



# CITY COUNCIL REGULAR MEETING CITY OF BAY CITY

Tuesday, February 27, 2024 at 6:00 PM  
COUNCIL CHAMBERS | 1901 5th Street

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## COUNCIL MEMBERS

**Mayor:** Robert K Nelson

**Mayor Pro Tem:** Blayne Finlay

**Council Members:** Benjamin Flores, Bradley Westmoreland, Becca Sitz, Jim Folse

### Vision Statement

*Through a united and collaborative effort, we seek to grow the City of Bay City with a diverse culture that is proud to call Bay City home. We envision a thriving family-centered community where citizens are involved in the future development of our city. We desire our citizens to work, play, worship and shop in the community in which we live. Visitors are welcomed and encouraged to enjoy the friendly environment and amenities the citizens and business owners have created together.*

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## AGENDA

**THE FOLLOWING ITEM WILL BE ADDRESSED AT THIS OR ANY OTHER MEETING OF THE CITY COUNCIL UPON THE REQUEST OF THE MAYOR, ANY MEMBER(S) OF COUNCIL AND/OR THE CITY ATTORNEY:**

*ANNOUNCEMENT BY THE MAYOR THAT COUNCIL WILL RETIRE INTO CLOSED SESSION FOR CONSULTATION WITH CITY ATTORNEY ON MATTERS IN WHICH THE DUTY OF THE ATTORNEY TO THE CITY COUNCIL UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH THE OPEN MEETINGS ACT (TITLE 5, CHAPTER 551, SECTION 551.071(2) OF THE TEXAS GOVERNMENT CODE).*

## CALL TO ORDER AND CERTIFICATION OF QUORUM

### INVOCATION & PLEDGE

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

*Councilman Benjamin Flores*

### MISSION STATEMENT

*The City of Bay City is committed to fostering future economic growth by collaborating with our citizens, employers, current and future businesses, as well as the Community and Economic Development Centers. We strive to deliver superior municipal services and to invest in quality-of-life initiatives such as housing, businesses, jobs and activities for all citizens. We make a concerted effort to respond to resident's concerns in a timely and professional manner in order to achieve customer satisfaction.*

*Councilman Benjamin Flores*

**APPROVAL OF AGENDA****PUBLIC COMMENTS**

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

**ITEMS, COMMENTS AND/OR ACKNOWLEDGEMENTS FROM CITY MANAGER****ITEMS, COMMENTS AND/OR ACKNOWLEDGEMENTS FROM THE MAYOR AND COUNCIL MEMBERS****CONSENT AGENDA ITEMS FOR CONSIDERATION AND/OR APPROVAL**

1. **City Council Workshop meeting minutes of January 9, 2024.**

**DEPARTMENT REPORTS**

2. **Public Works report and presentation.** Krystal Mason, Assistant Public Works Director
3. **2023 TMLDA Achievement of Excellence in Libraries Award.** Samantha Denbow, Library Director
4. **Municipal Court 1st Quarter Report.** Katy Plunkett, Court Administrator

**REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL**

5. **Interlocal Agreement ~ Discuss, consider, and/or approve the Interlocal Cooperation Contract between the Department of Public Safety of the State of Texas (DPS) and the Municipal Court of the City of Bay City, Texas.** Katy Plunkett, Municipal Court Administrator
6. **Memorandum of Understanding ~ Discuss, consider, and/or approve a Memorandum of Understanding between the City of Bay City and Bay City Gas Company for the Construction and Maintenance of the BMX Bicycle Park.** Scotty Jones, Interim City Manager
7. **Resolution ~ Discuss, consider, and/or approve a Resolution authorizing the City of Bay City Community Development Corporation to enter into a performance agreement which provides economic incentives to 3D Efficiencies LLC, DBA Fit For Life for the expansion of Fit For Life in Bay City, Texas and providing incentives not to exceed a total amount of \$80,000.00 over the five year term of the agreement (Second Reading).** Jessica Russell, BCCDC Executive Director
8. **Contracts ~ Discuss, consider, and/or approve the selection of engineering, geotechnical, and architectural service providers to assist with project**

**implementation for various City projects utilizing local, state and federal funding for the City of Bay City. Gabriel Lopez, Engineering Tech**

