment to be sent to the IRS will also be prepared. When needed, yield restriction computations, including computations of yield reduction payments, will be prepared, As needed, guidance regarding needed information and maintaining appropriate records will be provided.

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FEE SCHEDULE

DTA's proposed budget per the scope of work identified in this proposal shall not exceed $24,000 annually, plus related expenses not to exceed $1,500 each year.

PID administration services include **database development** (for the calculation of assessments and active parcel tracking), **SAP updates**, **assessment enrollment**, **property owner support** (via e-mail and a toll-free telephone number), and **continuing disclosure reporting**. Further work at that point would require additional fees.

Should the City request that DTA coordinate and distribute personalized handbills for the collection of assessments, fees for such services would be charged on a time and materials basis at the hourly rates listed below.

Table 1: DTA's Hourly Rates

Labor Category	Labor Rate
President/Managing Director	$290/Hour
Senior Vice President	$260/Hour
Vice President	$240/Hour
Manager	$190/Hour
Senior Associate	$180/Hour
Associate II	$165/Hour
Associate I	$150/Hour
Research Associate II	$140/Hour
Research Associate I	$125/Hour

A General Terms and Conditions

On or about the first two weeks of each month during which Consulting Services are rendered hereunder, Consultant shall present to Client an invoice covering the current Consulting Services performed and the reimbursable expenses incurred pursuant to this Agreement and exhibits thereto. Such invoices shall be paid by Client within 30 days of the date of each invoice. A 1.2% charge may be imposed against accounts which are not paid within 30 days of the date of each invoice.

At the City's request, services in addition to those identified in the scope of work may be provided, such as PID feasibility, PID formation, and Tax Increment Reinvestment Zone ("TIRZ") consulting services. Unless otherwise agreed to by the City and DTA, any additional tasks assigned by the City shall be charged at the hourly rates listed in Table 1. Our hourly rates are subject to a cost-of-living and/or other appropriate increase every 12 months thereafter. DTA generally reviews its professional fees and hourly rates annually and, if appropriate, adjusts them to reflect increases in seniority, experience, cost-of-living, and other relevant factors. DTA shall notify the City in advance of any such increase.

City of Galveston

P. O. Box 779 / Galveston, Texas 77553-0779

Staff Report

June 25, 2020

Industrial Development Corporation

Subject: Consideration of an Economic Development Agreement between the Industrial Development Corporation, and the City of Galveston to fund a match for the replacement of the Pelican Island Bridge.

I. Background

A. May 4, 2018 the Galveston County Commissioners Court approved a resolution supporting the "continued pursuit and development" of a 75' high conventional bridge.

B. As part of the 2018 HGAC Call for Projects, a portion of the funding for the Pelican Island Bridge Replacement was approved as a project.

C. The Industrial Development Corp. (IDC) approved an agreement to fund a match for the replacement of the Pelican Island Bridge on March 3, 2020.

D. The public hearing was held on June 9, 2020.

II. Current Situation

A. The Industrial Development Corporation is requested to consider approval of an Economic Development Agreement between the Industrial Development Corporation and the City of Galveston to fund a match for the replacement of the Pelican Island Bridge.
B. The money will be programmed as a match for fund the replacement of the bridge, other funding sources are to include; Galveston County, HGAC Call for Projects, TxDOT, etc.

III. Recommendation

Approve the Economic Development Agreement between the IDC and the City of Galveston.

IV. Fiscal Impact Report

Staff	Garrett McLeod
Funding Source	4B IDC Funds Economic Development Silo Infrastructure Silo

Cost	$4,500,000 Economic Development Silo over five years $500,000 Infrastructure Silo over five years

V. **Economic Impact**

Enhances property values, safety, and aesthetics on the largest undeveloped heavy industrial zoned property within the City of Galveston. The replacement of the bridge further positions Pelican Island for future development.

Respectfully Submitted,

_____

Garrett McLeod
Economic Dev. Coordinator

RESOLUTION NO. 20-001
PELICAN ISLAND BRIDGE

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT CORPORATION OF THE CITY OF GALVESTON APPROVING AS A PROJECT OF THE CORPORATION, EXPENDITURES REQUIRED OR SUITABLE FOR INFRASTRUCTURE NECESSARY TO PROMOTE OR DEVELOP NEW OR EXPANDED BUSINESS ENTERPRISES; EXPENDITURES REQUIRED OR SUITABLE FOR INFRASTRUCTURE NECESSARY TO PROMOTE OR DEVELOP NEW OR EXPANDED BUSINESS ENTERPRISES TO CREATE OR RETAIN PRIMARY JOBS AND EXENDITURES SUITABLE FOR THE DEVELOPMENT OF PORT RELATED FACILITIES TO SUPPORT WATERBORNE COMMERCE.

* * * * * * * *

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT CORPORATION OF THE CITY OF GALVESTON:

Section 1. The Board of Directors of the Industrial Development Corporation of the City of Galveston ("IDC") hereby creates the "Pelican Island Bridge" project. The "Pelican Island Bridge" project is described in Exhibit A attached hereto and incorporated herein.

Section 2. The IDC finds that the expenditures for the "Pelican Island Bridge" project are required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises including, but not limited to the businesses, improvements, land and facilities listed in Section 501.103 of the Texas Local Government Code.

Section 3. The IDC finds that the expenditures necessary for the "Pelican Island Bridge" project are suitable or required to promote or develop new or expanded business enterprises that create or retain primary jobs as set forth in Section 505.152 of the Texas Local Government Code.

Section 4. The IDC finds that the expenditures necessary for the "Pelican Island Bridge" project are required or suitable for port related facilities to support waterborne commerce as set forth in Section 504.103 of the Texas Local Government Code.

Section 5. The IDC does hereby find that the estimated cost for the proposed "Pelican Island Bridge" project is **$5,000,000.00 plus legal and administrative costs** paid from the Industrial Development Corporation of the City of Galveston.

Section 6. A public hearing before the Industrial Development Corporation of the City of Galveston is hereby called regarding the proposed Project. Said public hearing shall be held at 9:00 o'clock a.m., on June 9, 2020, at City Hall 823 Rosenberg Room 204 Galveston, Texas.

Section 6. A notice of such public hearing to be published in a newspaper of general circulation within the City of Galveston, Texas, in the form attached hereto as Exhibit "B"

PASSED, APPROVED, AND RESOLVED on this __ day of _____ 2020.

_____
James D. Yarbrough, President
Board of Directors

ATTEST:

_____
Brandon Cook, Secretary
Board of Directors

EXHIBIT A
PELICAN ISLAND BRIDGE PROJECT DESCRIPTION

EXHIBIT B

INDUSTRIAL DEVELOPMENT CORPORATION OF THE CITY OF GALVESTON
NOTICE OF PROJECT AND NOTICE OF PUBLIC HEARING
PELICAN ISLAND BRIDGE

The Industrial Development Corporation of the City of Galveston hereby gives notice pursuant to Section 505.159 of the Texas Local Government Code that the IDC has adopted, as a project the following:

> The Pelican Island Bridge project. The estimated cost for the proposed Pelican Island Bridge project is **$5,000,000.00 plus legal and administrative costs** paid from the Industrial Development Corporation of the City of Galveston.

The Corporation hereby gives notice that it will conduct a public hearing to solicit citizen input on the proposed Project. The public hearing shall be held at 9:00 o'clock a.m., on June 9, 2020, at City Hall 823 Rosenberg Room 204 Galveston, Texas. Interested citizens are invited to attend and will be given an opportunity to be heard.

ECONOMIC DEVELOPMENT GRANT AGREEMENT
BETWEEN THE CITY OF GALVESTON
AND
THE INDUSTRIAL DEVELOPMENT CORPORATION
OF THE CITY OF GALVESTON, TEXAS

This Agreement is entered into this _____ day of _____, 2020, by and between the City of Galveston, Texas (the "CITY") and the Industrial Development Corporation of the City of Galveston, Texas (the "IDC"), a Texas nonprofit corporation established pursuant to the Development Corporation Act of 1979 and now codified in Chapters 501, 502, 504 and 505 of the Texas Local Government Code (hereafter referred to as the "Act").

WITNESSETH:

WHEREAS, pursuant to the Act, the IDC is authorized to provide funding relating to projects that the IDC finds to be encompassed within the definition of "Projects," as that word is defined by Chapters 501, 504 and 505 of the Act; and

WHEREAS, the CITY has applied for a grant from the IDC for the construction of the Pelican Island Bridge; and

WHEREAS, the IDC has determined that such a grant complies with the Act and is in keeping with the mission of IDC.

NOW, THEREFORE, for and in consideration of the recitals set forth above and the promises made herein, the CITY and the IDC agree as follows:

ARTICLE I.
IDC'S OBLIGATIONS

A. Subject to the terms and conditions set forth in Article II hereof, upon execution of this Agreement, the IDC will provide a grant to the CITY as follows: The IDC agrees to pay to the CITY a total of Five Million Dollars (**$5,000,000.00)** for the following activity to be performed within the City of Galveston, Texas: **The construction of the Pelican Island Bridge.**

The IDC will set aside funds in each annual budget for the construction of the Pelican Island Bridge until the IDC determines that sufficient funds are available to design and complete construction of the Pelican Island Bridge. The IDC will determine when sufficient funds are available to design and complete construction of the Pelican Island Bridge. The design and construction of the Pelican Island Bridge will not begin until the IDC has given written notice to the CITY that there are funds available to design and complete construction of the Pelican Island Bridge and has issued a start work order.

B. The IDC will request a full accounting of the funds expended on the "Pelican Island Bridge" project no later than sixty (60) days after completion of "Pelican Island Bridge" project. If, after completion of the "Pelican Island Bridge" project there are funds remaining and/or savings from "Pelican Island Bridge" project and received from IDC, CITY shall return such funds to the IDC to be returned to the budget line item from which the funds were taken.

ARTICLE II.
CITY'S OBLIGATIONS

A. Following the execution of this Agreement, the CITY shall begin efforts to implement the activities described in Article I of this Agreement. The design and construction of the Pelican Island Bridge project shall be completed within _____ months of the date the IDC has given written notice to the CITY that there are funds available to design and complete construction of the Pelican Island Bridge and has issued a start work order.

B. The CITY's failure to complete the construction of the Pelican Island Bridge project within _____ months of the date the IDC has given written notice to the CITY that there are funds available to design and complete construction of the Pelican Island Bridge and has issued a start work order will constitute a breach of the Agreement and result in immediate termination of this agreement with no opportunity to cure. The CITY understands and agrees that, in the event termination of this Agreement by CITY, or pursuant to Article V of this Agreement, the CITY shall reimburse the IDC the full amount of money paid by the IDC to the CITY.

C. In accordance with Chapter 2264 of the Texas Government Code, the CITY agrees not to knowingly employ any undocumented workers. During the term of this Agreement, the CITY shall notify the IDC of any complaint brought against CITY alleging that it has employed undocumented workers. If the CITY, or any branch, division or department of the CITY is convicted of a violation under 8 U.S.C. Section 1324a (f), the total amount of economic development grants it has received, together with interest at the rate of five percent (5%), shall be repaid by the CITY to the IDC not later than the one hundred twentieth (120th) day after the date the IDC becomes aware of and notifies the CITY of the violation. The CITY shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by any person with whom the CITY contracts. The CITY shall reimburse the IDC the required amount within thirty (30) days of the termination of this Agreement.

D. The CITY shall keep and maintain complete and accurate records relating to its hiring and employment of persons, which is separate and identifiable from its other records, and shall make such records available for not less than three (3) years following

termination of this Agreement. The IDC and its representatives shall be entitled to inspect said records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice to the CITY. The CITY's failure to comply with this provision will constitute a breach of the Agreement.

E. Upon completion of the "Pelican Island Bridge" project, but no later than sixty (60) days after, CITY will furnish the IDC with a full accounting of the funds expended on the "Pelican Island Bridge" project. If, after completion of the "Pelican Island Bridge" project there are funds remaining and/or savings from the "Pelican Island Bridge" project, CITY shall return such funds to the IDC within thirty (30) days of IDC's acceptance of the full accounting. At the conclusion of the "Pelican Island Bridge" project the CITY will provide the IDC with an accounting of all monies spent on the "Pelican Island Bridge" project. All monies not spent directly on the "Pelican Island Bridge" project shall be returned to IDC. CITY will make an accounting of all expenses expended pursuant to this Agreement.

F. In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this contract on behalf of company verifies that the company does not boycott Israel and will not boycott Israel during the term of this contract.

ARTICLE III.
CITY'S REPRESENTATIONS AND WARRANTIES

A. The CITY represents and warrants, as of the date hereof, that:

1. The CITY is a local governmental entity of the State of Texas;

2. execution of this Agreement has been duly authorized by the CITY and this Agreement is not in contravention of the CITY's governing authority or any agreement or instrument to which the CITY is a party or by which it may be bound as of the date hereof;

3. no litigation or governmental proceeding is pending or, threatened against or affecting the CITY that may result in a material adverse change in the CITY's business, properties, or operations sufficient to jeopardize the CITY's legal existence; and

4. No written application, written statement, or correspondence submitted by the CITY to the IDC in connection with this Agreement, or in connection with any transaction contemplated hereby contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading. The CITY agrees that, upon execution of this Agreement, its application shall be attached and incorporated for all purposes.

B. Except as expressly set forth in this Article III, the CITY makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

ARTICLE IV.
IDC'S REPRESENTATIONS AND WARRANTIES

A. The IDC represents and warrants, as of the date hereof, that:

1. The IDC, to the best of the knowledge of its Board of Directors, is legally authorized to enter into this Agreement by virtue of the statute under which it is governed and by the authorities and powers vested in it as a corporation duly and properly organized under the Act;

2. The execution of this Agreement has been duly authorized by the IDC;

3. No litigation or governmental proceeding is pending, or, to the knowledge of any of the IDC's officers, threatened against or affecting the IDC, that may result in the IDC's inability to meet its obligations under this Agreement; and

4. The IDC has no reasonable basis for believing that it has or will have incurred debts beyond its ability to pay as such debts mature, including, but not limited to, the obligations set forth in this Agreement.

B. Except as expressly set forth in this Article IV, the IDC makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

ARTICLE V.
REMEDIES

A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement by any party hereto, **or any successor** to such party, such defaulting or breaching party shall, upon written notice from the other party, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice. In the event that remedial action is not taken or not diligently pursued and the default or breach shall not be cured or remedied within a reasonable time (but in no event later than ninety (90) days from the date of notification of such breach), the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, seeking specific performance and/or injunctive relief.

B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article V, the non-breaching party shall have the sole right and discretion to either terminate this Agreement and/or pursue any and all remedies that may be provided by law and this Agreement. Each party acknowledges and agrees that the CITY is not entitled to recover any amounts in excess of the grant money contracted for under this Agreement and that the IDC, pursuant to a breach and failure to cure by the CITY in accordance with this Agreement, is entitled to recover attorney fees, collection costs, and any other costs due to its pursuit of repayment and remedies under this Agreement.

C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights will not, so long as the breach or default by another party is continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor will any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

ARTICLE VI.
GENERAL PROVISIONS

A. Severability. The provisions of this Agreement are severable and, if for any reason, a provision of this Agreement is determined to be invalid by a court having competent jurisdiction over the subject matter of the invalid provision, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

B. Amendment. This Agreement may be amended only by written amendment signed by both parties hereto.

C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement shall be made or performed in Galveston County, Texas. Venue will lie in Galveston County, Texas; and this Agreement is governed by and construed in accordance with the laws of the State of Texas without respect to the conflict of laws thereof.

D. Notices. All notices given with respect to this Agreement must be in writing and will be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested, postage prepaid, on the fifth (5th) business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation), provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:

For the IDC: President
City of Galveston, Texas
Industrial Development Corporation
P.O. Box 779
Galveston, Texas 77553
Facsimile: (409) 797-3521

City Manager
City of Galveston
P. O. Box 779
Galveston, Texas 77553
Facsimile: (409) 797-3521

With a copy to: City Attorney
City of Galveston
P. O. Box 779
Galveston, Texas 77553
Facsimile: (409) 797-3531

For the CITY:

City Manager
City of Galveston
P. O. Box 779
Galveston, Texas 77553
Facsimile: (409) 797-3521

With a copy to: City Attorney
City of Galveston
P. O. Box 779
Galveston, Texas 77553
Facsimile: (409) 797-3531

E. Assignment. This Agreement may not be assigned by either party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a party consents to any valid assignment of this Agreement by the other party hereto, the assigning party will be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement.

F. Parties in Interest. Nothing in this Agreement shall entitle any party other than the CITY or the IDC to any claim, cause of action, remedy or right of any.

G. Term. The term of this Agreement (the "Term") will commence upon execution of this Agreement and shall terminate on the earlier occurrence of: (i) completion of the construction of the Pelican Island Bridge; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Article V hereof; (iv) at the CITY's sole and absolute discretion upon the CITY's return of all grant funding to the IDC that it has received under this Agreement; or (v) upon the CITY's repayment of all monies that are demanded by the IDC and are in fact required to be repaid by the CITY under Article II hereof. Upon termination of this Agreement, all rights, duties and obligations of any kind under this Agreement shall automatically expire and terminate and be of no other force and effect.

H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement will therefore, be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arm's length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

I. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.

J. Survival of Terms. All rights, duties, liabilities, and obligations accrued prior to termination will survive termination.

K Public Information. Information provided by or on behalf of the CITY under or pursuant to this Agreement that the CITY considers as proprietary shall be

marked as such and will be maintained as confidential to the extent allowed by law. If proprietary financial or trade secret information is requested under the Texas Public Information Act, the IDC shall follow the standards set out in the Act and under the Texas Attorney General's procedures for such requests, and the CITY shall be responsible for defending the confidentiality of such information. Other records and information provided to the IDC and its representatives to verify compliance with this Agreement shall be available for public inspection.

L. Counterparts. This Agreement may be executed in several identical counterparts by the parties and each counterpart, when so executed and delivered, shall constitute an original instrument.

M. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

EXECUTED AND EFFECTIVE, as of the date first indicated above, by the CITY OF GALVESTON, TEXAS, INDUSTRIAL DEVELOPMENT CORPORATION, by and through its Board President, duly authorized to execute same by action of its Board; and by the CITY OF GALVESTON, TEXAS acting through its duly authorized official.

CITY OF GALVESTON, TEXAS, INDUSTRIAL DEVELOPMENT CORPORATION

By: _____
Name: James D. Yarbrough
Title: President, Board of Directors
Date: _____

ATTEST:

By: _____
Name: Brandon Cook
Title: Secretary, Board of Directors

APPROVED AS TO FORM:

By: _____
Name: Arthur L. Pertile, III
Title Counsel for the Corporation

CITY OF GALVESTON, TEXAS

By: _____
Name: James D. Yarbrough
Title: Mayor
Date: _____

ATTEST:

By: _____
Name: Janelle Williams
Title: City Secretary

APPROVED AS TO FORM:

By: _____
Name: Donald Glywasky
Title: City Attorney

EXHIBIT "A"
APPLICATION FOR FUNDING

City of Galveston

OFFICE OF THE CITY SECRETARY
PO Box 779 | Galveston, TX 77553-0779
citysecretary@galvestontx.gov | 409-797-3510

June 17, 2020

To: City Council
Brian Maxwell, City Manager

From: Janelle Williams, City Secretary

RE: Consider for approval a contract for election services between the City of Galveston and Galveston County for the purpose of holding a City Election on November 3, 2020 and a possible Runoff Election on December 15, 2020.

I. Background

A. The City of Galveston contracts with Galveston County for election services pursuant to Texas Election Code, Chapter 31.

B. The City Council should consider calling a general election on November 3, 2020 for the purposes of electing a Mayor and Council Members for Districts 1 through 6. The City's Election normally takes place in May, however this year's Election was postponed due to the COVID-19 pandemic.

II. Current Situation

A. Approval of the election services contract is needed in order to move forward with the November 3, 2020 election.

B. The deadline to submit an approved and executed contract to Galveston County is on or before July 31, 2020.

III. Issues

1. Cost – estimated cost for the general election is $50,000, and $20,000 to $50,000 for a runoff election. If other entities on the Island hold a November election, the costs would be split among the all entities resulting in a much lower cost to the City.
2. Timing – approval is needed prior to January 31, 2020.

V. Recommendation

Staff's recommendation is approval of the contract between the City and the County for election services.

VI. Fiscal Impact Report

Requested by:	Janelle Williams, City Secretary
Funding Source:	Election Services Account
One-time cost:	(1) $50,000.00 for general election (2) $20,000 to $50,000 for runoff election

Respectfully Submitted,
Janelle Williams
City Secretary-

Contract for Election Services

Local Entity Countywide Vote Center Elections

This Contract is made and entered into this____ day of _____, 20___ by and between Hon. Dwight D. Sullivan, County Clerk and County Election Officer for Galveston County (herein known as "Galveston County") and _____ on behalf of _____ ("Entity").

This Contract is being entered into pursuant to Texas Election Code, Chapter 31, Subchapter D for the purpose of ensuring that Galveston County and the Entity understand the tasks each is to perform in connection with the following election and any subsequent runoff election, to-wit:

Purpose of Election: _____

November 3, 2020	**December 15, 2020**
Election Date	Runoff Election Date

Early Voting will be held on **Oct. 19-23, 2020** from 8 a.m. to 5 p.m. and **Oct. 26-30, 2020** with the polls being open from 7 a.m. to 7 p.m. **Saturday, Oct. 24, 2020** from 7 a.m. to 7 p.m. and **Sunday, Oct. 25, 2020** from 1 p.m. to 6 p.m. On Election Day the polls will be open from 7 a.m. to 7 p.m.

1. **Duties and Services of Galveston County.** Galveston County shall be responsible for performing the following duties and furnishing the following services and equipment in connection with the election and any subsequent runoff election.

1.1. Program, or arrange to have programmed, the ballot.
[Cost: Based upon the number of contests on the ballot. See the Fee Schedule]

1.2. Arrange to have published the legal notices of the first test of the electronic tabulating equipment as provided in Texas Election Code §127.096 and conduct all required tests of the electronic tabulating equipment under Texas Election Code §§127.096-127.098 and §§129.021-129.023. The first test shall be conducted at least five days prior to the election. In addition, it will be performed during normal business hours and open to the public.
[Cost: The cost for publishing the notice will be split equally between all the entities involved. See the Fee Schedule]

1.3. Provide technical and equipment support for the electronic poll books, voting machines and equipment being provided to the Entity. In the event there is an equipment failure Galveston County shall try to remedy the problem over the phone. If unable to do so, will dispatch to locations within Galveston County the appropriate technical support personnel and equipment to correct the failure.
[Cost: Included in the 10% election fee]

1.4. On behalf of the Entity, obtain Official Voter Registration lists from the Voter Registrar to be used during Early Voting and on Election Day.
[See Section 2.3 below]

1.5. Provide Ballot by Mail services for the Entity.
[See the Fee Schedule]

1.6. Hire Judges, Alternate Judges, and clerks to serve as election workers at the various polling locations. Workers will be paid in accordance with Section 3 of this contract and will be required to complete election training (at the discretion of the Elections Division) as a prerequisite for serving. Workers will be paid $40 for attending training.

1.7. Select the countywide vote center polling locations in coordination with the Entity and with the approval of Galveston County Commissioners' Court.

1.8. Provide the Entity ****and where possible the candidates running for office,*** a sample ballot for them to proof and approve or provide corrections.
[See sections 2.6 and 2.7 for related information]

****The Entity will be responsible for providing Galveston County with the email and contact information for each candidate who will be on the ballot.***

For additional Duties of Galveston County see section **(5) Fee Schedule of Galveston County** below.

2. Duties and Services of the Entity. The Entity will be responsible for performing the duties and services set forth in this section and will consummate this contract **on or before <u>July 31, 2020</u>**. Contracts submitted after this date will require a $500 fee ***which will be non-refundable regardless of whether the Entity cancels its election.***

2.1. Prepare and submit any required submissions to the U.S. Department of Justice under the Federal Voting Rights Act of 1965 for its election and runoff election.

2.2. Publish notices of the election in accordance with Section 4.003(a) of the Texas Election Code.

2.3. Provide Galveston County with the Entity's requirements for Official Voter Registration lists for early voting and Election Day.

2.4. In accordance with Texas Election Code §4.008 as amended, deliver written notice of the election to Galveston County.

2.5. It is understood that the Entity may need to modify its election order after **<u>August 28, 2020</u>**, to reflect the actual early voting and Election Day polling locations once the final determination has been made as to which entities will actually be holding an election.

If the Entity wishes to select additional polling locations within its footprint, it will submit a list and the contact information for each facility to Galveston County by

July 31, 2020. Regardless of who selects the polling locations the Entity shall comply with Texas Election Code §43.062, and shall notify prospective voters of the new location by placing a notice at the old polling location and a notice at the new polling location.

[See Section 1.7 for additional information on the selection of countywide polling places]

2.6. Provide to Galveston County the language for any ballot propositions, the names of election contests, the names of candidates as they are to appear on the ballot, a copy of a sample ballot, ballot draw information and a completed "Requirements to Program the Ballot" form. These materials will be provided in an electronic form to Galveston County by **no later than August 14, 2020**. All language on the ballot must be provided in both English and Spanish in a Word format. Any other languages required by law, must also be provided in a Word format as well (e.g., Harris County, Chinese and Vietnamese). In addition, the Entity will collect and provide to Galveston County the names, addresses, phone numbers and email addresses of all the candidates who are to appear on its ballot. This information will be used to send candidates copies of the ballot proofs for their review.

[See Section 1.8]

2.7. Return to Galveston County, by **Sept. 9, 2020 5 p.m.**, confirmation that the sample ballots Galveston County has prepared and provided to the Entity are satisfactory or provide changes that need to be made. Galveston County intends to conduct the L&A test on the Entity's ballot no later than **Sept. 16, 2020.**

The Entity shall have a representative present during the testing who will sign an affidavit signifying the ballot proofs are accurate and acceptable to the Entity. If unable to attend, a representative may send a signed electronic response approving the ballot.

[See Section 1.8 for related information on ballot proofing]

2.8. Galveston County will be conducting elections for numerous Entities on the same day. The parties understand that each election has its own challenges and requirements and that failure to provide the information outlined in Section 2 of this contract by the dates specified will place an undue burden on Galveston County that may hinder the ability to provide the services to the Entity in a timely and accurate manner. ***Should the Entity miss the deadlines, and/or fail to notify the County of any special circumstances (e.g., adding portions of another county to their election, additional languages required, or unopposed candidates on the ballot) there may be additional charges incurred, up to $1,000.00, to be determined by the Chief Deputy of Elections. Should Galveston County be unable to provide the services in a timely and accurate manner the Entity, to the extent allowed under the Constitution and Laws of the State of Texas, shall hold Galveston County and employees harmless from any election errors and corresponding liability and/or damages that may result, including but not limited to the costs incurred related to an election contest and/or the need to conduct a subsequent election.***

2.9. As required by §67.017(b) and the Secretary of State's Office, the Entity must submit an electronic precinct-by-precinct report to the Secretary of State's Office by no later than the 30th day after Election Day.

2.10. Unless otherwise stipulated, Galveston County will transport or have the Presiding Election Judges transport on its behalf, the voting machines and equipment to and from the Entity's early voting and Election Day voting locations.

2.11. Monitor, with the assistance of Galveston County, the overall conduct of its election in Entity's jurisdiction including the observation of the tabulating of the results.

2.12. Entity to pay a $125 fee per early voting and Election Day polling locations within its jurisdiction for additional support staff to provide the Entity and its Judges election support services throughout the term of this contract.

3. Cancellation of Contract: Except for contracts consummated after **July 31, 2020**, the Entity may cancel this contract without incurring any expenses by notifying Galveston County of its intention to cancel by no later than two (2) business days after its candidates filing deadline of **N/A.** The Entity will be obligated to pay Galveston County a $500 fee if cancelled after this grace period.

4. Special Provision: Bilingual Poll Worker Requirements. Galveston County was a party in Civil Action No. 3:07 CV 377 styled "The United States of America, Plaintiff, v. Galveston County, Texas, Defendant in the United States District Court for the Southern District of Texas, Galveston Division". It entered into a Consent Decree that acknowledged it is covered under both Section 4(f)(4) of the Voting Rights Act as amended and 42 U.S.C. §1973(b)(4) Section 4(f)(4) to provide Spanish language written materials and assistance to voters. Galveston also has an obligation to ensure that its polling places and poll workers comply with the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. §§15301 et. seq. Although this Consent Decree expired December 31, 2010, Galveston County agreed that it is permanently enjoined from:

a) Failing to provide in Spanish "any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," that they provide in English as required by Section 4(f)(4) of the Voting Rights Act, 43 U.S.C. 1973b(f)(4); and

b) Failing to ensure that poll workers provide and receive adequate training regarding (1) the use of providing provisional ballots under Section 302(a) of HAVA; and (2) the display of all HAVA-required signs under Section 302(b) of HAVA.

5. Fee Schedule of Galveston County: Galveston County agrees to perform these services at the following rates:

a) Provide to the Election Judges all necessary election supplies, which are to be returned to Galveston County after the polls close on Election Night.
Cost: $50 per kit

b) Arrange for staff to receive the supplies and equipment being returned by the Election Judges on Election Night.
Cost: Overtime for staff and part time workers hired to provide this service will be evenly split between the entities contracting with Galveston County.

c) Provide all necessary voting machines and equipment for use at early voting and Election Day locations.

***Cost*: $465 per Verity Touch, $506 per Verity Controller and $577 per Verity Touch with access.**

d) Transport the voting machines and equipment to and from the voting locations.
***Cost*: $125 delivery per location**

e) Program the ballot and conduct the Logic and Accuracy Testing of the counting equipment.
***Cost*: Determined by the number of contests on the ballot: $600 for up to ten contests, $1,200 for up to 20, $1,800 for up to 30, $2,450 for up to 40 and $3,000 for 41 or more contests.**

f) Provide a central counting station, supplies, equipment and the tabulating and supervisory personnel needed to tabulate. Prepare the unofficial tabulation results and unofficial/official canvass report.
***Cost*: $400 for use of the equipment plus overtime for county employees doing the tabulation if applicable.**

g) Assist the Entity in the general overall supervision of the election and any subsequent runoff election.
***Cost*: Included in the 10% election fee**

h) Conduct early voting, Election Day Voting, and bilingual training.
***Cost*: $48 per person per class**

i) Two or more electronic poll **pads** will be deployed (at the discretion of the Elections Division) to each polling location.
No Cost

j) Galveston County will partner with the Entities to determine the polling locations within their jurisdictions.

k) Hire judges, alternate judges, and clerks that are trained by Galveston County and are registered voters from within one of the jurisdictions holding an election.
***Cost*: Base cost of $12 per hour per worker. Any worker who serves more than 40 hours in a given pay week will be compensated at time and a half for the hours served in excess of 40 hours.**

l) Elections Mobile App: Entities contracting elections with Galveston County will have their election information included on the Elections Mobile App.
***Cost*: up to $500.**

m) The cost for all printed ballots (ballots by mail, sample ballots and test ballots) is $.25 per sheet.

n) Ballots by Mail: Galveston County will provide ballot by mail processing services to the Entity. ***The cost for this service is $3.00 per ballot ($3.50, if a multi-page ballot)***.

o) The Entity may have an observer present during the tabulation of the votes. The name and contact information of the observer must be provided to and approved by the Presiding Judge of the Central Count Station on the form prescribed by the Texas Secretary of State upon arrival at the location.

6. Compensation, Billing, and Payment. In accordance with Section 31.100(d) of the Texas Election Code the Entity will pay Galveston County the greater of Seventy-Five ($75.00) Dollars or ten percent (10%) of the total amount of this contract for general supervision of the election. Pursuant to Texas Election Code §31.098, Galveston County may contract with third persons for election services and supplies agreed to herein and the Entity hereby agrees to pay for these third party costs when invoiced by Galveston County.

Galveston County will invoice the Entity for services rendered under this contract. The Entity will make payment to Galveston County in accordance with the terms and provisions of what is commonly referred to as the Texas Prompt Payment Act.

7. Voting System. The Hart Intercivic Verity equipment as approved by the Texas Secretary of State will be the voting system used in providing services under this contract.

8. Authorized Representatives. Galveston County's authorized representative for all purposes of this contract is its Chief Deputy Clerk for Elections.

The Entity's authorized representative for all purposes of this contract is:

_____ _____

Name (Print and Sign) Phone #

9. General Provisions. As specified in Texas Election Code §31.096 this contract may not change:

a) The authority with whom applications of candidates for a place on a ballot are filed;

b) The authority with whom documents are filed under Texas Election Code S251.001 et. seq.; or

c) The authority to serve as custodian of voted ballots or other election records.

As set forth in Texas Election Code §31.099 not later than the 10th day after the date this contract is executed Galveston County shall file a copy of this contract with the County Treasurer and the County Auditor.

10. WAIVER OF DAMAGES. The parties acknowledge that the Hart Intercivic Verity System and the programming of paper ballots is highly technical and that it is conceivable that despite the efforts of Galveston County it might fail during an election or might contain errors. The Entity agrees that should the electronic voting system fail, it will not make any claim against Galveston County or any of their full or part-time employees, independent contractors or agents for damages of any kind, including but not limited to any and all costs relating to an election contest and/or costs and damages incurred for having to conduct a second election caused as a result of such failure or error.

The Entity acknowledges that holding multiple simultaneous elections presents logistical problems and other problems over and above a single election. Galveston County and its

employees and agents will attempt to help ensure that these simultaneous elections are conducted without error or mishap, but on occasion, errors or mishaps do occur. Accordingly, the Entity agrees that should an error or mishap occur that it will not make any claim against Galveston County, or their full or part-time employees, independent contractors or agents for damages of any kind including but not limited to any and all costs relating to an election contest and/or costs and damages incurred by the Entity for having to conduct a second election, as a result of such error or mishap.

If legal action is filed against the Entity involving its election and if Galveston County is named as a party to this legal action and the complaint is based solely on allegations made against the Entity, the Entity shall be solely responsible for all costs and defense of that suit. In addition, the Entity shall be required to provide adequate legal counsel for Galveston County and, upon notice to the Entity, Galveston County shall be entitled to settle such claim or legal action upon terms it deems most advantageous to itself.

For purposes of implementing this contract, Galveston County and the Entity designate the following individuals to submit and/or receive information or notices to Galveston County or the Entity:

Galveston County:
Dwight D. Sullivan, County Clerk
Attention: Ernest Murrie, Chief Deputy Clerk for Elections
Galveston County Justice Center
600 59th Street, Suite 2001
Galveston, TX 77551-4180

P.O. Box 17253
Galveston, Texas 77552-7253
409-770-5108
Email: ernest.murrie@co.galveston.tx.us

Entity:

_____

_____ *Phone:* _____

_____ *Email:* _____

This contract will be submitted to the Galveston County Commissioners' Court to be placed on the Consent Agenda as a Receive and File Item.

11. **Galveston County Title VI Assurance Clause.** Galveston County is committed to ensuring that no person, on the ground of race, color, national origin, religion, sex, age, disability or Veteran status, shall be subjected to discrimination, excluded from participation, or denied the benefits of, its programs and activities.

In accordance with this policy Galveston County requires its service providers and contractors to agree that during the performance of this contract the service provider or contractor for itself, its assignees and successors will abide by the following:

Compliance with Non-Discrimination Laws and Regulations. During the performance of this contract, contractor, for itself, its assignees and successors in interest (hereinafter referred to as "contractor") agrees as follows:

1) **Compliance with Regulations.** The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, DOT) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this contract.

2) **Nondiscrimination**. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the basis of race, color, national origin, religion, sex, age, disability or Veteran status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3) **Solicitations for Subcontractors, Including Procurement of Materials and Equipment**. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, religion, sex, age, disability or Veteran status.

4) **Information and Reports**. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Galveston County or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to Galveston County or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

5) **Sanctions for Noncompliance**. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, Galveston County shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:

    a) withholding of payments to the contractor under the contract until the contractor complies, and/or

    b) cancellation, termination, or suspension of the contract, in whole or in part.

6) **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as Galveston County or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request Galveston County to enter into such litigation to protect the interests of Galveston County, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Executed this _____ day of _____, 20___.

Galveston County:

_____
Dwight D. Sullivan
County Clerk

Entity:

Name: _____

( ) City Manager ( ) Mayor
( ) Superintendent ( ) President
( ) City Secretary ( ) Other
( ) Chair County Executive Committee

Received and Filed:
Galveston County

_____
Hon. Mark Henry
County Judge
Attest:

_____
Dwight D. Sullivan
County Clerk

Date: _____

Date Copy of Agreement Furnished

to County Treasurer: _____

Date Copy of Agreement Furnished
to County Auditor: _____

City of Galveston

Grants & Housing Department
Staff Report

2508 Ball Avenue / Galveston, TX 77550
(409) 797-3820 / Fax (409) 291-4553

June 25, 2020

To: Brian Maxwell, City Manager
Hon. Mayor and City Council Members

From: Alice T. Law, Director of Grants & Housing

RE: Consider for Approval Funding for Temporary Staffing from Robert Half International/AccounTemps in the Services Assistance for the Grants and Housing Department.

I. Background

A. The Grants and Housing Dept. requires additional staffing levels to properly implement and conduct applicant intake for the City's approved HUD funded projects. Due to increased funding from the CARES Act CDBG-CV and waivers in the HOME Program, the City has approved or is in the process of approving added projects for short-term rental assistance, testing for COVID-19 in coordination with UTMB, subsistence payments for homeowner mortgages, COVID-19 tracer work, and non-profit homeless assistance.

B. These projects require a greater need for processing the services and intake for applicants, expediting the applicant intake, and increased project oversight and reporting to ensure HUD regulations and guidelines are met.

C. The Dept. has determined that the need for additional staffing would be for a limited period, due to the deadline for the HOME Program waivers for the short-term rental assistance is only through December 31, 2020 and the subsistence payments for homeowner mortgages are allowed for only three (3) months. In addition, the remaining projects are expected to reach full capacity during this period of time.

II. Current Situation

A. For this limited period, the Human Resources Dept. advised to use the City's contract with Robert Half International/AccounTemps through HGAC Purchasing Cooperative, Contract # TS06-17 to provide staff support for the intake and processing of applicants. Using the HGAC Cooperative Purchasing Contract gives the discounted pricing; thus, saving the City on personnel expenses.

B. The Grants and Housing Dept. is proposing to utilize two (2) to three (3) temporary staffing positions as needed during this period until approximately December 31, 2020. The estimated total cost is $52,000.

III. Issues

A. Cost – Costs are eligible under the CDBG-CV and HOME Programs and funding is available for additional staff to implement the projects.

B. Term – The Dept. needs the staffing to administer the projects in a more timely manner and ensure HUD regulations and guidance are met.

IV. Recommendation

A. Approve the Funding for Temporary Staffing from Robert Half International/AccounTemps in the Services Assistance for the Grants and Housing Department in the amount not to exceed $52,000.

V. Fiscal Impact Report

Requested by:	Alice T. Law, Director of Grants & Housing
Funding Source:	U.S. Dept. of Housing & Urban Development (HUD) 2020 Community Development Block Grant-CV Program and 2019 and 2020 HOME Investment Partnerships Program
Costs of implementation:	Total $52,000

Respectfully Submitted,

Alice T. Law
Director of Grants & Housing

City of Galveston

DEPARTMENT OF INFORMATION TECHNOLOGY

STAFF REPORT

June 25, 2020

To: Brian Maxwell, City Manager
Honorable Mayor and City Council

From: Hope Dean, Executive Director & CITO

RE: Consider approving a contract with Kronos to migrate the time and attendance software system to a cloud SaaS solution and authorizing the City Manager to enter into a contract for a 60-month term in an amount not to exceed $325,714.

I. BACKGROUND

In 2003, the police department purchased electronic timekeeping and attendance hardware and software from Kronos, Inc. to meet the department timekeeping needs. The implementation aided the department in correctly calculating officer time and accruals. Further, the software assisted in eliminating the errors that were inherent to the paper timekeeping system. In 2005, the city extended use of the solution and purchased additional licenses to implement the software solution for citywide use, replacing its paper based system. Since the inception of its use, the solution has gone through 4 major upgrades as approved by council.

II. CURRENT SITUATION

1. Since its implementation, the software solution has been housed on premise. Hosting the solution on premise requires additional database and server licenses in addition to the annual software maintenance and support agreement with Kronos. Moving to a cloud hosted SaaS solution will eliminate the additional database licensing and hardware cost.

2. The current version of the software solution is out of date and uses older versions of Java and Flash that are no longer supported.

3. In February of this year, the city requested and council approved the renewal of the annual maintenance and support agreement for the existing solution an additional one (1) year term in the amount of or $ 36,311.98; $24,299.60 in software and maintenance support fees and $ 12,082.38 covering hardware (time clock) maintenance and depot support fees. As per the sales order, Kronos will credit the city for any pre-paid software support fees already paid for the existing application. The exact credit for fees already paid is contingent on the billing start date for the new application.

4. Kronos is waiving implementation fees for the migration from the on premise solution to the hosted cloud SaaS solution if the contract is executed by 6/26/2020, reducing the cost of the project. Should the city decide to defer the project, the projected increase in cost is an additional $ 82,000 in implementation fees. The cost of the migration project if approved by council in June is outlined as follows:

Description	FY20	FY21	FY22	FY23	FY24
SaaS Fees	$44,550	$44,550	$44,550	$44,550	$ 44,550
Equipment Support Fees	$12,082	$12,687	$13,321	$13,987	$14,687
Educational Expenses (Training)	$ 4800	-	-	-	-
One time fees and professional services	$400	-	-	-	-
Project Contingency	$16,000	-	-	-	-
Estimated Travel Expenses (Actual	$15,000	-	-	-	-
Total	$92,832	$57,237	$57,871	$58,537	$59,237

III. ISSUES

1. The Kronos software solution is the only solution in place to track staff time and attendance.

2. The current software is at end of support and need to be replaced.

3. Staff are unable to keep the solution up to current supported version due to its proprietary nature. Upgrade of the solution requires professional services not covered under the annual maintenance and support agreement. Moving the software solution to the Cloud SaaS solution will reduce the additional cost of associated with database software support fees, hardware and other license fees and will allow the city to keep the software solution up to current version in the hosted environment at no additional cost to the city.

IV. ALTERNATIVES

1. Discontinue the use the software solution and move to a paper based solution. This system would be difficult to managed to the size and complexity of city operations.

2. Purchase a time and attendance solution from another manufacturer or go back to a paper based system. The city has invested heavily in the solution. Moving to another solution would require the city to invest in new time clocks at an approximately cost of an addition $ 100,000 in addition to the cost of the implementation of the new solution.

V. RECOMMENDATION

Approve the contract with Kronos, Inc. to migrate the time and attendance software system to a Cloud Hosted SaaS solution for a 60-month term for a cost not to exceed $325,714.

VI. FISCAL IMPACT REPORT

Requested by:	Hope Dean Executive Director & CITO
Funding Source:	Technology Operating Budget/Capital Budget
Costs of implementation:	$325,714

KRONOS

Quote#: Q-48266
Expires: 6/26/2020
Sales Executive: Jason Coppi

Order Type: Quote
Date: 6/1/2020

Bill To Contact:

Bill To: CITY OF GALVESTON
2517 AVE H - SUITE 100 IT SERVICES
GALVESTON, TX 77550 USA

Ship To Contact:Hope D Dean

Ship To: CITY OF GALVESTON
2517 AVE H - SUITE 100 IT SERVICES
GALVESTON, TX 77550 USA

Ship to Phone:(409) 797-3578
Contact:Hope Dean
Email:hdean@galvestontx.gov

Currency: USD
Customer PO Number:
Solution ID: 6011383
Initial Term:60 months
Billing Start Date: 90 Days from Execution of Order Form
Data Center Location: USA

Shipping Terms: Shipping Point
Ship Method:
Freight Term: Prepay & Add
Renewal Term:12 months
Payment Term: Net 30 Days

Order Notes:

The fees for the Applications are invoiced 60 days prior to the Billing Start Date.

For the WFD Microsoft Outlook Plugin, Kronos hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-assignable right to use the application, during the Term and for internal business purposes only. Currently, usage consumes one Workforce Dimensions account license to integrate with this module. Currently, the application is available in US English language only, and will be supported only in the US data center. Currently, data refresh from production tenant to non-production tenant not supported and MPLS/Site-to-cloud and Setup Data Manager (SDM) are also not supported.

Kronos is providing Customer the Workforce Dimensions Analytics Application at no cost for a period of one (1) year from the Billing Start Date indicated on this Order Form. If Customer would like to continue to use the Workforce Dimensions Analytics Application after such one (1) year period, Kronos and Customer will enter into a subsequent Order Form that will be subject to the Workforce Dimensions Agreement between Kronos and Customer. Kronos agrees that the PEPM Fee for Workforce Dimensions Analytics will be $.50 per employee per month, subject to the renewal process set forth in the Workforce Dimensions Agreement.

The Scope Statement attached to this Order Form, and incorporated herein by reference, is a summary of the Implementation Services to be provided by Kronos for the Implementation Services Fees outlined in this Order Form.

The parties agree that Customer is migrating from their existing Kronos perpetual software licenses (the "Existing Applications") to the Kronos Workforce Dimensions software as a service offering. Customer's Software Support and Cloud Hosting services, as applicable, for the Existing Applications shall continue, in accordance with Kronos Support policies, for a period of two hundred seventy (270) days from execution of this Order Form, and shall terminate thereafter, unless Customer chooses to reinstate Software Support and Cloud Hosting services, as applicable, at applicable fees. Workforce Dimensions Monthly Service Fees shall be invoiced at the Billing Frequency indicated on this Order Form, commencing on the Billing Start Date. As of the Billing Start Date, Kronos will credit Customer for any pre-paid but unused fees for Software Support and/or Cloud Hosting services (as applicable) for the Existing Applications. Customer may apply credits against any amounts owed to Kronos by Customer until such credit is expended. Customer shall continue to pay the Software Support and/or Cloud Hosting services fees on the Existing Applications until the Billing Start Date.

Billing Frequency: Annual in Advance

Product Name	Quantity	PEPM	Monthly Price
WORKFORCE DIMENSIONS TIMEKEEPING HOURLY	875	USD 3.72	USD 3,255.00
WORKFORCE DIMENSIONS ACCRUALS	875	USD 0.38	USD 332.50
WORKFORCE DIMENSIONS ANALYTICS - PROMO	875	USD 0.00	USD 0.00
Total Price			**USD 3,587.50**

Billing Frequency: Annual in Advance

WORKFORCE DIMENSIONS MICROSOFT OUTLOOK PLUGIN	Total Quantity	Unit Price	Monthly Price
1 to 2499 Employee count	1	USD 125.00	USD 125.00
2500 to 4999 employee count	0	USD 0.00	USD 0.00
5000 to 9999 employee count	0	USD 0.00	USD 0.00
Greater Than 10000 employee count	0	USD 0.00	USD 0.00
Quantity Total	**1**	**Minimum Monthly Total**	**USD 125.00**

Billing Frequency: Invoiced Upon signature of the Order form

Item	Quantity	Total Price
KnowledgeMap Live SMB 1st Year Training	10	USD 0.00
Total Price		**USD 0.00**

Billing Frequency: Billed 100% upon signature of the order form

Item	Billing Role	Quantity	Unit Price	Total Price
WORKFORCE DIMENSIONS USER ADOPTION ASSESSMENT	Education Consultant	1	USD 2,400.00	USD 2,400.00
WORKFORCE DIMENSIONS TRAIN THE TRAINER PACKAGE	Education Consultant	1	USD 2,400.00	USD 2,400.00
Total Price				**USD 4,800.00**

Billing Frequency: Billed 100% upon signature of the order form

Item	Total Price
One Time Setup Fees	**USD 400.00**

Billing Frequency: Billed 100% upon signature of the order form

Item	Billing Role	Quantity	Unit Price	Total Price
Dimensions Project - Additional Assessment and Testing Cycle(s)	Grouped	1	USD 0.00	USD 0.00
Dimensions Project - Onsite Assessment - 3 days onsite	Grouped	1	USD 0.00	USD 0.00
Dimensions Project - Onsite User Acceptance Testing Support - 3 days onsite	Grouped	1	USD 0.00	USD 0.00
Timekeeping - Additional Employee Pay Group(s)	Grouped	10	USD 0.00	USD 0.00
Additional Interfaces	Grouped	1	USD 0.00	USD 0.00
Solution Quality Assurance - Boot Camp	Grouped	1	USD 0.00	USD 0.00
WFC Historical Access Setup Services	Grouped	1	USD 0.00	USD 0.00
Total Price				**USD 0.00**

Billing Frequency: Billed monthly as delivered

Item	Billing Role	Quantity	Unit Price	Total Price
WORKFORCE DIMENSIONS MIGRATION SMB	Kronos Consultant	1	USD 0.00	USD 0.00
WORKFORCE DIMENSIONS MIGRATION SMB	Integration Consultant	1	USD 0.00	USD 0.00
WORKFORCE DIMENSIONS MIGRATION SMB	Integration Build Consultant	1	USD 0.00	USD 0.00
WORKFORCE DIMENSIONS MIGRATION SMB	Technology Consultant	1	USD 0.00	USD 0.00
Total Price				**USD 0.00**

	Total Price
Total Monthly SaaS and Equipment Rental Fees	USD 3,712.50

	Total Price
Purchased Training	USD 0.00

	Total Price
Total Fixed Fees	USD 4,800.00

	Total Price
Total One Time Fees	USD 400.00

	Total Price
Total Bill As You Go Services	USD 0.00

CITY OF GALVESTON	Kronos Incorporated
Signature:_____	Signature:_____ Nicole Dandurant Order Processing Analyst Jun 15 2020 4:46 PM
Name:_____	Name:_____
Title:_____	Title:_____
Effective Date:_____	Effective Date:_____

cosign

Invoice amount will reflect deposit received. All professional services are billed as delivered with a payment term of Net Upon Receipt. Unless otherwise indicated above, this order is subject to the attached terms and conditions which the customer acknowledges have been read. THIS ORDER IS SUBJECT TO APPLICABLE TAXES. THE ACTUAL TAX AMOUNT TO BE PAID BY CUSTOMER WILL BE SHOWN ON CUSTOMER'S INVOICE. Shipping and handling charges will be reflected on the final invoice. The Monthly Price on this Order Form has been rounded to two decimal places for display purposes. As many as eight decimal places may be present in the actual price. Due to the rounding calculations, the actual price may not display as expected when displayed on your Order Form. Nonetheless, the actual price on your invoice is the true and binding total for this order for purposes of amounts owed for the term. If you are tax exempt; please provide a copy of your "Tax Exempt Certificate" with your signed quote.

Workforce Dimensions™ Agreement

This Workforce Dimensions™ Agreement (the "Agreement") governs the provision of Kronos' Workforce Dimensions software as a service and other related offerings by Kronos Incorporated and its Participating Entities ("Kronos") to Customer and its Participating Entities ("Customer"). Capitalized terms not defined within the text of the Agreement are defined in Exhibit F.

This Agreement consists of this execution page and the following exhibits, which are incorporated by reference, and which form an integral part of this Agreement:

Exhibit A: General Terms and Conditions
- Attachment A-1: Equipment Purchase, Rental, and Support
- Attachment A-2: Professional and Educational Services Policies
- Attachment A-3: Service Level Agreement

Exhibit B: Workforce Dimensions Cloud Guidelines:
www.kronos.com/workforce-dimensions/agreement/exhibitb

Exhibit C: Success Plans
- Attachment C-1: Support Policies

Exhibit D: Acceptable Use Policy (AUP):
www.kronos.com/workforce-dimensions/agreement/exhibitd

Exhibit E: AtomSphere Service and Boomi Software
- Attachment E-1: Boomi Flow Down Provisions

Exhibit F: Definitions

Exhibit G: Add-Ins

The description of the type, quantity, and cost of the specific offerings being ordered by Customer will be described in an Order Form, that will be mutually agreed upon and signed by the Parties pursuant and subject to this Agreement. If Implementation Services are to be delivered by Kronos, the Parties may need to execute a Statement of Work, which will set forth the scope, objectives and other business terms of the Implementation Services ordered with the Order Form.

This Agreement will serve as a master agreement for the Service and its related offerings. This Agreement contemplates that Participating Entities will enter into multiple Order Forms. This approach will allow the

Parties to contract for additional or diverse products or services simply by signing a mutually agreeable Order Form and SOW, if applicable, without having to renegotiate or re-execute this Agreement. When Participating Entities enter into an Order Form, they are deemed to be "Customer" for purposes of this Agreement for that Order Form. Similarly, the Kronos entity that enters into an Order Form is deemed to be "Kronos" for purposes of this Agreement for that Order Form.

Kronos Incorporated
Dated:
By: Nicole Dandurant Order Processing Analyst Jun 15 2020 4:46 PM
Name: COsign
Title:

Customer CITY OF GALVESTON
Dated:
By:
Name:
Title:

Exhibit A: General Terms and Conditions

Article 1. Order Forms

1.1 The following commercial terms may appear on an Order Form:

a. The Application(s) included in the Service, and the other offerings being ordered by Customer
b. Billing Start Date (i.e., the date the PEPM Fees begin to accrue)
c. Initial Term (i.e., the initial billing term of the Service commencing on the Billing Start Date)
d. Renewal Term (i.e., the renewal billing term of the Service)
e. Billing Frequency (i.e., the frequency for the invoicing of the PEPM Fees such as Annual in Advance or Monthly in Arrears)
    i. "Annual in Advance" means payment is due on an annual basis with the invoice being issued upon execution of the Order Form.
    ii. "Monthly in Arrears" (usually for Implementation Services) means payment is due on a monthly basis with the invoice being issued at the end of the month.
f. Payment Terms (i.e., the amount of days in which Customer must pay a Kronos invoice)
g. Shipping Terms (i.e., FOB – Shipping Point, Prepay and Add)

1.2 The following Fees may appear on an Order Form:

a. PEPM Fees for use of the Service, including PEPM Fees for Seasonal Licenses
b. Success Plan Fees for Guided and Signature Plans
c. Implementation Services Fees (The Order Form will note if Implementation Services Fees are included in PEPM Fees.)
d. Equipment Purchase Fees
e. Equipment Rental Fees
f. KnowledgeMap™ Live Fees

1.3 Kronos may also sell (or rent) Equipment to Customer, and provide related Equipment Support Services, if included on an Order Form. These offerings are subject to this Agreement and the terms and conditions set forth in Attachment A-1.

Article 2. Billing

2.1 Kronos will invoice the Fees on the Billing Frequency indicated on the Order Form. For each Order Form, the billing period of the PEPM Fees will start on the Billing Start Date and will continue for the time period indicated as the Initial Term. Customer will pay the Fees on the Payment Terms and in the currency, indicated on the Order Form. Customer will send payment to the attention of Kronos at the address indicated on the applicable invoice unless the Parties have made an alternative payment arrangement (such as credit card, wire transfer, ACH payment or otherwise). Unless expressly provided in this Agreement, Customer payments are non-refundable. Unless Customer has provided Kronos with valid evidence of tax-exemption, Customer is responsible for all applicable Taxes related to the Service and other items set forth on the Order Form. Each Party is responsible to pay all costs and fees attributable to such Party pursuant to the Shipping Terms indicated on the Order Form.

2.2 At the expiration of the Initial Term, and at the expiration of each Renewal Term, the Service will automatically renew for a Renewal Term. For each Renewal Term, Kronos may increase the PEPM Fees and the KnowledgeMap Live Fees by no more than four percent (4%) over the previous year's PEPM Fees and KnowledgeMap Live Fees, for the same Applications and the same licensed quantity. Kronos will

reflect these increased PEPM Fees and KnowledgeMap Live Fees in the applicable invoice for each Renewal Term. For renewals based on the Annual in Advance Billing Frequency, Kronos will provide Customer with the renewal invoice prior to commencement of the Renewal Term and payment will be made by Customer in accordance with the payment terms agreed upon with Customer for the Initial Term.