- 9. Contract ~ Discuss, consider, and/or approve the Contract Work Order No. 11 with Garver, LLC for assessment services and preliminary engineering phase services for the 5th Street waterline rehabilitation project. Herb Blomquist, Public Works Director**
- 10. Discuss, consider, and/or approve: a resolution between the City of Bay City and Texas Department of Transportation for 90/10 reimbursement grant funding to install an updated automated weather observing system at the Bay City Regional Airport and authorize the Mayor to execute a contract between the City of Bay City and Texas Department of Transportation.**
- 11. Discuss, consider, and/or approve: a resolution between the City of Bay City and Texas Department of Transportation to act as agent for the runway 13/31 rehab project at the Bay City Regional Airport and authorize the Mayor to execute a contract between the City of Bay City and Texas Department of Transportation.**

#### **CLOSED / EXECUTIVE SESSION**

- 12. Executive Session pursuant to Texas Government Code Section 551.072 (Deliberation regarding Real Property).**
- 13. Executive Session pursuant to the Texas Government Code Section 551.087 to discuss economic development negotiations.**
- 14. Personnel ~ Closed meeting to discuss personnel matters in accordance with Title 5, Section 551.074 of the Texas Government Code (To discuss appointment, employment, evaluation, responsibilities and duties, reassignment, discipline or dismissal of an officer or employee, or to hear a complaint or charge against an officer or employee: Mayor and Council**

#### **RECONVENE AND ACTION**

#### **ITEMS / COMMENTS FROM THE MAYOR, COUNCIL MEMBERS AND CITY MANAGER**

#### **ADJOURNMENT**

#### **AGENDA NOTICES:**

**Attendance By Other Elected or Appointed Officials:** It is anticipated that members of other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the other boards, commissions and/or committees of the City, whose members may be in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such

in attendance unless such item and action is specifically provided for on an agenda for that board, commission or committee subject to the Texas Open Meetings Act.

### **CERTIFICATION OF POSTING**

This is to certify that the above notice of a Regular Called Council Meeting was posted on the front window of the City Hall of the City of Bay City, Texas on **Friday, February 23, 2024 before 6:00 p.m.** Any questions concerning the above items, please contact the Mayor and City Manager's office at (979) 245-2137.

# CITY OF BAY CITY

## MINUTES • JANUARY 09, 2024

**COUNCIL  
CHAMBERS | 1901  
5th Street**

**City Council Workshop**

**5:00 PM**

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



### **Mayor**

Robert K. Nelson

### **Mayor Pro Tem**

Blayne Finlay

### **Councilman**

Jim Folse

### **Councilman**

Bradley Westmoreland

### **Councilwoman**

Becca Sitz

### **Councilman**

Benjamin Flores

*Through a united and collaborative effort, we seek to grow the City of Bay City with a diverse culture that is proud to call Bay City home. We envision a thriving family-centered community where citizens are involved in the future development of our city. We desire our citizens to work, play, worship and shop in the community in which we live. Visitors are welcomed and encouraged to enjoy the friendly environment and amenities the citizens and business owners have created together.*

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**CALL TO ORDER**

The meeting was called to order by Mayor Robert K. Nelson at 5:05 p.m.

**CERTIFICATION OF QUORUM**

Quorum present

**PRESENT**

Mayor Robert K. Nelson  
Mayor Pro Tem Blayne Finlay  
Councilman Benjamin Flores  
Councilman Jim Folse  
Councilman Brad Westmoreland  
Councilwoman Becca Sitz

**PUBLIC COMMENTS**

Anne Marie Odefey, City Attorney, introduced Carter Keating who is a graduate of Texas A&M and has his Masters in International Affairs. Mr. Keating will be temporally working with their law firm.

**REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND / OR APPROVAL**

**1. Discuss, consider, and/or take action regarding the schedule of Regular Council Meetings.**

Shawna Burkhart, City Manager, opened discussions stating that Councilman Westmoreland requested discussions regarding meeting once or twice a month. Councilman Westmoreland stated that he knows of Cities that meet once a month and meet for Special Called when needed. Councilman Westmoreland added that he wanted to push us to think differently about our agenda and wondered if that would drive up attendance of citizens if meetings were once a month. Councilman Folse requested that he would like a schedule of the meetings now to make a determination. Ann Marie Odefey, City Attorney, added that the Charter requires two meetings. Shawna Burkhart was concerned with intent of law of open meetings and knowing when we are having a meeting. Council decided that March, November, and December they would have two meetings on the 2nd Tuesday and review the schedule and draft Ordinance at the next meeting.

Councilman Westmoreland requested the Vision and Strategic Plan review start earlier this year. Councilman Flores requested a SWOT analysis on the Strategic Plan. Anne Marie Odefey added that Scotty Jones had discussed a consultant.

**ADJOURNMENT**

Minutes

City Council Workshop

January 09, 2024

Council adjourned the meeting at 5:34 p.m.

**PASSED AND APPROVED**, this 27th day of February 2024.

\_\_\_\_\_  
ROBERT K. NELSON, MAYOR

CITY OF BAY CITY, TEXAS

\_\_\_\_\_  
JEANNA THOMPSON

CITY SECRETARY



**CITY OF BAY CITY**  
 1901 FIFTH STREET  
 BAY CITY, TEXAS 77414  
 (979) 245-2137  
 FAX: (979) 323-1626

## AGENDA ITEM SUBMISSION FORM

Any item(s) to be considered for action by the City Council, must be included on this form, and be submitted along with any supporting documentation. Completed Agenda Item Submission forms must be submitted to the City Secretary's Office no later than 4:00 p.m. on the Monday of the week prior to the Regular Council meeting.

**Requestor Name:** Denbow, Samantha **Date Submitted:** 2/20/2024  
*Last, First* *MM/DD/YYYY*

**Requestor Type :** City Staff **Meeting Date:** 2/27/2024  
*Citizen/City Staff/Council Member* *MM/DD/YYYY*

**Position Title** Library Director  
*For City Staff Only*

**Agenda Location:** Presentation  
*(e.g.: Consent Agenda/ Discussion Item/ Public Hearing/ Executive Session/ Presentation)*

**Agenda Content:**

**AWARD: ~ PRESENTATION OF 2023 TMLDA ACHIEVEMENT OF EXCELLENCE IN LIBRARIES AWARD**

**Executive Summary of Item:**





February 1, 2024

Samantha Denbow  
Bay City Public Library  
1100 7th Street  
Bay City, Texas 77414

Dear Ms. Denbow,

Congratulations to Bay City Public Library! On behalf of the Texas Municipal Library Directors Association, I am pleased to inform you that you have been awarded the 2023 Achievement of Excellence in Libraries Award.

Your application clearly demonstrated your commitment to providing exceptional service to your community. Of the 545 public library systems in Texas, your library is one of only 84 who have earned this year's award. With this honor, your library is now in the top 15% of all public libraries in the state.

We know you will want to proudly display your accolades, which include a congratulatory letter, a digital medal and an award template that can be used to order a plaque. The digital medal is an image file that can be used (but not altered) on websites, email signatures, stationery, and other official library promotional materials. The digital image can be made to be clickable to the TMLDA award site or to a page displaying your accomplishment and/or completed application.

Again, congratulations on this accomplishment, and thank you for enriching the lives of your residents and providing your community with outstanding and innovative services.

Sincerely,

*Rachel Hadidi*

Rachel Hadidi  
President, Texas Municipal Library Directors Association



# Municipal Court Oct.-Dec. 2023

# Cash Collections

Cash	Check	Money Order	Credit Card	Total
\$16,387.43	\$691.00	\$1,180.65	\$29,473.60	\$47,732.68

# Non-Cash Collections

Jail Time	Waived	Community Service	Indigent	Total
\$41,328.03	\$1,410.60	\$7,460.15	\$3,898.00	\$54,096.78



## Filed Cases Oct.-Dec. 2023

Filed Cases	Oct	Nov	Dec	Total
State Law	21	23	22	66
Traffic	146	125	73	344
City Ordinance	5	13	2	20
Parking	0	0	1	1
Total Filed	172	161	98	431

## Warrants Issued

	Oct	Nov	Dec	Total
Warrants Issued				
Class C	51	13	41	105
Felony	11	5	6	22
A/B Misd	20	8	6	34

# Disposed Cases

Method	Oct	Nov	Dec	Total
Comm Serve	13	12	3	28
Dismissed DSC	5	4	4	13
Dismissed after Def	2	8	3	13
Presented Insurance	0	1	0	1
Compliance Dismissal	7	8	12	27
Dismissed By Prosecutor	9	6	8	23
Grand Total	36	39	30	105