2.3 Kronos will provide the Service to Customer during the entire Initial Term and each Renewal Term. Customer will pay for the Service for the entire Initial Term and each Renewal Term.

Article 3. Implementation Services, Professional Services and Educational Services

3.1 Implementation Services are described in a SOW that the Parties will sign or reference on a signed Order Form. These SOWs are subject to this Agreement. Implementation Services are invoiced monthly as delivered, except if otherwise indicated on an Order Form. Each Party will perform their respective obligations as outlined in a signed SOW.

3.2 While Customer may configure the Applications itself, as part of the Implementation Services as described in an SOW, Kronos may also configure the Applications. Kronos will configure the Applications based on Customer's instructions and direction. Customer is solely responsible for ensuring that the Configurations comply with Applicable Law.

3.3 Kronos may also provide Professional Services to Customer that do not require an SOW but which will be as set forth on an Order Form.

3.4 KnowledgeMap™ is included in the PEPM Fees. If included on an Order Form, Kronos will also provide a subscription to KnowledgeMap™ Live. The KnowledgeMap Live 1st Year Training will expire one (1) year from purchase. KnowledgeMap Live 5 Pack entitles Customer to add up to five (5) additional named users in a KnowledgeMap Live Subscription. KnowledgeMap Live Subscription and KnowledgeMap Live 5 Pack are coterminous with the Service and will renew with the Service, unless terminated by Customer upon at least sixty (60) days prior written notice before the start of a Renewal Term. The KnowledgeMap Live Subscription Fees will be invoiced at the commencement of each year during the Term. Customer is permitted to assign one (1) employee to each user account (or seat) included in Customer's KnowledgeMap Live subscription. The number of permitted seats will appear on the Order Form. Passwords and accounts cannot be shared by multiple users. Customer will designate one (1) named user account to act as a training administrator.

3.5 Kronos may also provide ala carte educational consulting services as Implementation Services or Professional Services as described in an SOW or Order Form.

3.6 The Kronos policies set forth in Attachment A-2 shall apply to all Implementation Services and Professional Services provided by Kronos. In the event of a conflict between the Professional Services Policies and this Agreement, the terms of this Agreement shall prevail.

Article 4. Service Level Agreement

Kronos offers the Service Level Agreement and associated SLA Credits as described in Attachment A-3. The SLA Credits are Customer's sole and exclusive remedy in the event of any Outage. Kronos remains obligated to provide the Service as otherwise described in this Agreement.

Article 5. Data, Confidentiality, Security and Privacy

Section 5.1 Data

5.1.1 Customer owns Customer Data. Customer is solely responsible for Customer Data, including ensuring that Customer Data complies with the Acceptable Use Policy and Applicable Law. Customer is solely responsible for any Claims that may arise out of or relating to Customer Data.

5.1.2 **"Aggregated Data"** is any statistical data that is derived from the operation of the Service, including without limitation, for analysis of the Service, Configurations or Customer Data, and is created by Kronos in response to specified queries for a set point in time; including without limitation aggregation, metrics, trend data, correlations, benchmarking, determining best practices, the number and types of transactions, configurations, records, reports processed in the Service, and the performance results for the Service. Kronos owns the Aggregated Data. Nothing in this Agreement will prohibit Kronos from utilizing the Aggregated Data for any purposes, provided that Kronos' use of Aggregated Data will anonymize Customer Data, will not reveal any Customer Confidential Information, and will not reveal any Personally Identifiable Information.

Section 5.2 Confidentiality

Each Party will treat the Confidential Information of the other Party with a reasonable standard of care commensurate with the sensitivity of such Confidential Information and as further described in this Agreement. Each Party will only use the Confidential Information of the other Party for the purposes of fulfilling its obligations under this Agreement and as reasonably necessary to provide the Service. Kronos agrees that it will not use any such Confidential Information for marketing or other commercial purposes. Confidential Information may be shared with and disclosed to (i) any subsidiary or affiliate of each of the Parties, or (ii) any court or governmental agency of competent jurisdiction, as required by a legal process, including in connection with any proceeding to establish a Party's rights or obligations under this Agreement (provided however that, when permitted by Applicable Law, a Party will give the other reasonable prior written notice so that the discloser has an opportunity to contest any disclosure required by a legal process). Either Party may seek injunctive relief to preserve its rights under this section without the requirement to post a bond.

Section 5.3 Security and Privacy

5.3.1 Kronos will maintain the Controls throughout the Term.

5.3.2 Each Party will comply with all Applicable Laws, including, without limitation, Data Protection Laws.

5.3.3 Kronos employees will access Customer Data from the locations from which such employees work. Customer consents to Kronos' handling, collection, use, transfer, and processing of Customer Data to provide the Service. As may be required by Applicable Law, Customer will ensure that Customer Data may be provided to Kronos for the purposes of providing the Service. Customer has obtained all necessary consents from individuals to enable Kronos to use the Customer Data to provide the Service. As may be contemplated by the applicable Data Protection Laws, Customer will remain the "controller" of Customer Data and Kronos will be considered a "processor" of Customer Data.

5.3.4 Kronos will notify Customer in accordance with Applicable Law upon becoming aware of an unauthorized access of Customer Data. To the extent reasonably possible, such a notification will include, at a minimum (i) a description of the breach, (ii) the information that may have been obtained as a result of the breach, and (iii) the corrective action Kronos is taking in response to the breach.

5.3.5 Consent to Use Sub-processors. Customer agrees that Kronos may use sub-processors to fulfill its contractual obligations under the Agreement. The list of sub-processors that are currently engaged by Kronos to carry out processing activities on Customer Data on behalf of Customer can be found at: www.kronos.com/workforce-dimensions/agreement/subprocessors

Customer hereby authorizes the engagement as sub-processors of all entities set forth in such list. Customer further generally authorizes the engagement as sub-processors of any other third parties engaged by Kronos for such purposes. The foregoing authorizations will constitute Customer's prior written consent to the subcontracting by Kronos of the processing of Customer Data if such consent is required under Applicable Laws.

At least 30 days before any new sub-processor will carry out processing activities on Customer Data on behalf of Customer, Kronos will update the applicable website and provide Customer with a mechanism to obtain notice of that update. Customer may object to any such new sub-processor by terminating the Agreement upon written notice to Kronos, such written notice to be provided within 60 days of being informed of the engagement of the sub-processor. This termination right is Customer's sole and exclusive remedy if Customer objects to any new sub-processor.

5.3.6 Sub-processor Obligations. When engaging any sub-processor:

a. Kronos will enter into a written agreement with the sub-processor;
b. Kronos will endeavor to ensure that the subprocessor provides sufficient guarantees to implement appropriate technical and organisational measures to meet the requirements of applicable Data Protection Laws; and,
c. Kronos will remain responsible for the performance of the sub-processor's data protection obligations pursuant to such written agreement and the requirements of applicable Data Protection Laws.

Article 6. Warranty

Kronos warrants that the Service will be provided in a professional and workmanlike manner. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, KRONOS DISCLAIMS ALL OTHER WARRANTIES RELATED TO THE SERVICE, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. If Customer informs Kronos in writing that there is a material deficiency in the Service which is making this warranty untrue, Kronos will use its reasonable commercial efforts to correct the non-conforming Service at no additional charge, and if Kronos is unable to do so within a reasonable period of time, Customer may terminate the then remaining Term of the Agreement, which will be Customer's sole and exclusive remedy. Customer agrees to provide Kronos with reasonable information and assistance to enable Kronos to reproduce or verify the non-conforming aspect of the Service.

Article 7. License

Section 7.1 Technology License

7.1.1 As part of the Service, Kronos will provide Customer access to and use of the Technology, including the Applications. Technology will include an Add-In if licensed by Customer pursuant to an Order Form. Kronos hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-assignable right to use the Service, including the Technology, during the Term and for internal business purposes only. Customer acknowledges and agrees that the right to use the Service, including Seasonal Licenses when included on the Order Form, is limited based upon the number of Authorized Users, and Customer's payment of the corresponding PEPM Fees. Customer agrees to use the Applications only for the number of employees stated on the total of all Order Forms for the applicable Applications. Customer agrees not to use any other Application nor increase the number of employees using an Application unless Customer enters into an additional Order Form that will permit the Customer to have additional Authorized Users. The license for any Add-In may be terminated by Customer at any time upon written notice to Kronos.

7.1.2 Kronos owns all title or possesses all intellectual property rights in and to the Technology used in delivering the Service. Customer has a right to use this Technology and to receive the Service subject to this Agreement. No other use of the Technology is permitted. Customer is specifically prohibited from reverse engineering, disassembling or decompiling the Technology, or otherwise attempting to derive the source code of the Technology. Customer cannot contact third party licensors or suppliers for direct support of the Technology. No license, right, or interest in any Kronos trademark, trade name, or service mark, or those of any third party supplying Technology as part of the Service, is granted hereunder.

Article 8. Scope and Authority

8.1 Participating Entities may order the Service and other related offerings from Kronos by signing an Order Form contemporaneously with this Agreement, or in the future by signing an Order Form specifically referencing this Agreement. Only the Parties entering into a particular Order Form will be responsible under this Agreement for the items on that Order Form.

8.2 The person signing this Agreement on behalf of Kronos and on behalf of Customer represent that they are lawfully able to enter into contracts and are authorized to sign this Agreement and bind the entity on whose behalf they are entering into this Agreement. By signing an Order Form, each person signing such Order Form represents that they are lawfully able to enter into contracts and are authorized to sign the Order Form and bind the Participating Entity on whose behalf they are signing the Order Form.

8.3 Authorized Users may access the Service on Customer's behalf, and Customer will be responsible for all actions taken by its Authorized Users. Customer will make sure that Authorized Users comply with Customer's obligations under this Agreement. Unless Kronos breaches its obligations under this Agreement, Kronos is not responsible for unauthorized access to Customer's account, nor activities undertaken with Customer's login credentials, nor by Customer's Authorized Users. Customer should contact Kronos immediately if Customer believes an unauthorized person is using Customer's account or that Customer's account information has been compromised.

8.4 Use of the Service includes the ability to enter into agreements and/or to make transactions electronically. This feature of the Service is referred to as the "Marketplace". The use of the Marketplace can be configured, and Customer may disable use of the Marketplace by some or all of its Authorized Users. CUSTOMER ACKNOWLEDGES THAT WHEN AN AUTHORIZED USER INDICATES ACCEPTANCE OF AN

AGREEMENT AND/OR TRANSACTION ELECTRONICALLY WITHIN THE MARKETPLACE, THAT ACCEPTANCE WILL CONSTITUTE CUSTOMER'S LEGAL AGREEMENT AND INTENT TO BE BOUND BY AND TO PAY FOR SUCH AGREEMENTS AND TRANSACTIONS. THIS ACKNOWLEDGEMENT THAT CUSTOMER INTENDS TO BE BOUND BY SUCH ELECTRONIC ACCEPTANCE APPLIES TO ALL AGREEMENTS AND TRANSACTIONS CUSTOMER ENTERS INTO THROUGH THE SERVICE, SUCH AS ORDERS, CONTRACTS, STATEMENTS OF WORK, AND NOTICES OF CANCELLATION.

Article 9. Suspension

9.1 Kronos may suspend the Service if any amount that Customer owes Kronos is more than thirty (30) days overdue. Kronos will provide Customer with at least seven (7) days prior written notice that the Customer's account is overdue before Kronos suspends the Service. Upon payment in full of all overdue amounts, Kronos will immediately restore the Service.

9.2 Customer is responsible for complying with the AUP. Kronos and its third party cloud service provider reserve the right to review Customer's use of the Service and Customer Data for AUP compliance and enforcement. If Kronos discovers an AUP violation, and Kronos reasonably determines that Kronos must take immediate action to prevent further harm, Kronos may suspend Customer's use of the Service immediately without notice. Kronos will contact Customer when Kronos suspends the Service to discuss how the violation may be remedied, so that the Service may be restored as soon as possible. If Kronos does not reasonably believe it needs to take immediate action, Kronos will notify Customer of the AUP violation. Even if Kronos doesn't notify Customer or suspend the Service, Customer remains responsible for any such AUP violation. Kronos will restore the Service once the AUP violation is cured or as both Parties may agree.

Article 10. Termination

Section 10.1. Types of Termination

10.1.1 Non-renewal. Either Party may terminate the Service upon at least sixty (60) days prior written notice to be effective at the expiration of the then current Term. Customer may terminate Seasonal Licenses upon at least sixty (60) days prior written notice to be effective at the expiration of the then current Term.

10.1.2 For Cause. Either Party may terminate the Service and this Agreement if the other Party fails to perform any material obligation under this Agreement, and such Party is not able to cure the non-performance within thirty (30) days of the date such Party is notified by the other Party of such default.

10.1.3 For Bankruptcy. If either Party: (i) becomes insolvent, (ii) makes a general assignment for the benefit of our creditors, (iii) is adjudicated as bankrupt or insolvent, or (iv) has a proceeding commenced against it under applicable bankruptcy laws, the other Party may ask for a written assurance of future performance of a Party's obligations under this Agreement. If an assurance that provides reasonable evidence of future performance is not provided within ten (10) business days of a written request, the requesting Party may immediately terminate this Agreement upon written notice.

Section 10.2 Effects of Termination

If the Agreement is terminated for any reason:

a. All Fees will be paid by Customer for amounts owed through the effective date of termination.

b. Any Fees paid by Customer for the Service not rendered prior to the effective date of termination will be credited against Customer's account, with any remaining amounts refunded to Customer within thirty (30) days of the effective date of termination.
c. Customer's right to use the Service will end as of the effective date of termination. Notwithstanding such termination, Customer will have thirty (30) days after the effective date of termination to access the Service for purposes of retrieving Customer Data through tools provided by Kronos that will enable Customer to so extract Customer Data. If Customer requires a longer period of access to the Service after termination to retrieve Customer Data, such access will be subject to additional Fees. Extended access and use of the Services will be subject to the terms of this Agreement.
d. Kronos will delete Customer Data after Customer's rights to access the Service and retrieve Customer Data have ended. Kronos will delete Customer Data in a series of steps and in accordance with Kronos' standard business practices for destruction of Customer Data and system backups. Final deletion of Customer Data will be completed when the last backup that contained Customer Data is overwritten.
e. Kronos and Customer will each return or destroy any Confidential Information of the other Party, with any retained Confidential Information remaining subject to this Agreement.
f. Provisions in this Agreement which by their nature are intended to survive in the event of a dispute or because their obligations continue past termination of the Agreement will so survive.

Article 11. Indemnification

11.1 Kronos will defend the Customer Indemnified Parties, from and against any and all Claims alleging that the permitted uses of the Service, Technology or Applications infringe or misappropriate any legitimate copyright or patent. Kronos will indemnify and hold harmless the Customer Indemnified Parties against any liabilities, obligations, costs or expenses (including, without limitation, reasonable attorneys' fees) actually awarded to a third party by a court of applicable jurisdiction as a result of such Claim, or as a result of Kronos' settlement of such a Claim. In the event that a final injunction is obtained against Customer's use of the Service by reason of infringement or misappropriation of any such copyright or patent, or if in Kronos' opinion, the Service is likely to become the subject of a successful claim of infringement or misappropriation, Kronos (at its option and expense) will use commercially reasonable efforts to either (a) procure for Customer the right to continue using the Service as provided in the Agreement, or (b) replace or modify the Service so that the Service becomes non-infringing but remains substantively similar to the affected Service. Should neither (a) nor (b) be commercially reasonable, either Party may terminate the Agreement and the rights granted hereunder, at which time Kronos will provide a refund to Customer of the PEPM Fees paid by Customer for the infringing elements of the Service covering the period of their unavailability.

11.2 Kronos will have no liability to indemnify or defend Customer to the extent the alleged infringement or misappropriation is based on: (a) a modification of the Service undertaken by anyone other than Kronos, or not undertaken at Kronos' direction and in accordance with such direction; (b) use of the Service other than as authorized by this Agreement; or (c) use of the Service in conjunction with any equipment, service or software not provided by Kronos, where the Service would not otherwise infringe, misappropriate or otherwise become the subject of the Claim.

11.3 Customer will defend the Kronos Indemnified Parties and hold them harmless from and against any and all Claims alleging that: (a) the Configurations violate any law applicable to the rights of an Authorized User; (b) Customer's modification or combination of the Service with other services, software or

equipment not furnished by Kronos, infringes or misappropriates any copyright or patent, provided that such modification or combination is the cause of such infringement and was not authorized by Kronos in writing; or, (c) a claim that the Customer Data or its collection or use by Customer violates the AUP or Applicable Laws. Customer will have sole control of the defense of any such action and all negotiations for its settlement or compromise. Kronos will cooperate fully (at Customer's expense) in the defense, settlement or compromise of any such action. Customer will indemnify and hold harmless the Kronos Indemnified Parties against any liabilities, obligations, costs or expenses (including, without limitation, reasonable attorneys' fees) actually awarded to a third party as a result of such Claims by a court of applicable jurisdiction or as a result of Customer settlement of such a Claim.

11.4 The Indemnified Party will provide written notice to the indemnifying party promptly after receiving notice of such Claim. If the defense of such Claim is materially prejudiced by a delay in providing such notice, the purported indemnifying party will be relieved from providing such indemnity to the extent of the delay's impact on the defense. The indemnifying party will have sole control of the defense of any indemnified Claim and all negotiations for its settlement or compromise, provided that such indemnifying party will not enter into any settlement which imposes any obligations or restrictions on the applicable Indemnified Parties without the prior written consent of the other Party. The Indemnified Parties will cooperate fully (at the indemnifying party's request and expense) with the indemnifying party in the defense, settlement or compromise of any such action. The indemnified party may retain its own counsel at its own expense, subject to the indemnifying party's rights above.

Article 12. Extent and Limitations of Liability

12.1 EXCEPT FOR KRONOS' INDEMNIFICATION OBLIGATIONS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE TOTAL AGGREGATE LIABILITY OF KRONOS TO CUSTOMER OR TO ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO ACTUAL AND DIRECT DAMAGES PROVEN BY CUSTOMER, SUCH DAMAGES NOT TO EXCEED AN AMOUNT EQUAL TO THE TOTAL NET PAYMENTS RECEIVED BY KRONOS FOR THE SERVICE IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE IN WHICH THE CLAIM ARISES.

12.2 **NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES.** NEITHER PARTY WILL BE LIABLE FOR THE COST OF ACQUIRING SUBSTITUTE OR REPLACEMENT SERVICES. NEITHER PARTY WILL BE LIABLE FOR ANY LOST OR IMPUTED PROFITS OR REVENUES OR LOST DATA RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES OR SERVICES INTERRUPTION, HOWEVER CAUSED, ARISING FROM OR RELATED TO THE SERVICE OR THIS AGREEMENT. THESE LIMITATIONS APPLY FOR ANY REASON, REGARDLESS OF ANY LEGAL THEORY AND FOR WHATEVER REASON LIABILITY IS ASSERTED. THIS IS TRUE EVEN IF KRONOS AND CUSTOMER HAVE TOLD EACH OTHER THAT EITHER ONE IS CONCERNED ABOUT A PARTICULAR TYPE OF LIABILITY.

Article 13. Changes

The information found in any Exhibit (or at any URL referenced in this Agreement) may change over the Term. Any such change will be effective as of the start of the next Renewal Term after such change is announced or published by Kronos.

Article 14. Feedback

From time to time, Customer may provide Feedback. Kronos has sole discretion to determine whether or not to undertake the development of any enhancements, new features or functionality contained in or

with Feedback. Customer hereby grants Kronos a royalty-free, fully paid up, worldwide, transferable, sublicensable, irrevocable, perpetual license to use, copy, distribute, transmit, display, perform, create derivative works of and otherwise fully exercise and commercially exploit the Feedback for any purpose in connection with Kronos' business without any compensation to Customer or any other restriction or obligation, whether based on intellectual property right claim or otherwise. For the avoidance of doubt, no Feedback will be deemed to be Customer Confidential Information, and nothing in this Agreement limits Kronos' right to independently use, develop, evaluate, or market products or services, whether incorporating Feedback or otherwise.

Article 15. General

15.1 This Agreement is governed by and is to be interpreted in accordance with the laws of the state, province and country in which Kronos is incorporated, without regard to any conflict of law provision if and as applicable. Each Party waives the application of the United Nations Commission on International Trade Law and United Nations Convention on Contracts for the International Sale of Goods as to the interpretation or enforcement of the Agreement and waives and "opts out" of the Uniform Computer Information Transactions Act (UCITA), or such other similar laws as may have been adopted.

15.2 The invalidity or illegality of any provision in this Agreement will not affect the validity of any other provision. All unaffected provisions remain in full force and effect.

15.3 Customer may not assign this Agreement without Kronos' prior written consent.

15.4 If there is some unforeseen event reasonably beyond the control of each of the Parties, such as acts of war, terrorism, or uprising, or acts of nature like earthquakes or floods, or civil unrest like embargoes, riots, sabotage or labor shortages, or changes in laws or regulations, or the failure of the internet or communications via common networks, or a power failure, or a delay in transportation, (collectively "Force Majeure"), each Party will be excused from performance of its obligations under this Agreement for the duration of the Force Majeure affecting such Party. The affected Party will use reasonable efforts to mitigate the impact of the Force Majeure on the other Party. Kronos is still obligated to provide the disaster recovery portion of the Service if Kronos' performance of those disaster recovery services is not also prevented by the Force Majeure.

15.5 When either Party needs to provide official notification under this Agreement, those notices will be in writing and considered delivered upon actual receipt to the addresses stated on the relevant Order Form or as otherwise communicated in writing to each other. Each Party agrees that an e-signature (or a facsimile signature by the authorized representative) is evidence of acceptance of a valid and enforceable agreement.

15.6 No third party beneficiaries exist under this Agreement.

15.7 This Agreement (and any information in any referenced Exhibit or at any referenced URL or specifically incorporated by reference) along with the corresponding Order Form constitutes the entire agreement between the Parties pertaining to each Order Form. This Agreement supersedes all prior and contemporaneous representations, negotiations or communications between the Parties relating to its subject matter. Except as otherwise provided in this Agreement, this Agreement may only be amended in writing signed by each of the Parties. If Customer uses its own purchase order as an Order Form, no pre-printed terms of that purchase order shall apply to the items ordered, and any reference to a Kronos

quote number or order number shall be deemed to incorporate that Kronos quote or order form into Customer's purchase order.

Attachment A-1: Equipment Purchase, Rental, and Support:
www.kronos.com/workforce-dimensions/agreement/attachment-a1

Attachment A-2: Professional and Educational Services Policies:
www.kronos.com/workforce-dimensions/agreement/attachment-a2

Attachment A-3: Service Level Agreement:
www.kronos.com/workforce-dimensions/agreement/attachment-a3

Exhibit C: Success Plans

Section 1. Success Plans

1.1 Kronos offers the following Success Plans for Workforce Dimensions:

a. Essentials (included in Customer's PEPM Fee)

b. Enhanced (available for an additional Fee as indicated on the Order Form)

1.2 As part of the Essentials Success Plan, Kronos will provide:

a. Local Time Zone Support: 8am – 8pm Monday to Friday, with two-hour response time to support cases.

b. 24/7 Mission Critical Support: Immediate and on-going support for a critical issue with no available workaround, where the system or a module may be down, experiencing major system degradation, or other related factors.

c. Kronos Community Access: Ability to access how-to articles, discussion boards, and open support cases.

d. Kronos Onboarding Experience: Step-by-step guidance to assist Customer during onboard activities.

e. KnowledgeMap™: On-line education portal providing access to Kronos e-learning resources.

f. KnowledgeMap™ Live may be purchased for an additional Fee.

g. A Technical Account Manager (TAM) may be purchased for an additional Fee: senior Technical Support Engineers or former Kronos Application Consultants with industry-specific Kronos product knowledge.

1.3 As part of the Enhanced Success Plan, Kronos will provide:

a. All of the services under the Essentials Success Plan.

b. 24/7 Local Time Zone Support with one-hour response time to support cases.

c. Dedicated Success Manager included at no additional charge.

d. Integration/API Support: Assistance with enhancing and updating existing APIs and integrations.

e. New Feature Review and Activation assistance.

f. Industry Best Practices Review: Review configuration and use of Workforce Dimensions against industry peers and provide recommendations.

g. Configuration Review: Assistance with optimizing the use of Workforce Dimensions based on your current usage patterns.

1.4 The Kronos policies set forth in Attachment C-1 shall apply to all Success Plans.

Attachment C-1: Support Policies:
https://www.kronos.com/workforce-dimensions/agreement/support-policies

Exhibit E: AtomSphere Service and Boomi Software

As part of the Service, Customer has the right to access and use the Boomi AtomSphere Service and a non-exclusive, non-transferable and non-sublicensable license to use the associated Boomi Software as part of the Boomi AtomSphere Service. Customer may use the Boomi AtomSphere Service and the Boomi Software only to create integrations to and from the Service.

There are two (2) cloud environments associated with Customer use of the Boomi AtomSphere Service and the Boomi Software:

a. Run-Time environment: A run time environment in the Kronos Cloud where the integration created by with the Boomi AtomSphere Service runs. This environment is described in Exhibit B.
b. Development environment: A development environment in the Boomi Cloud where the design and development tools exist to build the integrations. This environment is referred to as a Hosted Environment in Attachment E-1.

The Boomi AtomSphere Service is subject to the additional terms and conditions set forth below. These additional terms and conditions apply to all integrations to and from the Service using the Boomi AtomSphere Service, whether done by Customer or by Kronos. Except as provided in these additional terms and conditions, all terms and conditions of this Agreement related to the Service apply to the Boomi AtomSphere Service. If this Agreement terminates, Customer's rights to access the Boomi AtomSphere Service and the Boomi Software also terminates.

Attachment E-1: Boomi Flow Down Provisions:
www.kronos.com/workforce-dimensions/agreement/attachment-e1

Exhibit F: Definitions

"Acceptable Use Policy" and **"AUP"** are interchangeable terms referring to the Kronos policy describing prohibited uses of the Service as further described in Exhibit D.

"Add In(s)" mean the Kronos developed applets for Workforce Dimensions that enable limited functionality through the application programming interfaces ("APIs") of Workforce Dimensions and the associated applications of certain third-party technology providers as further described in Exhibit G.

"Applicable Law(s)" means any applicable provisions of all laws, codes, legislative acts, regulations, ordinances, rules, rules of court, and orders which govern the Party's respective business.

"Authorized User" means any individual or entity that directly (or through another Authorized User) accesses or uses the Service with any login credentials or passwords Customer uses to access the Service.

"Application(s)" means those Kronos Workforce Dimensions software application programs set forth on an Order Form which are made accessible for Customer to use under the terms of this Agreement.

"Boomi AtomSphere Service" means the third-party service for the creation of integrations by Customer as further described in Exhibit E, which the Customer and Customer's Authorized Users have the right to access through the Service.

"Boomi Software" means the third-party proprietary software associated with the Boomi AtomSphere Service as further described in Exhibit E.

"Claim(s)" means any and all notices, charges, claims, proceedings, actions, causes of action and suits, brought by a third party.

"Confidential Information" is any non-public information relating to each of Customer's and Kronos' businesses and those of Kronos' Technology suppliers that is disclosed pursuant to this Agreement and which reasonably should have been understood by the recipient of such information to be confidential because of (i) legends or other markings, (ii) the circumstances of the disclosure, or (iii) the nature of the information itself. Information will not be considered "Confidential Information" if the information was (i) in the public domain without any breach of this Agreement; (ii) disclosed to the Receiving Party on a non-confidential basis from a source which is lawfully in possession of such Confidential Information and, to the knowledge of the Receiving Party, is not prohibited from disclosing such Confidential Information to Receiving Party; or (iii) released in writing from confidential treatment by Delivering Party; or (iv) required to be disclosed pursuant to a subpoena, order, civil investigative demand or similar process with which the Receiving Party is legally obligated to comply, and of which the Receiving Party notifies Delivering Party.

"Configuration(s)" means the Customer specific settings of the parameters within the Applications(s), including pay and work rules, security settings such as log-in credentials, passwords, and private keys used to access the Service.

"Controls" means the administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of Customer Data, designed and implemented by Kronos to secure Customer

Data against accidental or unlawful loss, access or disclosure consistent with the AICPA Trust Principles Criteria for security, availability, confidentiality and processing integrity (SOC 2).

"Customer Data" means all content Customer, or its Authorized Users, posts or otherwise inputs into the Service, including but not limited to information, data (such as payroll data, vacation time, hours worked or other data elements associated with an Authorized User), text, multimedia images (e.g. graphics, audio and video files), or compilations.

"Customer Indemnified Party(ies)" means Customer and Customer's respective directors, officers, and employees.

"Data Protection Law(s)" means all international, federal, state, and local laws, rules, regulations, directives and published governmental or regulatory decisions that specify data privacy, data protection or data security obligations, and which, in each case, have the force of law applicable to a Party's collection, use, processing, storage, or disclosure of Personally Identifiable Information.

"Documentation" means the published specifications for the applicable Applications and Equipment, such as user manuals and administrator guides.

"Educational Services" means (i) KnowledgeMap Learning Portal; (ii) KnowledgeMap Live; and (iii) ala carte educational consulting services.

"Equipment" means Kronos equipment such as time clocks, devices, or other equipment set forth on an Order Form.

"Equipment Support Services" means the maintenance and support services related to Kronos' support of Equipment as further described in Attachment A-1.

"Feedback" means suggestions, ideas, comments, know how, techniques or other information provided to Kronos for enhancements or improvements, new features or functionality or other feedback with respect to the Service.

"Fees" means the charges to be paid by Customer for a particular item.

"Implementation Services" means those professional services provided by Kronos to set up the cloud environment and to setup the Configurations within the Applications, as set forth in an SOW.

"KnowledgeMap™" means the online educational portal providing access to learning resources.

"KnowledgeMap™ Live" means the subscription service providing instructor led training by user role on a rotating course schedule.

"Kronos Indemnified Party(ies)" means Kronos and its third-party Technology suppliers and each of their respective directors, officers, employees, agents and independent contractors.

"Order Form" means an order form mutually agreed upon by Kronos and Customer setting forth, among other things, the items ordered by Customer and to be provided by Kronos and the Fees to be paid by Customer.

"Participating Entity(ies)" means those Kronos or Customer entities that (i) directly or indirectly control, are controlled by, or are under common control with Kronos or Customer, respectively and (ii) sign an Order Form for the Service. "Control" (in this context) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of the entity in respect of which the determination is being made through the ownership of the majority of its voting or equity securities, contract, voting trust or otherwise.

"Party(ies)" means Kronos or Customer, or both of them, as the context dictates.

"PEPM" means the per employee per month fee for a Customer's Authorized Users access to the Service.

"Personally Identifiable Information" means information concerning individually identifiable employees of Customer that is protected against disclosure under Applicable Data Protection Law.

"Professional Services" means the professional, consulting, or training services provided by Kronos pursuant to an Order Form and which are not described in a Statement of Work.

"Seasonal Licenses" are limited use licenses that have the following attributes: (i) valid only for the four (4) consecutive months during the annual period identified on the Order Form; (ii) valid from the first day of the month in which they commence until the end on the last day of the month in which they expire; and (iii) will be effective automatically each year during the Term, subject to termination and non-renewal as provided in the Agreement.

"Service" means the Kronos supply of the commercially available version of the Workforce Dimensions SaaS Applications in Kronos' hosted environment and the services described in the Agreement related thereto.

"Statement of Work" and **"SOW"** are interchangeable terms referring to a written description of the Implementation Services.

"Success Plan(s)" means the services provided by Kronos to support and maintain the Service as described in Exhibit C.

"Taxes" means all applicable taxes relating to the goods and services provided by Kronos hereunder, including all duties and country, federal, state, provincial or local taxes (including GST or VAT if applicable) but excluding taxes on Kronos' income or business privilege.

"Technology" means the intellectual property of Kronos within the Service, including but not limited to the Applications.

"Term" means the Initial Term and any Renewal Terms.

Exhibit G: Workforce Dimensions™ Add-Ins

This Exhibit governs the Add-In(s) to be provided by Kronos to Customer, if specified on an Order Form. Capitalized terms not otherwise defined herein shall have the meanings prescribed to them in the Agreement. In the event of a conflict or inconsistency between the Agreement and this Exhibit, this Exhibit shall control.

Customer agrees that the Add-In(s) may only be used solely in connection with Workforce Dimensions™ for Customer's own internal purposes. The Add-Ins are not installed in the Kronos hosting environment in which Workforce Dimensions resides. The Add-Ins may only be installed and operated in a data center or other cloud environment managed by or on behalf of Customer. Customer is solely responsible to have all applicable rights, licenses and necessary infrastructure and support to use the third-party applications with which the Add-In(s) function, including security of the environment in which the Add-In(s) are installed.

The Service Level Agreement and associated SLAs (Attachment A-3) and the Workforce Dimensions Cloud Guidelines (Exhibit B) in the Agreement do not apply to the Add-In(s) because the Add-In does not reside in Kronos' hosting environment.

Implementation. Configuration and deployment of the Add-In(s) may be performed by Customer in accordance with Kronos written instructions and guidelines. Alternatively, Customer may engage Kronos or a third party to perform implementation or professional services as described in the Agreement.

Warranty Disclaimer. Kronos does not warrant that the Add-In(s) will be free from errors or service interruption. Kronos disclaims errors and liability with respect to the third-party applications or APIs with which the Add-In(s) function. Customer is solely responsible to manage its accounts or systems that may access the Add-In(s).

KRONOS®

Company Name _____

- Executive Sponsor _____
  (Sponsor of the project and point of escalation for Kronos Senior Management)

  Title _____

  Email Address _____

  Phone Number _____

- Project Manager _____
  (Key contact for Customer's internal team during implementation phase and coordinator of resources)

  Title _____

  Email Address _____

  Phone Number _____

- Seed User _____
  (Receiver of the WFD Tenants or WFR Sandbox, resets passwords and sets up users)

  Title _____

  Email Address _____

  Phone Number _____

- Vanity Tag _____
  (Company Name, no spaces & 18-char max)

- Accounts Payable Contact _____(email address)

Please return with your contract paperwork.

City of Galveston

DEVELOPMENT SERVICES

Coastal Resources Division
dhenry@galvestontx.gov | 409-797-3621 | www.galvestontx.gov

Date: June 25, 2020

To: Brian Maxwell, City Manager

Hon. Mayor and City Council Members

From: Dustin Henry, AICP, Coastal Resources and Floodplain Manager

Subject: Consider for Approval the Purchase of sign materials for beach access signage from Trantex Transportation Product through Buy Board (contract #608-20). Funding for the signage materials will come from the Seawall Beach Urban Park beach user fees account in the amount of $21,987.25.

I. Background

A. The Department of Development Services is working on a project to bring the City's Beach Access Plan into compliance with the requirements of the Texas General Land Office (GLO).

B. The GLO has requested that the City of Galveston ensure conspicuous signage is installed at various beach access points in the community to inform the public where off-beach parking areas are located and where dedicated public pedestrian pathways and dune walkovers exist for pedestrians to access the beach from these off-beach parking areas.

C. Signage previously existed at some of these areas, however over time most signs have deteriorated, gone missing, or display inconsistent or incomplete information.

II. Current Situation

A. The Department of Development Services and Public Works Department estimate that approximately 1,100 signs are needed community-wide in order to meet the GLO's requirements for conspicuous signage at off-beach parking areas and pedestrian walkovers/pathways.

B. Signage to be placed at the public pedestrian pathways/dune walkovers will also list the various ordinances and beach rules that apply to that specific beach area, and contact information for public safety.

C. The Coastal Resources Division is developing a map-based inventory of where these signs will go up, to aid staff responsible for ongoing maintenance of these signs with understanding where the required signs belong.

III. Alternatives in Order of Priority

A. Alternative #1: Approve the purchase of signage materials Trantex Transportation Product for $21,987.25.

B. Alternative #2: Do not approve the purchase of signage materials

IV. Recommendation

A. Alternative #1: Approve the purchase of signage materials Trantex Transportation Product for $21,987.25 to be paid for by the Seawall Beach Urban Park beach user fees account.

V. Fiscal Impact Report

Requested by:	Dustin Henry, AICP Coastal Resources and Floodplain Manager
Funding Source:	1095-211417-535346-4719000
Cost	$21,987.25

Respectfully Submitted,

Dustin Henry, AICP
Coastal Resources and Floodplain Manager, Department of Development Services

Tim Tietjens
Director, Department of Development Services

Quote

Trantex Transportation Product
3310-D Frick Road
Houston, TX 77086
United States
P: (281) 448-7711

Quote Number: QTE0000617
Quote Date: 06/17/20

Prepared By: RENEE

BILL TO:
City Of Galveston
P. O. Box 779
Galveston TX 77553

SHIP TO:
Charles West
City Of Galveston
2801 Santa Fe Place
Galveston TX 77550

Notes: BuyBoard# 608-20

Customer P.O.	Ship VIA	Terms	Shipping Terms
	TRANTEX	NET30	Freight Destination

Item Number	Ordered	Unit	Price	Extended Price
A12X18-A3 84F 12X18 FLAT SIGN BLANK .080	230	EA	$5.95	$1,368.50
QUOTE 30x30 FLAT DIAMOND SIGN BLANK .080	75	EA	$18.25	$1,368.75
QUOTE 48x36 FLAT SIGN BLANK .080	200	EA	$35.10	$7,020.00
QUOTE 48x12 FLAT SIGN BLANK .080	150	EA	$11.70	$1,755.00
40M-05 30H [P] EC Film 48" X50 YD 1179 Brown	7	ROL	$845.00	$5,915.00
QUOTE EC Flim 30"x50yards 1172 Red	4	EA	$525.00	$2,100.00
QUOTE EC Film 36"x50yards 1178 Black	4	EA	$615.00	$2,460.00

Quotations are valid for 30 days from the date of quotation.

Net Order:	$21,987.25
Discount %	0%
Less Discount:	$0.00
Freight:	$0.00
Sales Tax:	$0.00
Order Total:	$21,987.25

Signature: _____

Printed Name: _____

1.5% FINANCE CHARGE FOR INVOICES OVER 60 DAYS.
TERMS & CONDITIONS APPLY AS STATED AT https://TRANSLINEINC.COM/TOS/
281-448-7711 | FAX 281-591-6827 | sales@trantexinc.com | www.Translineinc.com

June 15, 2020

Brian Maxwell, City Manager
Honorable Mayor and City Council Members

Subject: Consider for the approval allowing the Fleet Facility and other city departments to purchase assortments of tools and supplies from Kimball Midwest who is a member of Buyboard, a cooperative purchasing organization. The funding sources will be the user department's parts and supplies accounts.

I. Background

A. Kimball Midwest is a supplier of shop supplies and is a nationwide business.

B. Buyboard is a cooperative purchasing organization that the city is a member of, that performs bidding packages for local governments. The Fleet Facility has performed competitive bidding packages on current equipment purchases to assure that these purchases are the better option (a majority of the time).

C. Staff would negotiate with this vendor to achieve the lowest pricing available to a municipal organization on an as needed basis.

D. This vendor has a supply location in the Houston area.

II. Current Situation

The City Council will have to approve allowing the Fleet Facility and other city departments to purchase assortments of tools and supplies from Kimball Midwest who is a member of Buyboard, a cooperative purchasing organization . The funding sources will be the user department's parts and supplies accounts.

III. Alternatives in order of priority

A. Approve the request.

1. Cost - will be negotiated at time of purchase.
2. Timing - as soon as possible.
3. Departmental Improvements - will provide the various departments with required supplies at a reduced pricing.

B. Do not approve the request.

1. Cost - costs will be increased since the co-op is not utilized
2. Timing - N/A
3. Departmental Improvements - the cost of required supplies will increase.

IV. Fiscal Impact Report

Requested by	David Smith
Funding Source	Parts and supplies accounts.
Cost	Not to exceed approved budgeted amounts
Savings Estimation	Costs will be negotiated at time of purchase

V. Environmental Impact

NA

VI. Recommendation

Approve the request.

Respectfully Submitted

David Smith
Executive Director

P.O. Box 400
Austin, TX 78767-0400
800.695.2919 | 512.467.0222 | Fax: 800.211.5454
buyboard.com

November 1, 2019

Sent via email to: govwebforms@kimballmidwest.com

LeAnna Toebbe
Kimball Midwest
4800 Roberts Rd.
Columbus OH 43228

Re: Building Maintenance, Repair, & Operations Supplies, & Equipment
BuyBoard Contract 577-18

The Local Government Purchasing Cooperative (BuyBoard) awarded your company a contract under Building Maintenance, Repair, & Operations Supplies, & Equipment, Contract 577-18, effective December 1, 2018 through November 30, 2019, with two possible one-year renewals. At this time, we are renewing your contract through November 30, 2020.

All discounts, terms, and conditions of your contract will remain the same. If you agree to this renewal, there is nothing you need to do. However, if you do not agree to this renewal, you must notify me immediately via email at connie.burkett@tasb.org.

Reminder: Once a BuyBoard contract is awarded, vendors must generate a minimum of $15,000 annually or they may not be offered a contract renewal. Evaluations will be made annually, prior to the expiration date of the contract term, and the BuyBoard reserves the right to discontinue the vendor's contract at that time.

Additionally, **all purchase orders must be processed through the BuyBoard. Except as expressly authorized in writing by the Cooperative's administrator, you are not authorized to process a purchase order received directly from a Cooperative member**. Accepting orders directly from a member entity without Cooperative authorization is a violation of the terms of your contract. We request your assistance in immediately forwarding any orders received directly from member entities. Purchase orders may be sent to us either by fax (800-211-5454) or by email (info@buyboard.com). If by chance an order sent directly to you has been unintentionally processed, please forward it to the Cooperative and note it as **RECORD ONLY** to prevent duplication.

If you have questions or comments concerning this renewal, please contact me as soon as possible at connie.burkett@tasb.org. We appreciate your interest in The Local Government Purchasing Cooperative.

Sincerely,

Connie W. Burkett

Connie W Burkett, *CTSBO*
Contract Administrator

P.O. Box 400
Austin, TX 78767-0400
800.695.2919 | 512.467.0222 | Fax: 800.211.5454
buyboard.com

October 24, 2018

Welcome to BuyBoard!

Re: *Notice of The Local Government Purchasing Cooperative Award*
Proposal Name and Number: Building Maintenance, Repair and Operations Supplies and Equipment, Proposal No. 577-18

Congratulations, The Local Government Purchasing Cooperative (Cooperative) has awarded your company a BuyBoard® contract based on the above-referenced Proposal. The contract is effective 12/1/2018 through 11/30/2019, with two possible one-year renewals. The contract documents are those identified in Section 3 of the General Terms and Conditions of the specifications.

To view the items your company has been awarded, please review the proposal tabulation No. 577-18 on the following web-site: www.buyboard.com/vendor. Only items marked as awarded to your company can be sold through the BuyBoard contract. In addition, on this website you will find the membership list which will provide you with the names of all entities with membership in our purchasing cooperative.

Enclosed with this letter you will find the following documents:

1. Vendor Quick Reference Guide
2. BuyBoard License and Identity Standards

You are advised that receipt of a purchase order directly from a Cooperative member is not within the guidelines of the Cooperative. Accepting purchase orders directly from Cooperative members may result in a violation of the State of Texas competitive bid statute and termination of this Cooperative BuyBoard contract. **Therefore, all purchase orders must be processed through the BuyBoard in order to comply**. Please forward by email to info@buyboard.com any order received directly from a Cooperative member. If you inadvertently process a purchase order sent directly to you by a Cooperative member, please fax the order to the above number and note it as **RECORD ONLY** to prevent duplication.

As an awarded vendor a BuyBoard user id and password will be sent via e-mail 2 to 3 business days prior to the start of your contract.

On behalf of the Texas Association of School Boards, we appreciate your interest in the Cooperative and we are looking forward to your participation in the program. If you have any questions, please contact **Cooperative Procurement Staff** at 800-695-2919.

Sincerely,

Arturo Salinas
Department Director, Cooperative Procurement
v.6.5

BuyBoard® National Purchasing Cooperative

Endorsed by NSBA National School Boards Association

November 13, 2018

Welcome to BuyBoard!

Re: *Notice of National Purchasing Cooperative Piggy-Back Award*
Proposal Name and Number: Building Maintenance, Repair and Operation Supplies and Equipment, Proposal No. 577-18

Congratulations, The National Purchasing Cooperative (National Cooperative) has awarded your company a BuyBoard® contract based on the above-referenced Proposal. As provided for in the Proposal and your National Purchasing Cooperative Vendor Award Agreement, you are authorized to sell the goods and services awarded under the Proposal to National Cooperative members in states other than Texas through the BuyBoard. The contract is effective 12/1/2018 through 11/30/2019, with two possible one-year renewals.

The National Cooperative membership list is available at our website www.buyboard.com/vendor. The list identifies the current members that may purchase awarded goods and services under your National Cooperative BuyBoard contract.

You are advised that receipt of a purchase order directly from a National Cooperative member is not within BuyBoard guidelines. Accepting purchase orders directly from Cooperative members may result in a violation of applicable competitive procurement law and termination of this National Cooperative BuyBoard contract. **Therefore, all purchase orders from National Cooperative members must be processed through the BuyBoard**. Please forward by e-mail to info@buyboard.com any order received directly from a National Cooperative member. If you inadvertently process a purchase order sent directly to you by a National Cooperative member, please fax the order to the above number and note it as **RECORD ONLY** to prevent duplication.

As an awarded vendor a BuyBoard user id and password will be sent via e-mail 2 to 3 business days prior to the start of your contract.

On behalf of the National Cooperative, we are looking forward to your participation in the program. If you have any questions, please contact **Cooperative Procurement Staff at 800-695-2919**.

Sincerely,

Arturo Salinas
Department Director, Cooperative Procurement
v.6.5

P.O. Box 400, Austin, Texas 78767-0400
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PROPOSER'S AGREEMENT AND SIGNATURE

Proposal Name: Building Maintenance, Repair and Operations Supplies and Equipment

Proposal Due Date/Opening Date and Time: May 3, 2018 at 4:00 PM

Location of Proposal Opening:
Texas Association of School Boards, Inc.
BuyBoard Department
12007 Research Blvd.
Austin, TX 78759

Proposal Number: 577-18

Anticipated Cooperative Board Meeting Date: October 2018

Contract Time Period: December 1, 2018 through November 30, 2019 with two (2) possible one-year renewals.

Kimball Midwest
Name of Proposing Company

5/2/2018
Date

4800 Roberts Rd
Street Address

Signature of Authorized Company Official

Columbus, OH 43228
City, State, Zip

LeAnna Toebbe
Printed Name of Authorized Company Official

800-233-1294 x2696
Telephone Number of Authorized Company Official

Government Sales Analyst
Position or Title of Authorized Company Official

614-219-6840
Fax Number of Authorized Company Official

31-4408759
Federal ID Number

The proposing company ("you" or "your") hereby acknowledges and agrees as follows:

1. You have carefully examined and understand all Cooperative information and documentation associated with this Proposal Invitation, including the Instructions to Proposers, General Terms and Conditions, attachments/forms, item specifications, and line items (collectively "Requirements");

2. By your response ("Proposal") to this Proposal Invitation, you propose to supply the products or services submitted at the prices quoted in your Proposal and in strict compliance with the Requirements, unless specific deviations or exceptions are noted in the Proposal;

3. Any and all deviations and exceptions to the Requirements have been noted in your Proposal and no others will be claimed;

4. If the Cooperative accepts any part of your Proposal and awards you a contract, you will furnish all awarded products or services at the prices quoted and in strict compliance with the Requirements (unless specific exceptions are noted in the Proposal and accepted by the Cooperative), including without limitation the Requirements related to:
   a. conducting business with Cooperative members, including offering pricing to members that is the best you offer compared to similar customers;
   b. payment of a service fee in the amount specified and as provided for in this Proposal Invitation;
   c. the **possible** award of a piggy-back contract by another governmental entity or nonprofit entity, in which event you will offer the awarded goods and services in accordance with the Requirements; and
   d. submitting price sheets or catalogs in the proper format as required by the Cooperative as a prerequisite to activation of your contract;

5. You have clearly identified on the included form any information in your Proposal that you believe to be confidential or proprietary or that you do not consider to be public information subject to public disclosure under a Texas Public Information Act request or similar public information law;

6. The individual signing this Agreement is duly authorized to enter into the contractual relationship represented by this Proposal Invitation on your behalf and bind you to the Requirements, and such individual (and any individual signing a form) is authorized and has the requisite knowledge to provide the information and make the representations and certifications required in the Requirements;

7. You have carefully reviewed your Proposal, and certify that all information provided is true, complete and accurate, and you authorize the Cooperative to take such action as it deems appropriate to verify such information; and

8. Any misstatement, falsification, or omission in your Proposal, whenever or however discovered, may disqualify you from consideration for a contract award under this Proposal Invitation or result in termination of an award or any other remedy or action provided for in the General Terms and Conditions or by law.

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VENDOR CONTACT INFORMATION

Company: Kimball Midwest

Vendor Contact Name and Mailing Address for Notices: Gov Sales Dept; 4800 Roberts Rd. Columbus, OH 43228

Company Website: https://www.kimballmidwest.com

Purchase Orders: Purchase orders from Cooperative members will be available through the Internet or by facsimile.

Option 1: **Internet**. Vendors need Internet access and at least one e-mail address so that notification of new orders can be sent to the Internet contact when a new purchase order arrives. An information guide will be provided to vendors that choose this option to assist them with retrieving their orders.

Option 2: **Fax**. Vendors need a designated fax line available at all times to receive purchase orders.

Please choose only one (1) of the following options for receipt of purchase orders and provide the requested information:

[x] I will use the **INTERNET** to receive purchase orders.

E-mail Address: all-governmentgroup@kimballmidwest.com

Internet Contact: LeAnna Toebbe Phone: 800-233-1294 x2696

Alternate E-mail Address: govwebforms@kimballmidwest.com

Alternate Internet Contact: Katelyn Bray Phone: 800-233-1294 x2436

[ ] I will receive purchase orders via **FAX**.

Fax Number: _____

Fax Contact: _____ Phone: _____

[ ] Purchase orders may be received by any Designated Dealer identified on my company's Dealer Designation form as provided to the Cooperative administrator. I understand that my company shall remain responsible for the Contract and the performance of all Designated Dealers under and in accordance with the Contract.

Request for Quotes ("RFQ"): Cooperative members will send RFQs to you by e-mail. Please provide e-mail addresses for the receipt of RFQs:

E-mail Address: govwebforms@kimballmidwest.com

Alternate E-mail Address: all-governmentgroup@kimballmidwest.com

Invoices: Your company will be billed monthly for the service fee due under a contract awarded under this Proposal Invitation. **All invoices are available on the BuyBoard website and e-mail notifications will be sent when they are ready to be retrieved.** Please provide the following address, contact and e-mail information for receipt of service fee invoices and related communications:

Please choose only one (1) of the following options for receipt of invoices and provide the requested information:

■ Service fee invoices and related communications should be provided directly to my company at:

Mailing address: 4800 Roberts Rd **Department:** Government Sales

City: Columbus **State:** OH **Zip Code:** 43228

Contact Name: LeAnna Toebbe **Phone:** 800-233-1294 x2696

Fax: 614-219-6840 **E-mail Address:** govwebforms@kimballmidwest.com

Alternative E-mail Address: all-governmentgroup@kimballmidwest.com

☐ In lieu of my company, I request and authorize all service fee invoices to be provided directly to the following billing agent**:

Mailing address: _____ **Department:** _____

City: _____ **State:** _____ **Zip Code:** _____

Contact Name: _____ **Phone:** _____

Fax: _____ **E-mail Address:** _____

Alternative E-mail Address: _____

☐ In lieu of my company, I request and authorize service fee invoices to be provided to the Designated Dealer(s) receiving the purchase order(s) to which the invoiced service fees relate at the address and contact information designated on my company's Dealer Designation form as provided to the Cooperative administrator.**

***** If Vendor authorizes a billing agent or Designated Dealer(s) to receive and process service fee invoices, in accordance with the General Terms and Conditions of the Contract, Vendor specifically acknowledges and agrees that nothing in that designation shall relieve Vendor of its responsibilities and obligations under the Contract including, but not limited to, payment of all service fees under any Contract awarded Vendor.***

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FELONY CONVICTION DISCLOSURE AND DEBARMENT CERTIFICATION

FELONY CONVICTION DISCLOSURE

Subsection (a) of Section 44.034 of the Texas Education Code (Notification of Criminal History of Contractor) states: "A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony."

Section 44.034 further states in Subsection (b): "A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract."

Please check (√) one of the following:

- ☐ My company is a publicly-held corporation. (Advance notice requirement does not apply to publicly-held corporation.)
- ☒ My company is not owned or operated by anyone who has been convicted of a felony.
- ☐ My company is owned/operated by the following individual(s) who has/have been convicted of a felony:

Name of Felon(s): _____

Details of Conviction(s): _____

_____

By signature below, I certify that the above information is true, complete and accurate and that I am authorized by my company to make this certification.

Kimball Midwest
Company Name

Signature of Authorized Company Official

LeAnna Toebbe
Printed Name

DEBARMENT CERTIFICATION

Neither my company nor an owner or principal of my company has been debarred, suspended or otherwise made ineligible for participation in Federal Assistance programs under Executive Order 12549, "Debarment and Suspension," as described in the Federal Register and Rules and Regulations. Neither my company nor an owner or principal of my company is currently listed on the government-wide exclusions in SAM, debarred, suspended, or otherwise excluded by agencies or declared ineligible under any statutory or regulatory authority. My company agrees to immediately notify the Cooperative and all Cooperative members with pending purchases or seeking to purchase from my company if my company or an owner or principal is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under any statutory or regulatory authority.

By signature below, I certify that the above is true, complete and accurate and that I am authorized by my company to make this certification.

Kimball Midwest
Company Name

Signature of Authorized Company Official

LeAnna Toebbe
Printed Name

RESIDENT/NONRESIDENT CERTIFICATION

Chapter 2252, Subchapter A, of the Texas Government Code establishes certain requirements applicable to proposers who are not Texas residents. Under the statute, a "resident" proposer is a person whose principal place of business is in Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in Texas. A "nonresident" proposer is a person who is not a Texas resident. Please indicate the status of your company as a "resident" proposer or a "nonresident" proposer under these definitions.

Please check (√) one of the following:

☐ I certify that my company is a **Resident Proposer.**

☒ I certify that my company is a **Nonresident Proposer.**

If your company is a Nonresident Proposer, you must provide the following information for your resident state (the state in which your company's principal place of business is located):

Kimball Midwest
Company Name

4800 Roberts Rd
Address

Columbus
City

OH
State

43228
Zip Code

A. Does your resident state require a proposer whose principal place of business is in Texas to under-price proposers whose resident state is the same as yours by a prescribed amount or percentage to receive a comparable contract?
☒ Yes ☐ No

B. What is the prescribed amount or percentage? $_____ or 5 %

VENDOR EMPLOYMENT CERTIFICATION

Section 44.031(b) of the Texas Education Code establishes certain criteria that a school district must consider when determining to whom to award a contract. Among the criteria for certain contracts is whether the vendor or the vendor's ultimate parent or majority owner (i) has its principal place of business in Texas; or (ii) employs at least 500 people in Texas.

If neither your company nor the ultimate parent company or majority owner has its principal place of business in Texas, does your company, ultimate parent company, or majority owner employ at least 500 people in Texas?

Please check (√) one of the following:

☐ Yes ☒ No

By signature below, I certify that the information in Sections 1 (*Resident/Nonresident Certification)* and 2 *(Vendor Employment Certification)* above is true, complete and accurate and that I am authorized by my company to make this certification.

Kimball Midwest
Company Name

Signature of Authorized Company Official

LeAnna Toebbe
Printed Name

NO ISRAEL BOYCOTT CERTIFICATION

Effective September 1, 2017, a Texas governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. (TEX. GOV'T CODE Ch. 2270)

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. TEX. GOV'T CODE §808.001(1).

By signature below, I certify and verify that Vendor does not boycott Israel and will not boycott Israel during the term of any contract awarded under this Proposal Invitation, that this certification is true, complete and accurate, and that I am authorized by my company to make this certification.

Kimball Midwest
Company Name

Signature of Authorized Company Official

LeAnna Toebbe
Printed Name

NO EXCLUDED NATION OR FOREIGN TERRORIST ORGANIZATION CERTIFICATION

Effective September 1, 2017, Chapter 2252 of the Texas Government Code provides that a Texas governmental entity may not enter into a contract with a company engaged in active business operations with Sudan, Iran, or a foreign terrorist organization – specifically, any company identified on a list prepared and maintained by the Texas Comptroller under Texas Government Code §§806.051, 807.051, or 2252.153. (A company that the U.S. Government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to the contract prohibition.)

By signature below, I certify and verify that Vendor is not on the Texas Comptroller's list identified above; that this certification is true, complete and accurate; and that I am authorized by my company to make this certification.

Kimball Midwest
Company Name

Signature of Authorized Company Official

LeAnna Toebbe
Printed Name

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HISTORICALLY UNDERUTILIZED BUSINESS CERTIFICATION

A proposer that has been certified as a Historically Underutilized Business (also known as a Minority/Women Business Enterprise or "MWBE" and all referred to in this form as a "HUB") is encouraged to indicate its HUB certification status when responding to this Proposal Invitation. The electronic catalogs will indicate HUB certifications for vendors that properly indicate and document their HUB certification on this form.

Please check (√) all that apply:

☐ I certify that my company has been certified as a HUB in the following categories:

☐ **Minority Owned Business**

☐ **Women Owned Business**

☐ **Service-Disabled Veteran Owned Business (veteran defined by 38 U.S.C. §101(2), who has a service-connected disability as defined by 38 U.S.C. § 101(16), and who has a disability rating of 20% or more as determined by the U. S. Department of Veterans Affairs or Department of Defense)**

Certification Number:

_____

Name of Certifying Agency:

_____

☒ My company has **NOT** been certified as a HUB.

By signature below, I certify that the above is true, complete and accurate and that I am authorized by my company to make this certification.

Kimball Midwest
Company Name

LeAnna Toebbe
Printed Name

Signature of Authorized Company Official

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CONSTRUCTION-RELATED GOODS AND SERVICES AFFIRMATION

A contract awarded under this Proposal Invitation covers only the specific goods and services awarded by the BuyBoard. As explained in the BuyBoard Procurement and Construction Related Goods and Services Advisory for Texas Members ("Advisory"), **Texas law prohibits the procurement of architecture or engineering services through a purchasing cooperative. This BuyBoard contract does not include such services. Architecture or engineering services must be procured by a Cooperative member separately, in accordance with the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code) and other applicable law and local policy.**

The Advisory, available at buyboard.com/Vendor/Resources.aspx, provides an overview of certain legal requirements that are potentially relevant to a Cooperative member's procurement of construction or construction-related goods and services, including those for projects that may involve or require architecture, engineering or independent testing services. A copy of the Advisory can also be provided upon request.

By signature below, the undersigned affirms that Proposer has obtained a copy of the Advisory, has read and understands the Advisory, and is authorized by Proposer to make this affirmation. If Proposer sells construction-related goods or services to a Cooperative member under a BuyBoard contract awarded under this Proposal Invitation, Proposer will comply with the Advisory and applicable legal requirements, make a good faith effort to make its Cooperative member customers or potential Cooperative member customers aware of such requirements, and provide a Cooperative member with a copy of the Advisory before executing a Member Construction Contract with the member or accepting the member's purchase order for construction-related goods or services, whichever comes first.

Kimball Midwest
Company Name

Signature of Authorized Company Official

LeAnna Toebbe
Printed Name

5/2/18
Date

BuyBoard® Cooperative Purchasing
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DEVIATION AND COMPLIANCE

If your company intends to deviate from the General Terms and Conditions, Proposal Specifications or other requirements associated with this Proposal Invitation, you MUST list all such deviations on this form, and provide complete and detailed information regarding the deviations on this form or an attachment to this form. The Cooperative will consider any deviations in its contract award decision, and reserves the right to accept or reject a proposal based upon any submitted deviation.

In the absence of any deviation identified and described in accordance with the above, your company must fully comply with the General Terms and Conditions, Proposal Specifications and all other requirements associated with this Proposal Invitation if awarded a contract under this Proposal Invitation. A deviation will not be effective unless accepted by the Cooperative. The Cooperative may, in its sole discretion, seek clarification from and/or communicate with Proposer(s) regarding any submitted deviation, consistent with general procurement principles of fair competition. The Cooperative reserves the right to accept or reject a proposal based upon any submitted deviation.

Please check (√) one of the following:

☒ **No**; Deviations
☐ **Yes**; Deviations

List and fully explain any deviations you are submitting:

_____

_____

PLEASE PROVIDE THE FOLLOWING INFORMATION:

1. Shipping Via: ☐ Common Carrier ☐ Company Truck ☐ Prepaid and Add to Invoice ☒ Other: UPS

2. Payment Terms: ☒ Net 30 days ☒ 1% in 10/Net 30 days ☐ Other:

3. Number of Days for Delivery: 3 ARO

4. Vendor Reference/Quote Number: N/A

5. State your return policy: 1. Credit resulting from the return of an entire sales order will apply against future orders only. 2. Merchandise must be in standard box quantities and in clean, resalable condition and may be subject to a 20% restocking charge. Dirty and abused merchandise will not be accepted for credit. 3. only merchandise originally sold by Kimball Midwest will be considered for credit return. 4. After 90 days a return is subject to corporate approval.

6. Are electronic payments acceptable? ☒ Yes ☐ No

7. Are credit card payments acceptable? ☐ Yes ☐ No

Kimball Midwest
Company Name

Signature of Authorized Company Official

LeAnna Toebbe
Printed Name

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LOCATION/AUTHORIZED SELLER LISTINGS

If you have more than one location/authorized seller that will service a contract awarded under this Proposal Invitation, please list each location/authorized seller below. If additional sheets are required, please duplicate this form as necessary. NOTE: Awarded Vendors shall remain responsible for all aspects of the Contract, including processing of Purchase Orders, and shall be responsible for the performance of all locations and authorized sellers under and in accordance with the Contract. If you are a product manufacturer and wish to designate Designated Dealers as defined in the General Terms and Conditions to receive Cooperative member Purchase Orders on your behalf, you must complete the Manufacturer Designated Dealer form.

Kimball Midwest
Company Name

4800 Roberts Rd
Address

Columbus — City
OH — State
43228 — Zip

800-233-1294 x2696 — Phone Number
614-219-6840 — Fax Number

LeAnna Toebbe
Contact Person

Kimball Midwest
Company Name

1202 Avenue S.
Address

Grand Prairie — City
TX — State
75050 — Zip

972-975-2777 — Phone Number
972-975-4403 — Fax Number

Tammy Wagoner
Contact Person

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MANUFACTURER DEALER DESIGNATION

If Vendor is a manufacturer that sells products through a dealer network and wishes to designate a dealer or multiple dealers ("Designated Dealers") to receive Cooperative member Purchase Orders on Vendor's behalf, you must complete this form for each dealer you wish to designate.

Regardless of any Designated Dealers submitted by Vendor, Vendor specifically agrees and acknowledges that any such designations are for Vendor's convenience only and shall not, if Vendor is awarded a Contract, relieve Vendor of any obligations under the Contract, including payment of Cooperative service fees on all Purchase Orders submitted to Vendor or any Designated Dealer. In accordance with the General Terms and Conditions, an awarded Vendor shall remain responsible and liable for all of its obligations under the Contract and the performance of both Vendor and any of Vendor's Designated Dealers under and in accordance with the Contract and remain subject to all remedies for default thereunder, including, but not limited to suspension and termination of Vendor's Contract for nonpayment of service fees.

If awarded, Vendor authorizes the Cooperative, in its sole discretion, to list any Vendor Designated Dealers in the BuyBoard system and to receive Purchase Orders directly from Cooperative members on behalf of Vendor. To the extent a Vendor with Designated Dealers receives a Purchase Order directly, it shall be the responsibility of Vendor to appropriately process such Purchase Order in accordance with the Contract, including but not limited to timely forwarding such Purchase Order to a Designated Dealer for processing.

The Cooperative reserves the right, in its sole discretion, to refuse addition of, or request removal of, any Designated Dealer, and Vendor agrees to immediately require such Designated Dealer to cease accepting Purchase Orders or otherwise acting on Vendor's behalf under the Contract. Further, the Cooperative's administrator shall be authorized to remove or suspend any or all Designated Dealers from the BuyBoard at any time in its sole discretion.

If you wish to designate a dealer to service a contract awarded under this Proposal Invitation, please list the Designated Dealer below and have this form signed by an official of your company authorized to make such designation. If you wish to designate multiple dealers, please duplicate this form as necessary.

N/A

Designated Dealer Name

Designated Dealer Address

City | State | Zip

Phone Number | Fax Number

Email address | Designated Dealer Tax ID Number* **(*attach W-9)**

Designated Dealer Contact Person

Your Company Name | Signature of Authorized Company Official

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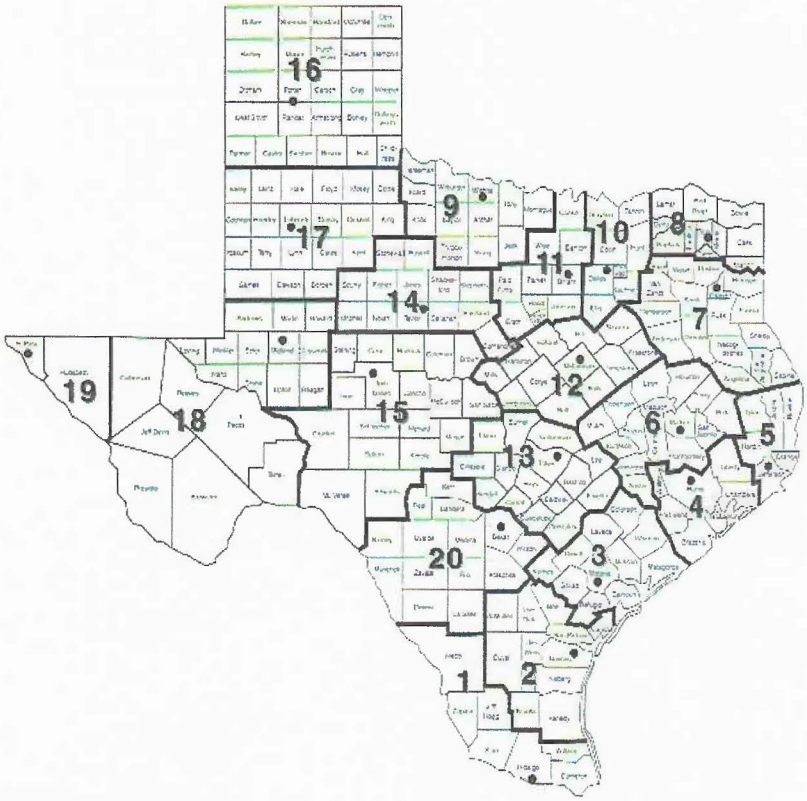
TEXAS REGIONAL SERVICE DESIGNATION

The Cooperative (referred to as "Texas Cooperative" in this form and in the State Service Designation form) offers vendors the opportunity to service its members throughout the entire State of Texas. If you do not plan to service all Texas Cooperative members statewide, you **must** indicate the specific regions you will service on this form. ***If you propose to serve different regions for different products or services included in your proposal, you must complete and submit a separate Texas Regional Service Designation form for each group of products and clearly indicate the products or services to which the designation applies in the space provided at the end of this form. By designating a region or regions, you are certifying that you are authorized and willing to provide the proposed products and services in those regions. Designating regions in which you are either unable or unwilling to provide the specified products and services shall be grounds for either rejection of your proposal or, if awarded, termination of your Contract.*** Additionally, if you do not plan to service Texas Cooperative members (i.e., if you will service only states other than Texas), you must so indicate on this form.

Regional Education Service Centers



☒ **I will service Texas Cooperative members statewide.**

☐ **I will not service Texas Cooperative members statewide. I will only service members in the regions checked below:**

	Region	Headquarters
☐	1	Edinburg
☐	2	Corpus Christi
☐	3	Victoria
☐	4	Houston
☐	5	Beaumont
☐	6	Huntsville
☐	7	Kilgore
☐	8	Mount Pleasant
☐	9	Wichita Falls
☐	10	Richardson
☐	11	Fort Worth
☐	12	Waco
☐	13	Austin
☐	14	Abilene
☐	15	San Angelo
☐	16	Amarillo
☐	17	Lubbock
☐	18	Midland
☐	19	El Paso
☐	20	San Antonio

☐ I will not service members of the Texas Cooperative.

Kimball Midwest
Company Name

Signature of Authorized Company Official

LeAnna Toebbe
Printed Name

If this Texas Regional Service Designation form applies to only one or some of the products and services proposed by Vendor, list the products and services to which this form applies here:

N/A

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STATE SERVICE DESIGNATION

The Cooperative offers vendors the opportunity to service other governmental entities in the United States, including intergovernmental purchasing cooperatives such as the National Purchasing Cooperative BuyBoard. You must complete this form if you plan to service the entire United States, or will service only the specific states indicated. *(Note: If you plan to service Texas Cooperative members, be sure that you complete the Texas Regional Service Designation form.)*

If you serve different states for different products or services included in your proposal, you must complete and submit a separate State Service Designation form for each group of products and clearly indicate the products or services to which the designation applies in the space provided at the end of this form. By designating a state or states, you are certifying that you are authorized and willing to provide the proposed products and services in those states. Designating states in which you are either unable or unwilling to provide the specified products and services shall be grounds for either rejection of your proposal or, if awarded, termination of your Contract.

Please check (√) all that apply:

☒ I will service all states in the United States.

☐ I will not service all states in the United States. I will service only the states checked below:

- ☐ Alabama
- ☐ Alaska
- ☐ Arizona
- ☐ Arkansas
- ☐ California (Public Contract Code 20118 & 20652)
- ☐ Colorado
- ☐ Connecticut
- ☐ Delaware
- ☐ District of Columbia
- ☐ Florida
- ☐ Georgia
- ☐ Hawaii
- ☐ Idaho
- ☐ Illinois
- ☐ Indiana
- ☐ Iowa
- ☐ Kansas
- ☐ Kentucky
- ☐ Louisiana
- ☐ Maine
- ☐ Maryland
- ☐ Massachusetts
- ☐ Michigan
- ☐ Minnesota
- ☐ Mississippi
- ☐ Missouri
- ☐ Montana
- ☐ Nebraska
- ☐ Nevada
- ☐ New Hampshire
- ☐ New Jersey
- ☐ New Mexico
- ☐ New York
- ☐ North Carolina
- ☐ North Dakota
- ☐ Ohio
- ☐ Oklahoma
- ☐ Oregon
- ☐ Pennsylvania
- ☐ Rhode Island
- ☐ South Carolina
- ☐ South Dakota
- ☐ Tennessee
- ☐ Texas
- ☐ Utah
- ☐ Vermont
- ☐ Virginia
- ☐ Washington
- ☐ West Virginia
- ☐ Wisconsin
- ☐ Wyoming

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This form will be used to ensure that you can service other governmental entities throughout the United States as indicated. Your signature below confirms that you understand your service commitments during the term of a contract awarded under this proposal.

Kimball Midwest

Company Name

Signature of Authorized Company Official

LeAnna Toebbe

Printed Name

If this State Service Designation form applies to only one or some of the products and services proposed by Vendor, list the products and services to which this form applies here:

NATIONAL PURCHASING COOPERATIVE VENDOR AWARD AGREEMENT

In accordance with the Terms and Conditions associated with this Proposal Invitation, a contract awarded under this Proposal Invitation may be "piggy-backed" by another governmental entity. The National Purchasing Cooperative is an intergovernmental purchasing cooperative formed by certain school districts outside of Texas to serve its members throughout the United States. If you agree to be considered for a piggy-back award by the National Purchasing Cooperative, you agree to the following terms and agree to serve National Purchasing Cooperative members in the states you have indicated on the State Service Designation form, in your Proposal.

By signing this form, Proposer (referred to in this Agreement as "Vendor") agrees as follows:

1. Vendor acknowledges that if The Local Government Purchasing Cooperative ("Texas Cooperative") awards Vendor a contract under this Proposal Invitation ("Underlying Award"), the National Purchasing Cooperative ("National Cooperative") may - but is not required to - "piggy-back" on or re-award all or a portion of that Underlying Award ("Piggy-Back Award"). By signing this National Cooperative Vendor Award Agreement ("Agreement"), Vendor accepts and agrees to be bound by any such Piggy-Back Award as provided for herein.

2. In the event National Cooperative awards Vendor a Piggy-Back Award, the National Cooperative Administrator ("BuyBoard Administrator") will notify Vendor in writing of such Piggy-Back Award, which award shall commence on the effective date stated in the Notice and end on the expiration date of the Underlying Award, subject to annual renewals as authorized in writing by the BuyBoard Administrator. Vendor agrees that no further signature or other action is required of Vendor in order for the Piggy-Back Award and this Agreement to be binding upon Vendor. Vendor further agrees that no interlineations or changes to this Agreement by Vendor will be binding on National Cooperative, unless such changes are agreed to by its BuyBoard Administrator in writing.

3. Vendor agrees that it shall offer its goods and services to National Cooperative members at the same unit pricing and same general terms and conditions, subject to applicable state laws in the state of purchase, as required by the Underlying Award. However, nothing in this Agreement prevents Vendor from offering National Cooperative members better (i.e., lower) competitive pricing and more favorable terms and conditions than those in the Underlying Award.

4. Vendor hereby agrees and confirms that it will serve those states it has designated on the State Service Designation Form of this Proposal Invitation. Any changes to the states designated on the State Service Designation Form must be approved in writing by the BuyBoard Administrator.

5. Vendor agrees to pay National Cooperative the service fee provided for in the Underlying Award based on the amount of purchases generated from National Cooperative members through the Piggy-Back Award. Vendor shall remit payment to National Cooperative on such schedule as it specifies (which shall not be more often than monthly). Further, upon request, Vendor shall provide National Cooperative with copies of all purchase orders generated from National Cooperative members for purposes of reviewing and verifying purchase activity. Vendor further agrees that National Cooperative shall have the right, upon reasonable written notice, to review Vendor's records pertaining to purchases made by National Cooperative members in order to verify the accuracy of service fees.

6. Vendor agrees that the Underlying Award, including its General Terms and Conditions, are adopted by reference to the fullest extent such provisions can reasonably apply to the post-proposal/contract award phase. The rights and responsibilities that would ordinarily inure to the Texas Cooperative pursuant to the Underlying Award shall inure to National Cooperative; and, conversely, the rights and responsibilities that would ordinarily inure to Vendor in the Underlying Award shall inure to Vendor in this Agreement. Vendor recognizes and agrees that Vendor and National Cooperative are the only parties to this Agreement, and that nothing in this Agreement has application to other third parties, including the Texas Cooperative. In the event of conflict between this Agreement and the terms of the Underlying Award, the terms of this Agreement shall control, and then only to the extent necessary to reconcile the conflict.

7. This Agreement shall be governed and construed in accordance with the laws of the State of Rhode Island and venue for any dispute shall lie in the federal district court of Alexandria, Virginia.

8. Vendor acknowledges and agrees that the award of a Piggy-Back Award is within the sole discretion of National Cooperative, and that this Agreement does not take effect unless and until National Cooperative awards Vendor a Piggy-Back Award and the BuyBoard Administrator notifies Vendor in writing of such Piggy-Back Award as provided for herein.

WHEREFORE, by signing below Vendor agrees to the foregoing and warrants that it has the authority to enter into this Agreement.

Kimball Midwest
Name of Vendor

577-18
Proposal Invitation Number

Signature of Authorized Company Official

LeAnna Toebbe
Printed Name of Authorized Company Official

5/2/18
Date

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FEDERAL AND STATE/PURCHASING COOPERATIVE EXPERIENCE

The Cooperative strives to provide its members with the best services and products at the best prices available from vendors with the technical resources and ability to serve Cooperative members. Please respond to the following questions.

1. Provide the dollar value of sales to or through purchasing cooperatives at or based on an established catalog or market price during the previous 12-month period or the last fiscal year: $ 2,300,000. (The period of the 12 month period is 1/1/2017 / 12/31/2017). In the event that a dollar value is not an appropriate measure of the sales, provide and describe your own measure of the sales of the item(s).

2. By submitting a proposal, you agree that, based on your written discounting policies, the discounts you offer the Cooperative are equal to or better than the best price you offer other purchasing cooperatives for the same items under equivalent circumstances.

3. Provide the information requested below for other purchasing cooperatives for which Proposer currently serves, or in the past has served, as an awarded vendor. Rows should be added to accommodate as many purchasing cooperatives as required.

PURCHASING GROUP	CURRENT VENDOR? (Y/N)	FORMER VENDOR (Y/N)? – IF YES, LIST YEARS AS VENDOR	AWARDED COMMODITY CATEGORY(IES)
1. Federal General Services Administration	Y		51V (hardware superstore)
2. T-PASS (State of Texas)	N	Y - 8/2006 - 2/2017	51V (hardware superstore)
3. U.S. Communities Purchasing Alliance			
4. National IPA/TCPN	Y		Full catalog
5. Houston-Galveston Area Council (HGAC)			
6. National Joint Powers Alliance (NJPA)			
7. E&I Cooperative			
8. The Interlocal Purchasing System (TIPS)	Y		Full catalog
9. Other			

☐ **MY COMPANY DOES NOT CURRENTLY HAVE ANY OF THE ABOVE OR SIMILAR TYPE CONTRACTS.**

CURRENT BUYBOARD VENDORS

If you are a current BuyBoard vendor in the same contract category as proposed in this Proposal Invitation, indicate the discount for your current BuyBoard contract and the proposed discount in this Proposal. Explain any difference between your current and proposed discounts.

Current Discount (%): 50 **Proposed Discount (%):** 33

Explanation: We have identified areas to reduce our overall catalog list from when our existing BuyBoard contract was last last negotiated. Rather than see a decrease in savings, members would see minimal change from existing price paid.

By signature below, I certify that the above is true, complete and accurate and that I am authorized by my company to make this certification.

Kimball Midwest
Company Name

Signature of Authorized Company Official

LeAnna Toebbe
Printed Name

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GOVERNMENTAL REFERENCES

For your Proposal to be considered, you must supply a minimum of five (5) individual governmental entity references. The Cooperative may contact any and all references provided as part of the Proposal evaluation. Provide the information requested below, including the existing price/discounts you offer each customer. The Cooperative may determine whether prices/discounts are fair and reasonable by comparing prices/discounts stated in your Proposal with the prices/discounts you offer other governmental customers. Attach additional pages if necessary.

Entity Name	Contact	Phone#	Email Address	Discount	Quantity/ Volume

1. Sharyland ISD - Joel Gonzalez - 956-580-5246 - BuyBoard 501-15 - $1485

2. Weslaco ISD - Jorge Marin - 956-969-6860 - BuyBoard 501-15 - $2168

3. Roma ISD - Jose Cuestas - 956-849-1424 - 33% - $4550

4. Valley View ISD - Alex - 956-340-1030 - BuyBoard 501-15 - $3251

5. Rio Grande City ISD - Jerry Gundran - 956-437-3191 - 33% - $2100

Do you ever modify your written policies or standard governmental sales practices as identified in the above chart to give better discounts (lower prices) than indicated? **YES** ☐ **NO** ☒ If YES, please explain:

By signature below, I certify that the above is true and correct and that I am authorized by my company to make this certification.

Kimball Midwest
Company Name

Signature of Authorized Company Official

LeAnna Toebbe
Printed Name

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MARKETING STRATEGY

For your Proposal to be considered, you must submit the Marketing Strategy you will use if the Cooperative accepts all or part of your Proposal. *(Example: Explain how your company will initially inform Cooperative members of your BuyBoard contract, and how you will continue to support the BuyBoard for the duration of the contract period.)*

Attach additional pages if necessary.

1- Our sales reps will be notified to inform purchasing agents at schools & state/local agencies of our BuyBoard contract and urge them to utilize the Cooperative for price savings. For members we already do business with, a letter will be e-mailed or mailed to their point of contact we have on file to inform them they may continue to receive discounted pricing on our catalog through the Cooperative. 2- If permitted by the Cooperative, a co-branded sales sheet would be developed within 90 days of award andsent to the appropriate BuyBoard contact for approval prior to any distribution. This sheet would provide Kimball Midwest sales personnel a useful tool to promote the contract to existing members and entities eligible to join. 3 - If also permitted, the contract would be listed on the government section of our website. The post would adhere to guidelines required by the Cooperative.

Kimball Midwest
Company Name

Signature of Authorized Company Official

LeAnna Toebbe
Printed Name

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CONFIDENTIAL/PROPRIETARY INFORMATION

A. Public Disclosure Laws

All Proposals, forms, documentation, or other materials submitted by Vendor to the Cooperative in response to this Proposal Invitation, including catalogs and pricelists, may be subject to the disclosure requirements of the Texas Public Information Act (Texas Government Code chapter 552.001, *et. seq.*) or similar disclosure law. Proposer must clearly identify on this form any information in its Proposal (including forms, documentation, or other materials submitted with the Proposal) that Proposer considers proprietary or confidential. If Proposer fails to properly identify the information, the Cooperative shall have no obligation to notify Vendor or seek protection of such information from public disclosure should a member of the public or other third party request access to the information under the Texas Public Information Act or similar disclosure law. Proposer will be notified of any third party request for information in a Proposal that Proposer has identified in this form as proprietary or confidential.

Does your Proposal (including forms, documentation, or other materials submitted with the Proposal) contain information which Vendor considers proprietary or confidential?

Please check (√) one of the following:

☐ **NO**, I certify that none of the information included with this Proposal is considered confidential or proprietary.

☒ **YES**, I certify that this Proposal contains information considered confidential or proprietary and all such information is specifically identified on this form.

If you responded "YES", you must identify below the specific information you consider confidential or proprietary. List each page number, form number, or other information sufficient to make the information readily identifiable. The Cooperative and its Administrator will not be responsible for a Proposer's failure to clearly identify information considered confidential or proprietary. Further, by submitting a Proposal, Proposer acknowledges that the Cooperative and its Administrator will disclose information when required by law, even if such information has been identified herein as information the vendor considers confidential or proprietary.

Confidential / Proprietary Information:

Pg 26, section 1: Federal and State/Purchasing cooperative sales

Pg. 28, Governmental References

Attached Kimball Midwest Price File

(Attach additional sheets if needed.)

B. Copyright Information

Does your Proposal (including forms, documentation, or other materials submitted with the Proposal) contain copyright information?

Please check (√) one of the following:

☒ **NO,** Proposal (including forms, documentation, or other materials submitted with the Proposal) does not contain copyright information.

☐ **YES,** Proposal (including forms, documentation, or other materials submitted with the Proposal) does contain copyright information.

If you responded "YES", identify below the specific documents or pages containing copyright information.

Copyright Information: _____

_____

_____

(Attach additional sheets if needed.)

C. Consent to Release Confidential/Proprietary/Copyright Information to BuyBoard Members

BuyBoard members (Cooperative and nonprofit members) seeking to make purchases through the BuyBoard may wish to view information included in the Proposals of awarded Vendors. If you identified information on this form as confidential, proprietary, or subject to copyright, and you are awarded a BuyBoard contract, your acceptance of the BuyBoard contract award constitutes your consent to the disclosure of such information to BuyBoard members, including posting of such information on the secure BuyBoard website for members. Note: Neither the Cooperative nor its Administrator will be responsible for the use or distribution of information by BuyBoard members or any other party.

D. Consent to Release Proposal Tabulation

Notwithstanding anything in this Confidential/Proprietary Information form to the contrary, by submitting a Proposal, Vendor consents and agrees that, upon Contract award, the Cooperative may publically release, including posting on the public BuyBoard website, a copy of the proposal tabulation for the Contract including Vendor name; proposed catalog/pricelist name(s); proposed percentage discount(s), hourly labor rate(s), or other specified pricing; and Vendor award or non-award information.

By signature below, I certify that the information in this form is true, complete, and accurate and that I am authorized by my company to make this certification and all consents and agreements contained herein.

Kimball Midwest
Company Name

Signature of Authorized Company Official

LeAnna Toebbe
Printed Name

5/2/18
Date

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VENDOR BUSINESS NAME

By submitting a Proposal, Proposer is seeking to enter into a legal contract with the Cooperative. As such, a Proposer must be an individual or legal business entity capable of entering into a binding contract. Proposers, must completely and accurately provide the information requested below or your Proposal may be deemed non-responsive.

Name of Proposing Company: Midwest Motor Supply Co. Inc. - DBA Kimball Midwest

*(List the **legal** name of the company seeking to contract with the Cooperative. Do NOT list an assumed name, dba, aka, etc. here. Such information may be provided below. If you are submitting a joint proposal with another entity to provide the same proposed goods or services, each submitting entity should complete a separate vendor information form. Separately operating legal business entities, even if affiliated entities, which propose to provide goods or services separately must submit their own Proposals.)*

Please check (√) one of the following:

Type of Business:

Individual/Sole Proprietor _____
Corporation x
Limited Liability Company _____
Partnership _____
Other _____ If other, identify _____

State of Incorporation (if applicable): Ohio

Federal Employer Identification Number: 31-4408759

(Vendor must include a completed IRS W-9 form with their proposal)

List the Name(s) by which Vendor, if awarded, wishes to be identified on the BuyBoard: *(Note: If different than the Name of Proposing Company listed above, only valid trade names (dba, aka, etc.) of the Proposing Company may be used and a copy of your Assumed Name Certificate(s), if applicable, must be attached.)*

Kimball Midwest

Form **W-9**
(Rev. December 2014)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.
Midwest Motor Supply Co. Inc.

2 Business name/disregarded entity name, if different from above
Kimball Midwest

3 Check appropriate box for federal tax classification; check only **one** of the following seven boxes:
☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☑ S Corporation ☐ Partnership ☐ Trust/estate
☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶
Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.
☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
Exempt payee code (if any)
Exemption from FATCA reporting code (if any)
(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) 4800 Roberts Rd.

Requester's name and address (optional)

6 City, state, and ZIP code
Columbus, OH 43228

7 List account number(s) here (optional)
Remittance Address: Kimball Midwest, Dept. L-2780, Columbus, OH 43260-2780

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number
☐☐☐ - ☐☐ - ☐☐☐☐

or

Employer identification number
3 1 - 4 4 0 8 7 5 9

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here **Signature of U.S. person ▶** **Date ▶** 1/18/18

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at *www.irs.gov/fw9*.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding?* on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

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EDGAR VENDOR CERTIFICATION

(2 CFR Part 200 and Appendix II)

When a Cooperative member seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200 (sometimes referred to as the "Uniform Guidance" or new "EDGAR"). All Vendors submitting proposals must complete this EDGAR Certification Form regarding Vendor's willingness and ability to comply with certain requirements which *may* be applicable to specific Cooperative member purchases using federal grant funds. This completed form will be made available to Cooperative members for their use while considering their purchasing options when using federal grant funds. Cooperative members may also require Vendors to enter into ancillary agreements, in addition to the BuyBoard contract's general terms and conditions, to address the member's specific contractual needs, including contract requirements for a procurement using federal grants or contracts.

For each of the items below, Vendor should certify Vendor's agreement and ability to comply, where applicable, by having Vendor's authorized representative complete and initial the applicable boxes and sign the acknowledgment at the end of this form. If you fail to complete any item in this form, the Cooperative will consider and may list the Vendor's response on the BuyBoard as "NO," the Vendor is unable or unwilling to comply. A "NO" response to any of the items may, if applicable, impact the ability of a Cooperative member to purchase from the Vendor using federal funds.

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1. Vendor Violation or Breach of Contract Terms:

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 USC 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.

Provisions regarding Vendor default are included in the BuyBoard General Terms and Conditions, including Section E.18, Remedies for Default and Termination of Contract. Any Contract award will be subject to such BuyBoard General Terms and Conditions, as well as any additional terms and conditions in any Purchase Order, Cooperative member ancillary contract, or Member Construction Contract agreed upon by Vendor and the Cooperative member which must be consistent with and protect the Cooperative member at least to the same extent as the BuyBoard Terms and Conditions.

The remedies under the Contract are in addition to any other remedies that may be available under law or in equity. By submitting a Proposal, you agree to these Vendor violation and breach of contract terms.

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2. Termination for Cause or Convenience:

For any Cooperative member purchase or contract in excess of $10,000 made using federal funds, you agree that the following term and condition shall apply:

The Cooperative member may terminate or cancel any purchase order under this Contract at any time, with or without cause, by providing seven (7) business days advance written notice to the Vendor. If this Agreement is terminated in accordance with this Paragraph, the Cooperative member shall only be required to pay Vendor for goods or services delivered to the Cooperative member prior to the termination and not otherwise returned in accordance with Vendor's return policy. If the Cooperative member has paid Vendor for goods or services not yet provided as of the date of termination, Vendor shall immediately refund such payment(s).

If an alternate provision for termination of a Cooperative member purchase for cause and convenience, including the manner by which it will be effected and the basis for settlement, is included in the Cooperative member's purchase order, ancillary agreement, or Member Construction Contract agreed to by the Vendor, the Cooperative member's provision shall control.

3. Equal Employment Opportunity:

Except as otherwise provided under 41 CFR Part 60, all Cooperative member purchases or contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall be deemed to 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."

The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference. Vendor agrees that such provision applies to any Cooperative member purchase or contract that meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 and Vendor agrees that it shall comply with such provision.

4. Davis-Bacon Act:

When required by Federal program legislation, Vendor agrees that, for all Cooperative member prime construction contracts/purchases in excess of $2,000, Vendor shall comply with the Davis-Bacon Act (40 USC 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, Vendor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determinate made by the Secretary of Labor. In addition, Vendor shall pay wages not less than once a week.

Current prevailing wage determinations issued by the Department of Labor are available at wdol.gov. Vendor agrees that, for any purchase to which this requirement applies, the award of the purchase to the Vendor is conditioned upon Vendor's acceptance of the wage determination.

Vendor further agrees that it shall also comply with the Copeland "Anti-Kickback" Act (40 USC 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.

5. Contract Work Hours and Safety Standards Act:

Where applicable, for all Cooperative member contracts or purchases in excess of $100,000 that involve the employment of mechanics or laborers, Vendor agrees to comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 USC 3702 of the Act, Vendor is 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 USC 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.

6. Right to Inventions Made Under a Contract or Agreement:

If the Cooperative member's 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 or 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.

Vendor agrees to comply with the above requirements when applicable.

7. Clean Air Act and Federal Water Pollution Control Act:

Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act (33 USC 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 USC 7401-7671q.) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

When required, Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act.

8. Debarment and Suspension:

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 1966 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.

Vendor certifies that Vendor is not currently listed on the government-wide exclusions in SAM, is not debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. Vendor further agrees to immediately notify the Cooperative and all Cooperative members with pending purchases or seeking to purchase from Vendor if Vendor is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549.

9. Byrd Anti-Lobbying Amendment:

Byrd Anti-Lobbying Amendment (31 USC 1352) -- Vendors 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 USC 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 forwarded from tier to tier up to the non-Federal award. As applicable, Vendor agrees to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352).

10. Procurement of Recovered Materials:

For Cooperative member purchases utilizing Federal funds, Vendor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act where applicable and provide such information and certifications as a Cooperative member may require to confirm estimates and otherwise comply. 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.

11. Profit as a Separate Element of Price:

For purchases using federal funds in excess of $150,000, a Cooperative member may be required to negotiate profit as a separate element of the price. See, 2 CFR 200.323(b). When required by a Cooperative member, Vendor agrees to provide information and negotiate with the Cooperative member regarding profit as a separate element of the price for a particular purchase. However, Vendor agrees that the total price, including profit, charged by Vendor to the Cooperative member shall not exceed the awarded pricing, including any applicable discount, under Vendor's Cooperative Contract.

12. General Compliance and Cooperation with Cooperative Members:
In addition to the foregoing specific requirements, Vendor agrees, in accepting any Purchase Order from a Cooperative member, it shall make a good faith effort to work with Cooperative members to provide such information and to satisfy such requirements as may apply to a particular Cooperative member purchase or purchases including, but not limited to, applicable recordkeeping and record retention requirements.

Vendor Certification Item No.	Vendor Certification: **YES**, I agree or **NO**, I do NOT agree	Initial
1. Vendor Violation or Breach of Contract Terms	Yes	LT
2. Termination for Cause or Convenience	Yes	LT
3. Equal Employment Opportunity	Yes	LT
4. Davis-Bacon Act	Yes	LT
5. Contract Work Hours and Safety Standards Act	Yes	LT
6. Right to Inventions Made Under a Contract or Agreement	Yes	LT
7. Clean Air Act and Federal Water Pollution Control Act	Yes	LT
8. Debarment and Suspension	Yes	LT
9. Byrd Anti-Lobbying Amendment	Yes	LT
10. Procurement of Recovered Materials	Yes	LT
11. Profit as a Separate Element of Price	Yes	LT
12. General Compliance and Cooperation with Cooperative Members	Yes	LT

By signature below, I certify that the information in this form is true, complete, and accurate and that I am authorized by my company to make this certification and all consents and agreements contained herein.

Kimball Midwest
Company Name

Signature of Authorized Company Official

LeAnna Toebbe
Printed Name

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PROPOSAL INVITATION QUESTIONNAIRE

The Cooperative will use your responses to the questions below in evaluating your Proposal and technical and financial resources to provide the goods and perform the services ("Work") under the BuyBoard contract contemplated by this Proposal Invitation ("Contract"). Proposers must fully answer each question, numbering your responses to correspond to the questions/numbers below. Proposers must complete below or attach your responses to this questionnaire, sign where indicated below, and submit the signed questionnaire and your responses to all questions in one document with your Proposal. **You must submit the signed questionnaire and responses with your Proposal or the Proposal will not be considered.**

1. List the number of years Proposer has been in business and former business names (if applicable). Note whether your company is currently for sale or involved in any transaction that would significantly alter its business or result in acquisition by another entity.

See Attached "Supplement to Proposal Invitation Questionnaire"

2. Describe Proposer's direct experience (not as a subcontractor) performing the work proposed under this contract. Include a brief description of the projects you have completed for Texas governmental entities in the last 5 years, and include for each the project name, scope, value, and date, and the name of the procuring government entity and entity contact person. Identify the contracts that best represent Proposer's capabilities relative to this contract.

See Attached "Supplement to Proposal Invitation Questionnaire"

3. Describe the resources Proposer has to manage staff and successfully perform the Work contemplated under this Contract. State the number and summarize the experience of company personnel who may be utilized for the Work, including those who will be available to Cooperative members for assistance with project development, technical issues, and product selection for Work associated with this Contract.

See Attached "Supplement to Proposal Invitation Questionnaire"

4. The Contract does not include architectural or engineering services, which must be procured separately, outside of the Cooperative, in accordance with Chapter 2254 of the Texas Government Code (Professional Services Procurement Act). If you are performing work under the contract on a project that requires the services of an architect or professional engineer, how will you work with a Cooperative member and its designated architect or engineer with respect to services that must be procured outside the contract?

N/A

5. Describe the tasks and functions that can be completed by Proposer in-house without the use of a subcontractor or other third party.

No third party or subcontractor is proposed. All tasks and functions pertaining to this bid can be completed in-house without the use of a sub-contractor or other third party. Functions include but are not limited to: sales, customer support, order processing and fulfillment, invoicing, returns, vendor managed inventory (VMI) services, contract reporting, and prompt service fee payment.

6. Describe Proposer's financial capability to perform the Contract. State or describe the firm's financial strength and rating, bonding capacity, and insurance coverage limits. State whether the firm, or any of the firm's past or present owners, principal shareholders or stockholders, or officers, have been a debtor party to a bankruptcy, receivership, or insolvency proceeding in the last 7 years, and identify any such debtor party by name and relationship to or position with your firm.

See Attached "Supplement to Proposal Invitation Questionnaire"

7. Does your company have any outstanding financial judgments and/or is it currently in default on any loan or financing agreement? If so, provide detailed information on the nature of such items and prospects for resolution.

No.

8. List all contracts, if any, in the last 10 years on which Proposer has defaulted, failed to complete or deliver the work, or that have been terminated for any reason. Include any contract for which the surety was notified of a potential claim in regards to a payment or performance bond. For each such contract, provide the project name, scope, value and date and the name of the procuring entity. Fully explain the circumstances of the default, notice to surety, failure to complete or deliver the work, or termination.

TXMAS-6-51V080 was terminated for convenience by the Texas Comptroller of Public Accounts, citing "less than $25,000 in sales over the previous year to date." It was a mass award schedule based on our GSA contract GS-06F-0040N. Termination was effective 2/6/17.

9. List all litigation or other legal proceedings (including arbitration proceedings and/or claims filed with a surety in regards to a payment or performance bond), if any, in the last 10 years brought against your firm, or any of the firm's past or present owners, principal shareholders or stockholders, officers, agents or employees, that relates to or arises from a contract similar to this Contract or the work contemplated under this Contract. Provide the style of the lawsuit or proceeding (name of parties and court or tribunal in which filed), if applicable, nature of the claim, and resolution or current status.

Not Applicable

10. Describe in detail the quality control system Proposer will use, including third party auditing certification, to support the long-term performance and structural strength of the products to be used in a project under the Contract.

We operate a Homegrown Quality System which includes supplier audits, incoming inspection, documented process procedures, product testing, COC collection, equipment calibration cycles, documented training, top-down support of quality metrics which are incorporated into annual corporate plans for all internal departments and individual position descriptions, with monthly and quarterly reporting of results to upper management, etc.

11. If the work will require Proposer to tender performance or payment bonds, provide the name of the bonding company or surety that will issue such bonds.

Not Applicable

12. Describe in detail all documented safety issues, if any, that have involved Proposer in the last three (3) years related to the type of work contemplated under this contract. Provide a 3-year history of your firm's workers compensation experience modifier.

Please refer to Worker's comp: 2018 EMR = 1.96; 2017 EMR = 1.53; 2016 EMR = 1.35.

No documented safety issues to report. Occasional injuries arise from this type of work, typically sprains and strains, that are handled under policies and procedures. All Kimball Midwest employees are instructed to comply with Personal Protective Equipment (PPE) use as applicable, such as the use of hard hats, safety glasses, etc.

By signature below, I certify that the information contained in and/or attached to this Proposal Invitation Questionnaire in response to the above questions is true and correct and that I am authorized by my company to make this certification.

Kimball Midwest

Company Name

Signature of Authorized Company Official

1. List the number of years Proposer has been in business and former business names (if applicable). Note whether your company is currently for sale or involved in any transaction that would significantly alter its business or result in acquisition by another entity.

   Kimball Midwest has been in business since 1923 and is family owned and operated. Midwest Motor Supply Company, Inc. was founded in Columbus, Ohio in 1933. In 1984, the Company acquired the Kimball Company, founded in Cleveland, Ohio in 1923. Thereafter, the Company has conducted business as Kimball Midwest. Kimball Midwest is not currently for sale or involved in any transaction that would significantly alter its business or result in acquisition by another entity.

2. Describe Proposer's direct experience (not as a subcontractor) performing the work proposed under this contract. Include a brief description of the projects you have completed for Texas governmental entities in the last 5 years, and include for each the project name, scope, value, and date, and the name of the procuring government entity and entity contact person. Identify the contracts that best represent Proposer's capabilities relative to this contract.

   Please see the contacts listed under "Governmental References" on page 28.

   Services performed for these customers vary across order acceptance and delivery, product training, installation and maintaining labeled shop equipment bins and ongoing service through vendor managed inventory (VMI) solutions: stock bins with delivered product, performing scheduled inventory, providing regular "Value-Added" reviews to demonstrate VMI's cost savings, and identifying and sourcing non-stock products to fulfill special orders.

   Current contracts of similar or greater size and scope:
   BuyBoard Contract 501-15
   GSA Schedule GS-06F-0040N
   National IPA Cooperative – Contract R142105 with Region 4 ESC

3. Describe the resources Proposer has to manage staff and successfully perform the Work contemplated under this Contract. State the number and summarize the experience of company personnel who may be utilized for the Work, including those who will be available to Cooperative members for assistance with project development, technical issues, and product selection for Work associated with this Contract.

   As a current holder of BuyBoard contract 501-15, Kimball Midwest has a proven track record performing the work contemplated under this contract. Through support from our corporate office and external sales reps, we will service BuyBoard members' accounts according to Kimball Midwest's exceptional standards and practices. Our Sales Force and internal staff work hand-in-glove to make sure our end-user customers are taken care of. Participating entities can expect prompt and courteous service 8am to 5pm in their time zones, whether through their Kimball Midwest sales representative or our Customer Service department.

Kimball Midwest offers multiple convenient ways to order any of the 49,000+ items in our catalog and access to 550,000+ hard-to find items through special order: through a sales representative, online via our Storefront (www.kimballmidwest.com), by phone, fax, and e-mail. Our online Storefront enables customers to browse our full catalog, take advantage of online ordering, product information, and Safety Data Sheets (SDS) 24 hours a day, 7 days a week, along with secure log-in access to their invoices, tracking, and purchase history.

We operate four full-service distribution centers across the United States. Our primary distribution center and headquarters are in Columbus, Ohio, with the additional distribution centers located in Grand Prairie, TX; Reno, NV; and Savannah, GA. The fill rate of all Kimball Midwest distribution centers exceeds 99% and has an accuracy rate of 99.86%. By establishing proactive checks and measures to sustain these high service rates, customers can trust their orders with Kimball Midwest will be accurate and on-time.

We strive to develop a "partnership in performance" with each customer to identify and satisfy their needs by way of superior products and programs. Our 850+ Sales Representatives have an average tenure of 9 years supplying vendor managed inventory (VMI) solutions and extensive training is conducted for both new hires and veteran reps which includes product training, inventory analysis and control, conversion and reset of inventory, safety seminars, and workplace efficiency. Chief among their tools are custom handheld devices through which they can complete dozens of functions, including generating quotes and orders while on-site with a customer.

Kimball Midwest's Customer Service team is equipped to answer questions on product availability, billing and order status, add notes to accounts with unique requirements, arrange returns, and more. We understand communication is key; should any inquiry require additional research, we are committed to providing timely follow-up the same or next business day. Customer Service can also assist with putting customers in contact with their nearest Kimball Midwest Sales Rep.

Our Strategic Sales team is experienced with developing and managing large-scale accounts and contracts for corporate entities, cooperatives, and federal, state, and local government agencies. We presently provide sales reports and fee remittance for several government contracts on a monthly and quarterly basis which are tailored to the recipient's needs. We have experience with BuyBoard's requirements and can continue timely execution of the service fee obligations described in the terms and conditions.

Kimball Midwest appreciates the opportunity to participate in this RFP for BuyBoard and its members. Having fulfilled the maintenance supply needs of government agencies for decades, Kimball Midwest is ready and eager to satisfy the obligations outlined in this proposal from day one.

6. Describe Proposer's financial capability to perform the Contract. State or describe the firm's financial strength and rating, bonding capacity, and insurance coverage limits. State whether the firm, or any of the firm's past or present owners, principal shareholders or stockholders, or officers, have been a debtor party to a bankruptcy, receivership, or insolvency proceeding in the last 7 years, and identify any such debtor party by name and relationship to or position with your firm.

Kimball Midwest has been in business since 1923 and is family owned and operated. It is one of the largest distributors in the industrial maintenance aftermarket in the United States, currently ranked 42 in Industrial Distribution's annual publication of "The Big 50" MRO suppliers, and 39th in Modern Distribution Management's Top 40 Industrial Distributors list for 2017. We service over 75,000 customers of all sizes in virtually every field of industry. Our sales growth has been very dynamic, increasing from less than $1 million in 1983 to more than $200 million today.

None of Kimball Midwest's past or present owners, principal shareholders or stockholders, or officers, have been a debtor party to a bankruptcy, receivership, or insolvency proceeding in the last 7 years.

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REQUIRED FORMS CHECKLIST

(Please check (√) the following)

- ☑ Completed: **Proposer's Agreement and Signature**
- ☑ Completed: **Vendor Contact Information**
- ☑ Completed: **Felony Conviction Disclosure and Debarment Certification**
- ☑ Completed: **Resident/Nonresident Certification**
- ☑ Completed: **No Israel Boycott Certification**
- ☑ Completed: **No Excluded Nation or Foreign Terrorist Organization Certification**
- ☑ Completed: **Historically Underutilized Business (HUB) Certification**)
- ☑ Completed: **Construction Related Goods and Services Affirmation**
- ☑ Completed: **Deviation/Compliance**
- ☑ Completed: **Location/Authorized Seller Listings**
- ☑ Completed: **Manufacturer Dealer Designation**
- ☑ Completed: **Texas Regional Service Designation**
- ☑ Completed: **State Service Designation**
- ☑ Completed: **National Purchasing Cooperative Vendor Award Agreement**
- ☑ Completed: **Federal and State/Purchasing Cooperative Experience**
- ☑ Completed: **Governmental References**
- ☑ Completed: **Marketing Strategy**
- ☑ Completed: **Confidential/Proprietary Information**
- ☑ Completed: **Vendor Business Name with IRS Form W-9**
- ☑ Completed: **EDGAR Vendor Certification**
- ☑ Completed: **Proposal Invitation Questionnaire**
- ☑ Completed: **Required Forms Checklist**
- ☑ Completed: **Proposal Specification Form with Catalogs/Pricelists**

**Catalogs/Pricelists must be submitted with proposal response or response will not be considered.*

Proposal Invitation No. 577-18-Building Maintenance, Repair and Operations Supplies and Equipment

(Catalogs/Pricelists must be submitted with Proposal or Proposal will not be considered[1].)

NOTE: Vendors proposing various manufacturer product lines per line item on the Proposal Specification Form must submit the information as follows or proposal may not be considered:

☐Manufacturers shall be listed in alphabetical order

☐Vendor's must list one specific percentage discount for each Manufacturer listed.

If a vendor's response to Proposal Specification Form states "please see attachment sheet," all manufacturers listed on the attachment sheet must indicate per manufacturer the line item that correlates to Proposal Specification Form or Vendor's proposal may not be considered.

Section I: Equipment, Products, and Supplies

Item No.	Short Description	Full Description	State Percent (%) of Discount off Catalog/Pricelist[1]	State Name of Catalog/Pricelist[1]	Exceptions to Discount
1	Discount (%) Off Catalog/Pricelist for Electrical Supplies, Materials and Equipment	Please state the discount (%) off catalog/pricelist for **Electrical Supplies, Materials and Equipment.** **Catalog/Pricelist MUST be included or proposal will not be considered.**	33 _____%	Kimball Midwest Price File	N/A
2	Discount (%) Off Catalog/Pricelist for All Types of Power Generating Equipment	Please state the discount (%) off catalog/pricelist for **All Types of Power Generating Equipment** (electric, gas, diesel portable, back up on-site). **Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		
3	Discount (%) Off Catalog/Pricelist for Various Types of Lamps and Ballasts	Please state the discount (%) off catalog/pricelist for **Various Types of Lamps and Ballasts** (fluorescent, incandescent, quartz, HID, shatterproof, metal halide, high pressure sodium, ballasts, similar related items). **Catalog/Pricelist MUST be included or proposal will not be considered.**	33 _____%	Kimball Midwest Price File	N/A
4	Discount (%) Off Catalog/Pricelist for Various Types of Lighting Fixtures	Please state the discount (%) off catalog/pricelist for **Various Types of Lighting Fixtures**. **Catalog/Pricelist MUST be included or proposal will not be considered.**	33 _____%	Kimball Midwest Price File	N/A
5	Discount (%) Off Catalog/Pricelist for All Types of Indoor Signage	Please state the discount (%) off catalog/pricelist for **All Types of Indoor Signage.** **Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		

PROPOSAL NOTE

1. Catalogs/Pricelists are required to be submitted with Proposal

Proposal Invitation No. 577-18-Building Maintenance, Repair and Operations Supplies and Equipment

(Catalogs/Pricelists must be submitted with Proposal or Proposal will not be considered[1].)

Item No.	Short Description	Full Description	State Percent (%) of Discount off Catalog/Pricelist[1]	State Name of Catalog/Pricelist[1]	Exceptions to Discount
6	Discount (%) Off Catalog/Pricelist for All Types of Solar Supplies and Equipment	Please state the discount (%) off catalog/pricelist for **All Types of Solar Supplies and Equipment**. **Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		
7	Discount (%) Off Catalog/Pricelist for Building Supplies and Materials	Please state the discount (%) off catalog/pricelist for **Building Supplies and Materials** (carpentry, lumber, drywall, and similar related items). **Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		
8	Discount (%) Off Catalog/Pricelist for All Types and Sizes of Doors	Please state the discount (%) off catalog/pricelist for **Doors-All Types and Sizes** (metal, wooden, and similar related items). **Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		
9	Discount (%) Off Catalog/Pricelist for All Types and Sizes of Overhead Doors	Please state the discount (%) off catalog/pricelist for **Overhead Doors-All Types and Sizes** (metal, wooden, similar related items). **Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		
10	Discount (%) Off Catalog/Pricelist for All Types of Fasteners and Hardware Products	Please state the discount (%) off catalog/pricelist for **All Types of Fasteners and Hardware Products** (doors, cabinets, and similar related items). **Catalog/Pricelist MUST be included or proposal will not be considered.**	33_____%	Kimball Midwest Price File	N/A
11	Discount (%) Off Catalog/Pricelist for Roofing Materials and Supplies	Please state the discount (%) off catalog/pricelist for **Roofing Materials and Supplies (PRODUCTS ONLY-NO LABOR) .** **Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		
12	Discount (%) Off Catalog/Pricelist for Paint and Paint Related Products	Please state the discount (%) off catalog/pricelist for **Paint and Paint Related Products.** **Catalog/Pricelist MUST be included or proposal will not be considered.**	33_____%	Kimball Midwest Price File	N/A
13	Discount (%) Off Catalog/Pricelist for Parking Lot Striping Supplies and Materials	Please state the discount (%) off catalog/pricelist for **Parking Lot Striping Supplies and Materials.** **Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		

PROPOSAL NOTE

1. Catalogs/Pricelists are required to be submitted with Proposal

Proposal Invitation No. 577-18-Building Maintenance, Repair and Operations Supplies and Equipment

(Catalogs/Pricelists must be submitted with Proposal or Proposal will not be considered[1].)

Item No.	Short Description	Full Description	State Percent (%) of Discount off Catalog/Pricelist[1]	State Name of Catalog/Pricelist[1]	Exceptions to Discount
14	Discount (%) Off Catalog/Pricelist for Plumbing Supplies, Materials and Equipment	Please state the discount (%) off catalog/pricelist for **Plumbing Supplies, Materials and Equipment.** **Catalog/Pricelist MUST be included or proposal will not be considered.**	33 _____%	Kimball Midwest Price File	N/A
15	Discount (%) Off Catalog/Pricelist for Various Types of Toilet Partitions	Please state the discount (%) off catalog/pricelist for **Various Types of Toilet Partitions.** **Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		
16	Discount (%) Off Catalog/Pricelist for Energy/Water Monitoring Products	Please state the discount (%) off catalog/pricelist for **All Types of Energy/Water Monitoring Products.** **Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		
17	Discount (%) Off Catalog/Pricelist for Boiler Equipment and Supplies	Please state the discount (%) off catalog/pricelist for **Boiler Equipment and Supplies.** **Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		
18	Discount (%) Off Catalog/Pricelist for HVAC Refrigerants and Supplies	Please state the discount (%) off catalog/pricelist for **HVAC Refrigerants and Supplies.** **Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		
19	Discount (%) Off Catalog/Pricelist for Hand Tools	Please state the discount (%) off catalog/pricelist for **Hand Tools.** **Catalog/Pricelist MUST be included or proposal will not be considered.**	33 _____%	Kimball Midwest Price File	N/A
20	Discount (%) Off Catalog/Pricelist for Commercial Building Glass and Other Glass Materials and Supplies	Please state the discount (%) off catalog/pricelist for **Commercial Building Glass and Other Glass Materials and Supplies.** **Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		

PROPOSAL NOTE

1. Catalogs/Pricelists are required to be submitted with Proposal

Proposal Invitation No. 577-18-Building Maintenance, Repair and Operations Supplies and Equipment

(Catalogs/Pricelists must be submitted with Proposal or Proposal will not be considered[1].)