# Magistrations

Class A/B Misdemeanors: 31

Felonies: 27

Requests for Council A/B: 0

Requests for Council Felonies: 3

MOEP's Issued: 5

Ignition Interlock: 1

Bond Conditions: 22



# Special Projects

- National Night Out
- Municipal Courts Week Festivities
- Coloring Contest Awards Lunches
- Software Conversion from Incode to I3Verticals







# Thank you

**Discuss, consider, and/or approve the Interlocal Cooperation Contract between the Department of Public Safety of the State of Texas (DPS) and the Municipal Court of the City of Bay City, TX.**



**EXECUTIVE SUMMARY**

**Interlocal Cooperation Contract (ICC) for Failure to Appear (FTA) Program**

**BACKGROUND:**

**Purpose of the Contract:**

To continue to participate in the Texas Failure to Appear program which denies the renewal of a Texas Driver's License holder in the event that a person fails to appear for a complaint or citation or fails to pay or satisfy a judgment ordering payment of a fine and cost in the manner ordered by the Court.

Due to changes that occurred during the 88<sup>th</sup> Legislative Session, the Department revised the FTA contract (ICC). Notice was received from Texas Department of Public Safety to inform participating cities of the changes and the need to sign a new contract to continue in participating in the FTA Program. The signed contract must be returned within 90 days from the date of the notice from Texas DPS (January 29, 2024).

Changes in the ICC include:

- \*Language and restructuring of the original ICC to provide clarity regarding the specific responsibilities held by each party.
- \*Inclusion of indigency into the program as mandated by House Bill 291, 88<sup>th</sup> Legislative Session.
- \*Language to account for future changes to the current statute, either federal or state, ensuring that the ICC remains in compliance with the latest legal requirements until a revised ICC is available.

**FINANCIAL IMPLICATIONS:**

Court will allocate \$6.00 of each \$10.00 reimbursement fee received for payment to the Vendor (Omnibase) and \$4.00 for credit to the general fund of the municipal or county treasury.

**RECOMMENDATION:** Recommend City Council approve contract for signature.

**ATTACHMENTS:** Copy of Contract



STEVEN C. McCRAW  
DIRECTOR  
WALT GOODSON  
FREEMAN F. MARTIN  
DWIGHT D. MATHIS  
DEPUTY DIRECTORS

# TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001  
512/424-2000  
[www.dps.texas.gov](http://www.dps.texas.gov)



ITEM #5.

COMMISSION  
STEVEN P. MACH, CHAIRMAN  
NELDA L. BLAIR  
LARRY B. LONG  
STEVE H. STODGHILL  
DALE WAINWRIGHT

January 29, 2024

BAY CITY MUNICIPAL COURT  
1824 6TH ST  
BAY CITY, TX 77414

Re: Notice of Interlocal Cooperation Contract (ICC) for Failure to Appear (FTA) Program

Dear Court Administrator,

Due to changes occurring in the 88<sup>th</sup> Legislative Session, the Department revised the FTA contract (ICC). This notice is to inform you of the changes and the need to sign a new contract to continue your participation in the FTA program. You must return the signed contract (ICC) **within 90 days** from the date of this notice to continue participating in the program.

The following changes have been made to the contract (ICC):

- Changes to language and restructuring of the original ICC to provide clarity regarding the specific responsibilities held by each party.
- Inclusion of indigency into the program as mandated by House Bill 291, 88<sup>th</sup> Legislative Session.
- Language to account for future changes to the current statute, either federal or state, ensuring that the ICC remains in compliance with the latest legal requirements until a revised ICC is available.

It is imperative that all participants in the FTA program adhere to these updated terms to ensure the program's continued effectiveness and compliance with relevant legislation. Submit the completed and signed contract (ICC) by mail, email, or fax. Please ensure you address this attention to FTA Program.

Mailing address:  
Enforcement & Compliance Service  
5805 North Lamar Blvd, Bldg A,  
Austin, TX 78752-0300  
E-mail: [driver.improvement@dps.texas.gov](mailto:driver.improvement@dps.texas.gov)  
Fax: (512) 424-2848

Should you have any questions, please send an email to [driver.improvement@dps.texas.gov](mailto:driver.improvement@dps.texas.gov). Thank you for your immediate attention to this matter.