Item No.	Short Description	Full Description	State Percent (%) of Discount off Catalog/Pricelist[1]	State Name of Catalog/Pricelist[1]	Exceptions to Discount
21	Discount (%) Off Catalog/Pricelist for Building Entryway Awnings, Canopies and Related Accessories	Please state the discount (%) off catalog/pricelist for **Building Entryway Awnings, Canopies and Related Accessories - all types of material** (metal, fabric, and related materials). **Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		
22	Discount (%) Off Catalog/Pricelist for Elevator Equipment and Supplies	Please state the discount (%) off catalog/pricelist for **Elevator Equipment and Supplies. Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		
23	Discount (%) Off Catalog/Pricelist for Escalator Equipment and Supplies	Please state the discount (%) off catalog/pricelist for **Escalator Equipment and Supplies. Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		
24	Discount (%) Off Catalog/Pricelist for Material Handling and Storage Equipment and Supplies	Please state the discount (%) off catalog/pricelist for **Material Handling and Storage Equipment and Supplies** (forklifts, warehouse storage systems, pallet jacks, similar related items). **Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		
25	Discount (%) Off Catalog/Pricelist for All Types of Fencing Materials and Supplies	Please state the discount (%) off catalog/pricelist for **All Types of Fencing Materials and Supplies. Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		
26	Discount (%) Off Catalog/Pricelist for Pest Control Products and Supplies	Please state the discount (%) off catalog/pricelist for **Pest Control Products and Supplies. Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		
27	Discount (%) Off Catalog/Pricelist for Power Washing Equipment and Materials	Please state the discount (%) off catalog/pricelist for **Power Washing Equipment and Materials. Catalog/Pricelist MUST be included or proposal will not be considered.**	_____%		

PROPOSAL NOTE

1. Catalogs/Pricelists are required to be submitted with Proposal

Proposal Invitation No. 577-18-Building Maintenance, Repair and Operations Supplies and Equipment

(Catalogs/Pricelists must be submitted with Proposal or Proposal will not be considered[1].)

Item No.	Short Description	Full Description	State Percent (%) of Discount off Catalog/Pricelist[1]	State Name of Catalog/Pricelist[1]	Exceptions to Discount
28	Discount (%) Off Catalog/Pricelist for All Other Products	Please state the discount (%) off catalog/pricelist for **All Other Building Maintenance, Repair and Operations Products not listed** (supplies, materials and equipment). **Catalog/Pricelist MUST be included or proposal will not be considered.**	33 _____%	Kimball Midwest Price File	N/A
Section II: Installation and Repair Service			**Not to Exceed Hourly Labor Rate**	**Detailed Information on Hourly Labor Rate**	**Exceptions to Hourly Labor Rate**
29	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Boiler Equipment and Products	**Hourly Labor Rate for Installation/Repair Service of Boiler Equipment and Products** - State the **Not to Exceed** hourly labor rate for Installation/Repair Service of Equipment and Products.	$ _____/Hour		
30	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Power Generating Equipment and Products	**Hourly Labor Rate for Installation/Repair Service of Power Generating Equipment and Products** - State the **Not to Exceed** hourly labor rate for Installation/Repair Service of Equipment and Products.	$ _____/Hour		
31	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Commercial Building Glass	**Hourly Labor Rate for Installation/Repair Service of Commercial Building Glass** - State the **Not to Exceed** hourly labor rate for Installation/Repair Service of Equipment and Products.	$ _____/Hour		
32	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Elevator Equipment and Products	**Hourly Labor Rate for Installation/Repair Service of Elevator Equipment and Products** - State the **Not to Exceed** hourly labor rate for Installation/Repair Service of Equipment and Products.	$ _____/Hour		

PROPOSAL NOTE

1. Catalogs/Pricelists are required to be submitted with Proposal

Proposal Invitation No. 577-18-Building Maintenance, Repair and Operations Supplies and Equipment

(Catalogs/Pricelists must be submitted with Proposal or Proposal will not be considered[1].)

Section II: Installation and Repair Service			**Not to Exceed Hourly Labor Rate**	**Detailed Information on Hourly Labor Rate**	**Exceptions to Hourly Labor Rate**
33	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Esclator Equipment and Products	**Hourly Labor Rate for Installation/Repair Service of Escalator Equipment and Products** - State the **Not to Exceed** hourly labor rate for Installation/Repair Service of Equipment and Products.	$ _____/Hour		
34	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Fencing	**Hourly Labor Rate for Installation/Repair Service of Fencing** - State the **Not to Exceed** hourly labor rate for Installation/Repair Service of Equipment and Products.	$ _____/Hour		
35	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Toilet Partitions	**Hourly Labor Rate for Installation/Repair Service of Toilet Partitions** - State the **Not to Exceed** hourly labor rate for Installation/Repair Service of Equipment and Products.	$ _____/Hour		
36	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Overhead Door Equipment and Products	**Hourly Labor Rate for Installation/Repair Service of Overhead Door Equipment and Products** - State the **Not to Exceed** hourly labor rate for Installation/Repair Service of Equipment and Products.	$ _____/Hour		
37	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Doors and Framework Equipment and Products	**Hourly Labor Rate for Installation/Repair Service of Doors and Framework Equipment and Products** - State the **Not to Exceed** hourly labor rate for Installation/Repair Service of Equipment and Products.	$ _____/Hour		

PROPOSAL NOTE

1. Catalogs/Pricelists are required to be submitted with Proposal

Proposal Invitation No. 577-18-Building Maintenance, Repair and Operations Supplies and Equipment

(Catalogs/Pricelists must be submitted with Proposal or Proposal will not be considered[1].)

Section II: Installation and Repair Service			**Not to Exceed Hourly Labor Rate**	**Detailed Information on Hourly Labor Rate**	**Exceptions to Hourly Labor Rate**
38	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Building Entryway Awnings, Canopies and Related Equipment and Products	**Hourly Labor Rate for Installation/Repair Service of Building Entryway Awnings, Canopies and Related Equipment and Products** - State the **Not to Exceed** hourly labor rate for Installation/Repair Service of Equipment and Products.	$ _____/Hour		
39	Not to Exceed Hourly Labor Rate for Power Washing Services	**Hourly Labor Rate for Power Washing Services** - State the **Not to Exceed** hourly labor rate for Power Washing Services.	$ _____/Hour		
40	Not to Exceed Hourly Labor Rate for Parking Lot Striping Services	**Hourly Labor Rate for Parking Lot Striping Services** - State the **Not to Exceed** hourly labor rate for Power Washing Services.	$ _____/Hour		

PROPOSAL NOTE

1. Catalogs/Pricelists are required to be submitted with Proposal

City of Galveston

CAPITAL PROJECTS
STAFF REPORT

June 16, 2020

To: Brian Maxwell, City Manager
Hon. Mayor and City Council Members

From: J. Dudley Anderson, Building Program Manager

RE: Consider approval of a contract with Main Lane Industries, Ltd. for 18th Street Storm Sewer System (RFP #20-06) in the amount of $15,904,160.80 and approval of a total project cost of $16,314,160.80. Authorizing the City Manager to execute all necessary documents upon final approval by the City Attorney.

I. Background

A. The City of Galveston accepted a proposal from Zarinkelk Engineering Services, Inc February 2109 to survey, model and design 19,000 linear feet of trunk sewer drainage system improvements along with the rehabilitation design of 14,400 feet of old clay pipe sanitary sewer and 25,750 feet of old ductile iron water line.

B. The project is intended to improve drainage in the project area and eventually connect to a future pump station to discharge storm water into the ship channel.

II. Current Situation

A. The project was advertised as RFP #20-06.

B. One (1) responsive proposal and One (1) non-responsive was received February 24, 2020.

C. Main Lane Industries, Ltd. provided the lone responsive proposal.

D. Main Lane Industries, Ltd. proposed a cost of $15,035,200.00 (without 10% contingency) which was more than anticipated. Negotiations and value engineering between the City and Main Lane Industries, Ltd. reduced the proposed base cost to $14,458,328.00 (without 10% contingency) without jeopardizing quality. The resultant Best and Final Offer is $15,904,160.80 including $1,445,832.80 contingency.

E. Zarinkelk Engineering Services, Inc. is the Engineer of Record and has recommended acceptance of the Best and Final offer from Main Lane Industries, Ltd. for this project

III. Impact or ramifications:

The project is necessary to provide more efficient drainage in the project area and for the system to connect to a planned storm water pump station to discharge into the ship channel.

IV. Alternatives in order of priority

A. Approve a contract with Main Lane Industries, Ltd. for 18th Street Storm Sewer System (RFP #20-06) in the amount of $15,904,160.80 and approval of a total project cost of $16,314,160.80. Authorizing the City Manager to execute all necessary documents upon final approval by the City Attorney.

B. Do not approve the request.

V. Recommendation

A. Approve a contract with Main Lane Industries, Ltd. for 18th Street Storm Sewer System (RFP #20-06) in the amount of $15,904,160.80 and approval of a total project cost of $16,314,160.80. Authorizing the City Manager to execute all necessary documents upon final approval by the City Attorney.

VI. Fiscal Impact Report

Requested by:	J. Dudley Anderson Building Program Manager
Funding Source:	GO Bonds
Construction Cost	$ 15,904,160.80
Construction Administration	$ 160,000.00
Material Testing & design	$ 250,000.00
Total Cost of Implementation	**$ 16,314,160.80**

Respectfully Submitted,

J. Dudley Anderson
Building Program Manager

Zarinkelk
Engineering Services, Inc.

617 Caroline St.
Houston, Texas 77002
Phone 832-242-2426
Fax 832-242-2445
www.zarinkelk.com

June 16, 2020

Mr. Dudley Anderson
Project Manager
City of Galveston
823 25th Street, Suite 402
Galveston, Texas 77550

Attn: Ms. Trina Jankowski
Construction Project Manager

RE: 18th Street Storm Sewer System Improvements Letter of Recommendation

Dear Mr. Christodoss:

On February 24, 2020, the City received two sealed bids for their 18th Street Storm Sewer System Improvements project. There were two bids received and one of the bids was deemed non-responsive.

The project includes a new storm drain system in 18th Street from Avenue O ½ to the Galveston Ship Channel. Also included in the project will be storm drain connections to the side streets, leads and inlets at appropriate spacing, restoration of pavement and an outfall structure with sluice gates at the Galveston Ship Channel. Removal of the bridge blocks at intersections and installation of 5' minimum curb inlets at all corners. The project extends along Avenue N from 19th Street to 17th Street, along Avenue K from 18th Street to 21st Street, and along Avenue H from 18th Street to 16th Street. Approximately 1,273 feet of water line will be replaced and approximately 2,395 feet of sanitary sewer will be replaced.

Zarinkelk Engineering Services, Inc. (ZESI) has reviewed the bids submitted for the above referenced project. The apparent one acceptable bidder is Main Lane Industries, Ltd. with a low bid of $15,288,749.80 for the Base Bid, $615,417.00 for the Alternate 1 Bid. Included therein is $1,445,832.80 for a contingency amount. We found no irregularities in their submittal. All required forms were included.

It is our recommendation to award the contract to Main Lane Industries, Ltd..

If you have any questions, please do not hesitate to contact me at 832-242-2426. For additional information you may contact Michael Bagstad directly at the same number.

Sincerely,

Giti Zarinkelk

Giti Zarinkelk, P.E., F.SAME

City of Galveston

CAPITAL PROJECTS
STAFF REPORT

June 15, 2020

To: Brian Maxwell, City Manager
Hon. Mayor and City Council Members

From: J. Dudley Anderson, Building Program Manager

RE: Consider approval of Change Order #02 to the agreement with E. P. Brady, Ltd., for the 24 inch Water Transmission Line from 59th Street Pump Station to the Airport Pump Station (RFP #19-24) increasing the project cost by $99,808.39. This represents an increase in the total project cost of 0.78% from the original amount of $17,159,876.30 to the amount of $17,293,075.22. Authorizing the City Manager to execute all necessary documents upon final approval by the City Attorney.

I. Background

A. The design and construction of this project was included in the City of Galveston Capital Improvement Plan.
B. City Council approved a contract with E. P. Brady, Ltd., for the 24 inch Water Transmission Line from 59th Street Pump Station to the Airport Pump Station (RFP #19-24) in an amount not to exceed $18,000,000.00 for the base bid plus alternate A, B, D, F, G, H, I, J, K, and L at the December 2019 Council meeting.
C. The City executed an agreement with E.P. Brady January 22, 2020 after negotiating a best and final offer for $17,159,876.30.
D. The City executed Change Order #01 with EP Brady April 30, 2020 for a 0.2% increase in the total construction contract from the original amount of $17,159,876.30 to the amount of $17,193,266.93. This change order did not increase the project budget.

II. Current Situation

A. Construction on this necessary water delivery system began March 2020.
B. The Contractor and City Staff have continued to consider means and method that would allow the least disruption to major thoroughfares along the route of this project and deliver a quality project.
C. 4 items have been either removed from the contract scope or added. These are more fully described in the attached recommendation from the Engineer of Record. The most critical items are revisions to the depth of the water line crossing Broadway at 55th and addition of a gate valve at that location.

III. Impact or ramifications:

The project is part of the City's continued efforts to expand services to the citizens.

IV. Alternatives in order of priority

A. Approve Change Order #02 to the agreement with E. P. Brady, Ltd., for the 24 inch Water Transmission Line from 59th Street Pump Station to the Airport Pump Station (RFP #19-24) increasing the project cost by $99,808.39. Authorizing the City Manager to execute all necessary documents upon final approval by the City Attorney.

B. Do not approve the request.

V. Recommendation

Approve Change Order #02 to the agreement with E. P. Brady, Ltd., for the 24 inch Water Transmission Line from 59th Street Pump Station to the Airport Pump Station (RFP #19-24) increasing the project cost by $99,808.39. Authorizing the City Manager to execute all necessary documents upon final approval by the City Attorney.

VI. Fiscal Impact Report

Requested by:	J. Dudley Anderson Building Program Manager
Funding Source:	Water and Sewer CO's GO Bond Street contingency fund ($68,500.00)

Construction Cost	$ 17,293,075.22 (an increase of $99,808.39)
Contingency	$ 631,923.68 (a decrease of $99,808.39)
Construction Administration	$ 125,500.00
Material Testing (estimated)	$ 225,000.00
Total Cost of Implementation	**$ 18,275,500.00**

Respectfully Submitted,

J. Dudley Anderson
Building Program Manager

ARCENEAUX WILSON & COLE
engineering | surveying | planning

May 27, 2020

Mr. Dudley Anderson
City of Galveston
823 Rosenburg
Room 205
Galveston, Texas 77550

RE: CHANGE ORDER NO. 2
24-Inch Water Line From 59th Street Pump Station To Airport Pump Station
AWC Job No. COG-130

Dear Mr. Anderson:

Arceneaux Wilson & Cole, LLC has reviewed the Change Order No. 2 for the 24-Inch Water Line From 59th Street Pump Station To Airport Pump Station project and recommends approval of the construction contract changes.

Regarding this Change Order No. 2 time and cost, the overall result for this change order is to increase the contract amount by $99,808.39. These costs include the following changes in quantities:

- Bid Item 18, Add 2 EA, 24" MJ 45 Degree Bend @ $2,900/EA ($5,800)
- Bid Item 19, Remove 2 EA, 24" MJ 22.5 Degree Bend @ $2,750/EA (- $5,500)
- New Bid Item 120, Add 1 L.S., 20" Water Line in Casing and Tie-In to 24" Water Line @ $69,770.29/L.S. ($69,770.29)
- New Bid Item 121, Add 1 L.S., 20" MJ Tee with 20" Gate Valve @ $29,738.10/L.S. ($29,738.10)

The above listed items are utilized by two (2) total revisions to the Contract. These revisions are described as follows:

- *Post Office Street Utility Conflict* – It was discovered during construction the existing 24" water line along Post Office Street is located at a deeper depth than originally planned. Additionally, the existing 30" water line is in direct conflict with the proposed 24" water line. There is also an existing unclaimed 12" gas line that was not located for design or the Contractor during construction in conflict with

the proposed 24" water line tie-in. In order to navigate the proposed 24" water line around the existing utility conflicts to reach the proposed tie-in location, it is necessary to utilize additional 45 degree bend fittings. As part of this change, two 24" MJ 22.5 Degree Bends will be removed from the project.

- *Broadway 24" Water Line Connection* – The construction plans call for the new 24" water line on to tie-in to an existing 20" water line located in Broadway Avenue. The existing 20" water line is located at a deeper depth than originally planned. Additionally, there is an existing uncased 2" cable, that was not located for design nor the Contractor during construction, that was discovered located above the existing 20" water line. These existing utility conflicts require the proposed tie-in to be constructed via alternate methods than what was originally designed. Of the available alternate options, the City decided it was both cost and maintenance beneficial to utilize a short section of new cased 20" water line under Broadway to complete the construction of the proposed tie-in.

I have attached Change Order No. 2 which modifies the contract to reflect these changes for your consideration and action. Should you have any questions or require additional information, please contact our office.

Very truly yours,
Arceneaux Wilson & Cole LLC
TEXAS REGISTERED ENGINEERING FIRM F-16194

Keith Zotzky, P.E., CFM
Staff Engineer

City of Galveston

24-Inch Water Line From 59th Street Pump Station To Airport Pump Station

Construction Contract Change Order Number 2

Consultant:	Owner:	Contractor:
Arceneaux Wilson & Cole LLC 2901 Turtle Creek Drive, Suite 320 Port Arthur, Texas 77642 Phone No.: 409.724.7888	City of Galveston 823 Rosenberg Galveston, Texas 77550 Phone No.: 409.797.3630	E.P. Brady, LTD 3414 Persimmon Houston, Texas 77093 Phone No.: 713.691.0923 NTP Date: 03/30/2020

Change in Contract Price		Change in Contract Time (Calendar Days)	
Original Contract Price:	$17,159,876.30	Original Contract Time:	365 days
Previous Change Order(s): No. to No. 1	$33,390.63	Net Change From Previous Change Orders:	0 days
Contract Price Prior to this Change Order:	$17,193,266.93	Contract Time Prior to this Change Order:	365 days
Net Increase/Decrease of this Change Order:	$99,808.39	Net Increase/Decrease of this Change Order:	0 days
Contract Price With all Approved Change Orders:	$17,293,075.32	Contract Time With all Change Orders:	365 days
Cumulative Percent Change in Contract Price (+/-):	+ 0.78%	Construction Contract End Date: (mm/dd/yy)	04/29/2021

RECOMMENDED:	APPROVED:	ACCEPTED:
By: _____	By: _____	By: Christopher Ulw
ARCENEAUX WILSON & COLE	CITY OF GALVESTON	E.P. BRADY, LTD.
Date: 06/11/2020	Date: _____	Date: 6/11/2020

NOTE: A cumulative change in the contract price in excess of 25% cannot be reviewed.

June 11th, 2020

To: Brian Maxwell, City Manager
Hon. Mayor and City Council Members

From: Daniel Christodoss, P.E., City Engineer

RE: Consider for approval, a proposal from Freese and Nichols for the City of Galveston American Water Infrastructure Act (AWIA) of 2018 Risk and Resilience Assessment (RRA) and the Emergency Response Plan (ERP) compliance documentation for a fee not to exceed $108,910. Authorizing the City Manager to execute all necessary documents upon final approval by the City Attorney.

I. Background

A. As part of Section 2013 of the act (AWIA), all municipalities serving a population of greater than 3,300 people are required to develop two documents: a Risk and Resiliency Assessment (RRA) and an Emergency Response Plan (ERP).

B. The act (AWIA) requires development of an RRA by December 31, 2020 and an ERP by June 30, 2021. This is based on the City of Galveston's service population (between 50,000 and 100,000 people).

C. Technical presentations were received from the following Consulting companies:
   i. Freese & Nichols
   ii. Ardurra
   iii. Hewitt-Zollars

D. The committee recommended Freese and Nichols due to the depth of the presentation, knowledge of AWIA and examples of the asset scoring provided during the presentation since this could lead into future proactive asset management of the City's infrastructure.

E. City Council selected Freese and Nichols in the April 2020 City Council Meeeting.

II. Current Situation

A. The City must comply with the deadlines established by the Act and submit to the Environmental Protection Agency (EPA) by the deadline above.

B. The scope is approved by the City, and Freese & Nichols has provided a final technical scope and cost proposal.

C. At this time, the professional services contract has been developed and is being submitted for City Council Approval.

III. Impact or ramifications:

If not awarded:

A. The City of Galveston may not be able to comply with the Act and its deadlines.

B. The City of Galveston will not have an updated Emergency Response Plan, putting the City's water, its citizen and economy, in a vulnerable situation.

C. Fines can reach $25,000/per day for non-compliance.

IV. Alternatives in order of priority

A. Approve the proposal from Freese and Nichols for development of the RRA and ERP to achieve compliance.

B. Do not approve the request and risk receiving penalties from the EPA for non-compliance and putting our water, citizens and economy at risk.

V. Recommendation

Approve the development of the RRA and ERP by Freese & Nichols.

VI. Fiscal Impact Report

Requested by:	Daniel Christodoss, P.E. City Engineer	
Funding Sources:	Waterworks CO 2017 Bonds Fund 40117 Water System Improvements/Valves W1618	
Cost (no construction involved)	$	108,910
Contingency	$	391,090
Construction Administration	$	est. 50,000
Material Testing (estimated)	$	est. 25,000
Total Cost of Implementation	**$**	**575,000**

Respectfully Submitted,

Daniel Christodoss, P.E.
City Engineer

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES

City of Galveston

Prepared by

EJCDC®
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

Issued and Published Jointly by

ACEC
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AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____ ("Effective Date") between

The City of Galveston, Texas ("Owner") and

Freese and Nichols, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

AWIA Risk and Resilience Assessment and Emergency Response Plan ("Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:

Performance of a Risk and Resilience Assessment and Preparation of an Emergency Response Plan in accordance with AWIA requirements

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

A. Owner shall have the responsibilities set forth herein and in Exhibit B.

B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.

C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:

1. any development that affects the scope or time of performance of Engineer's services;

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2. the presence at the Site of any Constituent of Concern; or

3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.

B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

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

4.02 *Payments*

A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.

B. *Failure to Pay*: If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

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1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.

D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

5.03 *Opinions of Total Project Costs*

A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

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ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. *Compliance with Laws and Regulations, and Policies and Procedures:*

1. Engineer and Owner shall comply with applicable Laws and Regulations.

2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:

   a. changes after the Effective Date to Laws and Regulations;

   b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;

   c. changes after the Effective Date to Owner-provided written policies or procedures.

F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make

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resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.

H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.

J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.

K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

L. Engineer's services do not include providing legal advice or representation.

M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to

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Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.

B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.

C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

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B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.

C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.

C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.

D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.

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G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

1. *By Owner*: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.

2. *By Engineer*: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination*: The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. by Engineer:

1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same,

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then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

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C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.

B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.

B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.

D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.

E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.

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F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," “arranger,” “operator,” “generator,” or “transporter” of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer’s activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner’s officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants’ and attorneys’ fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer’s officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, “Limitations of Liability."**

B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, “Limitations of Liability.”**

C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants’ and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.

E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party’s total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party’s negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

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F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:

1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

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2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.

3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.

5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.

6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.

7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.

10. *Construction Contract Documents*—Those items designated as "Contract Documents" in the Construction Contract, and which together comprise the Construction Contract.

11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.

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12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.

13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.

16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.

17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.

20. *Engineer*—The individual or entity named as such in this Agreement.

21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.

22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

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23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.

24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.

25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.

27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.

30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part

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thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

A. Exhibit A, Engineer's Services.

B. Exhibit B, Owner's Responsibilities.

C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.

D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. (Not Used)

E. Exhibit E, Notice of Acceptability of Work. (Not Used)

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F. Exhibit F, Construction Cost Limit. (Not Used)

G. Exhibit G, Insurance.

H. Exhibit H, Dispute Resolution.

I. Exhibit I, Limitations of Liability.

J. Exhibit J, Special Provisions. (Not Used)

K. Exhibit K, Amendment to Owner-Engineer Agreement. (Not Used)

8.02 *Total Agreement*

A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:
City of Galveston, Texas
By: _____
Print name:
Title: _____
Date Signed: _____

Address for Owner's receipt of notices:

_____

Designated Representative (Paragraph 8.03.A):

Title: _____
Phone Number: _____
E-Mail Address: _____

Engineer: Freese and Nichols, Inc.
By: Alan Hutson
Print name: Alan Hutson, P.E.
Title: Vice President
Date Signed: _____

Engineer License or Firm's Certificate No. (if required):
90179
State of: Texas

Address for Engineer's receipt of notices:

11200 Broadway St. Offices West; Suite 2320

Designated Representative (Paragraph 8.03.A):
David Hunn, P.E.
Title: Senior Project Manager
Phone Number: (346) 320-1582
E-Mail Address: David.Hunn@Freese.com

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EXHIBIT A

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PROJECT DESCRIPTION

Freese and Nichols, Inc. (FNI) understands that the City of Galveston is seeking assistance to meet compliance requirements for the American Water Infrastructure Act of 2018 and consists of 2 phases of development:

- Phase A – Drinking Water Risk and Resiliency Assessment (RRA): All hazards approach to identify hazards, cybersecurity risks, relative probabilities of occurrence, identify assets at risk, and develop a management plan to mitigate risks.
- Phase B – Update Current Emergency Response Plan (ERP): Provides a guidance document during emergencies that provides utility staff with well-defined response procedures intended to restore and maintain service delivery during times of crisis.

The RRA scope of work below is based on the approaches outlined in the following guidance documents:

- ANSI/AWWA J100: Risk Analysis and Management for Critical Asset Protection (RAMCAP) Standard for Risk and Resilience Management of Water and Wastewater Systems
- AWWA Manual 19: Emergency Planning for Water and Wastewater Utilities

The following guidance documents will also serve as references for this scope of work:

- AWWA G430: Security Practices for Operation and Management
- AWWA G440: Emergency Preparedness Practices

The detailed scope of services to be performed is as follows:

GENERAL REQUIREMENTS

The table below outlines the compliance schedule based on utility size. The City of Galveston falls into the "50,000 – 99,000" population category, with a corresponding deadline of December 31,

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2020 and June 30, 2021 for the Risk and Resiliency Assessment and Emergency Response Plan, respectively.

DEADLINE		
System Size (Population Served)	**Risk and Resiliency Assessment**	**Emergency Response Plan**
100,000 or more	March 31, 2020	September 30, 2020
50,000 – 99,999	December 31, 2020	June 30, 2021
3,300 – 49,999	June 30, 2021	December 30, 2021

The Scope of Work includes Basic Services that must be performed to meet the minimum requirements of the AWIA Risk and Resiliency Assessment and Additional Services that can be accomplished after initial compliance is achieved.

Section III below lists tasks that must be completed to meet minimum compliance with the requirements of the AWIA Risk and Resiliency Assessment (Phase A) and update the current Emergency Response Plan (Phase B).

PART 1 – BASIC SERVICES

Phase A: Water System Risk and Resilience Assessment

Task 1. Project Administration and Meetings

i. Project Management
   - Monthly Progress Reporting
   - Accounting/invoicing

ii. Kick-off Meeting
   - Discuss scope, schedule, goals, communication, and data needs.

iii. Data Collection and Review
   - Prepare data request memorandum
   - Collect, Assemble, review, and organize relevant data

iv. Progress Meetings / Workshops
   - Attend up to three progress meetings to discuss project progress with City staff
   - Conduct up to two workshops to facilitate discussions with various groups within the City's organization and to solicit input on the deliverables

Task 2. Asset Characterization

i. Identify mission or critical functions of utility to determine which assets support these functions

ii. Identify and list of potentially critical assets

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iii. Identify critical internal/external supporting infrastructures

iv. Document existing protective countermeasures and features

  i. Conduct a review of current security measures to assess current cybersecurity level based on AWWA and NIST guidelines.

v. Estimate worst reasonable consequences from asset loss

vi. Prioritize critical assets using estimated consequences

Task 3. Threat Characterization

i. Identify malevolent threats

ii. Identify natural hazards

iii. Identify dependency and proximity hazards

iv. Evaluate and rank threat/asset pairs

- Group into qualitative categories based on magnitude of consequences
- Identify key weaknesses and provide recommendations for the areas where Cybersecurity Practice Guides should be developed

v. Identify the top fifteen (15) critical threat-asset pairs for risk planning

Task 4. Consequence Analysis (C)

i. Develop goals for consequence analysis

ii. Develop worst-reasonable-case assumptions to threat scenarios.

iii. Estimate potential consequences utilizing VSAT, Parre, or similar software; to assess injuries, financial loss to Utility, economic loss to City and duration and severity of service denial

iv. Record consequence values for each threat/asset pair

v. Provide documentation of specific assumptions and procedures used for performing the consequence analysis, the worst-reasonable-case assumptions, and the results of the consequence analysis.

Task 5. Vulnerability Analysis (V)

i. Review facility details and layouts based on records and information of the site as included in the City's Master Plan or further information provided by the City of Galveston

ii. Document areas of vulnerability identified during the workshop by the City of Galveston

iii. Record vulnerability estimates for threat/asset pairs

iv. Vulnerability Analysis will be conducted using Parre or similar software determined by FNI.

Task 6. Threat Analysis (T)

i. Estimate likelihood of malevolent event based on attractiveness of region or location of facility

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ii. Estimate probability of natural hazard using historical records for the specific location of asset
iii. Estimate likelihood of dependency and proximity hazards using historical records for frequency, severity of occurrences
iv. The Threat Analysis will be conducted using Parre or similar software as determined by FNI.
v. Record threat analysis values for threat/asset pairs

Task 7. Risk and Resilience Analysis (Risk = C*V*T)

i. Calculate risk for each threat/asset pair as the product of Consequence analysis (C), Vulnerability analysis (V), and Threat analysis (T)
ii. Calculate overall system level of resilience using Appendix H in AWWA J-100 using 10 factors:
    - ERP Status
    - NIMS (National Incident Management System) compliance
    - Mutual aid assistance
    - Emergency power
    - Ability to meet minimum demands
    - Lead time for critical equipment
    - Percent of staff with backup
    - Business continuity plan status
    - Utility bond rating
    - GASB assessment
iii. Record risk and resilience estimates for each threat/asset pair

Task 8. Risk and Resilience Prioritized Recommendations

i. Define acceptable levels from risk scores
ii. Identify countermeasures or mitigation options for those threat/asset pairs including physical improvements, operational changes, and enhanced processes
iii. Identify options that potentially benefit multiple threat/asset pairs.
iv. Develop Capital Costs for highest ranking mitigation recommendations
v. Calculate net benefit and benefit-cost ratio to estimate total value and risk reduction efficiency
vi. Review and select the options to be included in future capital improvement plans (CIPs)

Task 9. Prepare Water System Risk and Resiliency Assessment Report

i. Draft report (electronic PDF copy)
ii. Review with City, incorporate comments and additional mitigation recommendations
iii. Develop Final report (electronic PDF copy plus 10 hard copies)

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Task 10. Develop and Send Certification Letter to EPA

i. Prepare Certification Letter shall include:
   - Community Water System ID
   - Date certified

Statement that the utility has conducted, reviewed, and revised as applicable the Risk and Resiliency Assessment in accordance with the AWIA of 2018.

<u>Phase B: Update Emergency Response Plan (ERP) for Water Utility System</u>

Task 1. Review existing ERP and update as necessary to include the following current information related to the Water Utility System:

i. Utility overview
   a. Utility authority
   b. Utility roles and responsibilities
   c. Utility service area (CNN type map)

ii. Scope of emergency plan
   a. Clearly identifies the purpose of the ERP
   b. Defines the scope of preparedness and incident management activities

iii. Authorities and references for ERP development
   a. Listing of EPA documents utilized
   b. Listing of AWWA documents utilized
   c. Listing of NIMS or DHS documents utilized

iv. Situation and risk assessment
   a. Summarizes the Risk and Resiliency assessment results
   b. Includes the descriptions of the greatest hazards identified

v. National Incident Management System (NIMS) Based Emergency Organization
   a. Identifies the roles/responsibilities during disaster events
   b. Defines the jurisdiction for the 5 NIMS sections
      - Management
      - Plans/Intel
      - Operations
      - Logistics
      - Finance

      Critical departments and personnel (i.e., IT/GIS and the Public Information Officer) will be included in the appropriate category of the 5 NIMS sections

vi. Develop Water Utilities Emergency Operations Center (WUEOC) and EOC organization
   a. Center location and readiness
   b. Emergency Operations Center (City-wide) location and readiness
   c. Organizational basics for both operations

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vii. Concept of operations
   a. Process to contact emergency response personnel identified in the ERP.
   b. Identify Public Information Officer (PIO)
   c. Review and up-date Emergency Communication Plan to addresses
      - Internal communication with employees
      - Senior leadership
      - Customers and public at large
      - Regulatory agencies

viii. Incident Command System (ICS)
   a. Identifies Command Staff
      - Incident Executive officer
      - Incident Command
      - Public Information officer
      - Safety officer
      - Liaison officer
   b. Identifies general staff
      - Operations section chief
      - Planning/Intel section chief
      - Logistics section chief
      - Finance/Accounting section chief

ix. Mutual Aid System and Processes
   a. Establishes key partnerships
   b. Establish collaboration with stakeholders
   c. Establish collaborative relations with other utilities
   d. Identify and develop processes to add mutual aid agreements needed to enhance resiliency
   e. Identify Water Agency Response Network (WARN) operational plans needed

x. Recovery Overview, Organization, Damage Assessments
   a. General recovery concept of operations
   b. Organization roles/responsibilities during recovery
   c. Identify processes to assess level of damage after the event

xi. Recovery documentation, reports and funding assistance
   a. Captures hazard event documentation process
   b. After-action questionnaire/report to internal office of emergency services
   c. Funding applications to FEMA on hazard mitigation grants or TWBD on emergency SRF with zero interest loans

Task 2. Training and Exercises

i. Table-top based exercises needed

ii. Operational/field-based exercises needed

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iii. Develop matrix of job positions vs training courses

Task 3. Plan Concurrence documentation

i. Letter of Promulgation

ii. Plan Concurrence with partner agencies

I. Additional Services (If Authorized)

Task 1. Site Visits to Critical Assets

i. FNI will conduct field visits to all critical assets with City of Galveston Personnel to confirm current conditions and existing security measures

ii. This task is not required for compliance with AWIA, but can be provided as an additional service if authorized

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I. Basic Services (Lump Sum)

Phase A – Water System Risk and Resilience Assessment

Task 1	Project Administration and Meetings	$8,680
Task 2	Asset Characterization	$1,760
Task 2.1	Assess Current Cybersecurity Level	$2,800
Task 3	Threat Characterization	$2,280
Task 3.1	Identify Cybersecurity Risks	$2,800
Task 4	Consequence Analysis	$5,300
Task 5	Vulnerability Analysis	$5,300
Task 6	Threat Analysis	$4,270
Task 7	Risk and Resilience Analysis	$5,960
Task 8	Risk and Resilience Prioritized Recommendations	$4,700
Task 9	Prepare Water System RRA Report	$9,190
Task 10	Develop and Send Certification Letter to EPA	$970
	Phase A Basic Services Subtotal: (Lump Sum)	$54,010
	Site Visits to Critical Assets (Optional Task Not Required for Certification)	$7,380
	Phase A Special Services (If Authorized): (Lump Sum)	$7,380

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Phase B - Update Emergency Response Plan (ERP) for Water Utility System

Task 1.i Utility Overview		$4,270
Task 1.ii	Scope of Emergency Plan	$4,270
Task 1.iii	Authorities and References for ERP Development	$1,500
Task 1.iv	Situation and Risk Assessment	$2,280
Task 1.v	NIMS Based Emergency Response	$1,760
Task 1.vi	WIEOC and EOC Organization	$2,280
Task 1.vii	Concept of Operations	$3,710
Task 1.viii	Incident Command System	$2,280
Task 1.ix	Mutual Aid System and Processes	$2,280
Task 1.x	Recovery Overview, Organization, Damage Assess	$4,270
Task 1.ix	Recovery Documentation Reporting and Funding	$4,270
Task 2 i.	Training and Exercises	$2,280
Task 2.ii.	Draft ERP Development Review	$5,200
Draft ERP Review Workshop		$4,480
Task 3	Plan Concurrence Documentation	$1,290
Phase B Basic Services Subtotal: (Lump Sum)		$46,420

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Estimate of Reimbursable Expenses (Expense Plus 5%)

Travel	$500
Miscellaneous Office Expenses	$600
Estimated Expenses Subtotal	$1,100

Total Fee (Lump Sum) Basic Services:	**$100,430**
Total Reimbursable Expenses	**$1,100**
Total Fee (Lump Sum) Additional Service (If Authorized):	**$7,380**
Total Project Fee Budget:	**$108,910**

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.

1. Risk and Resilience Assessment for Wastewater Utilities
2. Emergency Response Plan Update for Wastewater Utilities
3. Public Meeting Assistance
4. Design of Risk Mitigation Improvements
5. Preparation of Funding Assistance for Risk Mitigation Improvements
6. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

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7. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.

8. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.

9. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.

10. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.

11. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.

12. Undertaking investigations and studies including, but not limited to:

    a. detailed consideration of operations, maintenance, and overhead expenses;

    b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;

    c. preparation of appraisals;

    d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;

    e. detailed quantity surveys of materials, equipment, and labor; and

    f. audits or inventories required in connection with construction performed or furnished by Owner.

13. Furnishing services of Consultants for other than Basic Services.

14. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.

15. Providing the following services:

    a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.

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b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.

16. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).

17. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.

18. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.

19. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.

20. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.

21. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.

22. Preparing Record Drawings, and furnishing such Record Drawings to Owner.

23. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.

24. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.

25. Preparation of operation, maintenance, and staffing manuals.

26. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).

27. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.

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28. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.

29. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.

30. Overtime work requiring higher than regular rates.

31. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

32. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.

33. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).

34. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 *Additional Services Not Requiring Owner's Written Authorization*

A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.

2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.

3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes

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during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.

5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.

6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.

7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.

8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

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EXHIBIT B

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.

B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.

C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.

D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.

2. Zoning, deed, and other land use restrictions.

3. Utility and topographic mapping and surveys.

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4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.

5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.

6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.

7. Data or consultations as required for the Project but not otherwise identified in this Agreement.

E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:

1. Accounting, bond and financial advisory (including, if applicable, “municipal advisor” services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.

2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.

3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.

G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not

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limited to, cost estimating, project peer review, value engineering, and constructibility review.

J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.

O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.

P. Place and pay for advertisement for Bids in appropriate publications.

Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.

R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.

S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

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Exhibit C

Payments to Engineer for Services and Reimbursable Expenses

Payments to Engineer for Services and Reimbursable Expenses
Basic Services – Lump Sum

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

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 *Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment*

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A as follows:

1. A Lump Sum amount of $107,810 based on the following estimated distribution of compensation:

   a. Risk and Resilience Assessment $54,010

   b. Emergency Response Plan $46,420

   c. Site Visits to Critical Assets (If Authorized) $7,380

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.

3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.

4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses to be billed at cost plus 5% (see Appendix 1 for rates or charges):

   a. Mileage

   b. Reproductions Cost

   c. Estimated Budget for Reimbursable Expenses: $1,100

5. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the

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billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

B. *Period of Service:* The compensation amount stipulated is conditioned on a period of service not exceeding 12 months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

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Appendix 1 to EXHIBIT C

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

	Black and White	Color
8"x11" Copies/Impressions (per copy)	$0.10/page	$ 0.25/page
Mileage (auto)	Standard IRS Rates	
Large Format (Per Sq. ft.)		
Bond	$0.25	$0.75
Glossy / Mylar	$0.75	$1.25
Vinyl / Adhesive	$1.50	$2.00
Mounting (Per Sq. ft.)	$2.00	
Binding (Per Binding)	$0.25	

Other Direct Expenses

Other direct expenses are reimbursed at actual cost times a multiplier of 1.05. They include outside printing and reproduction expense, communications expense, travel, transportation, and subsistence away from the FNI office. For other miscellaneous expenses directly related to the work, including costs of other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multiplier of 1.05.

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EXHIBIT D

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

Not Applicable

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EXHIBIT E

Notice of Acceptability of Work:

Not Applicable

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EXHIBIT F

Construction Cost Limit

Not Applicable

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EXHIBIT G

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

a. Workers' Compensation: Statutory

b. Employer's Liability --

1) Bodily injury, each accident: $500,000
2) Bodily injury by disease, each employee: $500,000
3) Bodily injury/disease, aggregate: $500,000

c. General Liability --

1) Each Occurrence (Bodily Injury and Property Damage): $1,000,000
2) General Aggregate: $2,000,000

d. Excess or Umbrella Liability --

1) Per Occurrence: $2,000,000
2) General Aggregate: $2,000,000

e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):

$1,000,000

f. Professional Liability –

1) Each Claim Made $2,000,000[
2) Annual Aggregate $2,000,000

g. Other (specify): $N/A

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EXHIBIT H

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by a mutually agreeable mediation service. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

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EXHIBIT I

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

Engineer's Liability Limited to Amount of Insurance Proceeds: Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted byLaws and Regulations, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement.

B. *Indemnification by Owner*: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

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EXHIBIT J

Special Provisions

Not Applicable

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EXHIBIT K

AMENDMENT TO OWNER-ENGINEER AGREEMENT

Not Applicable

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June 3, 2020

To: Brian Maxwell, City Manager
Hon. Mayor and City Council Members

From: Daniel Christodoss, P.E., City Engineer

RE: Consider for approval the professional engineering services proposal addendum from Dannenbaum Engineering Corporation, to perform the Airport Pump Station (PS) Disinfection Improvements design, at a cost not to exceed $54,461 (includes 10% contingency of $4,951 for power supply upgrade design) increasing the existing design contract of $900,159 to $954,620. Authorizing the City Manager to execute all necessary documents upon final approval by the City Attorney.

I. Background

A. The Airport PS, located near Airport Blvd and Lockheed Drive, serves to boost water supply pressures mainly to the West Service Area.

B. The PS also boosts pressures in the North, South, and East sections in its vicinity.

C. The pump station's direct zone of influence includes various businesses such as Moody Gardens, Schlitterbahn, and the City of Galveston Airport which served a prominent role during Hurricane Harvey.

D. The PS can also boost pressures to allow quicker refill of the 10-Mile Road Elevated Storage Tank, the Jamaica Beach Elevated Water Storage Tank/Pump Station, the Municipal Utility District No. 29 Area (Pirates Beach) pump station/Elevated Water Storage Tank, the Isla Del Sol Elevated Water Storage Tank, and the White Sands Elevated Storage Tank.

E. Table 1 shows a summary of the major components of the Airport Pump Station which include:

1. The existing 20 feet tall Ground Storage Tank (GST) with 3 Million Gallons (MG) water storage capacity, and
2. Four (4) existing constant speed 3,000 gallons per minute (GPM) pumps.

Table 1

Component	Capacity	Total Capacity	Firm Capacity
Ground Storage Tanks (GST) Capacity in Million Gallons (MG)			
GST No. 1	3 MG	3 MG	3 MG
Booster Pumps (BP), Horse Power (HP), Total Dynamic Head (TDH)/pressure			
BP No. 1 (150 HP)	3,000 GPM @160' TDH/70 psi	12,000 GPM	9,000 GPM
BP No. 1 (150 HP)	3,000 GPM @160' TDH/70 psi		
BP No. 1 (150 HP)	3,000 GPM @160' TDH/70 psi		

BP No. 1 (150 HP)	3,000 GPM @160' TDH/70 psi		

F. Although the existing tank and pumps can supply water at 160' Total Dynamic Head (TDH) or 70 psi pressure, they still fall short of the following *critical water distribution system needs* for the West End and the pump station's vicinity:
   a. Two (2) new variable frequency drive (VFD) pumps that will adjust and provide variable pressure and flow to meet the variable water demand,
   b. 10 MG (Phase 1=3MG & Phase 2=7MG), 40 feet tall GST total capacity that will not be inundated during storm surge,
   c. One (1) new 24 inch water supply main from the 30th and 59th Street pump stations to feed the two (2) proposed 5 MG, 40 feet tall tanks, and
   d. Fiber optic lines from the 59th Street PS to the Airport PS, so all three (3) pump stations are connected electronically, and can be operated independently, to supply water Citywide from one of the three pump stations, when one or two pump stations are down during emergencies, and
   e. Rehabilitation of the electrical building that currently houses the four (4) constant speed pumps.

G. The new 24 inch water supply main (Item c above) has been designed by AWC Engineers and is in construction.

H. One (1) 7 MG tank will be designed as Phase 2 and a new 40 ft tall 3.0 MG tank is being built in Phase 1 which is currently in construction.

I. The rest of the items noted above have been designed and are currently in construction.

J. To provide economy of scale since a construction contractor was already selected for the project, and to comply with TCEQ regulations, a proposal was requested from Dannenbaum, the Engineer of Record.

II. Current Situation

A. Dannenbaum submitted a proposal for $49,510.00 to perform the Airport Pump Station Disinfection Improvements which includes:
   a) Design of the two new double walled tanks for the Liquid Ammonium Sulfate (LAS) and Zinc Orthophosphate.
   b) Design of the foundation and roof for the tanks.
   c) Chemical injection and dosing system, and
   d) Associated electrical and controls design.
   e) Contingency of $4,951 for power supply design is not included in their proposal.

III. Issues

A. Cost – $54,461.00.

B. Timing – As soon as the contract is ratified.

C. Impact or ramifications:

If the proposal is not approved, the City will be unable to meet the TCEQ compliant water distribution disinfection system needs and water demands in the West End of the Island, including the zone of influence in the North, South, and East side of the Airport Pump Station.

IV. Recommendation

Approve the proposal for professional engineering services from Dannenbaum Engineering Corporation in the amount of $49,510.00 + 10% contingency ($4,951) to upgrade power supply for a total of $54,461 to perform the Airport Pump Station Disinfection Improvements Design.

VI. Fiscal Impact Report

Requested by:	Daniel Christodoss, P.E. City Engineer
Funding Source:	Water Improvement Fund W1703-$25,000 Water CO Bonds 2017 Phase 1 W1705-$30,000
Costs of implementation:	$54,461.00
Fund and time Savings:	6 months plus savings in bid advertisement, mobilization costs, etc.

Respectfully Submitted,

Daniel Christodoss, P.E.
City Engineer

ADDENDUM EXHIBIT A

DANNENBAUM ENGINEERING CORPORATION
3100 WEST ALABAMA HOUSTON, TEXAS 77098 P.O. BOX 22292 HOUSTON, TEXAS 77227 (713) 520-9570

ENGINEERING EXCELLENCE SINCE 1945

June 15, 2020

Dilcia Jimenez, PE
City of Galveston
823 Rosenberg Street
P.O. Box 779
Galveston, Texas 77553

RE: Proposal for Engineering Services
City of Galveston
Airport Water Plant Expansion

Dear Ms. Jimenez,

Dannenbaum Engineering Corporation, at your request, is pleased to submit this proposal for additional design and construction services for the Airport Water Plant Expansion.

The scope of the additional design services will include the following:

- Design of a complete flow based, SCADA controlled, **Liquid Ammonium Sulfate** chemical feed system including piping, analyzers, flow meter, and double wall chemical storage tank in lieu of a full containment structure.
- Design of a complete flow based, SCADA controlled, **Zinc Orthophosphate** chemical feed system including piping, analyzers, flow meter, and double wall chemical storage tank in lieu of a full containment structure.
- Design of a complete flow based, SCADA controlled, **Chloramine** disinfection chemical feed system including piping, analyzers, flow meter, and **safety equipment** (SCBA, SCBA wall case, emergency shower).
- Electrical Design to incorporate additional chemical feed system equipment.
- **Control System Modification** to incorporate chemical feed system equipment and logic necessary for SCADA control.
- **Control System Modification (Graphics)** to incorporate chemical feed system into existing SCADA graphics.
- **Control Narrative** outlining the operation and control of the entire Airport Water Plant.
- **QA/QC** of Airport Water Plant for compliance with all TCEQ standards.
- Submit plans to TCEQ for approval including variances for double wall chemical storage tanks in lieu of full containment structures.
- **Start-Up and Testing** of Control System and Mechanical Equipment during the Construction Phase.

The chemical feed system design will be value engineered to be the best application for the Airport PS in terms of effectiveness and costs, while providing a complete up to date system based on TCEQ, IBC, OSHA and applicable local rules and regulations. The design will be incorporated into the existing Contract Documents with additional drawings and specification or modifications to existing drawings and specifications.

The total Engineering Cost for this work is $49,510.00. The proposed engineering services are broken down into the following phases of work:

Final Design Phase (Plans and Specifications Approved for Construction after City review and approval)	30,430.00
Construction Phase	19,080.00
Total Basic Services	**$49,510.00**

A spreadsheet is attached to provide more detail on the engineering scope, and the lump sum fees presented above.

Dannenbaum Engineering Corporation appreciates the opportunity to work with both you and the City of Galveston towards the successful completion of this project.

If you have any questions, please do not hesitate to call me at 713-527-6325.

Sincerely,

Tyson Arnold

Tyson Arnold, P.E., M. ASCE
Associate – Public Works Division
Dannenbaum Engineering Corporation

Attachments: Added Engineering Fee Spreadsheet

City of Galveston
Airport Water Plant Expansion

June 2020

Task Code	Direct labor ($ Per Hour)	# Sheets	Total Hours/Task	Engineering: Project Manager	Engineering: Civil Engineer	Engineering: Electrical Engineer	Engineering: CADD Technician	Admin.: Admin. Assistant	Total By Task
				$ 250.00	$ 185.00	$ 210.00	$ 115.00	$ 85.00	
Final Design/Engineering									
120	Project Management		8	8					$ 2,000.00
200	Site Visits				8				$ 1,480.00
200	Plan Sheets	2	44	4	16		24		$ 6,720.00
200	Electrical Drawings	1	30	2	4	8	16		$ 4,760.00
200	Detail Sheets	1	26	2	4	4	16		$ 3,920.00
200	Control System Modification (Logic, Graphics, Narrative)		26	2	16	8			$ 5,140.00
200	Prepare Technical Specifications		24	2	8	8		6	$ 4,170.00
200	Prepare Construction Cost Estimate		6	2	4				$ 1,240.00
198	QA/QC Plans and Specs		4	4					$ 1,000.00
Total Hours For Final Design/Engineering		4	168	26	60	28	56	6	**Subtotal**
Total Fees For Final Design/Engineering				**$ 6,500.00**	**$ 11,100.00**	**$ 5,880.00**	**$ 6,440.00**	**$ 510.00**	**$ 30,430.00**
Construction Services									
120	Project Management		4	4					$ 1,000.00
400	Maintain Log of Submittals		6		2			4	$ 710.00
400	Review Submittals		22	2	16	4			$ 4,300.00
400	Respond to RFIs		14	2	8	4			$ 2,820.00
400	Evaluate Cash Allowance Application/Prepare Recommendation		8		8				$ 1,480.00
400	Start-Up and Testing		32		20	12			$ 6,220.00
400	Prepare Record Drawings		18	2	2	2	8	4	$ 2,550.00
Total Hours For Construction Services			104	10	56	22	8	8	**Subtotal**
Total Fees For Construction Services				**$ 2,500.00**	**$ 10,360.00**	**$ 4,620.00**	**$ 920.00**	**$ 680.00**	**$ 19,080.00**
Total Hours For Basic Services			272	36	116	50	64	14	**Total**
Total Fees For Basic Services				**$ 9,000.00**	**$ 21,460.00**	**$ 10,500.00**	**$ 7,360.00**	**$ 1,190.00**	**$ 49,510.00**

Final Engineering	Construction	Total
$ 30,430.00	$ 19,080.00	**$ 49,510.00**

City of Galveston

ENGINEERING DIVISION

dchristodoss@galvestontx.gov | (409) 797-3630 | www.galvestontx.gov

ORIGINAL CONTRACT & NTP WHICH IS BEING INCREASED BY $41,240 FOR DISINFECTION DESIGN UPGRADES

January 24, 2018

Dannenbaum Engineering Corporation
3100 West Alabama
Houston, Texas 77098
Attn: Mr. Wayne G. Ahrens, P.E.

RE: NOTICE TO PROCEED – DESIGN OF AIRPORT PUMP STATION IMPROVEMENTS

Dear Mr. Ahrens,

On December 14, 2017 the Galveston City Council approved the above project in an amount not to exceed $900,159.00. You are hereby authorized to proceed on this project effective today, January 24, 2018.

Enclosed please find the executed contract.

Please reference Purchase Order **P1800789** when submitting invoices.

If you have any questions please contact this office at (409)797-3630.

Sincerely,

Daniel Christodoss, P.E.
City Engineer

Enclosure: Executed Contract
xc: Project File

CITY SECRETARY'S OFFICE
RECEIVED
JAN 12 2018
CITY OF GALVESTON

CITY OF GALVESTON
PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is entered into this 12th day of January, ~~2017,~~ 2018 by and between the City of Galveston, Texas, hereinafter called the "City", and Dannenbaum Engineering Corporation hereinafter called "COMPANY", located in 3100 West Alabama Street, Houston, Texas 77098 in connection with the following project:

Capital Improvement Plan
FY 2017-2021
Airport Pump Station with 5.0 MG Ground Storage Tank

This agreement between the Parties consist of the terms and conditions set forth herein, and in those documents, attached and incorporated for all purposes; Exhibit "A", identified as Responsive Proposal from COMPANY

WHEREAS, the City desires to engage COMPANY to render certain services in connection with the above stated project.

NOW THEREFORE, the parties do mutually agree as follows:

PART I

1. Scope of Services

   The Scope of Services shall be as set forth in the attached "Exhibit A".

2. Time of Performance - The services as set forth in Exhibit A shall commence on the above referenced date of this Agreement. Due to the nature and extent of the project the work is expected to be completed within 1,095 calendar days of issuance of a Notice to Proceed.

3. Independent Contractors – The parties are independent contractors as to each other. Nothing in this Contract shall be construed as creating any agency or employment relationship. Neither party shall make any representations tending to create an apparent or implied agency or employment relationship. Neither party has the authority to act for the other or to create obligations or debts binding on the other. Neither party shall be responsible for any obligations or expenses incurred by the other.

4. Standard of Care – The standard of care for all contractual and related services performed or furnished by COMPANY under this agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

5. Access to Information - It is agreed that all information, data, reports and records and maps as are existing, available and necessary for the carrying out of the work outlined above shall be furnished to COMPANY by the City and its agencies. The City and its agencies will cooperate with COMPANY in every way possible to facilitate the performance of the work described in the contract.

6. Appropriations - The obligations of the City to make payment under this Agreement are expressly subject to appropriations by the City of funds that are lawfully available to be applied to such purpose.

7. Compensation - The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed the lump sum amount of **$900,159.00.** Invoices are submitted by COMPANY each month (not necessarily falling on the first or last day of the month). City shall notify COMPANY in writing, of any and all objections, if any, to an invoice within ten (10) days of the date of invoice. Otherwise, the invoice shall be deemed proper and acceptable by the City. Amounts indicated on invoices are due and payable immediately upon receipt. City's account will be considered delinquent if COMPANY does not receive full payment within thirty (30) days after the invoice date.

8. The City shall not be responsible for payment to COMPANY for any additional services or expenses not specifically included in Exhibit "A", except upon execution of an amendment to this Agreement in writing by both parties. Parties shall attempt to resolve any payment disputes within sixty (60) days or the matter may be submitted to mediation

9. INDEMNIFICATION: FOR CONSIDERATION RECEIVED, COMPANY shall indemnify, defend, save and hold the City of Galveston harmless, including City's officers, agents, employees and servants, from any claims, actions, lawsuits, proceedings, damages, loss, damage, judgments, liabilities or expense on account of damage to property and injuries, including death, which may arise or result, in whole or in part from any negligent act or omission of COMPANY or those acting under COMPANY'S supervision or control. COMPANY shall not be responsible, however, for any loss, damage, liability or expense on account of damage to property and injuries, including death, which may arise from the sole negligence of the city. **COMPANY shall comply with the requirements of all current applicable laws, rules and regulations and shall indemnify, and hold harmless the City and its agency members from and against the failure to comply with those laws, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.**

10. Construction – This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Galveston County, Texas. Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement. In any case, if one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or

unenforceability shall not affect any other provision thereof and this Agreement shall not be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

11. Termination of Contract for Cause. If, through any cause, COMPANY shall fail to fulfill in a timely and proper manner his/her obligations under this Contract, or if COMPANY shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to COMPANY of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by COMPANY under this Contract shall, at the option of the City, become property of the City and the COMPANY shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, COMPANY shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by COMPANY, and the City may withhold any payments to COMPANY for the purpose of set-off until such time as the exact amount of damages due the City from COMPANY is determined.

12. Termination for Convenience of the City. The City may terminate this Contract at any time by giving at least ten (10) days' notice in writing to COMPANY. If the Contract is terminated by the City as provided herein, COMPANY will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of COMPANY, Paragraphs relative to termination shall apply.

13. Modification: No change in the terms of this Contract shall be binding unless it is in writing and signed by an authorized representative of both parties.

14. Force Majeure: No party to this agreement shall be deemed in violation if it is prevented from timely performing any of its obligations by reason of labor disputes, acts of God, acts of the public enemy, acts of superior governmental authority, or other circumstances for which the party is not responsible or which is not in its control.

15. Proof of Insurance: COMPANY shall maintain certain types of insurance protection throughout the duration of the project. All insurance policies are to be issued by an insurance company authorized to do business in the State of Texas, using an insurance company with an A.M. Best rating of a B+ or better.

16. Required Insurance: Commercial general liability insurance, naming the City of Galveston as an additional insured and as certificate holder, and waiving subrogation per the contractual requirements of this project; Automobile Liability Insurance, Worker's Compensation Insurance and Professional Liability Insurance. Limits are to be equal to or greater than:

    a. **Commercial general liability insurance**:

        $2,000,000 general liability (includes products and personal, etc.)

        $1,000,000 fire damage

$1,000,000 automobile damage
$500,000 workers compensation employers' liability
Statutory limits for workers compensation
Insurance coverage shall be on an "**occurrence basis**"

17. Assignability: COMPANY shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City. Unless specifically stated to the contrary in any written consent to assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

18. Reports and Information: COMPANY, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

19. Findings Confidential: To the extent permitted by law, all of the reports, information, data, etc., prepared or assembled by COMPANY under this contract are confidential and COMPANY agrees that they shall not be made available to any individual or organization without the prior written approval of the City.

20. Copyright: No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of COMPANY.

21. Compliance with Local, State and Federal Laws: This Contract shall be construed under and in accordance with the laws of the State of Texas, with jurisdiction in the courts of the State of Texas and venue in Galveston, County regardless of where the obligations of the parties were performed. By execution of this Contract, the parties agree to subject themselves to the jurisdiction of the Courts of the State of Texas in all matters relating to or arising out of this Contract or the Work.

22. Notices: All notices required or permitted under this Contract shall be in writing and shall be deemed given when delivered in person or three days after deposit in the United States Mail, postage prepaid, addressed to the party's address reflected at the end of this Contract. A party's notice address may be changed from time to time by that party's providing written notice to the other. A copy of the notice to the City shall be sent to:

City Attorney
City of Galveston
823 Rosenberg, Room 203
P.O. Box 779
Galveston, Texas 77553

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on the day and year first above written.

CITY OF GALVESTON, TEXAS	**DANNENBAUM ENGINEERING CORP.**
BY:	BY:
NAME: Brian Maxwell	NAME: Wayne G. Ahrens, P.E.
TITLE: City Manager	TITLE: Executive Vice President
DATE: 1/12/18	DATE: November 22, 2017

Approved As To Form

City Attorney's Office

Attest:

City Secretary's Office

BY EXECUTION OF THIS AGREEMENT, COMPANY ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT.

Exhibit A

DANNENBAUM ENGINEERING CORPORATION
1100 WEST ALABAMA HOUSTON, TEXAS 77006 P.O. BOX 22092 HOUSTON, TEXAS 77227 (713)520-9500

ENGINEERING EXCELLENCE SINCE 1945

November 6, 2017

Mr. Daniel Christodoss, PhD, P.E
City of Galveston
City Engineer
823 Rosenberg Street, Suite 402
Galveston, Texas 77550

Re: Proposal for Engineering Services for the City of Galveston
Design of the Airport Pump Station Project with 5.0 MG GST

Dear Mr. Christodoss:

Dannenbaum Engineering Corporation, at your request, is pleased to submit this proposal for the engineering services for the Design of the Airport Pump Station Project.

Dannenbaum Engineering Corporation has been providing engineering services to the City of Galveston for a number of years, including the 30th Street Pump Station, the 59th Street Pump Station, and other projects recommended as part of the Water Distribution System Master Plan to improve water pressure and flow on Galveston Island.

The proposed Airport Pump Station Project will be located on the existing Airport Pumping Station site. The project will include the expansion of the existing building to accommodate two new variable speed drive pumps, new motor control center, and the drives for the new pumps, and will include repair of the existing pump station walls and windows. The proposed building expansion will be elevated to match the height of the existing building. The existing piping will be modified and routed to connect the new pumps suction and discharge to the existing piping and distribution system. The design will attempt to minimize the down-time of the existing pump station. The access road to the site will be modified to relocate the entrance of the plant to Airport Road. This relocation is necessary to accommodate the construction of a new 5.0 MG Ground Storage Tank. Design of the new station will comply with all State of Texas and City of Galveston rules and regulations and all required approvals will be obtained prior to construction of the improvements. The estimated construction cost for this project, including all appurtenances, will be approximately $6,092,295.

The total Engineering Cost for this work, including extra services such as topographic survey, Environmental Phase I, geotechnical investigation, and coating inspection during construction, is $900,159.00. The proposed engineering services, fees and extra services are broken down into the following phases of work:

Preliminary Design Phase	41,884.00
Final Design Phase	553,947.00
Construction Phase	220,728.00
Total Basic Services	**$816,559.00**
Additional Services	
Survey	11,000.00
Geotechnical Investigation	17,000.00
Phase I Environmental Services	8,300.00
Materials Testing	32,800.00
SWPPP	5,000.00
Traffic Control	9,500.00
Total Additional Services	**$83,600.00**
Total Lump Sum Fees	**$900,159.00**

A spreadsheet is attached to provide more detail on the engineering scope, and the fees presented above.

Dannenbaum Engineering Corp appreciates the opportunity to work with both you and the City of Galveston towards the successful completion of this project.

If you have any questions, or need additional assistance, please do not hesitate to call.

Sincerely,

DANNENBAUM ENGINEERING CORPORATION

Carl D McConnell

Carl D. McConnell, P.E., PMP
Deputy Manager – Public Works Division

CC: File

City of Galveston

Airport Pump Station Project (5.0 MG GST)

Construction Cost Estimate

November, 2017

Item No.	Item Description	Unit	Quantity		Unit Cost		Subtotal
1	Mobilization (3%)	LS	1	$	161,300	$	161,300
2	Contol Building and Foundation Construction, including 6' wide access sidewalk, electrical equipment, variable speed pumps, with all necessary piping, fittings, fixtures, repair of existing pump station, aall materials, labor, and supervision	LS	1	$	625,000	$	625,000
3	Variable Speed Pumps (3,000 GPM @ 185')	EA	2	$	75,000	$	150,000
4	Electrical System - Rough in Empty Raceway	LS	1	$	90,000	$	90,000
5	Electrical System - Wiring and Connections	LS	1	$	75,000	$	75,000
6	Pump Room Ventilation Equipment	LS	1	$	20,000	$	20,000
7	Pump Room Heating Equipment	LS	1	$	10,000	$	10,000
8	Electrical Room Air Conditioning Equipment	LS	2	$	9,000	$	18,000
9	Motor Control Center	LS	1	$	88,000	$	88,000
10	Variable Frequency Drives - 200HP	EA	2	$	100,000	$	200,000
11	Solid State Soft Starters w/Bypass Starters	EA	4	$	50,000	$	200,000
12	Lighting Transformers/Panels	LS	1	$	48,000	$	48,000
13	Grounding	LS	1	$	15,000	$	15,000
14	Light Fixtures	LS	1	$	20,000	$	20,000
15	Process Monitoring Control System	LS	1	$	100,000	$	100,000
16	Start Up/Testing	LS	1	$	20,000	$	20,000
17	5.0 MG Ground Storage Tank	EA	1	$	2,610,000	$	2,610,000
18	Flow Control Station	EA	1	$	350,000	$	350,000
19	Construction Project Identification Sign	EA	1	$	2,000	$	2,000
20	36" Sewer Line Relocation	LS	1	$	76,500	$	76,500
21	Sanitary Sewer Bypass Pumping	LS	1	$	25,000	$	25,000
22	Yard Piping	LS	1	$	350,000	$	350,000
23	Concrete Access Road	SY	675	$	110	$	74,250
24	Site Fill	CY	925	$	120	$	111,000
25	Site Excavation	CY	325	$	120	$	39,000
26	Site Final Grading	LS	1	$	12,500	$	12,500
27	Fencing / Access Gate	LS	1	$	9,500	$	9,500
28	Site Resoration/Hydromulch Seeding	LS	1	$	15,000	$	15,000
29	Traffic Control	LS	1	$	12,000	$	12,000
30	SWPPP	LS	1	$	7,500	$	7,500
31	Reinforced Filter Fabric Fence	LF	1300	$	3	$	3,900
Subtotal Construction Cost						$	5,538,450
Contingencies and Construction Inspection (8% + 2%)						$	553,845
Total Construction Cost						$	6,092,295

City of Galveston
Airport Water Plant Expansion
November 2017

Task Code	Direct labor ($ Per Hour)	# Sheets	Total Hours/Task	Engineering: Project Manager	Civil Engineer	Structural Engineer	Architect	Electrical Engineer	CADD Technician	Admin. Assistant	Total By Task
				$ 250.00	$ 185.00	$ 165.00	$ 132.00	$ 185.00	$ 115.00	$ 85.00	
Preliminary Design/Engineering											
120	Project Management		18	18							$ 4,500.00
100	Site Visits		32	8	8	4	4	8			$ 6,148.00
100	Preliminary Layout		112	8	16	16	16	16	40		$ 17,272.00
100	Preliminary Cost Estimate		56	8	16	8	8	16			$ 10,296.00
100	Client Meeting for Comments		20	4	4	4	4	4			$ 3,668.00
Total Hours For Preliminary Design/Engineering			238	46	44	32	32	44	40	0	**Subtotal**
Total Fees For Preliminary Design/Engineering				**$ 11,500.00**	**$ 8,140.00**	**$ 5,280.00**	**$ 4,224.00**	**$ 8,140.00**	**$ 4,600.00**	**$ -**	**$ 41,884.00**
Final Design/Engineering											
120	Project Management		60	60							$ 15,000.00
200	Prepare List of Required Specifications		26	2	8	4	4	4		4	$ 4,248.00
200	Cover Sheet	1	22	2	4				16		$ 3,080.00
200	Index of Drawings	1	34	2	8	4		4	16		$ 5,220.00
200	General Notes	1	32	2	8	2	2	2	16		$ 4,784.00
200	Plan Sheets	45	1,364	48	128	48	160	80	900		$ 183,020.00
200	Electrical Drawings	25	708	24	48	48		80	500	8	$ 95,780.00
200	Structural Drawings	6	220	24	48	80			60	8	$ 35,660.00
200	Detail Sheets	10	384	8	24	24	80	80	160	8	$ 54,840.00
200	Prepare Bidding Documents and Technical Specs		232	16	40	16	40	80		40	$ 37,520.00
200	Prepare Construction Cost Estimate		60	8	16	8	8	16		4	$ 10,636.00
198	QA/QC Plans and Specs		134	134							$ 33,375.00
200	Incorporate Comments		168	4	24	8	8	16	100	8	$ 22,956.00
300	Provide Bidding Documents		52	4	16		16	8		8	$ 8,232.00
300	Attend Prebid Conference		32	8	8		8	8			$ 6,016.00
300	Respond to Bidders Questions		64	8	16	8	16	8		8	$ 10,552.00
300	Prepare Addenda as Required		136	8	24	8	24	24	32	16	$ 20,408.00
300	Evaluate and Submit Tabulated Bids		10	2	4					4	$ 1,580.00
300	Prepare Written Recommendation		6	2	2					2	$ 1,040.00
Total Hours For Final Design/Engineering		89	3,744	366	426	258	366	410	1,800	118	**Subtotal**
Total Fees For Final Design/Engineering				**$ 91,375.00**	**$ 78,810.00**	**$ 42,570.00**	**$ 48,312.00**	**$ 75,850.00**	**$ 207,000.00**	**$ 10,030.00**	**$ 553,947.00**
Construction Services											
120	Project Management		24	24							$ 6,000.00
400	Attend Preconstruction Meeting/Prepare Minutes		48	8	8	8	8	8		8	$ 8,016.00
400	Attend Progress Meetings/Site Visits		320	96	96	32	48	48			$ 62,256.00
400	Prepare Monthly Agenda		48		24					24	$ 6,480.00
400	Maintain Log of Submittals		48		24					24	$ 6,480.00
400	Review Submittals		328	32	120	40	40	80		16	$ 58,240.00
400	Respond to RFIs		112	16	16	16	16	32		16	$ 18,992.00
400	Perform Site Observations at Substantial Completion		40	8	8	8	8	8			$ 7,336.00
400	Perform Site Observations at Final Completion		40	8	8	8	8	8			$ 7,336.00
400	Prepare Record Drawings		276	4	32	16	16	64	128	16	$ 39,592.00
Total Hours For Construction Services			1284	196	336	128	144	248	128	104	**Subtotal**
Total Fees For Construction Services				**$ 49,000.00**	**$ 62,160.00**	**$ 21,120.00**	**$ 19,008.00**	**$ 45,880.00**	**$ 14,720.00**	**$ 8,840.00**	**$ 220,728.00**
Total Hours For Basic Services			5,266	608	806	418	542	702	1,968	222	**Total**
Total Fees For Basic Services				**$ 151,875.00**	**$ 149,110.00**	**$ 68,970.00**	**$ 71,544.00**	**$ 129,870.00**	**$ 226,320.00**	**$ 18,870.00**	**$ 816,559.00**

Preliminary Engineering	Final Engineering	Construction	Total
$ 41,884.00	$ 553,947.00	$ 220,728.00	**$ 816,559.00**

Task	Additional Services	# Sheets	Preliminary Engineering	Final Engineering	Construction	Total
500	Topographic Survey	2	$ 11,000.00			$ 11,000.00
600	Geotechnical Investigation	1	$ 17,000.00			$ 17,000.00
700	Phase I Environmental		$ 8,300.00			$ 8,300.00
800	Materials Testing				$ 32,800.00	$ 32,800.00
900	Traffic Control	4	$ 5,000.00			$ 5,000.00
1000	SWPPP	3		$ 9,500.00		$ 9,500.00
Total Additional Services			$ 41,300.00	$ 9,500.00	$ 32,800.00	**$ 83,600.00**
Total Cost By Phase			$ 83,184.00	$ 563,447.00	$ 253,528.00	**$ 900,159.00**
Total Cost						**$ 900,159.00**

11QQ
12/14/17

City of Galveston

P. O. Box 779 / Galveston, Texas 77553-0779

December 4, 2017

To: Brian Maxwell, City Manager
Hon. Mayor and City Council Members

From: Daniel Christodoss, P.E., City Engineer

RE: Consider for approval the professional engineering services proposal from Dannenbaum Engineering Corporation for a not to exceed cost of $900,159 to design the Airport Pump Station (PS) Improvements. Authorizing the City Manager to execute all necessary documents upon final approval by the City Attorney.

I. Background

A. The Airport PS, located near Airport Blvd and Lockheed Drive, serves to boost water supply pressures mainly to the West Service Area.

B. The PS also boosts pressures in the North, South, and East sections in its vicinity.

C. The pump station's direct zone of influence includes various businesses such as Moody Gardens, Schlitterbahn, and the City of Galveston Airport which served a prominent role during Hurricane Harvey.

D. The PS can also boost pressures to allow quicker refill of the 10-Mile Road Elevated Storage Tank, the Jamaica Beach Elevated Water Storage Tank/Pump Station, the Municipal Utility District No. 29 Area (Pirates Beach) pump station/Elevated Water Storage Tank, the Isla Del Sol Elevated Water Storage Tank, and the White Sands Elevated Storage Tank.

E. Table 1 shows a summary of the major components of the Airport Pump Station which include:

a) The existing 20 feet tall Ground Storage Tank (GST) with 3 Million Gallons (MG) water storage capacity, and

b) Four (4) existing constant speed 3,000 gallons per minute (GPM) pumps.

Table 1

Component	Capacity	Total Capacity	Firm Capacity
Ground Storage Tanks (GST) Capacity in Million Gallons (MG)			
GST No. 1	3 MG	3 MG	3 MG
Booster Pumps (BP), Horse Power (HP), Total Dynamic Head (TDH)/pressure			
BP No. 1 (150 HP)	3,000 GPM @160' TDH/70 psi	12,000 GPM	9,000 GPM
BP No. 1 (150 HP)	3,000 GPM @160' TDH/70 psi		
BP No. 1 (150 HP)	3,000 GPM @160' TDH/70 psi		
BP No. 1 (150 HP)	3,000 GPM @160' TDH/70 psi		

COUNCIL APPROVED
DATE 12/14/17
SIG. gWilliams

F. Although the existing tank and pumps can supply water at 160' Total Dynamic Head (TDH) or 70 psi pressure, they still fall short of the following *critical water distribution system needs* for the West End and the pump station's vicinity:
   i. Two (2) new variable frequency drive (VFD) pumps that will adjust and provide variable pressure and flow to meet the variable water demand,
   ii. Two (2) 5 MG, 40 feet tall GSTs that will not be inundated during storm surge,
   iii. One (1) new 24 inch water supply main from the 30th and 59th Street pump stations to feed the two (2) proposed 5 MG, 40 feet tall tanks, and
   iv. Fiber optic lines from the 59th Street PS to the Airport PS, so all three (3) pump stations are connected electronically, and can be operated independently, to supply water Citywide from one of the three pump stations, when one or two pump stations are down during emergencies, and
   v. Rehabilitation of the electrical building that currently houses the four (4) constant speed pumps.

G. The new 24 inch water supply main (Item iii above) is being designed currently by AWC Engineers.

H. One (1) of the two (2) 5 MG tanks needs to be designed as Phase 2.

I. The rest of the items noted above need to be designed during this Phase 1.

II. Current Situation

A. The City requested a proposal from Dannenbaum Engineering Corporation which was prequalified by City Council in October 2016.

B. Dannenbaum submitted a proposal for $900,159.00 to perform the Airport Pump Station Improvements which includes:
   a) The two (2) VFD pumps and new electrical building,
   b) One (1) 5 MG, 40 feet tall ground storage tank (GST),
   c) Fiber optic lines, and
   d) Rehabilitation of the existing electrical building.

III. Issues

A. Cost – $900,159.00.

B. Timing – As soon as the contract is ratified.

C. Impact or ramifications:
If the proposal is not approved, the City will be unable to meet the water distribution system needs and water demands in the West End of the Island, including the zone of influence in the North, South, and East side of the Airport Pump Station.

IV. Recommendation

Approve the proposal for professional engineering services from Dannenbaum Engineering Corporation in the amount of $900,159.00 to perform the Airport Pump Station Improvements Design.

VI. Fiscal Impact Report

Requested by: Daniel Christodoss, P.E.
City Engineer

Funding Source:	Water Improvement Fund W1703-$240,000 Water CO Bonds 2017 Phase 1 W1705-$733,750
Costs of implementation:	$900,159.00
Fund Savings:	$73,591

Respectfully Submitted,

Daniel Christodoss, P.E.
City Engineer

City Marshal's Office

CITY OF GALVESTON
823 Rosenberg | Galveston, TX 77550-0779
www.galvestontx.gov | 409-797-3660

June 6, 2020

To: Brian Maxwell, City Manager
Honorable Mayor and City Council Members

From: Butch Stroud, City Marshal

RE: Consider for the approval a 3-year contract, with the option to extend the contract for two one-year terms, for a total of five years, with no cost to the city. This contract will continue giving people options to pay to park using a smart phone or other electronic device, which the Marshals Office, Parking Enforcement Division, already have in operation for paying to park and authorize the City Manager to execute the contract upon final approval by the City Attorney. There will be no funding source.

I. <u>Background</u>

A. The Marshals Office needs the option for people to be able to pay for parking using their cell phone or other electronic device in addition to the pay stations.

B. We are currently using PaybyPhone to provide this option and have been for over five years.

C. PaybyPhone is compatible with our other pay to park collections and ALPR recognition systems we are currently using.

D. Staff has solicited three other companies, Park Mobile, Flowbird and Cale-Way to Park, which provide this service. Park Mobile and Flowbird are the only companies to respond.

E. ParkMobile waived all set up fees and set the transaction fee at 0.35 per transaction. They would reimburse the city 0.05 per transaction per month.

F. Flowbird waived all setup fees and set the transaction fee at 0.20 per transaction. We would then have to exchange all the signage currently in place. Each user would have to upload a new app and it would cause problems with the yearly paid parking already in place.

G. PaybyPhone has no set up fees and they have lowered the transaction fee from 0.25 per transaction, as they are currently charging, to 0.20 per transaction fee. This will not affect the cities profit but will be a savings for the user/customer.

H. PaybyPhone has been a proven, reliable and dependable service provider for the last five (5) years.

II. Current Situation

Concur in Alternative A and approve a 3-year contract, with the option to extend the contract for two one-year terms, for a total of five years, with no cost to the city. This contract will continue giving people options to pay to park using a smart phone or other electronic device, which the Marshals Office, Parking Enforcement Division, already have in operation for paying to park and authorize the City Manager to execute the contract upon final approval by the City Attorney. There will be no funding source.

III. Alternatives in order of priority

A. Approve the contract to PaybyPhone.

1. Cost – No Cost.

2. Timing – This contract is necessary immediately to prevent interruption of our Pay by Phone option.

3. Departmental Improvements – This contract will ensure that the Parking Enforcement Division of the Marshals Office continues to provide options for people to pay for parking.

B. Do not approve the contract to PaybyPhone.

1. Cost – No cost

2. Timing – N/A

3. Departmental Improvements – No improvements which will hinder people's options to pay to park.

IV. Recommendation

Concur in Alternative A and approve a 3-year contract, with the option to extend the contract for two one-year terms, for a total of five years, with no cost to the city. This contract will continue giving people options to pay to park using a smart phone or other electronic device, which the Marshals Office, Parking Enforcement Division, already have in operation for paying to park and authorize the City Manager to execute the contract upon final approval by the City Attorney. There will be no charge to the city.

V. Fiscal Impact Report

Requested by:	Butch Stroud City Marshal
Funding Source:	None
Cost of Implementation:	$0.00
Additional Information:	ParkMobile responded with a pricing quote which was no set up fees and 0.35 per transaction. Flowbird responded with a pricing quote which was no set up fees and 0.20 per transaction. Cale-Way to Park did not respond with a pricing quote. PaybyPhone responded with no set up fees and reduced user fee from 0.25 per transaction to 0.20 per transaction which makes PaybyPhone the best deal for the city and the pay to park customers.

Respectfully Submitted,

Butch Stroud
City Marshal

DocuSign Envelope ID: FCCBFF07-D6ED-4009-89AE-6847CEAD4DA7

COOPERATION AND SERVICE AGREEMENT

This Cooperation and Service Agreement (the "Agreement") is entered into as of _____, 2020 (the "Effective Date") between PayByPhone Technologies Inc., a developer of enhanced mobile commerce solutions, a British Columbia corporation with its principal place of business at #403 – 1168 Hamilton Street, Vancouver, British Columbia, Canada ("PayByPhone") and City of Galveston, a provider of parking services, with its head office at: 823 Rosenberg, Galveston, Texas 77553 ("Client").

RECITALS

The objective between PayByPhone and Client provided for in this Agreement is for PayByPhone to provide wireless applications to enhance the payment process for parking at parking facilities and metered parking stalls owned and/or managed by Client. PayByPhone mobile commerce solutions will also provide Client with a management information system, including real-time operation and transaction reports.

Under this Agreement, the designated areas for paid parking are: (a) the north and south sides of Seawall Boulevard from 6th Street to 61st Street and from 81st Street to the end of the Seawall Boulevard ("Galveston Parks Board Area"), and (b) downtown area of Galveston ("City of Galveston Area").

AGREEMENT

Section 1 THE PAYBYPHONE MOBILE PAYMENT PLATFORM AND APPLICATIONS

1.1 PAYBYPHONE MOBILE PAYMENT APPLICATION

PayByPhone agrees to roll out the PayByPhone mobile payment service for use at Client's managed and owned parking facilities as agreed upon by PayByPhone and Client, to allow for consumers to pay for the use of Client's parking facilities through personal wireless devices (e.g., cellular telephones) or other wireless systems.

1.2 PAYBYPHONE MANAGEMENT INFORMATION SYSTEM

PayByPhone will operate and manage a software application for Client that will provide near real time information and management reports on the transactions conducted utilizing the PayByPhone Parking Payment Application (the "Management Information System"). PayByPhone will host the Management Information System on its network. Client will access the Management Information System through a browser-based program installed on Client's computer hardware.

1.3 COMPUTER, NETWORKING AND TELECOMMUNICATION SYSTEMS

PayByPhone will own or possess, and will operate and maintain, all computer and networking hardware and software and data required to operate the PayByPhone mobile payment services service as contemplated in this Agreement, other than Client's existing computer and telecommunications systems.

1.4 MOBILE PAYMENT SERVICE ENFORCEMENT

Client agrees to supply Wireless Devices to employees in the field to provide real time confirmation of validly parked vehicles.

1.5 REPORTS

PayByPhone will provide Client with a set of standard reports in the self-serve PayByPhone Service Management Interface System. Any changes or customizations to the standard set of reports will be subject to then-current PayByPhone Professional Services fees. See Appendix B for sample rates.

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Section 2 FEES AND PAYMENTS

2.1 PRICING AND PAYMENT

Client agrees to pay the fees, as outlined in Appendix A. All amounts payable hereunder are exclusive of any and all taxes, including taxes applicable on fees paid by the consumer, and Client is responsible for payment of such taxes. All prices are stated, and Client shall pay, in US dollars. Payment is due within 30 days of invoicing.

2.2 MERCHANT ACCOUNT

Merchant account refers to Client's merchant account set up with Client's acquiring bank. PayByPhone will cover the cost of linking one (1) Client merchant account with PayByPhone's gateway provider. PayByPhone reserves the right to charge additional set up fees if the Client replaces the merchant account linked with PayByPhone's gateway provider with another merchant account.

2.3 TRANSACTION TESTING

PayByPhone reserves the right to execute test transactions from time to time to ensure top performance of the system and account. PayByPhone may execute up to ten test transactions per month without adjusting the Client invoice. Additional testing thereafter shall be conducted upon written approval of the Client.

2.4 THIRD PARTY INTEGRATION

This paragraph applies if Client engages a third party to provide parking enforcement services to Client and such third party requires access to and integration with the Management Information System. In the event that system changes (such as upgrades) by the third party impact the PayByPhone integration with Client sub-systems, PayByPhone will notify Client, in advance, of any resulting PayByPhone development costs associated with maintaining integration. The development costs will be determined in accordance with Appendix B sample rates. The Client agrees to pay PayByPhone's development costs required to maintain integration..

Section 3 EXCLUSIVITY

Client agrees that PayByPhone is the sole and exclusive provider of all mobile payment service applications (using whatsoever technology) for Client during the term of this agreement, including, but not limited to, all wireless payment applications employing wireless devices to pay for parking at the specific Client parking lots where PayByPhone is deployed pursuant to this Agreement.

Section 4 MARKETING, PROMOTION AND USER EDUCATION

4.1 SIGNAGE

4.1.1 Client agrees to provide adequate space for PayByPhone signage at each parking facility at which the PayByPhone mobile payment service is to be available, with sign size and placement to be mutually agreed by PayByPhone and Client acting reasonably. Client agrees that signs will be hung and/or located near payment machines at parking facilities enabled with the PayByPhone mobile payment services service. PayByPhone will provide the first round of signage for the initial implementation at Client's locations offering PayByPhone as mobile payment service provider. Client agrees to use PayByPhone's standard signage template for locations offering PayByPhone as mobile payment service provider. PayByPhone will provide one sign to be located at each pay station, plus one at each level of the parking structure without a pay station. Additionally, one decal will be placed on each pay station and/or meter. Client will be responsible for installation of all decals and signs required for implementation. Client agrees to supply all future decals and signage, including new locations. Client agrees to supply replacement signs and decals which may be required in the future.

4.1.2 Standard PayByPhone signage template is included in the standard implementation project. Professional Services associated with custom signage or changes to standard signage are billable at the then current professional

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services rates. See Appendix B for sample rates. All signage must comply with the PayByPhone consumer branding standards.

4.2 MARKETING EVENTS

PayByPhone may conduct on-site marketing events and campaigns for its service, whereby PayByPhone will inform parking lot consumers of the availability of the PayByPhone mobile payment services as well as any promotions available, with the knowledge and approval of Client which is not to be unreasonably withheld.

4.3 CLIENT TRAINING

PayByPhone will provide initial training to Client using a "Train the Trainer" (the "Client Trainer") model on the self-served PayByPhone Service Management Interface (SMI). The said Client Trainer will, at its own expense, train its staff and employees, including patrollers, to operate the mobile payment services and related applications and technology. Additional training sessions are available at the then current professional services rates. See Appendix B for sample rates.

Section 5 INTELLECTUAL PROPERTY

5.1 INTELLECTUAL PROPERTY RIGHTS

5.1.1 The parties acknowledge and agree that any trademarks, patents, trade names, logos, trade dress, domain names, copyrights or licenses therein, or other enforceable intellectual property rights and whether in hard or electronic copy (collectively "Intellectual Property") belonging to the other party, given to them under this Agreement is and shall remain the property of that party for the duration of the Term of this Agreement.

5.1.2 Except as expressly stated, nothing in this Agreement shall be deemed or interpreted to convey, transfer or assign any Intellectual Property rights to the other party.

5.1.3 Each party reserves the right to approve in advance the use of its Intellectual Property by the other party in each and every instance.

5.1.4 Upon termination of this Agreement for any reason the parties will use reasonable endeavours to ensure that all such Intellectual Property and material are removed from display and/or destroyed at the request of the other party save where such Intellectual Property is held by the parties in compliance with any statutory obligations and/or the maintenance of proper records.

5.1.5 The parties undertake that they have all necessary permissions, licenses and rights to use the Intellectual Property of third parties for the purposes of this Agreement.

5.1.6 Each party shall indemnify (for the purposes of this clause, the "Indemnifying Party") the other (for the purposes of this clause the "Indemnified Party") against all actions, claims, proceedings, costs and expenses (including reasonable legal fees) arising from any actual infringement of Intellectual Property rights of whatever nature insofar as these relate to the Intellectual Property rights developed and owned by the Indemnifying Party or licensed to the Indemnified Party which claims, actions or proceedings arise as a result of the Indemnified Party's use of any of the Services, except that the indemnity shall not apply to any actions, claims or proceedings which are attributable to any breach of contract or negligent act or omission on the part of the Indemnified Party or where such actions, claims or proceedings relate to any developments of the services carried out by or at the request of the Indemnified Party except where the Indemnified Party knew or ought to have known that such development of the services requested by the Indemnified Party would result in an infringement of Intellectual Property rights.

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5.1.7 The Indemnified Party shall notify the Indemnifying Party in writing of any such action, claim or proceeding and shall not make any admission unless the Indemnifying Party gives prior written consent.

5.1.8 At the Indemnifying Party's request and expense, the Indemnified Party shall permit the Indemnifying Party to conduct all negotiations and litigation. The Indemnified Party shall give all assistance as the Indemnifying Party may reasonably request and the Indemnifying Party shall pay the Indemnified Party's costs and expenses so incurred.

5.1.9 The Indemnifying Party may, at its expense: (i) obtain a license to enable the Indemnified party to continue to use the Services, or (ii) modify or replace the Services to avoid any alleged or actual infringement or breach, or (iii) terminate the provision of the affected elements of the Services. Where the Indemnifying Party exercises options (i) or (ii) the functionality of such modification or replacement shall not materially affect the performance of the Services.

5.2 CUSTOMER INFORMATION

5.2.1 PayByPhone maintains complete records of all information and data collected or used by PayByPhone from, or relating to its customer in relation to this Agreement, including, without limitation, any data collected from customers upon registration of a PayByPhone account, data collected on parking transactions including financial information, data collected on customers' mobile devices, and derivative data used and stored in PayByPhone databases (the "User Data").

5.2.2 PayByPhone obtains, stores and uses such User Data only in accordance with applicable laws.

5.2.3 PayByPhone shall retain exclusive ownership of all rights, including Intellectual Property rights, in and to the User Data.

5.2.4 PayByPhone may provide to the Client from time to time, throughout the duration of this Agreement, part of the User Data for the following purposes:

i) Such that the Client may use the User Data for parking enforcement;

ii) In respect of any enforcement proceedings for parking citations or penalties issued by the Client during the Term of this Agreement until such time as any such proceedings are resolved; and

iii) As the Client's internal and external auditors may reasonably request regarding compliance by PayByPhone with applicable laws and with its own privacy policy.

Section 6 TERM AND TERMINATION

6.1 TERM AND RENEWAL

6.1.1 This Agreement shall enter into force on the Effective Date and shall remain in force and effect for a period of three consecutive years (the "Initial Term") from the date signed unless earlier terminated in accordance with this Section 6.

6.1.2 Upon the termination of the Initial Term, the Agreement will automatically renew for two (2) additional terms of one (1) year each (each a "Renewal Term"), unless either party gives the other party at least ninety (90) days prior written notice of its intent to not renew the Agreement before the end of the then-current Term. The Initial Term and all Renewal Terms, if any, shall collectively be referred to as the "Term".

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6.2 TERMINATION

Should a party breach a material term and such breach remains uncorrected for thirty (30) days after receipt of a notice by the breaching party, the non-breaching party may, in addition to all other remedies available at law, terminate this Agreement by providing written notice to the breaching party, without further obligation provided, however, that if the nature of the breach is such that it cannot be reasonably cured within such thirty (30) day period, the breaching party will not be deemed in default of this Agreement so long as such party commences efforts to effect a cure and is diligently pursuing such efforts. Provided, further, that if the breach is as a result of the non-payment of any fee, the non-breaching party may terminate this Agreement if such breach remains uncorrected for ten (10) days after the breaching party's receipt of notice of such breach.

6.2.1 The Client and PayByPhone may suspend and/or terminate this Agreement for their convenience upon giving 90 days prior written notice to the other. In the event of termination for convenience, PayByPhone shall be entitled to receive compensation for any work performed in accordance with this Agreement up to the date of termination.

Section 7 REPRESENTATIONS AND WARRANTIES

7.1 MUTUAL REPRESENTATIONS AND WARRANTIES

Each party represents and warrants to the other that:

i) it has the full corporate right and authority, and possesses all licenses, permits, authorizations and rights to intellectual property, necessary to enter into and perform this Agreement;

ii) its entry into and performance of this Agreement do not and will not conflict with or result in a breach or violation of any agreement or order by which it is bound; and

iii) this Agreement constitutes its legal, valid and binding obligations enforceable against it in accordance with the terms of this Agreement.

Section 8 DISCLAIMER, INDEMNIFICATION AND LIMITATION OF LIABILITY

8.1 DISCLAIMER

Except as expressly set forth in this agreement, and as permitted by law, PayByPhone does not make, and hereby specifically disclaims, any representations or warranties, express or implied, regarding the PayByPhone mobile payment services, including any implied warranties of title, merchantability, fitness for a particular purpose or non-infringement. Client acknowledges that the PayByPhone mobile payment services and services furnished by PayByPhone under this agreement (including, without limitation, any servers or other hardware, software, applications and any other items used or provided by PayByPhone in connection with providing access to or hosting any of the foregoing or the performance of any services by PayByPhone under this agreement) are provided by PayByPhone "as is".

8.2 INDEMNIFICATION

Subject to Section 8.3, each party (the "Indemnifying Party") will defend, indemnify and hold harmless the other party (the "Indemnified Party") from and any against any and all third party claims, actions, losses (collectively, "Losses") resulting from or arising out of the Indemnifying Party's breach of any representation, warranty or other obligation set forth in this Agreement. The Indemnified Party shall not be entitled to be so indemnified unless it has given the Indemnifying Party prompt written notice of any Losses, afforded the Indemnifying Party the opportunity to assume sole control over the defence and settlement, if applicable, of the Losses, and provided the Indemnifying Party (at the Indemnifying Party's expense) all relevant information, assistance and authority to enable the Indemnifying Party to perform its obligations hereunder. The Indemnifying Party shall not settle any Losses without the Indemnified Party's written consent, which shall not be unreasonably withheld.

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8.3 LIMITATION OF LIABILITY

In no event shall any party be liable for consequential, special, indirect or incidental damages, including but not limited to any damages resulting from loss of use or profits arising out of or in connection with this agreement, whether in an action based on contract, tort (including negligence) or any other legal theory, even if the party has been advised of the possibility of such damages.

8.4 PARKING RATES

Client will be given access to parking rate data in order to confirm the parking rates at each location via the PayByPhone BackOffice. PayByPhone will make every attempt at ensuring the rates are configured correctly; upon completion of each location setup, it is the Client's responsibility to ensure all rates are configured correctly. Failing to do so shall exclude PayByPhone from any liability. Client shall provide PayByPhone with sufficient notice of any rates change during PayByPhone standard business hours.

Section 9 CONFIDENTIALITY

Neither party will disclose the other party's confidential or proprietary information, including User Data ("Confidential Information") (including the terms of this Agreement and any information provided by the other party that is confidentially maintained or proprietary or which derives value from not being generally known to persons who can obtain economic value from its disclosure or use or that a reasonable person would consider confidential, given the context) except:

i) with the other party's consent;

ii) to employees, agents and contractors who have a need to know in the discharge of their duties and who are subject to a contractual obligation to keep such information confidential that is at least as restrictive as this Agreement;

iii) when required to do so by law or by any binding rule, order or request.

For purposes of this Section 9, the parties agree that confidential or proprietary information does not include any information that is:

(a) already known to the receiving party at the time of disclosure hereunder (other than from the other party hereto) as demonstrated by its written records;

(b) now or hereafter becomes publicly known other than through acts or omissions of the receiving party, or anyone to whom the receiving party disclosed such information;

(c) disclosed to the receiving party, by a third party, under no obligation of confidentiality to the disclosing party or any other party; or

(d) independently developed by the receiving party without reliance on the confidential information of the disclosing party as shown by its written records.

Each party shall exercise reasonable commercial care in protecting the confidentiality of the other party's confidential information disclosed to it.

Section 10 MISCELLANEOUS

10.1 ASSIGNMENT

This Agreement shall be binding on the parties, their successors and their permitted assigns. Neither party may assign its rights or obligations under this Agreement without the consent of the other. Such consent may not be unreasonably withheld.

10.2 NO AGENCY

Each party, in all matters relating to this Agreement, will act as an independent contractor and independent employers. Except as otherwise expressly set forth herein, neither party will have authority and will not represent that it has any

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authority to assume or create any obligation, express or implied, on behalf of the other, or to represent the other as an agent, employee or in any other capacity. Nothing in this Agreement shall be construed to have established any agency, joint venture or partnership between the parties. Neither party shall make any warranties or representations on behalf of the other party.

10.3 GOVERNING LAW

This Agreement, and all matters relating hereto, shall be governed in all respects by the laws of the State of Texas. The parties hereby agree that all disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of and venue in the competent courts located in Galveston, Texas, and consent to the personal and exclusive jurisdiction and venue of these courts.

10.4 SEVERABILITY

In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

10.5 ATTORNEY'S FEES

In any legal proceeding between the parties, the prevailing party shall be entitled to recover reasonable attorney's fees and expenses.

10.6 FORCE MAJEURE

If performance hereunder is prevented, restricted or interfered with by any act or condition whatsoever beyond the reasonable control of a party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference.

10.7 ENTIRE AGREEMENT

This Agreement, together with the Appendix attached to it, constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes, and the terms of this Agreement govern, any prior agreements with respect to the subject matter hereof. This Agreement may not be modified, amended or any provision waived except by the parties' mutual written agreement.

10.8 NO WAIVER

Failure by either party to enforce any provision of this Agreement (whether in any one or more instance) shall not be deemed a waiver of future enforcement of that or any other provision.

10.9 NOTICE

Any notices hereunder provided to PayByPhone shall be given at the address specified below or at such other address as PayByPhone specifies in writing. Any notices hereunder provided to Client shall be given at the address specified below or at such other address as Client specifies in writing. Any notice or other communication required to be given hereunder by either party shall be deemed duly given (a) when personally delivered to the other party, or (b) on the date of receipt when such notice was mailed by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth above, or such other address as either party may designate by giving written notice to the other; or (c) on the date of receipt when such notice was sent by facsimile or e-mail to the other party; provided the sending party receives a written or electronic notice of receipt from the other party of the facsimile or e-mail.

10.10 COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument. The parties further agree that a signature transmitted via facsimile or electronic signature shall be deemed original for all purposes hereunder.

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10.11 CAPTIONS

The captions used in this Agreement are for convenience only and shall not affect in any way the meaning or interpretation of the provision set forth herein.

10.12 AGREEMENT APPROVAL

Each party hereby represents and warrants that all necessary corporate and/or governmental approvals for this Agreement have been obtained, and the person whose signature appears below has the authority necessary to execute this Agreement on behalf of the party indicated.

10.13 SOPHISTICATION OF PARTIES

Each party to this Agreement represents that it is a sophisticated commercial party capable of understanding all of the terms of this Agreement, that it has had an opportunity to review this Agreement with its counsel, and that it enters this Agreement with full knowledge of the terms of the agreement.

10.14 CLIENT'S CONDUCT OF BUSINESS THROUGH AFFILIATES

The parties acknowledge that Client may carry out its business through affiliates. Client agrees to cause its affiliates to take such actions and to execute such documents as may be reasonably required to give effect to this Agreement as though references to Client in this Agreement were references to Client and those of its affiliates through which it carries on the business of owning and operating parking facilities.

10.15 PCI-DSS: PAYMENT CARD INDUSTRY DATA SECURITY STANDARD

PayByPhone is responsible for the security of cardholder data which PayByPhone possesses or otherwise stores, processes, or transmits on behalf of the Client. PayByPhone abides by the rules and regulations set forth in the PCI-DSS.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorised representatives.

City of Galveston	PayByPhone Technologies Inc.
Signature: _____	Signature: DocuSigned by: Jules Marshall AC54C4C1984C4AE...
Name: Brian Maxwell	Name: Jules Marshall
Title: City Manager	Title: VP Finance
Notice Address: 823 Rosenberg Galveston, Texas 77553	Notice Address: #403 – 1168 Hamilton St. Vancouver, British Columbia, V6B 2S2

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APPENDIX A

SERVICES TO BE PROVIDED:

PayByPhone Mobile Payment Service

SYSTEM WILL:

1. Register consumers by phone or online who wish to pay for parking by mobile phone or web-enabled device.
2. Activate and collect payment via credit or debit card for parking using PayByPhone in accordance with parking rates specified by the Client and the PayByPhone Terms and Conditions.
3. Display payment status of license plate, space or meter number on internet-capable handheld device such as mobile phone, handheld computer or other wireless device for enforcement.
4. Provide a secure web-based administration interface for rates control, management and accounting reports.

PRICING

FOR CITY OF GALVESTON AREA:

One Time Setup Fees:	
Mobile payment services setup	Waived[1]
Each locations setup after initial deployment phase	Waived
Integration with third party	TBD
Monthly Fees:	
Monthly minimum	Waived[2]
Per Transaction Charges:	
City pays to PayByPhone A convenience fee, (currently $0.25) is added to the Consumer's cost of parking. If the City raises the convenience fee, the transaction fee paid to PayByPhone will be increased by an amount equal to 80% of the change in the convenience fee. If the City decreases the convenience fee, the transaction fee paid to PayByPhone will not be affected.	$0.20

FOR GALVESTON PARKS BOARD AREA:

One Time Setup Fees:	
Mobile payment services setup	Waived[1]
Each locations setup after initial deployment phase	Waived
Integration with third party	TBD
Monthly Fees:	
Monthly minimum	Waived[2]
Per Transaction Charges:	
City pays to PayByPhone No Convenience fee is added to the consumer's cost of parking	$0.20

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NOTES:

1. One time set-up fee includes, but is not limited to configuration, testing and implementation of a dedicated client account within the PayByPhone system; merchant account integration and testing; set up and training on reporting, customer service and other elements of the PayByPhone Service Management Interface, marketing coordination. Setup fees invoiced at contract signing.
2. Monthly fees apply when mobile payment services fees (transaction charges) per calendar month total less than as specified here. Client is responsible for covering the difference between the monthly minimum and the total fees.
3. Client's own credit card processing and merchant banking fees will apply.
4. For pricing option where the consumer does not pay any additional fee on top of the price of parking, uptake / usage of the PayByPhone service is significantly higher. The PayByPhone fees are more than off-set by increased volume, repeat usage by consumers who prefer this payment option, extensions to parking sessions paid remotely via PayByPhone and a reduction in cash handling and processing
5. In the event that PayByPhone is the only form of payment, the client will be responsible for 100% of the call centre cost as a pass through.
6. All fees and charges are payable within 30 days of invoicing.

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Appendix B

PayByPhone Professional Services Sample Rates Table & Definitions

Resource	Office Hours Rate per hour	After Hours Rate per hour
Senior Architect	**$250**	**$315**
Senior Product Manager	**$250**	**$315**
Creative Services	**$200**	**$250**
Project Manager	**$200**	**$250**
Programmer / Developer	**$200**	**$250**
Implementation Manager	**$175**	**$225**
Consumer Adoption Strategist	**$150**	**$200**
Application Trainer	**$125**	**$150**
Support Agent	**$125**	**$150**
Tester	**$125**	**$150**

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Resource	Descriptions
Senior Architect	A PayByPhone Architect will lead the definition and implementation of the product software architectures. They will transform the requirements created by the Product Manager into a set of architecture and design documents that can be used by the rest of the team to create the solution. The PayByPhone Architect is responsible for matching technologies to the proposed requirements.
Senior Product Manger	A PayByPhone Product Manager specifies market requirements for current and future products. Working with the Project Manager, software development team, client and client management team, the Product Manager is responsible for driving a solution across development teams through market requirements, product contracts and positioning.
Creative Services	The PayByPhone Creative Team will execute highly effective and proven design concepts, layouts, graphic elements and systems. Our Creative Manager will plan and arrange signage, stickers, decals and marketing collateral including web content according to the client's parking environment, marketing strategies and objectives, taking into consideration the usability and visibility of each sign.
Project Manager	A PayByPhone Project Manager will create and maintain project plans that communicate tasks, milestones, status and resource allocation. Making use of Project Management Lifecycle Methodology, they are ultimately responsible for project execution. In addition to exercising their knowledge of project management best practices, the PayByPhone project manager serves as business liaison, budget manager, customer relations manager, facilitator, negotiator, risk manager, change agent, task tracker, problem solver and implementer.
Implementation Manager	Manage / coordinate and implement ALL technical aspects required to set up the project. Liaise with Parking Operator staff to ensure data is complete and correct. Coordinate internal development resources and provide updates to project management and commercial team on timing, dependencies etc. Manages the pickle process. Provide technical training to client personnel.
Consumer Adoption Strategist	A PayByPhone Consumer Adoption Strategist will work with the key client contacts to develop and implement a plan to maximize the client's goals for the PayByPhone service. Learning from hundreds of client implementations, access to the latest data analytics and considerable expertise in mobile and consumer technology usage are incorporated into an ongoing plan to drive maximum usage and customer convenience.

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Application Trainer	A PayByPhone Applications Trainer will design and deliver training programs for the PayByPhone system. They will also design training course materials and other documents such as handouts, manuals and exercises. Training is typically conducted via a web session, either one on one in a train-the-trainer scenario or in a group setting.
Support Agent	A PayByPhone support agent interacts with client contacts to address inquiries regarding the PayByPhone system, reporting interface, log-ins and general administration.
Tester	The PayByPhone Quality Assurance (QA) testers will thoroughly evaluate, stress-test and troubleshoot all new code, programs and software. The PayByPhone QA testers will log and prioritized any issues/bugs found and work closely with the Software Development team for a resolution.

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ParkMobile, LLC
1100 Spring St NW, Suite 200
Atlanta, GA 30309

ParkMobile On-Demand Pricing Proposal for City of Galveston "Client"

Proposal Date: March 3rd, 2020
Project Name: City of Galveston Mobile Pay Solution

Sales Representative: Zach Cook
Email: zach.cook@parkmobile.io
Phone: 480-235-7279

Attention: Butch Stroud

Our services work on a per transaction basis with a convenience fee charged to the end user while paying for your parking fee on our app.

ParkMobile proposes to partner with the City of Galveston with the following revenue model:

1. Have the end user pay the ParkMobile transaction fees

2. Share $0.05 of the ParkMobile transaction fee back to the City.

Example: If the rate is $1 per hour and a customer pays for 4 hours in the transaction. The customer will pay $4.35 for the parking transaction.

- $4.05 to the client
- $0.30 to ParkMobile

The ParkMobile platform is based off of this convenience fee that the parker pays per transaction. We can even be the merchant of record for your parking transactions (see option 1 below) and we will remit payment to you monthly for the parking fees.

ParkMobile Proposal On-Demand Pricing:

Setup and Support	
Security & Support Fees	Waived
Hosting Fee	Waived
Maintenance Fee	Waived
Basic Setup Fee	~~$$250~~ Waived
Decals and Off-Street Signs	~~$20 per sign~~ Waived
Transaction Fee Options	
Option 1: Mobile Payment Transaction Fee with **ParkMobile as Merchant of Record**	$0.35 (Transaction fee) + 3% & $0.15 (CC Processing)
Option 2: Mobile Payment Transaction Fee Due to ParkMobile **(You are Merchant of Record)**	$0.35

ParkMobile, LLC
1100 Spring St NW, Suite 200
Atlanta, GA 30309

Free Services to the Client
ParkMobile agrees to provide Client with free access to its integration with all pay station & LPR manufacturers so that seamless enforcement of mobile payment transactions can occur.
As a backup to the free integrations, ParkMobile agrees to provide Client with a web-based enforcement portal with secure credentials to validate active parking sessions for each of the Client's location(s) where the service has been made available.
ParkMobile agrees to provide Client with a web-based reporting portal with secure credentials to evaluate usage by unique identification numbers established director for Client's parking footprint.
To demonstrate its commitment to the success of this program, ParkMobile agrees to cover all social media, standard marketing and advertising costs.
ParkMobile agrees to host and maintain the mobile payment solution at no additional costs to the Client.
ParkMobile agrees to provide both a Call Center & Customer Support Center to the Client at no additional cost.
All ParkMobile's standard terms & conditions shall apply to this parking proposal.

Merchant of Record

Option 1: : ParkMobile as Merchant of Record – $0.35 convenience fee paid by parker and ParkMobile will remit the parking fee less our convenience fee and 3%+$0.15 per transaction for the credit card processing

Option 2: Your organization as Merchant of Record – the $0.35 convenience fee per transaction will be invoiced monthly and due to ParkMobile.

CITY OF GALVESTON

MTP Meter Services and Level II Support Agreement

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MITCHELL ADDING MACHINE CO. INC. DBA MITCHELL TIME AND PARKING
4806 N IH 35
AUSTIN, TEXAS 78751
512.371.7773

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1. PARTIES TO AGREEMENT / PERIOD OF PERFORMANCE

1.1 This Agreement, dated as of [TBD], is made by and between Mitchell Adding Machine Co. Inc. DBA Mitchell Time and Parking. ("MTP") a corporation organized and existing under the laws of the State of Texas, having an office at 4806 North IH 35, Austin, Texas 78751 USA and [City of Galveston] (City of Galveston). (Individually referred to as the "Party", collectively to as the "Parties".)

1.2 MTP is to provide the services listed below to the Customer upon the terms and conditions stated herein commencing [TBD] for an initial period of Thirty-Six (36) months (the "Initial Period'). At the end of the Initial Period, the Agreement shall be automatically renewed for the following twelve (12) month period (the "Automatic Renewal Period") upon the same terms and conditions unless (i) one Party gives written notice of non-renewal to the other party or (ii) MTP advises Customer of a price increase, at least sixty (60) calendar days prior to the end of the Initial Period.

1.3 After the Initial Period of the agreement, each Renewal Period may be subject to a cost increase. Fees will be increased proportionate to the current CPI and market costs for communications on the renewal date of this Agreement.

1.4 Failure of the Parties to agree to new pricing within sixty (60) calendar days prior to the end of the Initial Period and/or any subsequent Renewal Period will entitle MTP to terminate the Agreement.

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2. SCOPE OF SERVICES TO BE PERFORMED BY MTP

The following services (the "Services") will be provided by MTP under this Agreement.

SERVICE	LIST PRICE PER MONTH	TERMINALS
☒ [Pay-N-Display, Pay-By-Space, Pay-By-Plate] Work Spaces • Action required • Terminal Out-of-Order • Communications Problems • Maintenance Performed • Consumables • Cash Collections • Cash-In-Terminals • Parking Activity • Ticket Sales Analysis • Transactions by Payment ☐ Pay-By-Space • Enforcement web site • Enforcement ☒ Standard Work Spaces • Maintenance • Collections • Transactions • Control ☒ Customer Telephone Support	[$57.00] per machine	**Strada Pal BNA** Number of units: **16**

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CLOUD BASED SERVICES	LIST PRICE PER MONTH	TERMINALS
☐ Validation codes	$7.00 per machine	**Strada Pal BNA** Number of units:**16**
☐ Extend by Text	N/A	
☐ CITY NEWS	$3.00 per machine	**Strada Pal BNA** Number of units**: 16**

3. PAYMENT TERMS

☑ Quarterly billing
☑ 30 Day Payment Terms from receipt of invoice

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4. GENERAL TERMS AND CONDITIONS

4.1. MTP DELIVERY OF SERVICES UNDER AGREEMENT

4.1.1 MTP will provide Level II Remote Technical Support when Customer consistent with Level I training and diagnosis/Service materials is not able to adequately service the Multi-space meters,

4.1.2 MTP will provide the Services with care and skill consistent with applicable industry standards.

4.1.3 MTP will maintain a properly staffed Level II Remote Call-in Service operation to assist Customer with the full range of diagnostics and repairs activities. Support will be available during MTP's regular business hours (Monday-Friday 8:00am/5:00pm CST) excluding holidays.

4.1.4 MTP will maintain a log of all Service incidents which will document the service problem, and relevant hardware/network environment as applicable and contact information. This log will be available to Customer upon reasonable request.