Regards,  
Manager  
Enforcement and Compliance Service

Enclosure

**Interlocal Cooperation Contract  
Failure to Appear Program**

State of Texas

County of \_\_\_\_\_

**I. PARTIES AND AUTHORITY**

This Interlocal Cooperation Contract (Contract) is entered into between the Department of Public Safety of the State of Texas (DPS), an agency of the State of Texas and the Municipal Court Court of the [City or County] of Bay City (Court), a political subdivision of the State of Texas, referred to collectively in this Contract as the Parties, under the authority granted in Tex. Transp. Code Chapter 706 and Tex. Gov't Code Chapter 791 (the Interlocal Cooperation Act).

**II. BACKGROUND**

A peace officer authorized to issue citations within the jurisdiction of the Court must issue a written warning to each person to whom the officer issues a citation for a traffic law violation. This warning must be provided in addition to any other warnings required by law. The warning must state in substance that if the person fails to appear in court for the prosecution of the offense or if the person fails to pay or satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the Court, the person may be denied renewal of the person's driver license.

As permitted under Tex. Transp. Code § 706.008, DPS contracts with a private vendor (Vendor) to provide and establish an automated Failure to Appear (FTA) system that accurately stores information regarding violators subject to the provisions of Tex. Transp. Code Chapter 706. DPS uses the FTA system to properly deny renewal of a driver license to a person who is the subject of an FTA system entry generated from an FTA Report.

An FTA Report is a notice sent by Court requesting a person be denied renewal of a driver's license in accordance with this Contract. The Court may submit an FTA Report to DPS's Vendor if a person fails to appear or fails to pay or satisfy a judgment as required by law. There is no requirement that a criminal warrant be issued in response to the person's failure to appear.

**III. PURPOSE**

This Contract applies to each FTA Report submitted by the Court to DPS or its Vendor and accepted by DPS or its Vendor.

**IV. PERIOD OF PERFORMANCE**

This Contract will be effective on the date of execution and terminate five years from that execution date unless terminated earlier in accordance with Section VII.C, *General Terms and Conditions, Termination*.

**V. COURT RESPONSIBILITIES**

**A. FTA Report**

For a matter involving any offense which a Court has jurisdiction of under Tex. Code Crim. Proc. Chapter 4, where a person fails to appear for a complaint or citation or fails to pay or

satisfy a judgment ordering payment of a fine and cost in the manner ordered by the Court, the Court will supply DPS, through its Vendor, an FTA report including the information that is necessary to deny renewal of the driver license of that person. The Court must make reasonable efforts to ensure that all FTA Reports are accurate, complete, and non-duplicative. The FTA Report must include the following information:

1. the jurisdiction in which the alleged offense occurred;
2. the name of the court submitting the report;
3. the name, date of birth, and Texas driver license number of the person who failed to appear or failed to pay or satisfy a judgment;
4. the date of the alleged violation;
5. a brief description of the alleged violation;
6. a statement that the person failed to appear or failed to pay or satisfy a judgment as required by law;
7. the date that the person failed to appear or failed to pay or satisfy a judgment; and
8. any other information required by DPS.

#### **B. Clearance Reports**

The Court that files the FTA Report has a continuing obligation to review the FTA Report and promptly submit appropriate additional information or reports to the Vendor. The clearance report must identify the person, state whether or not a fee was required, and advise DPS to lift the denial of renewal and state the grounds for the action. All clearance reports must be submitted immediately, but no later than two business days from the time and date that the Court receives appropriate payment or other information that satisfies the person's obligation to that Court.

To the extent that a Court uses the FTA system by submitting an FTA Report, the Court must collect the statutorily required \$10.00 reimbursement fee from the person who failed to appear, pay or satisfy a judgment ordering payment of a fine and cost in the manner ordered by the Court. If the person is acquitted of the underlying offense for which the original FTA Report was filed or found indigent by the court, the Court will not require payment of the reimbursement fee.