4.1.5 MTP will take all technical and commercially reasonable measures to provide a resolution within four (4) business hours of receipt of Customer's request for assistance.

4.1.6 MTP will escalate back office support requests to Level III if, within four (4) business hours, a resolution is not implemented.

4.1.7 MTP will convene regular Service review meetings with Customer to review Service history.

4.1.8 MTP will guard and maintain the confidentiality of all, logins, passwords and personal identification provided in connection with the Services against unauthorized use of the Services.

4.1.9 MTP will be entitled to subcontract in part or whole performance of the Services to be provided under this Agreement with prior written consent of Customer, such written consent not being unreasonably withheld.

4.2. CUSTOMER PARTICIPATION

4.2.1 Customer is responsible for Level I Technical Service and maintenance for all machines as specified in *Appendix C.*

4.2.2 Prior to requesting Level II support services, Customer will have attempted to service the Multi-space meters, consistent with Level I training and diagnosis/Service materials and encountered issues that it cannot resolve.

4.2.3 Customer will submit all requests into MTP's Technical Support using the contact method specified in *Appendix A* and provide all necessary information to permit MTP to perform the required services.
Customer will update MTP in writing of any changes to such information (especially any change of address) and be available to work with the MTP's support resource assigned to the support request.

4.2.4 Customer will maintain a local supply of spare parts sufficient to meet the desired repair timelines. The standard Return of Materials Authorization procedure is attached in *Appendix B*.

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4.2.5 Customer will protect technical information and know-how from unnecessary disclosure, maintain the confidentiality of all logins, passwords and personal identification used in connection with the Services and generally safeguard such information to ensure that there is no unauthorized use of the Services.

4.3. ADDITIONAL WORK

The following Services are not within the scope of this Agreement. Upon request, MTP will provide to Customer a technical and cost proposal to provide related requested additional services ("Additional Work"). Prior to performance, Customer shall authorize in writing the scope of such Additional Work and compensation payable to MTP for the full performance of the Additional Work.

4.3.1 Evaluation or Procurement of new software or hardware.

4.3.2 Evaluation or approval of new software or hardware for use by the Customer in conjunction with MTP products or Services including Customer and third party systems.

4.3.3 Deployment of a new software release at the machine.

4.3.4 Tariff or parameters changes.

4.3.5 Additional training for Customer technicians with respect to basic maintenance, troubleshooting, repairs, component replacement and operations such as programming and inventory.

4.3.6 Providing of a qualified technician, on mutual agreed upon date and duration to perform On-Site Level II support or remedial maintenance. At least two (2) weeks advance notice is required to ensure that Level II on-site support. To insure MTP's proposal properly addresses Customer's needs, MTP requests that Customer identify at the time of the request the issues that need to be addressed during the on-site visit and have available the necessary spare parts and consumables needed to restore the Multi-space meter up to MTP specification.

4.3.7 Assistance with Parkfolio back office or Multi-space meters usage when unsupported or non-standard hardware or software has resulted in unexpected behavior of otherwise reliable systems.

4.3.8 Adaptive maintenance: Defined as activities relating to upgrades or conversions of Parkfolio back office application, the Multi-space meters or its associated operating environment, in which the MTP products are functioning.

4.3.9 Modifications, updates or enhancements to original application required or desirable on account of changes in Customer's organization or business needs (such as a reorganization or change in the business practice) that may make the current specification obsolete.

4.3.10 Re-training of staff and any additional new hire training after initial training.

4.3.11 Removal, reinstallation or relocation of the Multi-space meters.

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4.4. FEES – INVOICING AND PAYMENT OBLIGATIONS

In consideration for receiving the Services and/or Additional Work, Customer shall pay to MTP the fees as set forth in the Article 2 Scope of Services above or agreed to pursuant to Article 4.3 above, as follows:

4.4.1 MTP will invoice the Customer as set forth in Article 3 above which invoice is due and payable within thirty (30) days of receipt.

4.4.2 In the event that there is an increase in the number of units being provided under this Agreement, then a Service charge based on the monthly per machine charge in effect at the time of installation shall be added to Customer's invoice.

4.4.3 Absent prior notification to and approval of the Customer, the total amount payable to MTP under this Agreement for the Initial twelve (12) month Period of the Agreement, plus any subsequent Renewal Periods of twelve (12) months, shall not exceed [$10,944] per twelve month period. This amount will be increased accordingly upon article 4.4.2. This amount is excluding any applicable taxes relating to the base Service provided under the terms of this Agreement.

4.4.4 To the extent that a disagreement arises in connection with the sum due and owing under the Agreement, Customer agrees to pay the undisputed amount of the invoice within the contractual deadline set forth in the 4.4.1 above.

4.4.5 If amounts due and owing MTP remain unpaid past the due date, MTP shall be entitled to interest of five percent (5.00%) commencing on the due date of the payment.

4.4.6 If amounts due and owing MTP remain unpaid for sixty (60) calendar days from the due date, MTP shall be entitled to terminate the Agreement with immediate effect by serving written notice to the Customer.

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4.5. TERMINATION

4.5.1 Termination for Non-Appropriation of Funds. This Agreement shall terminate without penalty at such time as appropriated funds are not available to satisfy the obligations of Customer hereunder. The failure of Customer to make an appropriation in any given year shall not be deemed a breach of this Agreement, nor give rise to any cause of action by MTP for legal or equitable relief. Customer shall provide MTP written notice sixty (60) calendar days prior to such non-appropriation termination and shall pay to MTP all sums due and owing under the Agreement as of the date the non-appropriation termination becomes effective.

4.5.2 Termination for Convenience. Notwithstanding any other provision of this Agreement, Customer may terminate this Agreement (in whole or in part) without cause sixty (60) days following delivery of a written Notice of Termination to MTP.

4.5.2.1 Upon receipt of a Notice of Termination, and except as otherwise agreed between MTP and Customer, MTP shall immediately proceed with the following actions:

4.5.2.1.1 Stop work as specified in the Notice

4.5.2.1.2 Place no further orders for materials, services, or facilities, except as necessary to complete any part of the Agreement not subject to termination.

4.5.2.1.3 Cancel all cancelable orders and terminate all subcontracts to the extent they relate to the Work terminated

4.5.2.1.4 Assign to Customer, and deliver to the work site, any non-cancelable orders for material and equipment that is not capable of use except in the performance of this Agreement.

4.5.2.1.5 Take all reasonable measures to mitigate Customer's liability under this section.

4.5.2.1.6 Complete performance of non-terminated work

4.5.2.2 Upon termination of the Agreement without cause, Customer shall immediately pay MTP all amounts due and owing under the Agreement up to the date of termination, all non-cancelable costs for material and equipment that cannot be used other than in connection with this Agreement, and ten (10%) percent of the difference between the Total Agreement Price and all payments due to MTP prior to termination of the Agreement.

4.5.3 Other Termination. Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may:

4.5.3.1 Terminate the Agreement in the event of a material breach of this Agreement which is not remedied within thirty (30) calendar days of notification to the other Party in writing to remedy such breach which notification will set forth in reasonable detail the nature of the alleged breach;

4.5.3.2 Immediately upon (i) appointment of a receiver or administrator over the other Party or its assets or if the other Party is subject to bankruptcy, liquidation or any analogous proceedings under laws of any competent jurisdiction or (ii) the other Party suspends or ceases, or threatens to suspend or cease, to perform all or a substantial part of its Work under this Agreement;

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4.5.3.3 Upon the occurrence of a Force Majeure event (a circumstance not within the control of the Affected Party) but only if and to the extent that such circumstance despite the exercise of reasonable diligence cannot be prevented, avoided or substantially mitigated by the Party and such circumstance materially and adversely affects that Party's ability to perform its obligations under this Agreement for an uninterrupted period of no less than three (3) months. In such event, the Affected Party shall promptly notified the Other Party of its intention to terminate the Agreement which termination shall have full force and effect three (3) business days after receipt of notice. Neither Party will be liable to the Other Party for damages.

4.5.4 Upon termination of the Agreement by Customer for any reason under 4.5.3, MTP shall be paid any amounts owed under the Agreement up to the date of termination.

4.5.5 MTP shall not by reason of the termination of this Agreement be liable to Customer or be subject to consequential, incidental, indirect or special damages or for costs associated with substituted performance.

4.6. INTELLECTUAL PROPERTY

4.6.1 Customer agrees that all Intellectual Property Rights, confidential know-how, tools, methods, skills, trade secrets, graphics, logos and trade names used by MTP in performing its obligations under this Agreement ("Intellectual Property Rights") are, and will remain, the property of MTP (or the third-party who has granted MTP the right to use such rights) and nothing in this Agreement or MTP's performance under this Agreement will be deemed to transfer to Customer any such Intellectual Property Rights of MTP or any third-party.

4.6.2 Customer acknowledges that the name "MTP" and any other trademark, brand name, trade name and logotype associated with the Products or services of MTP (hereinafter referred to as "MTP Trademarks") whether or not registered, are and shall remain the property of the owner of the Trademarks, being MTP or one of its affiliates, and that Customer has no right, title or interest in MTP Trademarks during the term of this Agreement or thereafter except as provided otherwise herein.

4.6.3 The Parties both agree that except as otherwise provided herein, neither Party shall utilize the intellectual property rights of the other.

4.6.4 MTP shall defend or, at its option, settle any claim or action brought against Customer alleging that the use of the Services as provided under the Agreement and as used within the scope of the Services granted to Customer, infringes the Intellectual Property Rights of a third-party, provided that (i) this infringement claim is not attributable (a) to a use other than in accordance with this Agreement regardless of whether the use is in combination with any service(s) not furnished by MTP, or (b) to the use of a non-current release of the Software and that (ii) Customer gives reasonable notice and cooperation to MTP in connection with the defense of such claim, makes no admission or settlement in respect of such claim and that MTP directs and controls such defense.

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4.6.5 Software licensing: MTP will provide Customer a license to use Pay Station software and Parkfolio back office. MTP does not provide software or licensing for software being used with MTP products that is not part of the MTP Pay Station, Parkfolio back office, or other MTP products provided by MTP to Customer under this Agreement. Customer shall provide such software and licensing as needed.

4.7. PROPRIETARY AND CONFIDENTIAL INFORMATION

4.7.1 Proprietary Information (hereafter "Proprietary Information") means object code, source code and any benchmark tests for the Services, pricing and other information Identified as proprietary, but excludes: (a) information made available to the general public without restriction by the disclosing Party or by an authorized third-party, (b) information known to the receiving Party independent of disclosures by the disclosing Party, (c) information independently developed by the receiving Party without access to or use of the disclosing Party's Proprietary Information, or (d) information related to the Agreement that the receiving Party may be required to disclose pursuant to the applicable Freedom of Information statutes or pursuant to subpoena or other lawful process initiated by a governmental authority or by the disclosing Party, provided that the receiving Party notifies the disclosing Party of the lawful process to allow the disclosing Party to appear before the governmental authority and protect its interests, and such disclosure complies with applicable law.

4.7.2 Confidential Information (hereafter "Confidential Information") means non-disclosable data, but shall exclude (a) information known to the receiving Party independent of disclosures by the disclosing Party, (b) information independently developed by the receiving Party without access to or use of the disclosing Party's confidential information, or (c) Information related to the Agreement that the receiving Party is required to disclose pursuant to applicable Freedom of Information statutes or pursuant to subpoena or other lawful process initiated by a governmental authority or by the disclosing Party, provided that the receiving Party notifies the disclosing Party of the lawful process in a timely manner to allow the disclosing Party to appear before the governmental authority and protect its interests, and such disclosure complies with applicable law.

4.7.3 The Parties shall use reasonable efforts to protect each other's Proprietary and Confidential Information from disclosure. Neither Party is entitled to disclose the other Party's Confidential or Proprietary Information without prior written consent of the other Party, which may be withheld in the other Party’s sole and absolute discretion. Provided the other Party’s prior written consent has been obtained, the Party requesting consent may disclose in confidence the other Party's Confidential or Proprietary Information on a need-to-know basis to such Party's contractors and subcontractors as have executed a non-disclosure agreement, and the Party making that disclosure shall be responsible for that person's compliance with these restrictions on disclosure and use.

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4.7.4 Upon termination of this Agreement, the Parties shall securely dispose of all information received and shall make no further use of it. The termination shall not serve to release any Party from its obligations regarding confidentiality under this article which shall remain in force for a period of two (2) years after the date of termination.

4.7.5 As a municipal corporation, Customer may have an obligation to disclose public records pursuant to applicable Freedom of Information statutes. To avoid disclosure of MTP Proprietary Information, any documents that contain trade secrets will be clearly marked "Proprietary" prior to submission to Customer. Upon citizen request for disclosure of Proprietary Information pursuant to the applicable statues, sufficient notice shall be provided to MTP to permit MTP to contest such disclosure.

4.8. LIABILITY AND WARRANTY

4.8.1 This clause sets out the liability of MTP in its entirety (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to Customer in respect of any claims relating to (i) MTP's performance of the Agreement (ii) any breach of this Agreement (iii) any use made by the Customer of the Services, or (iv) any representation, statement or act or omission (including negligence) of MTP arising under or in connection with this Agreement.

4.8.2 Notwithstanding any other provision of this Agreement to the contrary or rule of law or statute, in no event shall MTP be liable to Customer for (i) any special, indirect, incidental or consequential loss, costs, damages, charges or expenses; or (ii) loss of profits, business, contracts, business opportunities, income, or anticipated savings; or (iii) damage to reputation or (iv) loss or corruption of data or information; or (v) any degradation which occurs in relation to the network or associated software or hardware of the Customer as a result of the performance of the Services.

4.8.3 MTP Multi-space meters communicate through public cellular communication networks. MTP shall not be liable to Customer for any loss, costs, damages, charges or expenses arising from failures, defects or limitations of the cellular communication network or any product or service supplied by a third-party in connection with the cellular communication network. The cellular providers may experience capacity, interference, equipment and other problems; may make unannounced changes to their Services which impact communications; may limit, restrict or end the Services. MTP's sole obligation under this Agreement in connection with the cellular communication network is to treat communications problems that impact Multi-space meters performance as a priority issue and work with the cellular provider to expeditiously resolve the problem.

4.8.4 Data is saved in accordance with current data protection and back up standards. However, complete security cannot be guaranteed. In the event of data loss or data errors, MTP shall not be held liable unless the data loss or data error was solely the direct result of gross negligence on the part of MTP.

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4.8.5 MTP shall have no liability to Customer for malfunction of third-party systems, acts or omissions of a third-party, infiltration or disruption of MTP services by a third-party by any means, including without limitation, DDoS attacks, software viruses, Trojan horses, worms, time bombs or any software programs or technology designed to disrupt or delay the MTP's services.

4.8.6 MTP's maximum aggregate total liability for damages arising out of or relating to this Agreement, exclusive of claims by third-parties, shall not exceed an amount equivalent to twenty-five (25%) percent of the remaining contract value in the year in which the damages occurred.

4.8.7 MTP makes no warranty express or implied that all security threats, breaches and vulnerabilities will be detected and/or avoided. MTP may be required to reduce or suspend Services for limited periods to enable technical or maintenance operations to be conducted or upgraded or as the result of an imminent threat of material harm. MTP will use best efforts to minimize inconvenience to the Customer caused by such reduction or temporary suspension of Services.

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4.9. EXTENSION OF TIME FOR FORCE MAJEURE

4.9.1 In the event of a Force Majeure incident which does not result in termination of the Agreement per Article 4.5.3.3 above, the end date of this Agreement shall be extended by the period of time that such circumstance materially and adversely impaired or prevented a Party's ability to perform its obligations under this Agreement (the "Affected Period"). Immediately upon termination of the Affected Period, the Affected Party shall resume performance. The Party seeking to obtain a Force Majeure extension of time must immediately notify the other Party in writing of the nature, details and anticipated effect and duration of the Force Majeure incident.

4.10. GOVERNING LAW AND JURISDICTION

4.10.1 This Agreement made in two original counterparts in the English language shall be governed by and construed in accordance with the laws of the State of Texas.

4.10.2 All disputes or claims arising under or in connection with this Agreement shall, in the first instance, be subject to amicable resolution by the Parties. In the event the dispute or claim cannot satisfactorily be resolved amicably, the Parties agree to submit such disputes or claim to binding arbitration. Arbitration shall be held in Moorestown, New Jersey. The commercial arbitration rules of the American Arbitration Association shall apply. Any judgment, decision, or award by the arbitrators shall be final and binding on the Parties and may be enforced in any court having jurisdiction over a Party against whom any such judgment, decision, or award is to be enforced. The Parties shall bear their own costs and expenses (including attorney's fees) for any arbitration, unless otherwise directed by the arbitrator.

4.11. CONTRACT DOCUMENTS

4.11.1 The contract documents which govern the dealings between the Parties are as follows, listed by order of precedence:

- Changes, modifications, amendments and extension of this Agreement
- The Agreement including its Appendices,
- MTP's Response to Bid # _____ dated _____
- Customer's Request for Proposal or Information for Bidders issued _____ as amended.

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4.12. NOTICES

4.12.1 Addresses may be changed by either Party from time to time and shall be notified to the other Party. All notices and other communication hereunder shall be deemed to have been given as of the date of delivery by hand, or five (5) working days after posting when mailed by registered or certified mail, postage prepaid, or twenty-four (24) hours after dispatch if sent by facsimile during business hours of the receiving Party. Refusal to accept delivery has the same effect as receipt.

4.12.2 Notices or other communications to either Party shall be made in writing and addressed to the relevant Party at its address as stated below:

Mitchell Adding Machine Co. Inc. DBA
Mitchell Time and Parking
4806 N. IH 35
Austin, Texas 787851
USA
Attention: Mr. Gary J. Hobbs

City of Galveston
_____
_____
USA
Attention: _____

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4.13. GENERAL

4.13.1 This Agreement including appendices and changes, modifications, amendments and extension thereto represents the entire agreement between the Parties.

4.13.2 This Agreement supersedes and cancels all other agreements, written or oral, between the Parties relating to the Services.

4.13.3 The failure of any Party to insist upon strict performance of any of the terms or conditions herein, irrespective or the length of time for which such failure shall continue, shall not be a waiver of that Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation of this Agreement. No waiver or consent shall be effective unless in writing and signed by the Party against whom such waiver or consent is asserted.

4.13.4 The terms and conditions of this Agreement shall be binding only upon written agreement signed by the duly qualified representatives of each Party.

4.13.5 The Parties may amend or modify this Agreement at any time, provided that such amendment(s) or modification(s) make specific reference to this Agreement, and are executed in writing by a duly authorized representative of both Parties. Such amendment(s) or modification(s) shall not invalidate this Agreement, nor relieve or release the Parties from their obligations under this Agreement.

4.13.6 Neither Party shall be bound by any condition, definition, guarantee or representation other than those set forth in this Agreement.

4.13.7 Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer and employee between the Parties. MTP shall at all times remain an independent contractor with respect to the Services to be performed under this Agreement. The Customer shall not be obligated to provide workers' compensation insurance, health or accident insurance to cover MTP for any type of loss which might result to MTP or its employees, in connection with the performance of the Services set forth in this Agreement. The Customer shall not pay any contribution to Social Security, unemployment insurance, federal or state withholding taxes, nor provide any other contributions or benefits which might otherwise be expected in an employer-employee relationship, it being specifically agreed that MTP is not an employee of the Customer.

4.13.8 Provided the other Party's prior written consent has been obtained, each Party shall have the right to make reference to the name, trademarks and logo of the other Party (provided that such reference shall not refer to the content of this Agreement) in any marketing literature, on all websites, on any media and any commercial documents and brochures of the other Party.

4.13.9 The Party representatives who execute this Agreement hereby represent and warrant that they have full and complete authority to act on behalf of MTP and Customer, respectively, and that their signatures below, the terms and provisions hereof, constitute valid and enforceable obligations of each.

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4.13.10 In the event any portion of this agreement is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of the Agreement, as if such invalid or unconstitutional provision was not originally a part of the Agreement.

IN WITNESS WHEREOF, THE DULY AUTHORIZED REPRESENTATIVES OF THE PARTIES HAVE EXECUTED THIS AGREEMENT.

Approved as to Legality and Form:

For City of Galveston	**For Mitchell Time and Parking**
Date: _____/_____/_____	Date: _____/_____/_____
Name: Butch Stroud as	Name: Gary J. Hobbs as
Title: Parking Manager for The City of Galveston	Title: President for Mitchell Adding Machine Co. Inc. DBA Mitchell Time and Parking
Signature: _____	Signature: _____
By signing I confirm that, - I have read, understood and accepted the general terms and conditions of this agreement.	By signing I confirm that, - I have read, understood and accepted the general terms and conditions of this agreement.

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APPENDIX A

LEVEL II REMOTE TECHNICAL SUPPORT

MTP will provide Level II Remote Technical Support between the hours of 8:00AM and 5:00PM CST Monday through Friday excluding company holidays. The primary method of contacting MTP is via email:

Service@mitchelltimeandparking.com

In a situation where Level I Service is exhausted and is of an urgent nature you may contact MTP Level II Remote Technical Support via telephone at

Office: **512.371.7773**

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APPENDIX B

MTP RETURN MATERIALS AUTHORIZATION ('RMA')

Email us at:

Service@mitchelltimeandparking.com

Phone: Please call 512.371.7773
Hours of operation: Monday – Friday: 8:00 AM – 5:00 PM Central Standard Time

All requests for parts, machine changes and miscellaneous sales should be directed to the above contact point. For parts being returned for repair or replacement a Return Material Authorization **(RMA)** is required PRIOR to the physical return of the product:

1. MTP will issue an RMA number and provide shipping instructions.
2. Customer will ship the defective parts back to MTP and clearly mark the outside of the carton or the shipping label with the RMA number. Each assigned RMA is limited to 20 individual items.
3. Customer agrees to properly wrap each defective part and package them securely within a box to assure no further damage will occur to these parts.
4. Customer is responsible for freight charges on items being returned to MTP. MTP is responsible for standard ground freight charges of replacements.
5. Once MTP has received the defective parts, replacement parts will be shipped within 72 hours via two (2) business-day delivery if parts are covered under standard warranty. If parts are covered under a MTP Service Contract, replacement parts will be shipped within 24 hours via two (2) business-day delivery
6. MTP will cross reference all parts against its warranty/contract database and determine if the part is covered. Customer will be notified if parts are not covered under warranty and will be advised of available options by the Sales Administration Dept.
7. Customer is responsible for testing of parts before returning. MTP will inspect and test parts to determine reason for return. If any parts are determined to be functional with no problem found or found functional after a standard cleaning procedure, Customer will be charged $175.00 dollars per unit for Preventative Maintenance charge to clean and restock.
8. Customer is responsible for all replacement charges for parts out of warranty or not covered under contract.
9. Customer is responsible for all expedited shipping charges.
10. Customer should ship all return parts to MTP and reorder on a regular weekly basis in order to provide a smooth flow of replacement parts and eliminate the need for expedited requests. Bulk RMAs (> 20 items) or multiple RMAs per week will result in processing and handling delays.

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APPENDIX C

LEVEL I TECHNICAL SERVICE AND MAINTENANCE

Customer is responsible, through its trained staff, for performing Level I Technical service and maintenance for all Pay Stations covered through this Agreement, as follows.

Technical Services

1. Open Pay Station and remove and/or replace internal components as necessary.
2. Execute self-diagnostic and other repair processes, as shown in service training and described in the Service Guide and other documentation provided in conjunction with and at the time of training.
3. Install programming changes to the Pay Station using the maintenance procedures that are available at the maintenance keyboard on the Pay Station and explained during Level I service training.
4. Maintain a log of repair activities performed by the technicians, which will be available for reference purposes during a call to Level II Technical Support.
5. Ensure that the staff servicing MTP's Pay Stations have successfully completed the full training program provided by MTP and maintain the certification level of all staff who service the Pay Stations or operate ParkFolio back office software system.
6. Complete all prescribed Level I diagnostics and repair steps prior to escalating a service issue to Level II support.
7. Ensure that only trained Level I service staff initiate support requests to the Level II helpdesk.
8. Use its own qualified IT resource to provide desktop client, server, network, and infrastructure services necessary to maintain the proper functioning of the ParkFolio system.
9. Provide all information required to open a support request with MTP Level II Service and be available to work with the MTP support resource assigned to the support request.
10. Timely complete the recommended Pay Station preventative maintenance process to maximize useful life of the parts within the Pay Station.
11. Maintain the concrete mounting pad and mounting hardware per installation specifications.
12. Maintain all electrical installation accessories other than those that form an integral part of the Pay Stations as well as electrical connections to the Pay Stations
13 Maintain a supply of locally-available parts sufficient to meet desired repair timelines. These parts will be supplied to MTP as needed for Level II On-Site Operation.
14. Maintain a log of all parts replacements which will be made available to MTP upon demand.
15. Archive data and historical analysis for data older than 90 days.

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Parkfolio Services

1. Maintain desktop and file server computers, LAN connections, internet connections and other aspects of the operating environment in a manner that allows the operation of and compatibility with the Parkfolio software.
2. Require all staff using Parkfolio to have successfully completed the full Parkfolio training program as provided by MTP.
3. Design, customize and generate reports using data in Parkfolio.
4. Complete all prescribed Level I diagnosis and repair steps prior to escalating issues for Level IObtain appropriate Information Technology or Information Services resources to provide server, network, firewall, and infrastructure support services, including Web server, authentication software, WebObjects' Monitor, software installation, application installation on production servers, database connections, and database changes.
5. Provide all information required to open a support request for MTP Level II support and be available to work with MTP support resource assigned to the support request.

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APPENDIX D

WHOOSH - MOBILE PHONE SOLUTION

MTP offers a service called WHOOSH. This Service is used to make remote payment for municipal parking, and MTP, via the WHOOSH platform, is the technical intermediary between a parking user ('User") of the WHOOSH Service and Customer. The WHOOSH platform allows for the User's payment of parking time from a mobile phone or a computer, consistent with the options chosen by the Customer.

ARTICLE 1 - PURPOSE

The purpose of this Agreement is to define the rights and obligations of MTP and Customer with respect to MTP's provisions of WHOOSH Service.

ARTICLE 2 - ATTACHMENTS

The document is comprised of the following attachments:

- ANNEX 1 - Scope of the WHOOSH Service
- ANNEX 2 - Price conditions
- ANNEX 3 - Service levels
- ANNEX 4 - Corporate Style Guide

ARTICLE 3 – DESCRIPTION OF THE WHOOSH SERVICE

WHOOSH is a service rendered by MTP; it enables Users having activated the Service to make remote payments for parking.
The WHOOSH Service makes possible:

- Registration by the User for the WHOOSH Service,
- Payment for parking rights by User via mobile phone or a computer,
- Processing of electronic money flows up to the remittance of parking payments to the Customer merchant banking account in accordance with the approved time limit,
- Access to certain information by parking enforcement officers, through the use of portable terminals (PDAs) or by API monitoring,
- Access by User to his/her account and history of his/her transactions,
- Access by Customer to the monitoring of the issuance and sale of parking rights,

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- Customer's assistance as regards to the use and handling of complaints,

The roles of each of the parties is further defined as follows:

- Customer defines the parking policy.
- MTP makes available and manages:
  - The WHOOSH Mobile Payment Service platform, which registers users and is used for transactional interface at the time of purchase of the parking rights;
  - The processing of all of the "parking business" functionalities and the data concerning the monitoring of online parking rights.
- MTP shall provide access to the payment platform used for Internet payment transactions via credit card.
- Customer shall verify electronic payments.

ARTICLE 4 – FINANCIAL CONDITIONS

4.1 In addition to the parking fee charged by Customer, User will pay a Service Fee for the use of the WHOOSH Service as defined in *Annex 2*. The parking fee plus the Service Fee will be sent to the Customer's bank through their selected merchant bank processor. The Customer is responsible for any fees charged by their merchant bank processor.

4.2 MTP will invoice Customer on a monthly basis to collect the Service Fee and Customer will pay MTP all such Service Fees that it collects.

4.3 The Service Fees shall be payable within twenty days of invoice date.

4.4 MTP reserves the right to suspend services and/or to terminate the agreement in the event of a payment delay in excess of 60 days.

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ARTICLE 5 – MTP'S COMMITMENTS

5.1 MTP undertakes to provide the expertise and care necessary to provide the WHOOSH Service, as well as to follow relevant accepted industry practices and to achieve a level of quality that is consistent with market standards.

5.2 MTP warrants that the WHOOSH Service will be available and meet or exceed the standards contained in the Service Level Agreement defined in Annex 3.

However, MTP may in its sole discretion suspend the provision of the WHOOSH Service in the following situations:

- Suspension of the WHOOSH Service with advance notice of one working day, by any written means:
  - Installation of updates
  - Maintenance of the System and/or scheduled Maintenance
  - Service Fee payment delay in excess of 60 days.
- Suspension of the WHOOSH Service without advance notice:
  - Risks for the smooth functioning or safety of the infrastructures or equipment,
  - Technical or maintenance work by MTP on its infrastructures or equipment,
  - Fraud detected or reported,
  - Suspected or reported wrongful, fraudulent, unlawful use of the WHOOSH Service,
  - Failure to perform by a third-party and necessary to the rendering of the WHOOSH Service, including, but not limited to, the suppliers and operators of the telecommunications network.
  - And, more generally, in all emergency situations.

Regardless of the circumstances, MTP shall inform Customer of any suspension as soon as reasonably possible.

5.3 Back office

MTP shall provide Customer access to the Back Office tools enabling Customer to have access to the information and to the management reports on the transactions executed by the Users of the WHOOSH Service.

These tools draw on the infrastructure and platform managed and hosted by MTP. The platform is accessible by Customer through an Extranet. The conditions for the availability of these tools are defined in Annex 1.

MTP shall collect information regarding Users' payments and shall make this information available on the Platform for Customer use. MTP shall continue to be the owner of this information.

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5.4 Changes to the Services

MTP may occasionally, at its own initiative and in its sole discretion, change all or some of the functions or any component of the Service or make any modification (hereinafter referred to as "Modification") in order to improve the performance, service quality, or to correct errors or preserve the competitiveness of the Service. Before making such a Modification, MTP shall inform the Customer by e-mail of said Modification.

ARTICLE 6 – CUSTOMER'S OBLIGATION

6.1 Customer must carry out all operations that are necessary prior to the launch of the WHOOSH Service and on an on-going basis, in particular:

- Opening and maintenance of the remote selling account throughout the duration of the agreement,
- Supply of all of the city data for parameterisation of the solution (mapping of parking payment terminals, prices, zone, etc.)
- Setting up of the system to verify electronic tickets and supply interface data, if applicable
- Training of the city's employees
- And, more generally, transmit to MTP any information useful to the implementation of the WHOOSH Service.

It is hereby stipulated that the above list is given for indicative purposes and that it can be supplemented at the start of the project based on Customer's specific characteristics.

6.2 Customer undertakes to render the WHOOSH Service in accordance with MTP's recommendations and pursuant to the terms and conditions of the WHOOSH Service, provided to the User on the WHOOSH application and on the WHOOSH web site.

6.3 Customer undertakes not to use or authorise a third-party to exploit the information obtained from the use of the WHOOSH Service for purposes other than those related to the WHOOSH Service.

6.4 Customer acknowledges that the WHOOSH Service is paid for by credit card. Any transfer of information associated with the payment shall take place in a secure context. In particular, at the time of a payment, a credit card number and its validity date are transferred in a secure context using protocols in force, on the server of the service provider chosen by MTP.

In this connection and pursuant to standard terms of the service provider chosen by MTP, Customer acknowledges the importance of complying with the security rules.

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For complete information on the security rules to be followed, Customer can refer to the PCI DSS (Payment Card Industry Data Security Standards) available, for example, on the Internet site of Visa or MasterCard, or from Financial Institutions.

In addition, Customer undertakes to:

- Ensure the application of the security patches on all of its machines, as well as setting up the machines' secure configurations.
- Never store on any type of medium information that is sensitive, such as credit card numbers or visual cryptograms (CVCs/CVVs)
- Protect all of its passwords and change these regularly, in particular, the password needed to obtain access to the Account of the payment service provider
- Protect access to its servers and its applications, as well to its technical infrastructure in general, in particular, using the firewall and antivirus.
- Establish secure application development procedures

The platform of MTP's payment service provider shall supply several automatic or manual methods permitting MTP to monitor consistency between the payments handled by the payment service provider and its own sales system. The system permits, notably:

- online consultation of transactions via Customer's Account,
- via SHA-1 key systems, to ensure the consistency of the payment data,
- the sending of payment notification e-mails,
- the use of other electronic means of notification in real or deferred time.

Customer undertakes to establish and apply adequate procedures for monitoring the proper execution of payments.

MTP strongly recommends Customer set up as many monitoring mechanisms as possible, in particular, in the case of e-commerce applications, and MTP reserves the right to limit the financial possibilities of the Account of the payment services provider (types of transactions permitted, maximum number of transactions per period, etc.) if it deems Customer's checks and/or monitoring insufficient. The mechanisms for checks and monitoring used, and/or the activation or non-activation of the security options are freely chosen by Customer, and cannot under any circumstances give rise to MTP's liability.

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ARTICLE 7 – MARKETING AND PROMOTION

Customer authorizes MTP to engage in marketing, business analytics and advertising campaigns for the promotion of the WHOOSH Service, including but not exclusive communication and promotion by press, flyers, city Internet site, affixing of information stickers on places of sale (on parking payment terminals, or in their absence, on any other medium visible from parking places) in a manner consistent with the Corporate Style Guide and the definition of the zone codes.

To this end, MTP hereby grants Customer a non-exclusive license during the term of this Agreement for the purposes of using the WHOOSH name and logo in the conditions defined below:

MTP shall provide to Customer graphical materials (logo, visuals, etc.) needed in order to organize the promotion and showcasing of the WHOOSH Service to Users. Customer is authorized to modify these items, if applicable, within the limits defined by MTP's written instructions and in accordance with the Corporate Style Guide enclosed in Annex 4. In such case, Customer must obtain MTP's written approval prior to any use of said items.

Upon the expiry of the Agreement, whatever the reason, Customer shall return to MTP as soon as requested all of the items that were handed over to it pursuant to this Article.

ARTICLE 8 – INFORMATION REGARDING USERS

In accordance with the terms of this Agreement and those of applicable laws MTP shall keep full files of all of the information and data collected from Users. MTP shall obtain and use this information only in accord with applicable laws in force and any amendment to this Act and shall not give or disclose this information, in any circumstances, to third parties, except for the information that has been expressly approved by Customer or is required to be produced pursuant to subpoena or court order. MTP shall comply with all of the provisions concerning data processing and freedoms and shall apply these accordingly to its technical facilities.

Each Party undertakes, as regards the Service rendered, to comply with all of the provisions of applicable law. No data and in particular personal data, may be used by either Party for any purpose other than the strict performance of the Agreement. MTP undertakes to implement mechanisms to monitor access to these data.

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ARTICLE 9 - SUSPENSION

MTP reserves the right to suspend, limit or to partially or completely restrict the supply of and/or access to the Service after having so notified Customer by any means, notably:

- In the event of a breach of one of Customer's obligations indicated in the Agreement
- In the event of a failure to make timely payment of the amounts due, and in the absence of a challenge, duly reasoned and sent to MTP by registered mail with return
- In the event of non-conforming use of the Products or Services
- And, more generally, if the Agreement provides for this.

The resumption of the Service after suspension and/or limitation due to Customer's act or fault can give rise to the invoicing of Resumption of Service Fees. In the event of a suspension and/or a limitation, regardless of the cause, Customer shall continue to be bound by its obligations; it is understood that the suspension shall not give rise to the cessation of the invoicing of said fees.

In addition, MTP shall be authorized to suspend, limit or restrict the Service for any improvement or preventive or curative maintenance work, or if MTP is required to follow an order, an instruction, a demand from the Government, a regulatory authority or from any competent administrative or local authority.

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ANNEX 1

SCOPE OF THE WHOOSH SERVICE

FUNCTIONAL AND TECHNICAL SCOPE

The WHOOSH Service permits:

- The registration of users for the service via:
  - Applications for IOS and Android smartphones
  - Internet/Mobile Internet browser and access to the dedicated site `www.whooshstore.com` and `m.whooshstore.com`
- The obtaining and payment of parking rights by users who use their mobile phone or a computer via:
  - Applications for IOS and Android smartphones
  - Internet/Mobile Internet
- The obtaining of payment confirmation from the web site;
- The obtaining of expiry imminent notification via push notification if option chosen by the user;
- The possibility to extend the ticket in progress, in accordance with pricing rules in force as established by Customer;
- The secure processing of electronic money flows up to the remittance of payments to the Customer;
- Access to the information necessary to the verifying of the vehicles parked, by the parking enforcement officers having portable terminals (PDAs) beforehand that are connected either via the monitoring application or by the making available of an API;
- Access by users to their account and to the history of their transactions;
- Access by the Customer to the financial information and to the monitoring of parking rights sales transactions;
- Assisting users in using the WHOOSH Service;
- The handling of complaints communicated by the Customer;
- Informing the user of the city price;
- Access to FAQs, as well as to a usage tutorial.

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INFRASTRUCTURE

The WHOOSH Service is provided in SaaS mode.

MTP shall supply:

- access to the WHOOSH Service platform that registers users and is the transactional interface at the time of the purchase of the parking rights by Smartphone (IOS and Android), Internet application and Mobile Internet.
- access to the payment monitoring information;
- myParkfolio interface for the reporting of information concerning the Transactions executed on all of the distribution channels and permitting the financial and statistical consolidation of the data concerning the parking rights delivered by the distribution channels set up.

MTP manages the connection to the payment platform that is used for Internet payment transactions.

REGULATORY CONSIDERATIONS

MTP shall ensure the conformity of the WHOOSH Service to Payment Card Industry Security Standards ("PCI-DSS") and the maintenance of all of the accreditations required by outside firms, excluding all of the systems that are not directly under its control.

IMPLEMENTATION AND EXPLOITATION PROCEDURE

INITIALIZATION

1. MTP shall allocate to each of the on-street parking zones and to each street in which the parking zone is authorized, a certain number of unique parking zone codes.
2. MTP shall agree with the Customer on a timetable for the commencement of the service at a launch meeting.
3. MTP shall provide the following to the Customer at least 20 days prior to the agreed date for the commencement of the service:
   a. The telephone number of customer service;
   b. The list of the parking zone numbers allocated for each of the parking payment terminals, provided with their address for the introduction of the Whoosh Service.
4. MTP shall provide either standard items enabling the Customer to create its communications media, or the standard models made by MTP; a brochure or leaflet, a model of stickers to be affixed on parking payment terminals, recommendations for the affixing of said stickers, access to the Internet site and suggestions for contributing content and visuals.

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5. MTP undertakes to process all of the data with the strictest possible confidentiality.

6. Customer undertakes to perform the following obligations:

   a. To supply, as a pre-condition to the activation of the Service all of the information necessary for the parameterisation and personalisation of the Service and to inform MTP in writing, of any change of this information (in particular and not limited to, any moving of a parking payment terminal to a new address, or pricing modification). Customer is alone responsible for the consequences caused by a failure to supply or to make available this information; in particular, Customer shall furnish:

      i. A copy of the contract of adherence to the merchant contract mentioning its identifier at the acquirer (MerchantID)
      ii. List of the names of zones
      iii. GPS coordinates of the zones in question
      iv. Names and titles of the users of the monitoring service
      v. Agreement on communication to the public (stickers, flyers and any promotional content)
      vi. Agreement on any communications content (label, websites, naming review, etc.)
      vii. Agreement on the list of applicable rates
      viii. Confirmation of use of the monitoring API supplied by MTP; any use of another interface shall be quantified and be the subject of a specific timetable.

   b. To supply to MTP the contact information of the person responsible for the Customer for the implementation and exploitation of the service, and to inform MTP immediately in the event of any change.

   c. To authorise MTP to use the parking data for statistical purposes

   d. To ensure the security and conformity of the use of the system by its agents.

   e. To restrict the dissemination and to maintain the confidentiality of all of the logins, passwords and identification of the personnel, used with respect to the Service and, more generally, to protect this information so as to avoid any use by unauthorized persons.

   f. To only use the Service in accordance with the instructions given by MTP, for its proper management.

   g. To test the conformity of the system made available in accordance with the recommendations or specifications supplied by MTP.

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ACTIVATION OF THE SERVICE

1. The Service shall be activated on an agreed date for the launch of the Service (mentioned on the Service registration form), insofar as the preconditions are satisfied and the activation date is realistic. In the event of the non-satisfaction or incomplete satisfaction of the preconditions, MTP shall suggest a new date for the activation of the Service, which must be consistent with the date on which the preconditions will be satisfied
2. During the activation of the Service the Customer must ensure the full availability of a manager, who is an employee of the Customer and has knowledge of and access to all information associated with the Service.
3. After activation, MTP shall notify the Customer of the official launch of the Service.

SUPPORT

MTP shall provide a support service in accordance with the conditions described in *Annex 3*, "Service Availability and Levels".

In this connection, MTP shall:

1. Provide access to the technical support service to assist the Customer to reply to and advise the user on the questions associated with the WHOOSH Service;
2. Ensure that the technical support is available during business hours 8:00AM and 5:00PM CST Monday through Friday excluding company holidays;
3. Ensure that the technical support can be reached via a telephone number at the local call rate;
4. Monitor the performance and supply of the WHOOSH Service.

UPGRADE MAINTENANCE

MTP is entitled to modify the Service

MTP shall be responsible for the corrective and upgrade maintenance of the WHOOSH Service. In this case, MTP can suspend the supply of the Service in the conditions defined in this agreement.

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ANNEX 2

PRICING CONDITIONS

SERVICE FEES

The Service Fee is $0.20 per transaction.

REVISION OF PRICES

MTP reserves the right to increase or decrease the Service Fee on an annual basis. Written notification will be provided to Customer at least 30 days prior to a price revision.

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ANNEX 3

SERVICE AVAILABILITY AND LEVELS (SLA)

This SLA defines the Service Level to which MTP is committed and the financial liability of MTP to Customer in the event of the non-attainment of the Service Level. This SLA pertains specifically to the WHOOSH Service.

As regards the service levels as defined in following Articles 4 and 6, the average response time and/or the average availability are understood as average values calculated for all Customers for the given period.

ARTICLE 1 - MAINTENANCE OF THE WHOOSH SERVICE

1.1 MTP shall send Customer an e-mail informing the latter of any major modification having an impact on the functionalities of Customer's account. This e-mail shall contain a description of these modifications.

1.2 MTP shall do its utmost to deliver good backward compatibility of the new versions of the interfaces that can be used by the Customer's applications.

1.3 The procedures described in Articles 1.1 and 1.2 above do not apply to urgent corrections of bugs or made for reasons of security or required directly or indirectly by Financial Institutions, or governmental or legal authorities.

1.4 Unavailability associated with the maintenance of the Service shall, if possible, be scheduled during periods of low traffic. In principle, this maintenance shall not exceed an average of 4 hours per month. However, this average monthly maintenance duration can be exceeded once each quarter, by at most 8 hours. Customer shall be informed in writing at least 48 hours prior to the beginning of the maintenance activities, except in the case of Article 1.3 above.

ARTICLE 2 - MONITORING OF THE SERVICE

2.1 The Service is monitored in two ways:

- Active monitoring: MTP's automatic procedures, which periodically test the availability of the main system and its functionalities. These active monitoring processes include the alert and escalation mechanisms needed for MTP's technical support department to be informed as quickly as possible.
- Passive monitoring: Customer is able to notify, 24 hours a day, an incident associated with the use of the Service. Outside the Help Desk's working hour time slots, this notification shall be made by e-mail to the address info@whooshstore.com

2.2 Customer undertakes not to use the active monitoring system in order to avoid a possible disturbance of the Service's performance due to unnecessary overload.

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ARTICLE 3 - AVAILABILITY OF THE SERVICE

During the days and time slots in which parking is not free of charge, MTP shall take measures to enable:

- The User Service to be operational 24 hours a day, except for scheduled maintenance.
- Transactional flows to be recorded every day without loss of data
- The Service to be open to users during paid parking times, except for scheduled maintenance.
- The Service via the Internet site for users to be operational 24 hours a day, except for scheduled maintenance.
- The management and monitoring service via the interfaces connected to the system to be operational, Monday to Friday, from 8:00AM to 5:00PM CST, excluding company holidays.
- The service for the verifying carried out by parking enforcement officers to be operational throughout the activity period of the services of the City's Police force (working hours).
- The Service for access by law enforcement personnel to be operational 24 hours a day, except for scheduled maintenance.

Unavailability of the Service is defined as the period during which the majority of Customer's users are unable to place new authorisation or payment transactions via the Service. It is also agreed that the service shall be considered unavailable if the response time as defined in Article 4 below exceeds 60 seconds for the majority of the Customer's users.

3.1 MTP offers 98% availability of the Service, on a monthly basis, although the situations mentioned in Article 3.2 are excluded. Customer can, if it expressly requests this, obtain the transmission of an SLA report covering a given month, to enable it to monitor the level of performance compared to the SLA.

3.2 Unavailability excludes the following situations, which therefore do not give rise to the right to any compensation:

- Errors following the configuration based on incorrect information supplied by Customer,
- Supply by Customer or its users of incorrect or incomplete data needed by MTP to properly execute a transaction,
- Scheduled unavailability due to maintenance, insofar as executed in accordance with Article 1 of this SLA,
- Failures by Customer or by its users to comply with MTP's procedures,
- Malfunction of the equipment of Customer or of its users,
- Unavailability of telecommunications lines,
- Unavailability of Internet access,
- Unavailability of the acquirer's authorisation equipment,
- Force majeure,
- Unavailability resulting from a bug that could have been easily detected by Customer during the test phase, if it had carried out a few basic tests during the Service's pre-activation period.

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3.3 Notification and beginning of an incident

Customer shall inform MTP of the existence of an incident:

- During working hours: by telephone and by assistance request ticket. (See *Article 5*, Technical assistance below) The unavailability time shall commence as of the moment in which the assistance request ticket is created. In the event that the receiving procedure that permits the creation of assistance request tickets is unavailable, the unavailability time shall commence as of the telephone call to the MTP technical support department.
- Outside working hours: by e-mail, only to the address info@whooshstore.com. The unavailability time is only counted over the Technical Support's time slot worked, i.e. 8:00AM to 8:00PM CST, Monday to Friday excluding company holidays.

3.4 If the duration of the incident is less than 15 minutes, the unavailability time is not counted for the purposes of the application of Article 3.

3.5 If two (2) consecutive unavailability periods of less than 15 minutes, occurring for an identical reason, are separated by a short period of availability (less than 15 minutes AND a total duration of less than the duration of the periods of unavailability), the two unavailability periods shall be considered as a single unavailability period, commencing with the beginning of the first unavailability period and ending at the end of the last unavailability period.

ARTICLE 4 - RESPONSE TIME

4.1 MTP guarantees an average monthly response time of its online payment authorization process of less than twenty (20) seconds for all of its debit or credit card transactions. However, certain exceptions could exist, associated with specific acquirer connections. In that case, MTP would indicate it to Customer on a case-by-case basis. This applies only to online transactions transmitted individually to the MTP payment service provider and excludes any transaction consolidation mechanism.

4.2 Response time is measured from time of receipt of the payment request by MTP until the sending by MTP of the result of the payment request to the initiator of this request.

ARTICLE 5 - TECHNICAL ASSISTANCE

Technical assistance is provided by telephone (see the service telephone numbers available on the contact page) and by e-mail, from 8:00AM until 8:00PM CST, excluding legal holidays and Company published holidays.

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ARTICLE 6 - SEVERITY LEVEL AND RESOLUTION

MTP undertakes to restore basic functionalities, or at least, to communicate an action plan for resolution, within the time limits defined below. The time limit is assessed as of the time that MTP becomes aware of the problem.

If the analysis of a problem concludes that the latter results from improper use of the system or of a part of the system by the Customer, MTP shall maintain the level of severity and shall strive to keep to the time limit defined below. In such a case, MTP nevertheless reserves the right to apply a specific price for this resolution and to increase the intervention time.

		Intervention time commitment vs. Technical Support Working hours	
Severity	Description	During	Outside
CRITICAL	A problem, the impact of which on Customer's commercial operations is critical, namely, if it is not possible to make parking purchases via Whoosh.	4 hours	4 hours as of the subsequent working hours
MAJOR	- A problem of configuration or updating having an impact on the supervisory functionalities (loss or modification) or triggering a loss or a modification of key information. - A problem having an impact on access to the supervisory service	6 hours	6 hours as of the subsequent working hours
MINOR	A problem giving rise to the loss or modification of non-major information.	24 hours	36 hours
SUPERFICIAL	A configuration modification request, or any other problem, the impact of which on Customer's commercial operations is limited.	36 hours	48 hours

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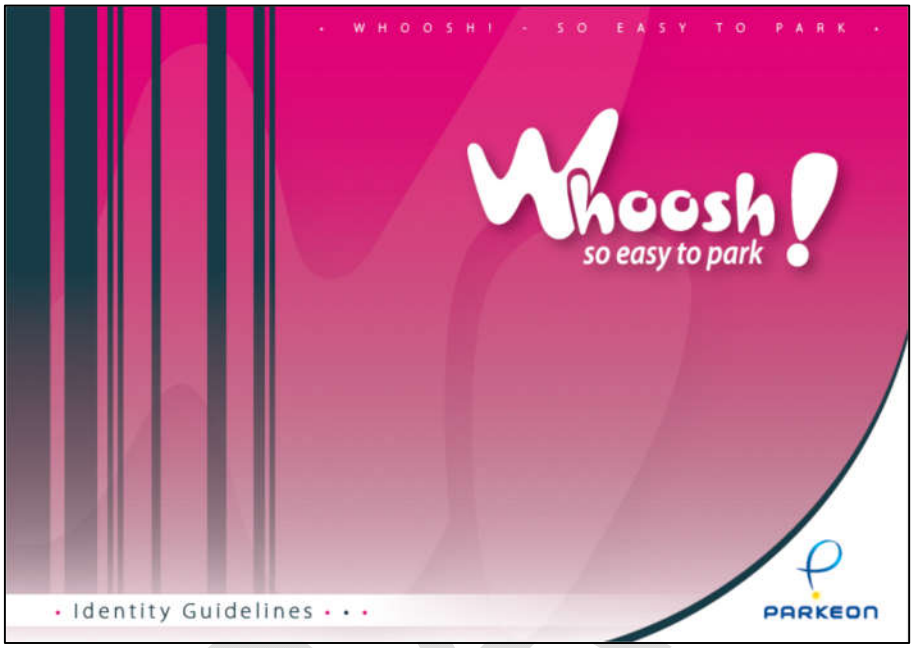
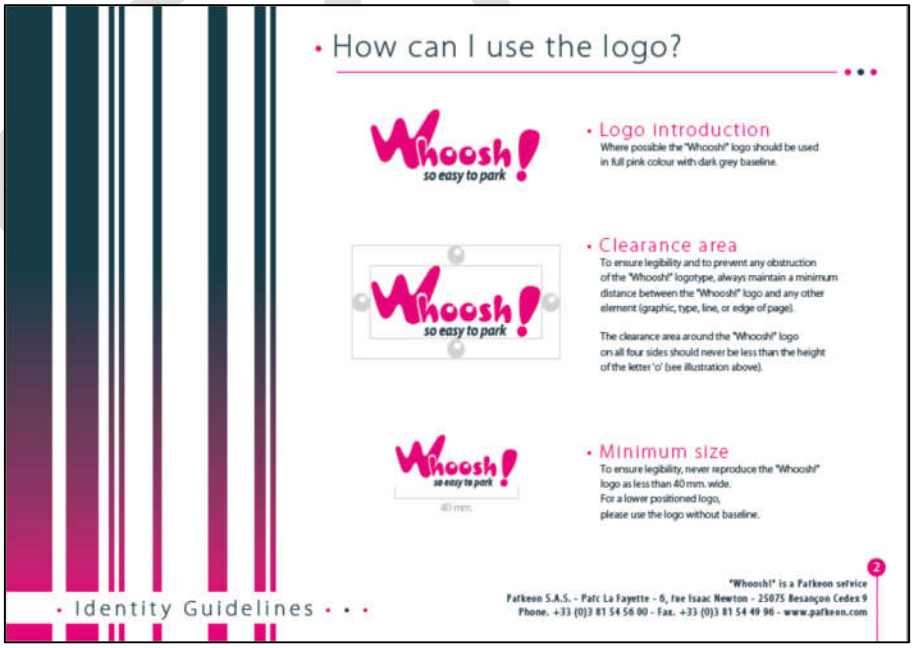
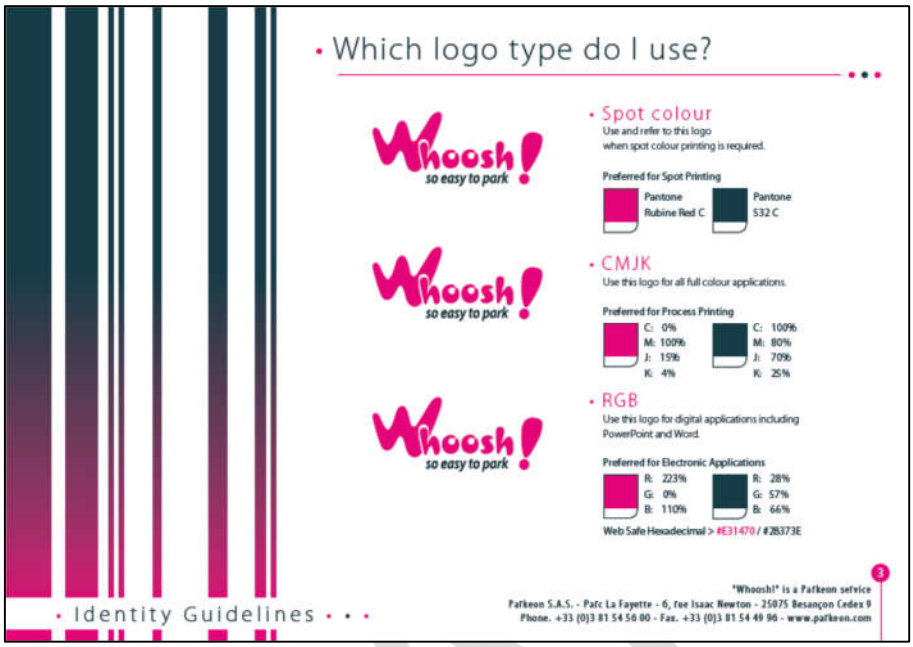
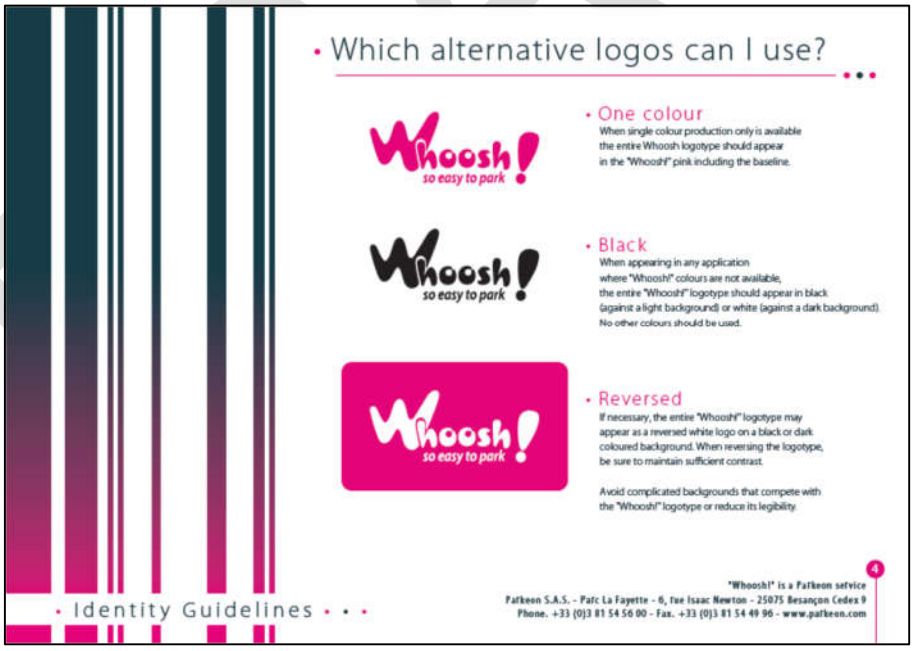
ANNEX 4

CORPORATE STYLE GUIDE






Which logo type do I use?
Whoosh! so easy to park
Spot colour
Use and refer to this logo when spot colour printing is required.
Preferred for Spot Printing
Pantone Rubine Red C
Pantone 532 C
CMJK
Use this logo for all full colour applications.
Preferred for Process Printing
C: 0% M: 100% J: 15% K: 4%
C: 100% M: 80% J: 70% K: 25%
RGB
Use this logo for digital applications including PowerPoint and Word.
Preferred for Electronic Applications
R: 223% G: 0% B: 110%
R: 28% G: 57% B: 66%
Web Safe Hexadecimal > #E31470 / #2B373E
Identity Guidelines
"Whoosh!" is a Parkeon service
Parkeon S.A.S. - Parc La Fayette - 6, rue Isaac Newton - 25075 Besançon Cedex 9
Phone. +33 (0)3 81 54 56 00 - Fax. +33 (0)3 81 54 49 96 - www.parkeon.com
3


Which alternative logos can I use?
Whoosh! so easy to park
One colour
When single colour production only is available the entire Whoosh logotype should appear in the "Whoosh!" pink including the baseline.
Black
When appearing in any application where "Whoosh!" colours are not available, the entire "Whoosh!" logotype should appear in black (against a light background) or white (against a dark background). No other colours should be used.
Reversed
If necessary, the entire "Whoosh!" logotype may appear as a reversed white logo on a black or dark coloured background. When reversing the logotype, be sure to maintain sufficient contrast.
Avoid complicated backgrounds that compete with the "Whoosh!" logotype or reduce its legibility.
Identity Guidelines
"Whoosh!" is a Parkeon service
Parkeon S.A.S. - Parc La Fayette - 6, rue Isaac Newton - 25075 Besançon Cedex 9
Phone. +33 (0)3 81 54 56 00 - Fax. +33 (0)3 81 54 49 96 - www.parkeon.com
4

Which alternative logos can I use?

Whoosh!

Without the baseline
If necessary, the "Whoosh!" logo can be used without the baseline "so easy to park".

"Whoosh!" initials
Additional graphic element issued from the applications.

"Whoosh!" applications icon
Icon for "Whoosh!" applications.

Identity Guidelines

"Whoosh!" is a Parkeon service
Parkeon S.A.S. - Parc La Fayette - 6, rue Isaac Newton - 25075 Besançon Cedex 9
Phone. +33 (0)3 81 54 56 00 - Fax. +33 (0)3 81 54 49 96 - www.parkeon.com

5

Which fonts should I use?

Main Content Fonts
Fonts to use for the main content of any Whoosh presentation material (body copy).

Myriad Pro Light / *Italic*
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Substitute Fonts
Please use ARIAL (normal - bold - italic - bold italic) for all digital mediums and web use or when Myriad Pro is not available.

Identity Guidelines

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6

City Marshal's Office

CITY OF GALVESTON
823 Rosenberg | Galveston, TX 77550-0779
www.galvestontx.gov | 409-797-3660

June 11, 2020

To: Brian Maxwell, City Manager
Honorable Mayor and City Council Members

From: Butch Stroud, City Marshal

RE: Consider for the approval a 3-year contract with Mitchell Time and Parking, with the option to extend the contract for two one-year terms, for a total of five years. We will be utilizing the National Cooperative Purchasing Alliance. This contract will give the city continued support and maintenance for the 16 Strada Pay Stations in the downtown area, which the Marshals Office, Parking Enforcement Division, already have in operation for paying to park and authorize the City Manager to execute the contract upon final approval by the City Attorney. Funding will be from the Parking Management Fund.

I. Background

A. The Marshals Office already owns the software for these electronic pay station.

B. We are currently using Mitchell Time and Parking to provide the support and maintenance and have been for over five years.

C. Mitchell Time and parking has been proven, reliable and dependable to provider for the last 5 years.

II. Current Situation

Concur in Alternative A and approve a 3-year contract, with the option to extend the contract for two one-year terms, for a total of five years. We will be utilizing the National Cooperative Purchasing Alliance. This contract will give the city continued support and maintenance for the 16 Strada Pay Stations in the downtown area, which the Marshals Office, Parking Enforcement Division, already have in operation for paying to park and authorize the City Manager to execute the contract upon final approval by the City Attorney. Funding will be from the Parking Management Fund.

III. Alternatives in order of priority

A. Approve the contract to Mitchell Time and Parking.

Cost –	Support:	$10,933 per year
	Maintenance:	$22,300 per year
	Total:	**$33,244 per year**

1. Timing – This contract is necessary immediately to prevent interruption of our support and Maintenance of the 16 Strada pay station.

2. Departmental Improvements – This contract will ensure that the Parking Enforcement Division of the Marshals Office continues to provide options for people to pay for parking.

B. Do not approve the contract to Mitchell Time and parking.

1. Cost – No cost

2. Timing – N/A

3. Departmental Improvements – No improvements which will hinder people's options to pay to park.

IV. Recommendation

Concur in Alternative A and approve a 3-year contract, with the option to extend the contract for two one-year terms, for a total of five years. We will be utilizing the National Cooperative Purchasing Alliance. This contract will give the city continued support and maintenance for the 16 Strada Pay Stations in the downtown area, which the Marshals Office, Parking Enforcement Division, already have in operation for paying to park and authorize the City Manager to execute the contract upon final approval by the City Attorney. Funding will be from the Parking Management Fund.

V. Fiscal Impact Report

Requested by:	Butch Stroud City Marshal
Funding Source:	Parking Management Fund **Acct: 1096-913650-531067-425600**
Cost of Implementation:	Approximately $33,244 per year
Additional Information:	We will be utilizing the National Cooperative Purchasing Alliance.

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Respectfully Submitted,

Butch Stroud
City Marshal

SALES AGREEMENT BETWEEN MITCHELL TIME AND PARKING AND THE CITY OF GALVESTON

AGREEMENT BETWEEN MITCHELL TIME AND PARKING AND THE CITY OF GALVESTON. FOR MAINTENANCE OF 16 STRADA PAL BNA PARKING METERS

3/20/2020

MITCHELL ADDING MACHINE CO. INC. DBA MITCHELL TIME AND PARKING
4806 N IH 35
AUSTIN, TEXAS 78751
512.371.7773

This Agreement is made and entered into this _____ day of _____, 2020, by and between MITCHELL ADDING MACHINE CO. INC., DBA MITCHELL TIME AND PARKING., (hereinafter "Contractor") and Client the CITY OF GALVESTON hereinafter "The Client")

WITNESSETH

WHEREAS, the Contractor has been awarded a contract with the National Cooperative Purchasing Alliance for the provision of PARKING METERS, SINGLE AND MULTI-SPACE ("Agency Contract"); and,

WHEREAS, the City has the authority to enter into a cooperative purchase contract with Contractor using the Agency Contract; and,

WHEREAS, the parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions which shall govern the provision of services and goods rendered by Contractor.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the parties hereby agree as follows:

1. SCOPE OF SERVICES.

The goods and services to be provided in connection with this Agreement are outlined in Exhibit A of this agreement. Said goods and services shall be provided in accordance with the applicable terms and conditions set forth in the Client solicitation, and it is understood and agreed among the parties that in the event of a variance between the terms and conditions of this Agreement and any amendment thereto and the terms and conditions contained either in the solicitation document or the Response thereto, the order of precedence shall be as follows: (1) This Agreement; (2) the Client's solicitation; (3) the Contractor's response.

All associated costs and pricing are outlined in Exhibit A of this agreement.

This Agreement shall not be binding upon the parties until it has been executed by both parties.

2. COMPENSATION

During the term of this Agreement, Client shall compensate the Contractor in accordance with the Pricing Schedule attached hereto and incorporated herein by reference as Exhibit A. which includes all reimbursable expenses. All other fees reflected on Exhibit A shall be directly invoiced monthly by Contractor to Client in accordance with the INVOICES section set forth below.

3. INVOICES

The Contractor shall submit original invoices for all fees to be invoiced on a quarterly basis as reflected on Exhibit A, or copies of original invoices certified as such by the Contractor, on the Contractor's letterhead and in form and substance reasonably acceptable by the Client and with all reasonably necessary supporting documentation, to the Client. The invoice shall describe the services provided, list the price per unit, reflect any applicable terms of payment, and show the contract number to which it relates.

Invoices shall be submitted to the City of Galveston : …….

The Client shall remit payment based on the Contractor's invoice pursuant to state law.

4. TAX PAYMENTS

Prices set forth in the Pricing Schedule are exclusive of sales, use and other taxes. If client claims exemption from Federal Excise, State and Local Taxes, it must provide tax exemption certificates to the Contractor.

5. TITLE & RISK

Risk of loss of any goods hereunder shall not pass to the Client until the Client actually receives and takes possession of the goods at the point or points of delivery. Title shall pass upon payment in full for goods.

6. PATENT INDEMNIFICATION

The Contractor warrants that any goods/services furnished hereunder do not infringe or violate any patent, trademark, copyright, trade secret, or any other proprietary right of any third party; that it shall defend all suits that may arise with respect thereto; and that it shall indemnify, defend, save and hold harmless the Client, its officials, employees, agents, successors and assigns, from and against all liabilities, suits, claims, damages, costs or expenses, including without limitation attorney and expert witness fees, for or by reason of any actual or alleged claim the goods/services purchased by Client hereunder infringe any patent, copyright, or is a violation of trade secret disclosure laws, whether by reason of the Contractor's purchase or otherwise. This indemnification obligation shall survive the expiration or termination of this Agreement.

7. SHIPMENTS

Partial shipments may be allowed unless otherwise stated in writing by Client. The Contractor shall not ship excess quantities without the Client's prior written approval. Contractor shall not be liable for any delay in delivery of goods that is caused by events outside of its control or Client's failure to provide adequate delivery instructions.

8. ENTIRE AGREEMENT

This Agreement constitutes the full and final understanding of the parties with respect to the subject matter hereof and supersedes and replaces any and all prior or contemporaneous agreements or understandings, whether written or oral, express or implied, between the parties with respect to the subject matter of the Agreement. This Agreement is solely for the benefit of Client and Contractor.

9. HEADINGS

Titles and headings used herein are for the convenience of reference only and shall be disregarded completely in the interpretation and validity of this Agreement or any of its terms.

10. MODIFICATION AND AMENDMENT

This Agreement shall be amended or modified only by a written document signed by the parties hereto, in accordance with applicable laws and regulations.

11. CHANGES

The parties shall have the right at any time to propose written changes to the work performed hereunder. Any difference in price or other terms resulting from such proposed changes shall be negotiated in good faith and agreed between the parties before such changes become effective and this Agreement is modified in accordance with paragraph 10.

12. RIGHTS IN DATA

The Contractor agrees that Client data or compilations thereof produced under this Agreement shall remain the property of the Client and shall not be published by the Contractor or any other party without the express prior written consent of the Client. In implementing the foregoing, the Contractor hereby grants and assigns to the Client all rights and claims of whatever nature, whether now or hereafter, arising in and to such Client data and compilations thereof and shall cooperate fully with the Client in any steps the Client may take to obtain copyrights, trademark or like protections with respect thereto.

13. INTELLECTUAL PROPERTY

Subject to Article 12 above, any intellectual property provided or prepared by Contractor in connection with this

Agreement shall remain the exclusive property of Contractor, except that Contractor shall supply to Client a non-exclusive non-transferable license solely to the extent required for use by the Client of deliverables provided hereunder, and performance of maintenance by Client and its authorized agents upon the deliverables provided hereunder, for the time that the deliverables remain in service for their intended use. Customer agrees that intellectual property licensed shall be used solely for the limited purposes described in this paragraph, and shall be kept confidential by the Client, its employees, and authorized agents as applicable pursuant to this paragraph. Client acknowledges that, in respect of any third party intellectual property rights, the Client's use of such rights is conditional upon Contractor obtaining a written license from the relevant licensor on such terms as will entitle Contractor to license such rights to Client.

14. EMPLOYMENT OF CLIENT WORKERS

The Contractor shall not engage, on a full, part-time or any other basis during the term of this Agreement, any professional or technical personnel who are or have been at any time during the term of this Agreement in the employ of the Client.

15. CONTRACTOR'S PERSONNEL

The Contractor certifies that it presently has adequate qualified personnel to perform all services required under this Agreement and that all work performed under this Agreement shall be supervised by the Contractor. Contractor will make its personnel aware of and cause them to comply with the Client's policies that have been made known to Contractor while performing pursuant to this Agreement. The Contractor further certifies that all of its employees assigned to perform any work hereunder shall have such knowledge and experience as required to perform the duties assigned to them. Any employee of the Contractor who, in the reasonable opinion of the Client, is incompetent, whose conduct becomes detrimental to the work, or whom the Client deems to be unsatisfactory for any reason, shall immediately be removed from association with the services hereunder per the Client's request. Upon such request, the Contractor shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement, all employee compensation and benefits. The Client shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, health, welfare and disability benefits, Federal and local taxes, or other compensation, benefits or taxes for any personnel provided on behalf of the Contractor. In addition, the Contractor shall be solely liable and responsible for any and all workers' compensation benefits to any person as a result of injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Agreement.

16. INDEPENDENT CONTRACTORS

Nothing in this Agreement shall be deemed or construed to represent that the Contractor, or any of the Contractor's employees or agents, are the agents, representatives, or employees of the Client. The Contractor acknowledges that it is an independent contractor over the details and means for performing the services hereunder. Anything in this Agreement which may appear to give the Client the right to direct the Contractor as to the details of the performance of its obligations hereunder or to exercise a measure of control over the Contractor is solely for purposes of compliance with local, state and federal regulations and means the Contractor will follow the desires of the Client only as to the intended results of the scope of this Agreement.

It is further expressly agreed and understood by the Contractor that neither it nor its employees or agents shall hold itself out contrary to the terms of this paragraph, and the Client shall not be liable for any representation, act or omission of the Contractor contrary to the provisions hereof..

17. TERMINATION

1. It shall be cause for the immediate termination of this Agreement if:

    a. the Client reasonably determines that the Contractor or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has pled or been found guilty of a criminal violation, whether state or federal, involving governmental sales or purchases, including but not limited to the rigging of bids, price fixing, misappropriation of government funds, or any other collusive and illegal activity

pertaining to bidding and governmental contracting; or

b. the Contractor subcontracted, assigned, delegated, or transferred its rights, obligations or interests, voluntarily or involuntarily, under this Agreement without the Client's consent or approval; or

c. Contractor has filed bankruptcy, has been adjudicated bankrupt, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of the Contractor's assets.

d. the Client fails to make timely payment of sums due under this Purchase Order and then fails to cure such default by making payment of all sums owed and due within ten (10) business days of written notice to cure. (The Contractor, without limitation of its other rights and remedies including the right to later terminate for cause, may elect to suspend performance in the event of uncured nonpayment.)

e. a party commits a material breach of its obligations under this Agreement and (if such breach is remediable) then fails to remedy that breach within thirty (30) days after receipt of notice in writing to do so from the other party.

f. a party abandons performance of this Agreement. Upon termination for cause the Client shall pay the seller for all outstanding invoices and invoices issued for goods and services provided but not previously invoiced, which invoice shall be immediately payable.

2. The Client may, in its sole discretion, suspend and/or terminate this Agreement for convenience upon giving 30 business days prior written notice to the Contractor. In the event a purported termination for cause by the Client is in error, then such termination shall be deemed to be a termination for convenience under this section. In the event of termination for convenience or wrongful termination for cause deemed a termination for convenience, the Contractor shall be entitled to receive compensation for any work performed in accordance with the Agreement up to the termination date, together with its reasonable termination costs and lost profits with respect to this Agreement.

18. CONFLICT OF INTEREST

Neither party shall engage in any conduct or activity in the performance of this Agreement that constitutes a conflict of interest under applicable federal, state or local laws, rules and regulations.

The Contractor covenants that it has no public or private interest, and shall not acquire, any interest, directly or indirectly, which would conflict in any manner with the performance required under this Agreement, and the Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer, official, agent or employee of the Client, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement. The Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the Client as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the Contractor in connection with any work contemplated or performed relative to this Agreement. For breach or violation of this provision, the Client shall have the right to recover or withhold the full amount of such gratuities.

19. GENERAL COMPLIANCE WITH LAWS

The Contractor certifies that it is qualified or will take steps necessary to qualify to do business in the State of Texas and that it shall take such action as, from time to time, may be necessary to remain so qualified and shall comply with federal, state and local laws applicable to performance of this Agreement.

20. NON-DISCRIMINATION

The Contractor hereby agrees to comply with Title VI and Title VII of the Civil Rights Act of 1964 and all other federal, state or local laws prohibiting discrimination, which provide in whole or in part, that no person shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance

of this Agreement or in the Contractor's employment practices on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, State or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination. The Client reserves the right to investigate any claims of illegal discrimination by the Contractor and in the event a finding of discrimination is made and upon written notification thereof, the Contractor shall take all necessary steps to cure and rectify such action to the reasonable satisfaction of the Client.

21. EMPLOYMENT OF ILLEGAL IMMIGRANTS

The Contractor hereby certifies to comply with all applicable federal and state laws prohibiting the employment of individuals not legally authorized to work in the United States. Contractor shall not knowingly (i) utilize the services of illegal immigrants; or (ii) utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract.

22. SEVERABILITY

If any terms or provisions of this Agreement are held to be illegal, invalid or unenforceable as a matter of law, such provision shall be fully severable, and the remaining provisions of this Agreement shall remain in full force and effect and continue to be binding and shall not be affected by such provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, the parties may negotiate in good faith to replace such provision with a valid, legal and enforceable provision that most closely approximates the parties' original intent.

23. NO WAIVER OF CONTRACTUAL RIGHT

No term or provision of this Agreement, or of any document executed pursuant hereto, shall be held to be waived, modified or deleted unless in writing and executed by the parties hereto . No delay or failure of a party to enforce any right or provision of this Agreement or in any document executed pursuant hereto shall operate as a waiver or relinquishment of that party’s right to subsequently enforce and compel strict compliance with such provision or any other provision herein or in any document related hereto and specifically identified as a waiver of any succeeding breach thereto or of any other provision herein contained.

24. ORGANIZATION STATUS AND AUTHORITY

The Contractor represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Delaware; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary. The execution, delivery and performance of this Agreement by the Contractor has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of the Contractor, any provision of any indenture, agreement or other instrument to which the Contractor is a party, or by which the Contractor's respective properties or assets are bound, in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

Each person executing this Agreement on behalf of the parties represents that: he/she is lawfully authorized to sign the Agreement on behalf of the party he/she represents and execution of the Agreement was duly and regularly authorized by the party's governing body.

25. WARRANTY

The Contractor warrants to the Client that all goods/work shall be free from defects in design and faulty or improper workmanship and shall be in strict compliance with the terms of this Agreement. Contractor specifically warrants that, if Client gives notice in writing during the warranty period within a reasonable time of discovery that some or all goods or services provided hereunder do not comply with the warranty provided under the paragraph, and Contractor is provided with proof of the same and reasonable opportunity to investigate including examination of such goods/services, then Contractor shall, at its option, repair or replace the defective goods or services, or refund the price paid for such goods or services. Excluded hereunder are without limitation non-conformances, defects and damage arising from ordinary wear and tear, abuse, negligence, vandalism, willful damage or abnormal working

conditions, or due to failure to follow Contractor's oral or written instruction with respect to storage, installation, commissioning, use or maintenance. This warranty shall be effective for a period of one (1) year from the date of successful verification testing of the system. The warranty shall survive the termination or expiration of this Agreement. To the extent permitted by law, THIS WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY CONTRACTOR WITH RESPECT TO THE GOODS AND SERVICES PROVIDED HEREUNDER. ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, ARE EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF PURPOSE, OR ANY IMPLIED WARRANTIES CLAIMED TO ARISE FROM TRADE USAGE, CUSTOM OR COURSE OF DEALING. THE REMEDY PROVIDED IN THIS PARAGRAPH CONSTITUTES THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY.

26. DISPUTE RESOLUTION

In the event of any dispute(s), controversy, or claim arising out of or relating to this Agreement or the breach thereof, the parties agree that they shall first use their best efforts in an attempt to settle the dispute through negotiations involving themselves or their representatives as they each deem appropriate.

27. FORCE MAJEURE

The Contractor shall not be deemed in default hereunder, nor shall the Contractor be responsible for any delay, interruption, or cessation in the performance of its obligations under this Agreement where such failure of performance is the result of any force majeure event, including, but not limited to, acts of God, riots, wars, strikes, epidemics, acts of governmental authorities or acts of nature or other similar cause beyond its control.

28. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

29. NOTICES

All notices and other communications required or permitted to be given hereunder shall be written and hand delivered with signed receipt; delivered by facsimile; delivered by a nationally recognized overnight courier; or mailed via certified U.S. mail, postage prepaid and return receipt requested. All notices shall be deemed received and effectively given as follows: (i) if by hand delivery, on the date of delivery; (ii) if by email/fax, on the day the email/fax transmission is received at the receiving location and receipt is telephonically confirmed by the sender; (iii) if by delivery via U.S. mail, on the date of receipt appearing on a return receipt card; or (iv) if by overnight courier, on the date receipt is confirmed by such courier service. All notices must be addressed to the respective party at the following addresses or to such other person or address as either party may designate in writing and deliver as provided herein:

To the Contractor:
Mitchell Adding Machine Co. Inc.
Dba Mitchell Time And Parking
4806 N IH 35 Austin, Texas 78751

512-371-7773
Email: service@mitchelltimeandparking.com

To the CLIENT:
City of Galveston
Director of Parking, Butch Stroud
823 Rosenberg
Galveston, Texas, 77553
409-797-3611
Email: Bstroud@galvestontx.gov

30. CONFIDENTIALITY

The parties including their employees, consultants, agents, affiliates, assigns and successors shall keep in strict confidence all technical or commercial know-how, specifications, inventions, proprietary information, processes or initiatives which are of a confidential nature that may have been disclosed to one another in connection with this Agreement. In the event one party receives a subpoena or other validly issued administrative or judicial process requesting the other's confidential information, the first party shall provide prompt actual notice to the other party of

such receipt, so as to provide the other party with a reasonable opportunity to intervene in the proceeding before the time that first party is required to comply with such subpoena or other process.

31. LIMITATION OF LIABILITY

Neither party shall be liable to the other party for consequential (which shall be deemed to include but not be limited to lost parking revenue), incidental, exemplary or special damages of any nature and under any legal theory. Contractor's total liability to Client in connection with or as arising under this Agreement shall be limited to 25% of the total price set forth in the Pricing Schedule. This paragraph shall survive termination of this Agreement.

32. NUMBER AND GENDER

Unless the context requires otherwise, (i) use of a specific gender imports the other gender(s); and (ii) use of the singular imports the plural and vice versa.

33. SURVIVAL

The parties hereto acknowledge that provisions that require or contemplate performance or observance after expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and continue in full force and effect.

34. DRAFTER

This Agreement is the result of arm's length negotiations between the parties and shall be construed to have been drafted by both parties such that any ambiguities in this Agreement shall not be construed against either party.

35. COUNTERPARTS

This Agreement may be signed in multiple counterparts and/or counterpart signature pages, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument. Signed signature pages may be transmitted by facsimile, and any such signature shall have the same legal effect as an original.

36. GOVERNING LAW, JURISDICTION AND VENUE

The terms and conditions of this Agreement shall be construed in accordance with and governed by the laws of the State of Texas. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in courts within the State of Texas, without regard to conflicts of laws principles. In accordance herewith, the parties to this Agreement submit to the jurisdiction of courts within the State of Texas.

37. INSURANCE REQUIREMENTS FOR A CERTIFICATE OF INSURANCE

I. Commercial General Liability (Primary and Non Contributory)

A. Limits of Liability
Bodily Injury and Property Damage Liability
Each Occurrence $ 1,000,000
General Aggregate Limit $ 2,000,000
Products/Completed Operations $ 1,000,000
Personal and Advertising Injury $ 1,000,000

B. Endorsements Required

II. Business Automobile Liability

A. Limits of Liability
Bodily Injury and Property Damage Liability
Combined Single Limit
Any Auto
Including Hired, Borrowed or Non-Owned Autos
Any One Accident $ 1,000,000

B. Endorsements Required

III. Worker's Compensation
A. Limits of Liability

IV. Employer's Liability
A. Limits of Liability
$1,000,000 for bodily injury caused by an accident, each accident.
$1,000,000 for bodily injury caused by disease, each employee
$1,000,000 for bodily injury caused by disease, policy limit
V. Umbrella Policy (Excess Follow Form)

A. Limits of Liability
Bodily Injury and Property Damage Liability
Each Occurrence $ 2,000,000
Aggregate $ 2,000,000

38. ATTORNEY'S FEES
If any action at law or in equity is necessary due to a dispute and/or to enforce or interpret the terms of this Agreement, the parties will bear their own attorneys' fees and court costs.

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this Agreement, effective as of the day and year first above written.

CITY OF GALVESTON	**MITCHELL TIME AND PARKING**
By: _____	By: _____
Name: _____	Name: Gary J. Hobbs
Title: _____	Title: President

Mitchell Time & Parking
4806 North IH 35 Austin, TX 78751
Tel: (512) 371-7773 Fax: (512) 371-7181

Exhibit A Scope of Services

SERVICE AGREEMENT

for the City of Galveston

Effective the date of this contract, Mitchell Time and Parking, upon receipt of payment, annually in advance, of the amount listed below, agrees to render service three times annually to the equipment listed below; to clean, adjust and make necessary replacement of parts at the time of each regular inspection and to make any necessary mechanical or programming adjustments or repairs at any time between regular inspections.

Includes three trips per year minimum. Any additional trips will be billed at a flat rate of $250.00 per trip, with no hourly labor fee. To receive next day service, a service call must be placed by NOON the day before.

This agreement is made with the understanding that the equipment listed below is in good operating condition at the date, hereof, and that said service will be rendered during regular business hours.

Parts and labor are to be furnished by Mitchell Time and Parking.

Software upgrades, and tickets are not included. It is further understood that this agreement does not cover labor or parts necessary to repair damages caused by fire, water, accident or abuse.

This agreement is not transferable and becomes void upon the sale of the equipment covered by this agreement and is subject to cancellation by either party at any time upon written notice.

Supported Equipment:		
Quantity	Description	Yearly Amount
16	Strada Pal BNA Meters per year in advance with a 5-year contract	$22,300

SALES AGREEMENT BETWEEN MITCHELL TIME AND PARKING AND THE CITY OF GALVESTON

	From:		To:
Effective Date of Agreement:	7/1/2020	Upon Signing	6/30/2025

Customer:

Mitchell Time and Parking:

City of Galveston

Authorized Signature/Title

Authorized Signature/Title

Date:

Date:

6/12/2020

CITY OF GALVESTON

MTP Meter Services and Level II Support Agreement

MITCHELL ADDING MACHINE CO. INC. DBA MITCHELL TIME AND PARKING
4806 N IH 35
AUSTIN, TEXAS 78751
512.371.7773

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APPENDIX A

APPENDIX B

APPENDIX C

1. PARTIES TO AGREEMENT / PERIOD OF PERFORMANCE

1.1 This Agreement, dated as of 7/1/2020, is made by and between Mitchell Adding Machine Co. Inc. DBA Mitchell Time and Parking. ("MTP") a corporation organized and existing under the laws of the State of Texas, having an office at 4806 North IH 35, Austin, Texas 78751 USA and the City of Galveston, (City) located at 823 Rosenberg, P.O. Box 779, Galveston, Texas. (Individually referred to as the "Party", collectively to as the "Parties".)

1.2 MTP is to provide the services listed below to the Customer upon the terms and conditions stated herein commencing 7/1/2020 for an initial period of twenty-four (24) months (the "Initial Period'). At the end of the Initial Period, the Agreement may be automatically renewed for up to three (3), one (1) year periods (the "Automatic Renewal Period") upon the same terms and conditions unless (i) one Party gives written notice of non-renewal to the other party or (ii) MTP advises Customer of a price increase, at least sixty (60) calendar days prior to the end of each Period.

1.3 After the Initial Period of the agreement, each Renewal Period may be subject to a cost increase. Fees will be increased proportionate to the current CPI and market costs for communications on the renewal date of this Agreement.

1.4 Failure of the Parties to agree to new pricing within sixty (60) calendar days prior to the end of the Initial Period and/or any subsequent Renewal Period will entitle each party to terminate the Agreement.

2. SCOPE OF SERVICES TO BE PERFORMED BY MTP

The following services (the "Services") will be provided by MTP under this Agreement.

SERVICE	LIST PRICE PER MONTH	TERMINALS
☒ [Pay-N-Display, Pay-By-Space, Pay-By-Plate] Work Spaces • Action required • Terminal Out-of-Order • Communications Problems • Maintenance Performed • Consumables • Cash Collections • Cash-In-Terminals • Parking Activity • Ticket Sales Analysis • Transactions by Payment ☐ Pay-By-Space • Enforcement web site • Enforcement ☒ Standard Work Spaces • Maintenance • Collections • Transactions • Control ☒ Customer Telephone Support	[$57.00] per machine	**Strada Pal BNA** Number of units: **16**

CLOUD BASED SERVICES	LIST PRICE PER MONTH	TERMINALS
☐ Validation codes	$7.00 per machine	**Strada Pal BNA** Number of units:**16**
☐ Extend by Text	N/A	
☐ Flowbird/Woosh Mobile App	$.20/ per Transaction	**Strada Pal BNA** Number of units:**16**

☐ CITY NEWS	$3.00 per machine	**Strada Pal BNA** Number of units: **16**

OTHER SERVICES	LIST PRICE PER MONTH	TERMINALS
☐ Whoosh (Refer to *Appendix D if elected by Customer*)	$.20/ per Transaction	**Strada Pal BNA** Number of units: **16**

3. PAYMENT TERMS

☑ Quarterly billing
☑ 30 Day Payment Terms from receipt of invoice

4. GENERAL TERMS AND CONDITIONS

4.1. MTP DELIVERY OF SERVICES UNDER AGREEMENT

4.1.1 MTP will provide Level II Remote Technical Support when Customer consistent with Level I training and diagnosis/Service materials is not able to adequately service the Multi-space meters,

4.1.2 MTP will provide the Services with care and skill consistent with applicable industry standards.

4.1.3 MTP will maintain a properly staffed Level II Remote Call-in Service operation to assist Customer with the full range of diagnostics and repairs activities. Support will be available during MTP's regular business hours (Monday-Friday 8:00am/5:00pm CST) excluding holidays.

4.1.4 MTP will maintain a log of all Service incidents which will document the service problem, and relevant hardware/network environment as applicable and contact information. This log will be available to Customer upon reasonable request.

4.1.5 MTP will take all technical and commercially reasonable measures to provide a resolution within four (4) business hours of receipt of Customer's request for assistance.

4.1.6 MTP will escalate back office support requests to Level III if, within four (4) business hours, a resolution is not implemented.

4.1.7 MTP will convene regular Service review meetings with Customer to review Service history.

4.1.8 MTP will guard and maintain the confidentiality of all, logins, passwords and personal identification provided in connection with the Services against unauthorized use of the Services.

4.1.9 MTP will be entitled to subcontract in part or whole performance of the Services to be provided under this Agreement with prior written consent of Customer, such written consent not being unreasonably withheld.

4.2. CUSTOMER PARTICIPATION

4.2.1 Customer is responsible for Level I Technical Service and maintenance for all machines as specified in *Appendix C.*

4.2.2 Prior to requesting Level II support services, Customer will have attempted to service the Multi-space meters, consistent with Level I training and diagnosis/Service materials and encountered issues that it cannot resolve.

4.2.3 Customer will submit all requests into MTP's Technical Support using the contact method specified in *Appendix A* and provide all necessary information to permit MTP to perform the required services.
Customer will update MTP in writing of any changes to such information (especially any change of address) and be available to work with the MTP's support resource assigned to the support request.

4.2.4 Customer will maintain a local supply of spare parts sufficient to meet the desired repair timelines. The standard Return of Materials Authorization procedure is attached in *Appendix B*.

4.2.5 Customer will protect technical information and know-how from unnecessary disclosure, maintain the confidentiality of all logins, passwords and personal identification used in connection with the Services and generally safeguard such information to ensure that there is no unauthorized use of the Services.

4.3. ADDITIONAL WORK

The following Services are not within the scope of this Agreement. Upon request, MTP will provide to Customer a technical and cost proposal to provide related requested additional services ("Additional Work"). Prior to performance, Customer shall authorize in writing the scope of such Additional Work and compensation payable to MTP for the full performance of the Additional Work.

4.3.1 Evaluation or Procurement of new software or hardware.

4.3.2 Evaluation or approval of new software or hardware for use by the Customer in conjunction with MTP products or Services including Customer and third party systems.

4.3.3 Deployment of a new software release at the machine.

4.3.4 Tariff or parameters changes.

4.3.5 Additional training for Customer technicians with respect to basic maintenance, troubleshooting, repairs, component replacement and operations such as programming and inventory.

4.3.6 Providing of a qualified technician, on mutual agreed upon date and duration to perform On-Site Level II support or remedial maintenance. At least two (2) weeks advance notice is required to ensure that Level II on-site support. To insure MTP's proposal properly addresses Customer's needs, MTP requests that Customer identify at the time of the request the issues that need to be addressed during the on-site visit and have available the necessary spare parts and consumables needed to restore the Multi-space meter up to MTP specification.

4.3.7 Assistance with Parkfolio back office or Multi-space meters usage when unsupported or non-standard hardware or software has resulted in unexpected behavior of otherwise reliable systems.

4.3.8 Adaptive maintenance: Defined as activities relating to upgrades or conversions of Parkfolio back office application, the Multi-space meters or its associated operating environment, in which the MTP products are functioning.

4.3.9 Modifications, updates or enhancements to original application required or desirable on account of changes in Customer's organization or business needs (such as a reorganization or change in the business practice) that may make the current specification obsolete.

4.3.10 Re-training of staff and any additional new hire training after initial training.

4.3.11 Removal, reinstallation or relocation of the Multi-space meters.

4.4. FEES – INVOICING AND PAYMENT OBLIGATIONS

In consideration for receiving the Services and/or Additional Work, Customer shall pay to MTP the fees as set forth in the Article 2 Scope of Services above or agreed to pursuant to Article 4.3 above, as follows:

4.4.1 MTP will invoice the Customer as set forth in Article 3 above which invoice is due and payable within thirty (30) days of receipt.

4.4.2 In the event that there is an increase in the number of units being provided under this Agreement, then a Service charge based on the monthly per machine charge in effect at the time of installation shall be added to Customer's invoice.

4.4.3 Absent prior notification to and approval of the Customer, the total amount payable to MTP under this Agreement for the Initial twelve (12) month Period of the Agreement, plus any subsequent Renewal Periods of twelve (12) months, shall not exceed [$10,944] per twelve month period. This amount will be increased accordingly upon article 4.4.2. This amount is excluding any applicable taxes relating to the base Service provided under the terms of this Agreement.

4.4.4 To the extent that a disagreement arises in connection with the sum due and owing under the Agreement, Customer agrees to pay the undisputed amount of the invoice within the contractual deadline set forth in the 4.4.1 above.

4.4.5 If amounts due and owing MTP remain unpaid past the due date, MTP shall be entitled to interest of five percent (5.00%) commencing on the due date of the payment.

4.4.6 If amounts due and owing MTP remain unpaid for sixty (60) calendar days from the due date, MTP shall be entitled to terminate the Agreement with immediate effect by serving written notice to the Customer.

4.5. TERMINATION

4.5.1 Termination for Non-Appropriation of Funds. This Agreement shall terminate without penalty at such time as appropriated funds are not available to satisfy the obligations of Customer hereunder. The failure of Customer to make an appropriation in any given year shall not be deemed a breach of this Agreement, nor give rise to any cause of action by MTP for legal or equitable relief. Customer shall provide MTP written notice sixty (60) calendar days prior to such non-appropriation termination and shall pay to MTP all sums due and owing under the Agreement as of the date the non-appropriation termination becomes effective.

4.5.2 Termination for Convenience. Notwithstanding any other provision of this Agreement, Customer may terminate this Agreement (in whole or in part) without cause sixty (60) days following delivery of a written Notice of Termination to MTP.

4.5.2.1 Upon receipt of a Notice of Termination, and except as otherwise agreed between MTP and Customer, MTP shall immediately proceed with the following actions:

4.5.2.1.1 Stop work as specified in the Notice

4.5.2.1.2 Place no further orders for materials, services, or facilities, except as necessary to complete any part of the Agreement not subject to termination.

4.5.2.1.3 Cancel all cancelable orders and terminate all subcontracts to the extent they relate to the Work terminated

4.5.2.1.4 Assign to Customer, and deliver to the work site, any non-cancelable orders for material and equipment that is not capable of use except in the performance of this Agreement.

4.5.2.1.5 Take all reasonable measures to mitigate Customer's liability under this section.

4.5.2.1.6 Complete performance of non-terminated work

4.5.2.2 Upon termination of the Agreement without cause, Customer shall immediately pay MTP all amounts due and owing under the Agreement up to the date of termination, all non-cancelable costs for material and equipment that cannot be used other than in connection with this Agreement and all payments due to MTP prior to termination of the Agreement.

4.5.3 Other Termination. Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may:

4.5.3.1 Terminate the Agreement in the event of a material breach of this Agreement which is not remedied within thirty (30) calendar days of notification to the other Party in writing to remedy such breach which notification will set forth in reasonable detail the nature of the alleged breach;

4.5.3.2 Immediately upon (i) appointment of a receiver or administrator over the other Party or its assets or if the other Party is subject to bankruptcy, liquidation or any analogous proceedings under laws of any competent jurisdiction or (ii) the other Party suspends or ceases, or threatens to suspend or cease, to perform all or a substantial part of its Work under this Agreement;

4.5.3.3 Upon the occurrence of a Force Majeure event (a circumstance not within the control of the Affected Party) but only if and to the extent that such circumstance despite the exercise of reasonable diligence cannot be prevented, avoided or substantially mitigated by the Party and such circumstance materially and adversely affects that Party's ability to perform its obligations under this Agreement for an uninterrupted period of no less than three (3) months. In such event, the Affected Party shall promptly notify the Other Party of its intention to terminate the Agreement which termination shall have full force and effect three (3) business days after receipt of notice. Neither Party will be liable to the Other Party for damages.

4.5.4 Upon termination of the Agreement by Customer for any reason under 4.5.3, MTP shall be paid any amounts owed under the Agreement up to the date of termination.

4.5.5 MTP shall not by reason of the termination of this Agreement be liable to Customer or be subject to consequential, incidental, indirect or special damages or for costs associated with substituted performance.

4.6. INTELLECTUAL PROPERTY

4.6.1 Customer agrees that all Intellectual Property Rights, confidential know-how, tools, methods, skills, trade secrets, graphics, logos and trade names used by MTP in performing its obligations under this Agreement ("Intellectual Property Rights") are, and will remain, the property of MTP (or the third-party who has granted MTP the right to use such rights) and nothing in this Agreement or MTP's performance under this Agreement will be deemed to transfer to Customer any such Intellectual Property Rights of MTP or any third-party.

4.6.2 Customer acknowledges that the name "MTP" and any other trademark, brand name, trade name and logotype associated with the Products or services of MTP (hereinafter referred to as "MTP Trademarks") whether or not registered, are and shall remain the property of the owner of the Trademarks, being MTP or one of its affiliates, and that Customer has no right, title or interest in MTP Trademarks during the term of this Agreement or thereafter except as provided otherwise herein.

4.6.3 The Parties both agree that except as otherwise provided herein, neither Party shall utilize the intellectual property rights of the other.

4.6.4 MTP shall defend or, at its option, settle any claim or action brought against Customer alleging that the use of the Services as provided under the Agreement and as used within the scope of the Services granted to Customer, infringes the Intellectual Property Rights of a third-party, provided that (i) this infringement claim is not attributable (a) to a use other than in accordance with this Agreement regardless of whether the use is in combination with any service(s) not furnished by MTP, or (b) to the use of a non-current release of the Software and that (ii) Customer gives reasonable notice and cooperation to MTP in connection with the defense of such claim, makes no admission or settlement in respect of such claim and that MTP directs and controls such defense.

4.6.5 Software licensing: MTP will provide Customer a license to use Pay Station software and Parkfolio back office. MTP does not provide software or licensing for software being used with MTP products that is not part of the MTP Pay Station, Parkfolio back office, or other MTP products provided by MTP to Customer under this Agreement. Customer shall provide such software and licensing as applicable.

4.7. PROPRIETARY AND CONFIDENTIAL INFORMATION

4.7.1 Proprietary Information (hereafter "Proprietary Information") means object code, source code and any benchmark tests for the Services, pricing and other information Identified as proprietary, but excludes: (a) information made available to the general public without restriction by the disclosing Party or by an authorized third-party, (b) information known to the receiving Party independent of disclosures by the disclosing Party, (c) information independently developed by the receiving Party without access to or use of the disclosing Party's Proprietary Information, or (d) information related to the Agreement that the receiving Party may be required to disclose pursuant to the applicable Freedom of Information statutes or pursuant to subpoena or other lawful process initiated by a governmental authority or by the disclosing Party, provided that the receiving Party notifies the disclosing Party of the lawful process to allow the disclosing Party to appear before the governmental authority and protect its interests, and such disclosure complies with applicable law.

4.7.2 Confidential Information (hereafter "Confidential Information") means non-disclosable data, but shall exclude (a) information known to the receiving Party independent of disclosures by the disclosing Party, (b) information independently developed by the receiving Party without access to or use of the disclosing Party's confidential information, or (c) Information related to the Agreement that the receiving Party is required to disclose pursuant to applicable Freedom of Information statutes or pursuant to subpoena or other lawful process initiated by a governmental authority or by the disclosing Party, provided that the receiving Party notifies the disclosing Party of the lawful process in a timely manner to allow the disclosing Party to appear before the governmental authority and protect its interests, and such disclosure complies with applicable law.

4.7.3 The Parties shall use reasonable efforts to protect each other's Proprietary and Confidential Information from disclosure. Neither Party is entitled to disclose the other Party's Confidential or Proprietary Information without prior written consent of the other Party, which may be withheld in the other Party's sole and absolute discretion. Provided the other Party's prior written consent has been obtained, the Party requesting consent may disclose in confidence the other Party's Confidential or Proprietary Information on a need-to-know basis to such Party's contractors and subcontractors as have executed a non-disclosure agreement, and the Party making that disclosure shall be responsible for that person's compliance with these restrictions on disclosure and use.

4.7.4 Upon termination of this Agreement, the Parties shall securely dispose of all information received and shall make no further use of it. The termination shall not serve to release any Party from its obligations regarding confidentiality under this article which shall remain in force for a period of two (2) years after the date of termination.

4.7.5 As a municipal corporation, Customer may have an obligation to disclose public records pursuant to applicable Freedom of Information statutes. To avoid disclosure of MTP Proprietary Information, any documents that contain trade secrets will be clearly marked "Proprietary" prior to submission to Customer. Upon citizen request for disclosure of Proprietary Information pursuant to the applicable statues, sufficient notice shall be provided to MTP to permit MTP to contest such disclosure.

4.8. LIABILITY AND WARRANTY

4.8.1 This clause sets out the liability of MTP in its entirety (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to Customer in respect of any claims relating to (i) MTP's performance of the Agreement (ii) any breach of this Agreement (iii) any use made by the Customer of the Services, or (iv) any representation, statement or act or omission (including negligence) of MTP arising under or in connection with this Agreement.

4.8.2 MTP Multi-space meters communicate through public cellular communication networks. MTP shall not be liable to Customer for any loss, costs, damages, charges or expenses arising from failures, defects or limitations of the cellular communication network or any product or service supplied by a third-party in connection with the cellular communication network. The cellular providers may experience capacity, interference, equipment and other problems; may make unannounced changes to their Services which impact communications; may limit, restrict or end the Services. MTP's sole obligation under this Agreement in connection with the cellular communication network is to treat communications problems that impact Multi-space meters performance as a priority issue and work with the cellular provider to expeditiously resolve the problem.

4.8.3 Data is saved in accordance with current data protection and back up standards. However, complete security cannot be guaranteed. In the event of data loss or data errors, MTP shall not be held liable unless the data loss or data error was solely the direct result of gross negligence on the part of MTP.

4.8.4 MTP shall have no liability to Customer for malfunction of third-party systems, acts or omissions of a third-party, infiltration or disruption of MTP services by a third-party by any means, including without limitation, DDoS attacks, software viruses, Trojan horses, worms, time bombs or any software programs or technology designed to disrupt or delay the MTP's services.

4.8.5 MTP's maximum aggregate total liability for damages arising out of or relating to this Agreement, exclusive of claims by third-parties, shall not exceed an amount equivalent to twenty-five (25%) percent of the remaining contract value in the year in which the damages occurred.

4.8.6 MTP makes no warranty express or implied that all security threats, breaches and vulnerabilities will be detected and/or avoided. MTP may be required to reduce or suspend Services for limited periods to enable technical or maintenance operations to be conducted or upgraded or as the result of an imminent threat of material harm. MTP will use best efforts to minimize inconvenience to the Customer caused by such reduction or temporary suspension of Services.

4.9. EXTENSION OF TIME FOR FORCE MAJEURE

4.9.1 In the event of a Force Majeure incident which does not result in termination of the Agreement per Article 4.5.3.3 above, the end date of this Agreement shall be extended by the period of time that such circumstance materially and adversely impaired or prevented a Party's ability to perform its obligations under this Agreement (the "Affected Period"). Immediately upon termination of the Affected Period, the Affected Party shall resume performance. The Party seeking to obtain a Force Majeure extension of time must immediately notify the other Party in writing of the nature, details and anticipated effect and duration of the Force Majeure incident.

4.10. GOVERNING LAW AND JURISDICTION

4.10.1 This Agreement made in two original counterparts in the English language shall be governed by and construed in accordance with the laws of the State of Texas.

4.10.2 All disputes or claims arising under or in connection with this Agreement shall, in the first instance, be subject to amicable resolution by the Parties. In the event the dispute or claim cannot satisfactorily be resolved amicably, the Parties agree to submit such disputes or claim to mediation. Mediation shall be held in Galveston County, Texas. The Parties shall bear their own costs and expenses (including attorney's fees) for any mediation, unless otherwise directed by the mediator.

4.11. CONTRACT DOCUMENTS

4.11.1 The contract documents which govern the dealings between the Parties are as follows, listed by order of precedence:

- Changes, modifications, amendments and extension of this Agreement
- The Agreement including its Appendices,
- MTP's Response to Bid # N/A_ dated _____
- Customer's Request for Proposal or Information for Bidders issued ___N/A_____ as amended.

4.12. NOTICES

4.12.1 Addresses may be changed by either Party from time to time and shall be notified to the other Party. All notices and other communication hereunder shall be deemed to have been given as of the date of delivery by hand, or five (5) working days after posting when mailed by registered or certified mail, postage prepaid, or twenty-four (24) hours after dispatch if sent by facsimile/email during business hours of the receiving Party. Refusal to accept delivery has the same effect as receipt.

4.12.2 Notices or other communications to either Party shall be made in writing and addressed to the relevant Party at its address as stated below:

Mitchell Adding Machine Co. Inc. DBA
Mitchell Time and Parking
4806 N. IH 35
Austin, Texas 787851
USA
Attention: Mr. Gary J. Hobbs

City of Galveston
823 Rosenberg_____
P.O Box 779_____
Galveston, TX, USA
Attention: Butch Stroud, Parking Manager

4.13. GENERAL

4.13.1 This Agreement including appendices and changes, modifications, amendments and extension thereto represents the entire agreement between the Parties.

4.13.2 This Agreement supersedes and cancels all other agreements, written or oral, between the Parties relating to the Services.

4.13.3 The failure of any Party to insist upon strict performance of any of the terms or conditions herein, irrespective or the length of time for which such failure shall continue, shall not be a waiver of that Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation of this Agreement. No waiver or consent shall be effective unless in writing and signed by the Party against whom such waiver or consent is asserted.

4.13.4 The terms and conditions of this Agreement shall be binding only upon written agreement signed by the duly qualified representatives of each Party.

4.13.5 The Parties may amend or modify this Agreement at any time, provided that such amendment(s) or modification(s) make specific reference to this Agreement, and are executed in writing by a duly authorized representative of both Parties. Such amendment(s) or modification(s) shall not invalidate this Agreement, nor relieve or release the Parties from their obligations under this Agreement.

4.13.6 Neither Party shall be bound by any condition, definition, guarantee or representation other than those set forth in this Agreement.

4.13.7 Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer and employee between the Parties. MTP shall at all times remain an independent contractor with respect to the Services to be performed under this Agreement. The Customer shall not be obligated to provide workers' compensation insurance, health or accident insurance to cover MTP for any type of loss which might result to MTP or its employees, in connection with the performance of the Services set forth in this Agreement. The Customer shall not pay any contribution to Social Security, unemployment insurance, federal or state withholding taxes, nor provide any other contributions or benefits which might otherwise be expected in an employer-employee relationship, it being specifically agreed that MTP is not an employee of the Customer.

4.13.8 Provided the other Party's prior written consent has been obtained, each Party shall have the right to make reference to the name, trademarks and logo of the other Party (provided that such reference shall not refer to the content of this Agreement) in any marketing literature, on all websites, on any media and any commercial documents and brochures of the other Party.

4.13.9 The Party representatives who execute this Agreement hereby represent and warrant that they have full and complete authority to act on behalf of MTP and Customer, respectively, and that their signatures below, the terms and provisions hereof, constitute valid and enforceable obligations of each.

4.13.10 In the event any portion of this agreement is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of the Agreement, as if such invalid or unconstitutional provision was not originally a part of the Agreement.

4.13.10 In the event any portion of this agreement is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of the Agreement, as if such invalid or unconstitutional provision was not originally a part of the Agreement.

IN WITNESS WHEREOF, THE DULY AUTHORIZED REPRESENTATIVES OF THE PARTIES HAVE EXECUTED THIS AGREEMENT.

Approved as to Legality and Form:

For City of Galveston	**For Mitchell Time and Parking**
Date: ____/____/____	Date: 6 / 12 / 2020
Name: Brian Maxwell	Name: Gary J. Hobbs as
Title: City Manager for The City of Galveston	Title: President for Mitchell Adding Machine Co. Inc. DBA Mitchell Time and Parking
Signature: _____	Signature: Gary J Hobbs
By signing I confirm that, - I have read, understood and accepted the general terms and conditions of this agreement.	By signing I confirm that, - I have read, understood and accepted the general terms and conditions of this agreement.

APPENDIX A

LEVEL II REMOTE TECHNICAL SUPPORT

MTP will provide Level II Remote Technical Support between the hours of 8:00AM and 5:00PM CST Monday through Friday excluding company holidays. The primary method of contacting MTP is via email:
Service@mitchelltimeandparking.com
In a situation where Level I Service is exhausted and is of an urgent nature you may contact MTP Level II Remote Technical Support via telephone at Office: **512.371.7773**

APPENDIX B

MTP RETURN MATERIALS AUTHORIZATION ('RMA')

Email us at: Service@mitchelltimeandparking.com

Phone: Please call 512.371.7773

Hours of operation: Monday – Friday: 8:00 AM – 5:00 PM Central Standard Time

All requests for parts, machine changes and miscellaneous sales should be directed to the above contact point. For parts being returned for repair or replacement a Return Material Authorization **(RMA)** is required PRIOR to the physical return of the product:

1. MTP will issue an RMA number and provide shipping instructions.
2. Customer will ship the defective parts back to MTP and clearly mark the outside of the carton or the shipping label with the RMA number. Each assigned RMA is limited to 20 individual items.
3. Customer agrees to properly wrap each defective part and package them securely within a box to assure no further damage will occur to these parts.
4. Customer is responsible for freight charges on items being returned to MTP. MTP is responsible for standard ground freight charges of replacements.
5. Once MTP has received the defective parts, replacement parts will be shipped within 72 hours via two (2) business-day delivery if parts are covered under standard warranty. If parts are covered under a MTP Service Contract, replacement parts will be shipped within 24 hours via two (2) business-day delivery
6. MTP will cross reference all parts against its warranty/contract database and determine if the part is covered. Customer will be notified if parts are not covered under warranty and will be advised of available options by the Sales Administration Dept.

7. Customer is responsible for testing of parts before returning. MTP will inspect and test parts to determine reason for return. If any parts are determined to be functional with no problem found or found functional after a standard cleaning procedure, Customer will be charged $175.00 dollars per unit for Preventative Maintenance charge to clean and restock.
8. Customer is responsible for all replacement charges for parts out of warranty or not covered under contract.
9. Customer is responsible for all expedited shipping charges.
10. Customer should ship all return parts to MTP and reorder on a regular weekly basis in order to provide a smooth flow of replacement parts and eliminate the need for expedited requests. Bulk RMAs (> 20 items) or multiple RMAs per week will result in processing and handling delays.

APPENDIX C

LEVEL I TECHNICAL SERVICE AND MAINTENANCE

Customer is responsible, through its trained staff, for performing Level I Technical service and maintenance for all Pay Stations covered through this Agreement, as follows.

Technical Services

1. Open Pay Station and remove and/or replace internal components as necessary.
2. Execute self-diagnostic and other repair processes, as shown in service training and described in the Service Guide and other documentation provided in conjunction with and at the time of training.
3. Install programming changes to the Pay Station using the maintenance procedures that are available at the maintenance keyboard on the Pay Station and explained during Level I service training.
4. Maintain a log of repair activities performed by the technicians, which will be available for reference purposes during a call to Level II Technical Support.
5. Ensure that the staff servicing MTP's Pay Stations have successfully completed the full training program provided by MTP and maintain the certification level of all staff who service the Pay Stations or operate ParkFolio back office software system.
6. Complete all prescribed Level I diagnostics and repair steps prior to escalating a service issue to Level II support.
7. Ensure that only trained Level I service staff initiate support requests to the Level II helpdesk.
8. Use its own qualified IT resource to provide desktop client, server, network, and infrastructure services necessary to maintain the proper functioning of the ParkFolio system.
9. Provide all information required to open a support request with MTP Level II Service and be available to work with the MTP support resource assigned to the support request.
10. Timely complete the recommended Pay Station preventative maintenance process to maximize useful life of the parts within the Pay Station.
11. Maintain the concrete mounting pad and mounting hardware per installation specifications.

12. Maintain all electrical installation accessories other than those that form an integral part of the Pay Stations as well as electrical connections to the Pay Stations
13. Maintain a supply of locally-available parts sufficient to meet desired repair timelines. These parts will be supplied to MTP as needed for Level II On-Site Operation.
14. Maintain a log of all parts replacements which will be made available to MTP upon demand.
15. Archive data and historical analysis for data older than 90 days.

Parkfolio Services

1. Maintain desktop and file server computers, LAN connections, internet connections and other aspects of the operating environment in a manner that allows the operation of and compatibility with the Parkfolio software.
2. Require all staff using Parkfolio to have successfully completed the full Parkfolio training program as provided by MTP.
3. Design, customize and generate reports using data in Parkfolio.
4. Complete all prescribed Level I diagnosis and repair steps prior to escalating issues for Level IObtain appropriate Information Technology or Information Services resources to provide server, network, firewall, and infrastructure support services, including Web server, authentication software, WebObjects' Monitor, software installation, application installation on production servers, database connections, and database changes.
5. Provide all information required to open a support request for MTP Level II support and be available to work with MTP support resource assigned to the support request.

Galveston Police Department

OFFICE OF THE CHIEF
STAFF REPORT

June 25th, 2020

To: Brian Maxwell, City Manager
Hon. Mayor and City Council Members

From: Vernon L. Hale, III, Chief of Police

RE: **Consider for approval the purchase of fifteen (15) Vista HD Body Worn Cameras and related items to supply officers with Body Worn Cameras for a total price of $20,025 which will be funded from the Police Academy Minor Equipment Fund.**

I. Background

A. The Galveston Police Department's needs to acquire additional Body Worn Cameras to issue to officers who are about to complete the police academy. Current stocks are low and Body Worn Cameras are need to equip these new officers. The purchase will also include a 3 year no fault warranty.

B. The use of Body Worn Cameras is not only policy for the Galveston Police Department but also improves evidence collection, strengthens officer performance, accountability, and enhances agency transparency.

II. Current Situation

Whether to approve the purchase of the fifteen (15) HD Vista Body Worn Cameras.

III. Issues

1. Cost – The total cost of the fifteen (15) HD Vista Body Worn Cameras is $20,025.
2. Timing – This purchase is necessary immediately to issue Body Worn Cameras to the new police officers.
3. Departmental Improvements – The department will be able to outfit all new hires and cadets with Body Worn Cameras.

IV. Alternatives in order of priority

A. Approval of the purchase of fifteen (15) HD Vista Body Worn Cameras.

B. Do not approve the purchase of fifteen (15) HD Vista Body Worn Cameras.

V. Recommendation

Concur in *Alternative A* and grant approval to purchase the fifteen (15) HD Vista Body Worn Cameras.

VI. Fiscal Impact Report

Requested by:	Vernon L. Hale, III Chief of Police
Funding Source:	0100-211450-522056-421000 Police Academy Minor Equipment Fund
Costs:	$20,025.00

Respectfully Submitted,

Vernon L. Hale
Chief of Police

4RE/VISTA Price Quote

CUSTOMER: Galveston Police Department

ISSUED: 5/26/2020 3:55 PM

EXPIRATION: 6/30/2020 10:00 AM

,
,,
,,,

TOTAL PROJECT ESTIMATED AT: $20,025.00

ATTENTION: BuyBoard - BWC - 568-18

SALES CONTACT: Gavin Wallace

PHONE: 409-765-3702

DIRECT: (214) 785-2611

E-MAIL:

E-MAIL: gavin.wallace@motorolasolutions.com

4RE and VISTA Proposal

VISTA HD Cameras and Options

Part Number	Detail	Qty	Direct	Discount	Total Price
VIS-EXT-WIF-001	VISTA HD WiFi Additional Camera Only	15.00	$995.00	$200.00	$11,925.00
VIS-CHG-BS2-KIT	VISTA Charging Base R2 Kit, incl. Power and USB Cables	15.00	$95.00	$20.00	$1,125.00

VISTA HD Warranties

Part Number	Detail	Qty	Direct	Discount	Total Price
WAR-VIS-WIF-NOF	Warranty, VISTA WiFi, 3 Year No-Fault	15.00	$450.00	$0.00	$6,750.00

WatchGuard Video Technical Services

Part Number	Detail	Qty	Direct	Discount	Total Price
Freight	Shipping/Handling and Processing Charges	1.00	$225.00	$0.00	$225.00
					$20,025.00

Total Estimated Tax, may vary from State to State $0.00

Configuration Discounts	**$3,300.00**
Additional Quote Discount	**$0.00**
Total Amount	**$20,025.00**

NOTE: This is only an estimate for 4RE & VISTA related hardware, software and WG Technical Services. Actual costs related to a turn-key operation requires more detailed discussion and analysis, which will define actual back-office costs and any costs associated with configuration, support and installation. Please contact your sales representative for more details.

415 E. Exchange Parkway • Allen, TX • 75002
Toll Free (800) 605-6734 • Main (972) 423-9777 • Fax (972) 423-9778
www.WatchGuardVideo.com

4RE/VISTA Price Quote

To accept this quotation, sign, date and return with Purchase Order: _____ DATE: _____

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MINUTES OF THE CITY COUNCIL OF THE CITY OF GALVESTON
SPECIAL MEETING - APRIL 23, 2020

4/23/2020 - Minutes

1. DECLARATION OF A QUORUM AND CALL MEETING TO ORDER
   With a quorum present, the meeting was called to order at 1:15 p.m.

2. ROLL CALL
   Present (via videoconference): Mayor James Yarbrough, Mayor Pro Tem Dr. Craig Brown, Council Member Amy Bly, Council Member David Collins, Council Member Jason Hardcastle, Council Memember John Listowski, and Council Member Dr. Jackie Cole.

3. PUBLIC COMMENT
   Agenda Items - a total of 202 comments were received all related to COVID-19 with the following breakdown: 84 in favor of opening the beaches; 9 in favor of keeping the beaches closed; 38 related to opening the businesses; 18 related to the draft reopening plan; 2 related to assistance for small businesses; 6 in favor of openin the golf courses and tennis courts; 6 in favor of opening short term rentals, hotels, and bed and breakfasts; 2 are requests to open churches; 2 are medical questions related to COVID-19; 8 related to wearing face masks; 1 related to gathering on the Seawall; 18 related to help for the homeless population in Galveston; 1 in favor of opening the fishing piers; 2 requests to allow fishing charters; 2 in favor of allowing pet grooming; 2 related to swimming pools; and 1 related to the enforcement of current stay at home order.

4. DISCUSSION ITEMS

4.A. Update On Corona Virus/COVID-19 (B. Maxwell)
Mayor Yarbrough reported on meetings with the County and other cities within the County on a standardized reopening plan, a meeting with Judge Hidalgo on timing for Harris County's plan, and the City Manager had a meeting with Nim Kidd regarding reopening. City Manager Brian Maxwell provided the following update: we continue to perform very well on testing, our current testing is at 2% or less; we have tested about 3% of the population; we are running out of q-tips; there is an issue of an explosion of cases in the Texas prison system; now splitting testing site times with League City; the Governor is asking everyone to stay the course and if in doubt keep it closed; the Governor is working with the federal government on testing supplies; the Governor clarified golf course order again today; we still have about 40 employees working remotely; he met with the hoteliers, businesses, large attractions, and fishing piers; the Governor will announce a plan on Monday; the beaches being closed is not about contracting the virus on the beach, it is about limiting points of contact for first responders; factors in the reopening plan the three top priorities are supply chain, points of contact for first responders, and safety of the citizens. Mayor Yarbrough reported on testing results provided by Dr. Keiser. Discussion was held regarding testing times and locations in Galveston, the difference of city and the Governor's restrictions, statistical data of nursing homes, and the homeless coalitions efforts to assist the unsheltered population.

4.B. Discussion Of The Draft Reopening Plan (B. Maxwell)
Mayor Yarbrough reported that all is moot until we hear from the Governor. If the Governor gives the okay, this would be the starting point of the basis of what the city is doing. Council Members provided comments and suggestions regarding the city's draft reopening plan.

4.C. Discussion Of Issues Related To Municipal Elections; Dates, Early Voting And Any Related Matters (Legal)
City Attorney Don Glywasky provided an update on a possible election date in July. He reported that the Governor has expressed that under the Elction Code he does not believe he has authority to allow a general election to occur on any day other than the uniform election

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dates in May and November. He reported on two lawsuits related to mail in ballots.

5. ACTION ITEMS

5.A. Consider For Approval An Ordinance Of The City Of Galveston, Texas; Modifying Certain Emergency Orders Ratified By City Council In Ordinance 20-28; Making Various Findings And Provisions Related To The Subject, Providing For A Penalty And Providing For An Effective Date.

Motion was made by Mayor Yarbrough, second by MPT Brown, to extend the orders through April 30.

Discussion was held regarding a plan for opening the beaches. City Manager Brian Maxwell reported that the City has not heard back from the GLO regarding a plan to open the beaches.

An amendment to the motion was made by CM Listowski, second by CM Hardcastle, to open the beaches as stated in the draft report as follows: the beaches will be opened to pedestrians in the morning from 6:00 - 9:00 a.m. seven days a week; no masks will be required; no sitting, laying or other stationary act will be allowed on beaches during this time; fishing from rock piers will be allowed during the same days and hours as mentioned above; surfing will be allowed during the same days and hours mentioned above; to be effective Monday, April 27. In favor: Collins, Hardcastle, Listowski, and Cole. In opposition: Yarbrough, Brown, and Bly. Motion carries.

The original motion, with the amendment to reopen the beaches, was unanimously approved.

6. ADJOURNMENT
The meeting was adjourned at 3:45 p.m.

Janelle Williams, City Secretary
Date Approved:

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MINUTES OF THE CITY COUNCIL OF THE CITY OF GALVESTON
WORKSHOP - APRIL 30, 2020

4/30/2020 - Minutes

1. DECLARATION OF A QUORUM AND CALL MEETING TO ORDER
   With a quorum present, the workshop was called to order at 9:00 a.m.

2. ROLL CALL
   Present (via videoconference): Mayor James Yarbrough, Mayor Pro Tem Dr. Craig Brown, Council Member Amy Bly, Council Member David Collins, Council Member Jason Hardcastle, Council Member John Listowski, and Council Member Dr. Jackie Cole.

3. DISCUSSION ITEMS

3.A. Clarification Of Consent And Regular City Council Agenda Items - This Is An Opportunity For City Council To Ask Questions Of Staff On Consent And Regular Agenda Items. (30 Minutes)
Dr. Cole commended staff on the outdoor lighting item; CM Hardcastle commended staff on Item 11K for showing percentages on the change orders; items 8C and 11J were clarified by staff.

3.B. Update On Corona Virus/COVID-19 (B. Maxwell - 30 Minutes)
City Manager Brian Maxwell provided an update on COVID-19. He reported on the Governor/GLO's order to open the beaches without restrictions effective on May 1. Discussion was held regarding the number of cases in Galveston, testing, the opening of fishing piers and charter fishing boats, licenses to use, wearing masks, modifying the current orders, and extending the disaster declaration. Barbara Sanderson provided an update on efforts to help the homeless population.

3.C. Discuss The Budget Impact Of The COVID-19 Pandemic And Related Economic Issues (M. Loftin - 30 Minutes)

Assistant City Manager Mike Loftin provided the following budget impact of the COVID-19 pandemic and related economic issues.

(1) FY2020 Budget Status of COVID-19 Impact: Estimated $7.5 million in lost revenue; $3.06 million ($2.9 million total in General Fund); Sales tax ($3.08 million including General Fund and IDC) and Hotel Occupancy Tax (trickel down loss of $1.28 million); General Fund; $2.5 million net revenue loss made up with expenditure.

(2) FY2021 Strategic Concerns: Post COVID-19 economy including oil/energy sector in Houston and recession that is already underway; Full impact on city revenue won't be known until real estate market goes througha post-pandemic appraisal cycle Spring of 2021 that produces tax revenue for FY2022; How will Galveston bounce back? Suddenly or over time into calendar year 2021; CIP is important to local economy - water and sewer program had been anticipating additional sale of bonds in last half of FY2021; Current condition in municipal bond market makes any new money sale unwise and impossible.

(3) Other FY2021 Budget Issues: Convention Center Surplus Fund - needs approximately $2 millio for ongoing costs; FY20 HOT revenue is $785,000 compared with $2.15 million budget; CARES transit grant - $4.7 million provided directly to city as long as we are urban system; goes through State if we are considered rural and could be substantially reduced; Island Transit's status as urban system up in 2020 - needs congressional support; "No New Revenue" property tax rate - 3.5% revenue growth limit may not force reduction in ta rate.

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(4) FY21-22 Assumptions: Property taxes - initial FY21 tax roll is 15.5 % higher; hearings loss will reduce taxable value to a 6.5%; FY21 includes 1.4% in new construction ($1oo million taxable value) and TIRZ 12 and 14 ($216 million taxable value); FY22 "High Estimate" shows 4.5 % increase in taxable value; FY22 "Low Estimate" shows flat value increase in taxable property value; Sales Taxes - FY22 "High Estimate" on loss of 200,000 jobs (out of 3.2 million total) in region that are recovered steadily over 3-4 years; FY22 "Low Estimate" is based on no economic growth from FY21 to FY22; Industry specific COVID-19 revenue losses

3.D. Discuss Options Available To The City On The Community Development Block Grant Coronavirus (CDBG-CV) Allocation In The Amount Of $714,670 (A. Law/G. McLeod - 30 Minutes)
Alice Law provided information on CDBg-CV eligible activities. Project categories include Public Service - Non-Profit Assistance for COVID-19 Response Project, Income Subsistence Payments for LMI Owner-Occupied; and Personal Protection Equipment (PPE) Distribution Program; Public Facility Improvements - Non-Profit Assistance for COVID-19 Response Project; and Economic Development - Small Business Loan Program. Deputy City Manager Dan Buckley reported that City Staff is not equipped to administer the loan program. City Manager Brian Maxwell advised the City would have to front the money which puts the City at risk. Discussion was held regarding using funds for the Non-Profit Assstance for COVID-19 Response Project which would include the following direct serices: heatlth services, needs and supplies; nutrition services including meals, food, and related services to LMI or Senior Citizens; shelter and services to survivors

3.E. Receive And Discuss A Presentation From Vision Galveston On The 2020 Census (M. Jadidi - 15 Minutes)

3.F. Discussion Of Beach Maintenance Recommendation From The Beach Access And Dune Protection Plan Review Ad Hoc Committee And The Planning Commission - 30 Minutes (C. Gorman)

3.G. Report Of City Council's Park Board Representative (Collins/Yarbrough - 10 Minutes)

4. ADJOURNMENT

Janelle Williams, City Secretary
Date Approved:

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MINUTES OF THE CITY COUNCIL OF THE CITY OF GALVESTON
REGULAR MEETING - APRIL 30, 2020

4/30/2020 - Minutes

1. DECLARATION OF A QUORUM AND CALL MEETING TO ORDER
   With a quorum present, the meeting was called to order at 1:15 p.m.

2. ROLL CALL
   Present (via video conference): Mayor James Yarbrough, Mayor Pro Tem Dr. Craig Brown, Council Member Amy Bly, Council Member David Collins, Council Member Jason Hardcastle, Council Member John Listowski, and Council Member Dr. Jackie Cole.

3. INVOCATION

4. PLEDGE OF ALLEGIANCE

5. CONFLICTS OF INTEREST
   None.

6. PRESENTATIONS/REPORTS OF COUNCIL, OFFICER BOARDS, AND CITY MANAGER

6.A. Pursuant To Texas Government Code Section 551.0415, The City Council May Report On Any Of The Following Items:
1. Expressions of thanks, gratitude, and condolences - **CM Listowski gave thanks and gratitude to the Fire Fighters for their efforts at his neighbor's house fire, as well as the other neighbors for their part in assisting during the fire. The Mayor and Council Members thanked CM Listowski for his part in rescuing the neighbors from a third story balcony.**

2. Information regarding holiday schedules

3. Recognition of individuals
   A. National Beach Safety Week Proclamation - read by City Secretary Janelle Williams.
   B. Fair Housing Month Proclamation - read by City Secretary Janelle Williams.

4. Reminders regarding City Council events

5. Reminders regarding community events

6. Health and safety announcement

7. COMMUNICATIONS AND PETITIONS
   Claims: 20-031 - Dianellie Garcia; 20-032 - Dorothy Cade; 20-033 - Warren Hoffman; 20-034 - John Sweetman.

8. PUBLIC HEARINGS

8.A. Consider For Approval An Ordinance Of The City Of Galveston, Texas, Amending The City Code By Changing The Street Name Of Lockheed Drive To "Gene Lucas Boulevard" Between Jones Drive And Its Terminus East Of Hope Boulevard; Making Various Findings And Provisions Related To The Subject. (T. Tietjens)
Ordinance No. 20-031 was read by caption. Tim Tietjens provided staff comments. The public hearing was opened. No comments were received for this item via the electronic public comment form. The public hearing was closed. Motion was made by MPT Brown, second by

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CM Cole, to approve the ordinance. Unanimously approved.

8.B. Consider For Approval An Ordinance Of The City Of Galveston, Texas, Amending The City Code By Adding The Name "Charlie Roque" To 83rd Street Between Stewart Road And Piper Street; Making Various Findings And Provisions Related To The Subject. (T. Tietjens)
Ordinance No. 20-032 was read by caption. Tim Tietjens provided staff comments. The public hearing was opened. No comments were received for this item via the electronic public comment form. The public hearing was closed. Motion was made by Mayor Yarbrough, second by CM Bly, to approve the ordinance. Unanimously approved.

8.C. Conduct A Public Hearing And Consider For Approval The 2020 Community Development Block Grant (CDBG) And HOME Investment Partnership (HOME) Consolidated Program Objectives And Projects In The Total Amount Of $1,490,525 (CDBG Allocation Of $1,214,844 And HOME Allocation Of $275,681) And CDBG And HOME Program Income Total Estimates Of $60,000 And Amendments To The Citizen Participation Plan. Authorize The City Manager To File A Grant Application With The U.S. Department Of Housing And Urban Development (HUD) And Execute All Necessary Contracts, Certifications, And Documents For The Programs. (A. Law)
Alice Law provided staff comments. The public hearing was opened. A comment from Sherill Hilton was received via the electronic public comment form. The public hearing was closed. Motion was made by Mayor Yarbrough, second by MPT Brown, to approve the 2020 Community Development Block Grant and HOME Programs, with the corrected amount for CDBG and HOME Program income total estimates of $50,000. Unanimously approved.

9. PUBLIC COMMENT
Agenda Items - staff received 108 comments all related to COVID-19 with the following breakdown: 53 in favor of opening the beaches; 8 in favor of keeping the beaches closed; 20 related to opening the businesses and short term rentals; 10 related to the effects of reopening; 1 on the Governor's orders; 3 related to golf courses; 2 questions related to COVID-19; 1 related to wearing face masks; 2 about crowds on the Seawall; 1 related to the homeless population; 1 about child care in Galveston; 2 related to Police and Beach Patrol; 1 question about supply chain issues; and 3 related to swimming pools.

10. ORDINANCES (NOT REQUIRING PUBLIC HEARINGS)

10.A. Consider For Approval An Ordinance Of The City Of Galveston, Texas, Declaring A State Of Disaster And Emergency In The City Of Galveston Related To The Emergence Of The Corona Virus/Covid 19; Extending The State Of Disaster And Emergency In The City Of Galveston Until May 30, 2020, Extending All Emergency Orders Issued By The Mayor And Confirmed By The Council Until May 30, 2020; Making Various Findings And Provisions Related To The Subject, Providing For A Penalty And Providing For An Effective Date. (Legal)
Ordinance No. 20-033 was read by caption. Motion was made by MPT Brown, second by CM Collins, to approve the ordinance. Unanimously approved.

10.B. Consider For Approval An Ordinance Of The City Of Galveston, Texas; Modifying Certain Emergency Orders Ratified By City Council In Ordinance 20-28; Making Various Findings And Provisions Related To The Subject, Providing For A Penalty And Providing For An Effective Date. (Legal)
Ordinance No. 20-034 was read by caption. Motion was made by CM Cole, second by CM Collins, to approve the ordinance. Unanimously approved.

11. CONSENT ITEMS

The following items shall be considered for action as a whole, unless one or more Council Members objects. The City Manager is authorized to execute all necessary documents upon final approval by the City Attorney.

Motion was made by CM Bly, second by CM Hardcastle, to approve Consent Items 11A through 11Y. Unanimously approved.

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11.A. Consider For Approval A Resolution Designating Authorized Signatories For The City's DR-4332 Community Development Block Grant – Disaster Recovery Program Contract Number 20-065-001-B947; Authorizing Signatures On The Depository/Authorized Signatories Designation Form; And Authorizing The City Manager To Execute All Necessary Documents Upon Final Approval By The City Attorney. (D. Anderson)
Resolution No. 20-013

11.B. Consider For Approval A Resolution Of The City Council Of The City Of Galveston, Texas Approving An Interlocal Agreement With The University Of Texas Medical Branch For The Provision Of Water To The UTMB Locations In The City Of Galveston, Providing For Findings Of Fact And Providing For An Effective Date. (Legal)
Resolution No. 20-014

11.C. Consider Approving A Resolution Authorizing The City Of Galveston To Adopt Rules To Ensure The Identification, Security And Confidentiality Of Electronic Solicitations And Providing An Effective Date, Utilizing The City's Current Document Management System. (M. Loftin)
Resolution No. 20-015

11.D. Consider For Approval Of The Grant Terms And Conditions (Grant Agreement) With The Texas Division Of Emergency Management (TDEM) For FEMA Public Assistance (PA) Funding For COVID-19 Eligible Costs And Authorizing The City Manager To Execute All Necessary Documents Upon Final Approval By The Legal Department. (T. Wrobleski)

11.E. Consider For Approval The Award Of RFP #20-10 To UTEAP To Provide An Employee Assistance Program For A Three (3) Year Period. (K. Etienne)

11.F. Consider For Approval A One-Year Extension To The Contract On The Annual Sanitary Sewer And Force Main Rehabilitation Project (RFP 19-14) To T Con Construction, LLC For An Additional Amount Not To Exceed The Council Approved Capital Improvement Plan Budget; Authorizing The City Manager To Execute All Necessary Documents Upon Final Approval By The City Attorney. (T. Pedraza)

11.G. Consider Approval Of Change Order #01 With Angel Brothers Enterprises Ltd., For The 49th Street Improvements From Ave P To Ave S 1/2 Project (RFP #19-29) Decreasing The Contract By $26,062.32 From The Amount Of $3,649,779.25 To The Amount Of $3,623,716.93 (A Cumulative Decrease Of 0.71% From The Original Contract Sum). (D. Anderson)

11.H. Consider Approval Of Change Order #04 With Lucas Construction Company, Inc., For The 27th Street Improvements From Avenue O To Seawall Boulevard (Phase II) Project (RFP #19-12) Increasing The Contract By $19,610.00 From The Amount Of $1,464,877.00 To The Amount Of $1,484,487.00 (A Cumulative Increase Of 9.37% From The Original Contract Sum). Authorizing The City Manager To Execute All Necessary Documents Upon Final Approval By The City Attorney. (D. Anderson)

11.I. Consider Approval Of Change Order #1 To The Agreement With E. P. Brady, Ltd., For The 24 Inch Water Transmission Line From 59th Street Pump Station To The Airport Pump Station (RFP #19-24) Increasing The Project Cost By $33,390.63. This Represents An Increase In The Total Project Cost Of 0.2% From The Original Amount Of $17,159,876.30 To The Amount Of $17,193,266.93. (D. Anderson)

11.J. Consider For Approval Change Order #6 To The Contract With Construction LTD, For The Fire Station #1 New Site Construction And Existing Site Demolition Project Increasing The Contract By $111,738.00 From The Amount Of $10,991,390.03 To The Amount Of $11,103,128.03 And Extending The Contract Term By 60 Days. (D. Anderson)

11.K. Consider For Approval Change Order #7 To The Contract With J. W. Kelso Company, Inc., For The City Of Galveston Public Works Facility Project, Increasing The Contract By $214,618.00 (2.0%) From The Amount Of $11,232,419.20 To The Amount Of $11,447,037.20. (D. Anderson)

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11.L. Consider For Approval Change Order No. 6 To The Contract With Ardent Construction LLC, For The 30th Street Water & Electric Light Station Rehabilitation Project Increasing The Contract By $63,281.00 From The Amount Of $3,086,632.51 To A New Total Amount Of $3,149,913.51 And Adding 136 Days To The Contract Time. (D. Anderson)

11.M. Consider For Approval The Selection Of HRGreen For The Professional Engineering Services For The Solids Handling Building Replacement Project At The Main Wastewater Treatment Plant (WWTP)

11.N. Consider For Approval The Selection Of HRGreen For The Professional Engineering Services For Capacity Improvements In The Terramar Wastewater Treatment Plant (WWTP) Service Area. (D. Christodoss)

11.O. Consider For Approval The Selection Of HRGreen For Professional Engineering Services For Retrofitting The Dewatering Equipment For The Grit Removal System At The Main Wastewater Treatment Plant (WWTP). (D. Christodoss)

11.P. Consider For Approval The Selection Of HRGreen For Professional Engineering Services For Rehabilitation And Improvements Of Lift Stations #34, #37, #49, #52 And #56. (D. Christodoss)

11.Q. Consider For Approval The Selection Of Freese And Nichols For The Development Of The AWIA Risk And Resilience Assessment (RRA) And The Emergency Response Plan (ERP) To Comply With The American Water Infrastructure Act (AWIA) Of 2018. (D. Christodoss)

11.R. Consider For The Approval Of A Resolution Supporting The Transfer Of The Remaining Three (3) Gillig Buses That Are Owned By The City Of Galveston To Gulf Coast Center For The League City Park & Ride, And Thereby Authorizing The City Manager To Execute The Agreement Thereof. (D. Smith)
Resolution No. 20-016

11.S. Consider For The Approval Of The Change Order Payment For The Required Ladder And Platform Repairs To Unit 1830, Which Is A 2002 Fire Department Ladder Truck, To Siddons Martin, For An Additional $9,835.20 To The Previously Approved Amount Of $22,238.13. Funding Source Is The Garage Outside Repairs Account And TML Insurance. (D. Smith)

11.T. Consider For The Approval Of A Resolution Supporting An Extension Of The Interlocal Agreement Between The City Of Galveston, Texas And Harris County (Dba Harris County RIDES), In An Amount Not To Exceed $400,000 In Support Of Subsidized Taxi Services For The Delivery Of ADA Paratransit/Demand Response Transit Services, And Thereby Authorizing The City Manager To Execute The Attached Agreement Thereof. (D. Smith)
Resolution No. 20-017

11.U. Consider For Approval Staffs Recommendation To Hire Grindline Skateparks Inc. For Repairs To The Johnathan M. Romano Skatepark. (M. Rabago)

11.V. Consider For Approval Staffs Recommendation To Hire A&H Electric For Lighting Improvements At Menard Park. Authorizing The City Manager To Execute All Necessary Documents Upon Final Approval By The City Attorney. (M. Rabago)

11.W. Consider For Approval Staffs Recommendation To Hire Four Seasons Development Company Inc. To Replace The Perimeter Fence At The Wright Cuney Recreation Center And Park. (M. Rabago)

11.X. Consider For Approval The Bid From JCR Construction For Solicitation IRFB 20-IRFB-002 Seawall Fort Crockett Park Amenities Re-Paint Project. (M. Rabago)

11.Y. Consider For Approval Minutes Of The Regular Meeting And Executive Session Held On March 24, 2020; And Minutes Of The Special Meetings Held On April 3, 2020, April 9, 2020, And April 16, 2020. (J. Williams)

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12. ACTION ITEMS

12.A. Consider For Approval A Resolution Of The City Council Of The City Of Galveston, Texas, Authorizing The City Manager To Accept Grant Funds From The Moody Endowment For The Purchase Of Personal Protection Equipment For First Responders, Directing The City Manager To Execute All Necessary Documents Relating To The Grant; Directing The City Secretary To Send A Certified Copy Of The Resolution To The Texas Department Of Transportation; Providing For Findings Of Fact And Providing For An Effective Date. (T. Wrobleski)
Motion was made by Mayor Yarbrough, second by MPT Brown, to approve Resolution No. 20-018. Unanimously approved.

12.B. Consider For Approval A Resolution Of The City Of Galveston Denying Texas Gas Service Company's Requested Rate Increase; Requiring The Company To Reimburse The City's Reasonable Ratemaking Expenses; Finding That The Meeting At Which This Resolution Is Passed Is Open To The Public As Required By Law; Requiring Notice Of This Resolution To The Company And The City's Legal Counsel. (Legal)
Motion was made by Mayor Yarbrough, second by CM Hardcastle, to approve Resolution No. 20-012. Unanimously approved.

13. ADJOURNMENT
The meeting was adjourned at 3:05 p.m.

Janelle Williams, City Secretary
Date Approved:

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MINUTES OF THE CITY COUNCIL OF THE CITY OF GALVESTON
WORKSHOP - MAY 28, 2020

5/28/2020 - Minutes

1. DECLARATION OF A QUORUM AND CALL MEETING TO ORDER
   With a quorum present, the workshop was called to order at 10:01 a.m.

2. ROLL CALL

   Present (via video conference): Mayor Pro Tem Dr. Craig Brown, Council Member Amy Bly, Council Member David Collins, Council Member Jason Hardcastle, Council Member John Listowski, and Council Member Dr Jackie Cole. Mayor James Yarbrough joined the meeting at 10:50 a.m.

3. DISCUSSION ITEMS

3.A. Clarification Of Consent And Regular City Council Agenda Items - This Is An Opportunity For City Council To Ask Questions Of Staff On Consent And Regular Agenda Items. (30 Minutes)
Items 8A, 9F, 9G, 9I, 9V, and 10B were clarified by Staff. Items 9P and 9Q are being pulled by Staff and will come back to City Council at the June meeting. CM Hardcastle commended the City Manager for the letter of support to Sandpiper Cove.

3.B. Update On Corona Virus/COVID-19 (B. Maxwell - 20 Minutes)
City Manager Brian Maxwell provided an update on COVID-19. He reported that the city trended up in cases yesterday;there is an oil platform with 75 people on it that started testing positive; we have received notice of CARES Act funding to be used for PPE and other costs associated with COVID-19; CDBG-DR money specific to COVID-19 is on today's agenda to be used for testing restaurant and hospitality industry workers (which is not mandatory), the balance of the money will be used for a tracing program, rental and mortgage assistance, and housing of the homeless population should they test positive.

3.C. Discuss A Draft And/Or Proposed Ordinance Amending The Code Of The City Of Galveston, Chapter 19, "Licenses, Permits And Business Regulations", To Amend, Article VI "Short Term Rentals" By Adding Regulations And Making Clarifications Pertaining To The Collection Of City Of Galveston Hotel Occupancy Tax (HOT Tax).
Assistant City Manager Mike Loftin provided a HOT collection overview, and a history of hotel occupancy collections for FY2007 through the first six months of FY2020. The goal of the draft ordinance is to induce the rental companies to collect and remit local and state tax, the city to maintain access to the data, and we want them to use the Park Board's registration number to discreetly identify short term rental properties. City Attorney Don Glywasky reported on issues with the voluntary collection agreement and not being able to audit payments. He advised that payment of the hotel occupancy tax should remain the responsibility of the short term rental owner. Staff members will continue to have internal meetings and possibly meet with the short term rental association and Kay Terry at the Park Board to get additional input. This item will be placed on the June workshop agenda for additional discussion.

3.D. Report Of City Council's Park Board Representative (Collins/Yarbrough - 10 Minutes)
CM Collins reported on the following: hotel revenues were up over the weekend; lots of day trippers on the island; issues of trash being left behind; the City Attorney is going to review the litter ordinance; the Park Board is doing a great job cleaning up trash after the weekends; he encourages everyone to go out on Tuesday to see how clean the beaches are; he will be asking Michael Woody at the CVB to do a promotion on keeping the beaches clean and to look at how other coastal cities manage trash; and he announced that Michael Moser is retiring, and the new CFO will start in June.

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4. ADJOURNMENT
   The meeting was adjourned at 11:15 a.m.

Janelle Williams, City Secretary
Date Approved:

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MINUTES OF THE CITY COUNCIL OF THE CITY OF GALVESTON
REGULAR MEETING - MAY 28, 2020

5/28/2020 - Minutes

1. DECLARATION OF A QUORUM AND CALL MEETING TO ORDER
   With a quorum present, the meeting was called to order at 1:15 p.m.

2. ROLL CALL
   Present (via video conference): Mayor James Yarbrough, Mayor Pro Tem Dr. Craig Brown, Council Member Amy Bly, Council Member David Collins, Council Member Jason Hardcastle, Council Member John Listowski, and Council Member Dr. Jackie Cole.

3. CONFLICTS OF INTEREST
   None.

4. PRESENTATIONS/REPORTS OF COUNCIL, OFFICER BOARDS, AND CITY MANAGER

4.A. Pursuant To Texas Government Code Section 551.0415, The City Council May Report On Any Of The Following Items:
1. Expressions of thanks, gratitude, and condolences - **CM Bly congratulated all of the 2020 graduates, especially the Ball High School graduates. City Manager Brian Maxwell offered condolences to John Schmidt and his family for the passing of GG Schmidt.**

2. Information regarding holiday schedules

3. Recognition of individuals

4. Reminders regarding City Council events

5. Reminders regarding community events

6. Health and safety announcement

5. COMMUNICATIONS AND PETITIONS
   Claims: 20-035 - Jose Pulido; 20-036 - Nora Garcia; 20-037 - Terri Valiante; 20-038 - Spencer Washington; 20-039 - Catherine Brown Morris; 20-040 - Juan Ramirez.

6. PUBLIC HEARINGS

6.A. Conduct A Public Hearing And Consider For Approval The 2020 Community Development Block Grant-CV (CDBG-CV) Coronavirus Aid, Relief, And Economic Security (CARES Act) Supplemental Funding In The Amount Of $442,934. Amendment To The 2019 Consolidated Plan To Implement Coronavirus Pandemic Disaster Projects For The CDBG-CV Funding Of $714,670. Authorize The City Manager To File A Grant Application (Amendment) With The U.S. Department Of Housing And Urban Development (HUD) And Execute All Necessary Contracts, Certifications, And Documents For The Programs. (A. Law)
Alice Law provided staff comments. The public hearing was opened. No comments were received for this item. The public hearing was closed. Motion was made by Mayor Yarbrough, second by CM Bly, to approve this item. Unanimously approved.

7. PUBLIC COMMENT
   Summary of public comments (12 received) - four related to trash on the beaches and city streets and a suggestion to create a litter task force; one in favor of prohibiting parking on the beaches;

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one suggestion for Seawall crowds; one request to limit tourists for residents; and essential workers' safety on the island; one related to face masks; one request to ask medical professionals not to wear scrubs in public; one related to a letter sent to the Bermuda Beach HOA regarding parking spaces to comply with the beach access plan; one request for the city to allow parking of utility trailers on the streets; and one thank you to City Council for your hard work during the crisis.

8. ORDINANCES (NOT REQUIRING PUBLIC HEARINGS)

8.A. Consider For Approval An Ordinance Of The City Of Galveston, Texas, Amending Chapter 33, "Taxation" Of "The Code Of The City Of Galveston 1982, As Amended" By Amending The Procedures For Allocating Net Disbursible Funds To Eligible Groups By Allowing For Re-Allocation In The Event Of Significant Reductions To Hotel Occpancy Tax; Making Various Findings And Provisions Related To The Subject And Providing For An Effective Date. (M. Loftin)
The Ordinance was read by caption. Motion was made by CM Collins, second by MPT Brown, to refer this Ordinance back to the Arts & Historic Preservation Advisory Board for their recommendation before coming back to City Council. Unanimously approved.

8.B. Consider For Action An Ordinance Of The City Of Galveston, Texas, Adopting The Homestead, Elderly, And Disabled Ad Valorem Tax Exemptions For Tax Year 2020, Pursuant To Chapter 33, Section 33-24 Of The Code Of The City Of Galveston 1982, As Amended; Making Various Findings And Provisions Related To The Subject. (M. Loftin)
Ordinance No. 20-035 was read by caption. Motion was made by CM Bly, second by CM Cole, to approve the Ordinance. Unanimously approved.

8.C. Consider For Approval An Ordinance Of The City Of Galveston, Texas, Declaring A State Of Disaster And Emergency In The City Of Galveston Related To The Emergence Of The Corona Virus/Covid 19; Extending The State Of Disaster And Emergency In The City Of Galveston Until June 30, 2020; Making Various Findings And Provisions Related To The Subject, Providing For A Penalty And Providing For An Effective Date. (Legal)
Ordinance No. 20-036 was read by caption. Motion was made by MPT Brown, second by CM Cole, to approve the Ordinance. Unanimously approved.

9. CONSENT ITEMS

The following items shall be considered for action as a whole, unless one or more Council Members objects. The City Manager is authorized to execute all necessary documents upon final approval by the City Attorney.

Motion was made by CM Hardcastle, second by CM Collins, to approve the Consent Items except 9P and 9Q. Unanimously approved.

9.A. Consider For Approval A Resolution Of The City Council Of The City Of Galveston, Texas, Approving An Interlocal Agreement With The Texas Department Of Transportation ("TxDOT") Whereby The City Of Galveston Will Provide Galveston Police Officers For Law Enforcement And Traffic Control Operations On Ferry Road And At The Galveston Ferry Landing; Authorizing The City Manager To Sign The Interlocal Agreement; Directing The City Secretary To Send A Certified Copy Of This Resolution To The Texas Department Of Transportation; Providing For Findings Of Fact And Providing For An Effective Date. (V. Hale)
Resolution No. 20-019

9.B. Consider For Approval A Resolution Of The City Council Of The City Of Galveston, Texas, Authorizing The City Manager To Accept A Coronavirus Aid, Relief, And Economic Security (CARES) Act Grant From The Texas Department Of Transportation, Aviation Division To Prevent, Prepare For, And Respond To The Impacts Of The COVID-19 Public Health Emergency On Airport Operations For Fiscal Year 2020 (M. Shahan).
Resolution No. 20-020

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9.C. Consider For Approval A Resolution Of The City Council Of The City Of Galveston, Texas, Authorizing The City Manager To Accept Grant Funds From The Moody Endowment For The Purpose Of Assisting The City Response To The Covid-19 Crisis; Directing The City Manager To Execute All Necessary Documents Relating To The Grant; Providing For Findings Of Fact And Providing For An Effective Date. (T. Wrobleski)
Resolution No. 20-021

9.D. Consider For Approval Of A Contract With Plexos Group, LLC, For The Community Development Block Grant (CDBG) Regional Administrative Services (RFP-20-12). Authorizing The City Manager To Execute All Necessary Documents Upon Final Approval By The City Attorney. (T. Wrobleski)

9.E. Consider For Approval A Contract With Plexos Group LLC, For The Community Development Block Grant (CDBG) MIT Administrative Services (RFP-20-11). Authorizing The City Manager To Execute All Necessary Documents Upon Final Approval By The City Attorney. (T. Wrobleski)

9.F. Consider Approval Of DCMC Partners Task Order #4 Authorizing The Expenditure Of An Amount Not To Exceed $30,000.00 For Technical Assistance And Disaster Consulting Services Related To COVID-19 Activities And Authorize The City Manager To Sign All Necessary Documents Upon Final Approval By The City Attorney. (T. Wrobleski)

9.G. Consider For Acceptance A Grant Award From The National Endowment For The Arts (NEA) For Assistance In Developing The Galveston Arts And Cultural Master Plan. Authorizing The City Manager To Sign All Necessary Documents Upon Final Approval By The City Attorney. (T. Wrobleski)

9.H. Consider For Approval The Retention Of Temporary Accounting Services From AccounTemps Through HGAC Purchasing Cooperative Contract #TS06-17 For Closeout And Audit Services For Hurricane Ike To Assist The FEMA Public Assistance Program Manager, For An Additional Amount Not To Exceed $30,000. (T. Wrobleski)

9.I. Consider For Approval The Grant Terms And Conditions (Grant Agreement) With The Texas Division Of Emergency Management (TDEM) For Coronavirus Relief Fund (CRF) For COVID-19 Eligible Costs, And Authorize The City Manager To Execute All Necessary Documents Upon Final Approval By The Legal Department. (T. Wrobleski)

9.J. Beach Surveying - One-Year Renewal Option Of Interlocal And Contract (D. Henry)

9.K. Consider For Approval The Amendments To The HOME Investment Partnerships Program (HOME) Projects (Program Years 2017–2019) For The Reallocation Of 2017-2019 Community Housing Development Org. Funding Of $115,488.50 To Short-Term Tenant-Based Rental Assistance And 2019 Tenant-Based Rental Assistance Program Funding Of $38,797.50 To 2019 HOME Program Administration And A Revised Scope For The 2019 Tenant-Based Rental Assistance Balance Of Funds To Allow For The Provision Of Short-Term Rental Assistance. Authorize The City Manager To Execute All Necessary Contracts, Certifications, And Documents For The Projects. (A. Law)

9.L. Consider Approving The Purchase Of IGM Technologies Gravity Lease Management Extension To The Existing Contract For The Software Used To Prepare The Comprehensive Annual Financial Report. (M. Loftin)

9.M. Consider For Approval The Payment Of $35,445.38 To Mustang Rental Services For The Cost Of Repairs To A CAT259 Skid Loader Rented By The Galveston Public Works Department / Drainage Division And Damaged In A One Vehicle Rollover Incident. Estimated Insurance Reimbursement From TMLIRP Is $35,198.38. (R. Simmons)

9.N. Consider For Approval The Purchase Of 3 Sets Of Personal Protective Equipment (PPE) Along With Additional Replacement PPE Items From NAFECO Through Buy Board (Contract #603-20) For A Total Amount Of $23,331.90. Funding For The PPE's Will Come From Our Protective Clothing Account. (C.

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Olsen)

9.O. Consider For Approval The Renewal Of The Annual Maintenance Support Agreement For A 3-Year Term For City's Financial And Human Resources Software System, Banner, Awarding The Contract To Avenu Government Systems, LLC In The Amount Of $240,793.59 (H. Dean).

9.P. Consider For The Approval A 3-Year Contract, With The Option To Extend The Contract For Two One-Year Terms, For A Total Of Five Years, With No Cost To The City. This Contract Will Continue Giving People Options To Pay To Park Using A Smart Phone Or Other Electronic Device, Which The Marshals Office, Parking Enforcement Division, Already Have In Operation For Paying To Park And Authorize The City Manager To Execute The Contract Upon Final Approval By The City Attorney. There Will Be No Funding Source. (B. Stroud)
Pulled at the request of staff.

9.Q. Consider For The Approval A 3-Year Contract With Mitchell Time And Parking, With The Option To Extend The Contract For Two One-Year Terms, For A Total Of Five Years. We Will Be Utilizing The National Cooperative Purchasing Alliance With Parkeon Using The Contract Number 05-39. This Contract Will Give The City Continued Support And Maintenance For The 16 Strada Pay Stations In The Downtown Area, Which The Marshals Office, Parking Enforcement Division, Already Have In Operation For Paying To Park And Authorize The City Manager To Execute The Contract Upon Final Approval By The City Attorney. Funding Will Be From The Parking Management Fund. (B. Stroud)
Pulled at the request of staff.

9.R. Consider For Approval The Award Of A Contract To Republic Services For The Rental And Disposal Of Sanitary Sewer Solid Waste Containers, From All Of The City Of Galveston's Wastewater Treatment Plants, (IRFP #20-IRFP-04), At An Estimated Cost Not To Exceed $45,000.00 Annually For A Term Of Three Years With An Option To Extend The Contract Up To Two (2) Additional Years. (T. Pedraza)

9.S. Consider For Approval A Resolution Adopting Policies To Ensure The City Is Eligible To Receive And Use CDBG-DR Funding For City's DR-4332 Community Development Block Grant - Disaster Recovery Program Contract Number 20-065-001-B947 And Authorizing The City Manager To Execute All Necessary Documents Upon Final Approval By The City Attorney. (D. Anderson)
Resolution No. 20-024

9.T. Consider For Approval Change Order #1 To The Contract With Angel Brothers Enterprises, LTD, For The Seawall Boulevard Mill And Overlay Project From Boddeker Road To SH87 (Ferry Road) In The Amount Of $132,059.71. Authorizing The City Manager To Execute All Necessary Documents Upon Final Approval By The City Attorney. (D. Anderson)

9.U. Consider For Approval An Agreement Between Health Management Systems ("HMS") And The Chapter 172 Health Benefits Plan Board Of Trustees, Allowing HMS To Perform An Examination, Audit Or Other Evaluation Of The Documents, Files, Books And/Or Other Records Pertaining To The Health Care Benefit Claims Paid By A Claims Administrator For The City's Group Health Plan(K. Etienne).

9.V. Receive And File The Following Documents:

10. ACTION ITEMS

10.A. Consider For Approval A Resolution Of The City Council Of The City Of Galveston, Texas, Supporting The Port Of Galveston's Proposed West End Cargo Corridor Complex Project; Making Various Findings And Provisions Related To This Subject; And Providing For An Effective Date. (Brown/Yarbrough)
Motion was made by MPT Brown, second by CM Hardcastle, to approve Resolution No. 20-022. Unanimously approved.

10.B. Discuss And Consider For Action A Request For Approval Of Sale Of Narrow Strip Of Land Located Between 1319 Pilot Lane And The Crash Boat Basin (M. Jadidi)

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Motion was made by CM Cole, second by MPT Brown, to approve the sale of a narrow strip of land located between 1319 Pilot Lane and the Crash Boat Basin. Unanimously approved.

10.C. Consider For Approval A Resolution Of The City Council Of The City Of Galveston, Texas, Establishing The Recycling Ad Hoc Committee; Providing For The Committee's Duties, Term, Membership, Quorum, Voting, Meetings, And Rules Of Procedure; Providing For Findings Of Fact And Providing For An Effective Date. (Cole/Yarbrough)
Motion was made by CM Cole, second by MPT Brown, to approve Resolution No. 20-023. Unanimously approved.

10.D. Consider For Approval Appointments To The Following City Boards, Commissions, And Committees:

Galveston Island Redevelopment Authority/Galveston Housing Finance Corporation/Galveston Property Finance Authority - MPT Brown nominated John Manlove and Leon Phillips; CM Collins nominated Kyle Albright and Lisa Blair; Mayor Yarbrough nominated Patricia Bolton-Legg; CM Hardcastle nominated Chris Robb; and CM Cole nominated John Lightfoot. Motion was made by MPT Brown, second by CM Collins, to appoint the following members: John Manlove, Kyle Albright, Lisa Blair, Leon Phillips, Patricia Bolton-Legg, Chris Robb, and John Lightfoot. Unanimously approved.

Recycling Ad Hoc Committee - Mayor Yarbrough nominated Paul Sivon; MPT Brown nominated Cody Wright; CM Bly nominated Joanie Steinhaus; CM Collins nominated Matt Havard; CM Listowski nominated Susan Syler; and CM Cole nominated Dorothy Trevino. Motion was made by CM Collins, second by Mayor Yarbrough, to appoint the following members: Paul Sivon, Cody Wright, Joanie Steinhaus, Matt Havard, Susan Syler, and Dorothy Trevino. Unanimously approved. Motion was made by Mayor Yarbrough, second by MPT Brown, to appoint CM Cole as an ex officio member. Unanimously approved.

Zoning Board of Adjustments and Appeals - Motion was made by CM Collins, second by Mayor Yarbrough, to move Sharon Thompson from Alternate 2 to Position 5. Unanimously approved.

11. ADJOURNMENT
The meeting was adjourned at 2:00 p.m.

Janelle Williams, City Secretary
Date Approved:

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MINUTES OF THE CITY COUNCIL OF THE CITY OF GALVESTON
SPECIAL MEETING - JUNE 11, 2020

6/11/2020 - Minutes

1. DECLARATION OF A QUORUM AND CALL MEETING TO ORDER
   With a quorum present, the meeting was called to order at 9:15 a.m.

2. ROLL CALL
   Present (via video conference): Mayor James Yarbrough, Mayor Pro Tem Dr. Craig Brown, Council Member Amy Bly, Council Member David Collins, Council Member Jason Hardcastle, Council Member John Listowski, and Council Member Dr. Jackie Cole.

3. DISCUSSION ITEMS

   3.A. Interview Applicants For City Boards, Commissions, And Committees
   The City Council interviewed the following Park Board Applicants: Jan Collier, Blair Curra, Sherrill Hilton, Bryan Manuele, Joan Marshall, Jackie Neff, Maureen Patton, Anthony Rios, Paul Sivon, Harry St. John, and Jason Worthen.

4. ADJOURNMENT
   The meeting was adjourned at 11:30 a.m.

Janelle Williams, City Secretary
Date Approved:

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City of Galveston

CAPITAL PROJECTS
STAFF REPORT

June 18, 2020

To: Brian Maxwell, City Manager
Hon. Mayor and City Council Members

From: J. Dudley Anderson, Building Program Manager

RE: Consider approval of a contract with RAC Industries, LLC for Teichman Road Waterline (RFP#20-09) in the amount of $2,551,033.65 and approval of a total project cost of $2,621,033.65. Authorizing the City Manager to execute all necessary documents upon final approval by the City Attorney.

I. Background

A. The City of Galveston accepted a proposal from AWC Engineering February 2019 to design improvements to the delivery of water and the street surface along Teichman Road.

II. Current Situation

A. The project was advertised as RFP #20-09.
B. Five (5) responsive proposals were received on March 9, 2020.
C. RAC Industries, LLC provided the highest scoring proposal with a proposed a cost of $2,312,061.50 (without 10% contingency) which was within the project anticipated costs. Negotiations and value engineering between the City and RAC Industries, LLC confirmed the proposed base cost as reasonable. The City requested a best and final offer to include a 10% contingency to allow for encountering unknowns in the construction area. The resultant best and final offer is $2,551,033.65 which is less than the anticipated cost of construction for this project.
D. AWC Engineering is the Engineer of Record and has recommended acceptance of the best and final offer from RAC Industries, LLC for this project.

III. Impact or ramifications:

The project is necessary to provide more efficient drainage in the project area and for the system to connect to a planned storm water pump station to discharge into the ship channel.

IV. Alternatives in order of priority

A. Approve a contract with RAC Industries, LLC for Teichman Road Waterline in the amount of $2,551,033.65 and approval of a total project cost of $2,613,267.65. Authorizing the City Manager to execute all necessary documents upon final approval by the City Attorney.
B. Do not approve the request.

V. Recommendation

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A. Approve a contract with RAC Industries, LLC for Teichman Road Waterline in the amount of $2,551,033.65 and approval of a total project cost of $2,613,267.65. Authorizing the City Manager to execute all necessary documents upon final approval by the City Attorney.

VI. Fiscal Impact Report

Requested by:	J. Dudley Anderson Building Program Manager
Funding Source:	CO Bonds
Construction Cost	$ 2,551,033.65
Construction Administration	$ 35,000.00
Material Testing & design	$ 35,000.00
Total Cost of Implementation	**$ 2,621,033.65**

Respectfully Submitted,

J. D. Anderson

J. Dudley Anderson
Building Program Manager

ARCENEAUX WILSON & COLE
engineering | surveying | planning

June 18, 2020

Mr. Dudley Anderson
City of Galveston
823 Rosenberg
Galveston, TX 77550

RE: RECOMMENDATION OF AWARD OF CONTRACT
Teichman Road Waterline Water Distribution System Improvement
AWC Job No. COG-220

Dear Mr. Anderson:

On, March 9, 2020 the City of Galveston received five (5) sealed bids for **Teichman Road Waterline Water Distribution System Improvements** in Galveston, Texas. The bids were opened at 3:15 pm and the results read aloud in the public bid opening.

On behalf of the City of Galveston, Arceneaux Wilson & Cole (AWC) has evaluated the bid documentation for each submitted bid and tabulated the results. All Submittal Packages were submitted with the required contents and acknowledged receipt of Addenda Nos. 1. No substitutions were submitted.

With consideration of the available budget, AWC recommends awarding the project based on the results of Total Base Bid including Alternate "A". AWC has determined that **RAC Industries, LLC** submitted the lowest, responsive Total Amount Bid Including Alternate "A" in the amount of **$2,551,033.65**. A copy of the **Certified Contractor Best & Final Offer Tabulation** is enclosed for your information.

Based on their references and past experience, we recommend that the City of Galveston award the contract for **Teichman Road Waterline Water Distribution System Improvements to RAC Industries, LLC** on the basis the lowest responsive Total Amount Bid including Alternate "A" in the amount of **$2,551,033.65**.

409.724.7888
2901 Turtle Creek Dr., Suite 320
Port Arthur, TX 77642
awceng.com

If you have any questions or require additional information, please do not hesitate to contact the undersigned by email at Calvin.Prosen@awceng.com or by phone at 409-724-7888.

ARCENEAUX WILSON & COLE LLC
TEXAS REGISTERED ENGINEERING FIRM F- 16194

Calvin D. Prosen, PE
Sr. Project Manager

Attached: Contractor Best & Final Offer Tabulation

RESOLUTION NO. 20 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GALVESTON, TEXAS RELATED TO THE ONGOING PUBLIC HEALTH EMERGENCY IN THE STATE OF TEXAS AND CITY OF GALVESTON, ACKNOWLEDGING INCREASE RISK OF SPREAD DUE TO LARGE CROWDS OF VISITORS TO THE ISLAND, REITERATING RECOMMENDATIONS TO THE CITIZENS OF THIS CITY TO PROTECT THEMSELVES FROM INFECTION, AND ENCOURAGING EMPLOYERS TO TAKE ANY FEASIBLE PROTECTIVE MEASURES TO PROTECT THEIR EMPLOYEES FROM EXPOSURE, AND PROVIDING FOR FINDINGS OF FACT AND FOR AN EFFECTIVE DATE.

WHEREAS, on Monday June 3, 2020 the Governor of the State of Texas issued an executive order announcing the third phase of reopening of the State and on June 15, 2020 the Texas Department of Health and Human Services reported a record number of 2,287 lab confirmed COVID-19 patients currently hospitalized in the State; and

WHEREAS, the Texas Department of Health and Human Services has further reported that in neighboring Harris County there are 9,520 active Covid-19 cases; and

WHEREAS, with the Governor's reopening of the State the City of Galveston has experienced dramatic increases in the number of visitors to the Island many of whom are from Harris County with crowded conditions seen in many venues; and

WHEREAS, the Governor has prohibited cities from enacting public health restrictions more restrictive than allowed by his own Executive Orders frustrating the ability of this City to protect its citizens from the spread of Covid-19; and

WHEREAS, the City Council recognizes the ongoing risk to its citizens and can only encourage its citizens to take those steps set forth herein as control measures to prevent spread of the Covid -19 and wishes to reiterate those measures to its citizens and urge adherence to safety practices to the greatest degree possible.

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

SECTION 1. The findings and recitations set out in the preamble to this Resolution are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2. The City Council of the City of Galveston, Texas hereby urges the citizen of the City of Galveston, as well as all visitors to the Island to follows the following practices to control the spread of the Covid-19 infection:

a) Citizens should wash their hands frequently and should scrub them for a period of at least 20 seconds;

b) Citizens should wear masks in public places, especially locations with concentrations of people such as grocery stores and retail locations;

c) Citizens should refrain from touching their faces with their hands;

d) Citizens who feel ill should immediately self-quarantine in their own homes and seek testing to determine if they have been exposed to Covid-19;

e) Citizens should continue to follow "social distancing" by maintaining at least six feet of separation between themselves and the next person;

f) Citizens should carry and use hand sanitizer of at least 60 percent alcohol to ensure continued cleanliness;

g) Citizens who are in retail or restaurant locations who are not comfortable the establishment is taking steps such as frequent cleaning and distancing should consider leaving the establishment;

h) Employers should continue to monitor their practices of frequent cleaning of their establishments and providing their employees necessary equipment to maintain hygiene in the establishment; and

i) All citizens should accept that while these measures are of no guarantee, adherence to them is an exercise of personal control and responsibility to help control the spread of Covid-19.

SECTION 3. The City Council encourages and urges the citizens of the City of Galveston, as well as all visitors to the Island to follow the practices on a continuous basis until significant reduction in the number of cases has been achieved.

SECTION 4. This Resolution shall be and become effective from and after the date of its adoption.

APPROVED AS TO FORM:

_____

DONALD S. GLYWASKY
CITY ATTORNEY

I, Janelle Williams, Secretary of the City Council of the City of Galveston, do hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the City Council of the City of Galveston at its Regular Meeting held on the 25th day of June, 2020, as the same appears in records of this office.

IN TESTIMONY WHEREOF, I subscribe my name hereto officially under the corporate seal of the City of Galveston this _____ day of _____, 2020.

_____
Secretary for the City Council
of the City of Galveston