Court must submit a clearance report for the following circumstances:

1. the perfection of an appeal of the case for which the warrant of arrest was issued or judgment arose;
2. the dismissal of the charge for which the warrant of arrest was issued or judgment arose;
3. the posting of a bond or the giving of other security to reinstate the charge for which the warrant was issued;
4. the payment or discharge of the fine and cost owed on an outstanding judgment of the Court; or
5. other suitable arrangement to satisfy the fine and cost within the Court's discretion.

After termination of the Contract, the Court has a continuing obligation to report dispositions and collect fees for all violators in the FTA system at the time of termination. Failure to comply with the continuing obligation to report will result in the removal of all outstanding entries of the Court in the FTA Report, resulting in the lifting of any denied driver license renewal status from DPS.



**C. Quarterly Reports and Audits**

Court must submit quarterly reports to DPS in a format established by DPS.

Court is subject to audit and inspection at any time during normal business hours and at a mutually agreed upon location by the state auditor, DPS, and any other department or agency, responsible for determining that the Parties have complied with the applicable laws. Court must provide all reasonable facilities and assistance for the safe and convenient performance of any audit or inspection.

Court must correct any non-conforming transactions performed by the Court, at its own cost, until acceptable to DPS.

Court must keep all records and documents regarding this Contract for the term of this Contract and for seven years after the termination of this Contract, or until DPS or the State Auditor's Office (SAO) is satisfied that all audit and litigation matters are resolved, whichever period is longer.

**D. Accounting Procedures**

Court must keep separate, accurate, and complete records of the funds collected and disbursed and must deposit the funds in the appropriate municipal or county treasury. Court may deposit such fees in an interest-bearing account and retain the interest earned on such accounts for the Court.

Court will allocate \$6.00 of each \$10.00 reimbursement fee received for payment to the Vendor and \$4.00 for credit to the general fund of the municipal or county treasury.

**E. Non-Waiver of Fees**

Court will not waive the \$10.00 reimbursement fee for any person that has been submitted on an FTA Report, unless any of the requirements in Tex. Trans. Code § 706.006(a) or §706.006(d) are met.

Failure to comply with this section will result in: (i) termination of this Contract for cause; and (ii) the removal of all outstanding entries of the Court in the FTA Report, resulting in the lifting of any denied driver license renewal status from DPS.

**F. Litigation Notice**

The Court must make a good-faith attempt to immediately notify DPS in the event that the Court becomes aware of litigation in which this Contract or Tex. Transp. Code Chapter 706 is subject to constitutional, statutory, or common-law challenge, or is struck down by judicial decision.

**VI. DPS's RESPONSIBILITIES**

DPS will not continue to deny renewal of the person's driver license after receiving notice from the Court that the FTA Report was submitted in error or has been destroyed in accordance with the Court's record retention policy.

**VII. PAYMENTS TO VENDOR**

Court must pay the Vendor a fee of \$6.00 per person for each violation that has been reported to the Vendor and for which the Court has subsequently collected the statutorily required \$10.00 reimbursement fee. In the event that the fee has been waived by Tex. Trans. Code § 706.006(a) or §706.006(d), no payment will be made to the Vendor.

Court agrees that payment will be made to the Vendor no later than the last day of the month following the close of the calendar quarter in which the payment was received by the Court.

DPS will not pay Vendor for any fees that should have been submitted by a Court.

**VIII. GENERAL TERMS AND CONDITIONS**

- A. Compliance with Law.** This Contract is governed by and construed under and in accordance with the laws of the State of Texas. The Court understands and agrees that it will comply with all local, state, and federal laws in the performance of this Contract, including administrative rules adopted by DPS.
- B. Notice.** The respective party will send the other party notice as noted in this section. Either party may change its information by giving the other party written notice and the effective date of the change.

<b>Court</b> Bay City Municipal Court	<b>Department of Public Safety</b>
<b>Attn.:</b> Katy Plunkett	Enforcement & Compliance Service
<b>Address:</b> 1824 6 <sup>th</sup> Street	5805 North Lamar Blvd., Bldg A
<b>Address:</b> Bay City, TX 77414	Austin, Texas 78752-0001
<b>Fax:</b> 979-323-9711	(512) 424-5311 [fax]
<b>Email:</b> kplunkett@cityofbaycity.org	Driver.Improvement@dps.texas.gov
<b>Phone:</b> 979-245-0035	(512) 424-7172

**C. Termination.**

Either party may terminate this Contract with 30 days' written notice.

DPS may also terminate this Contract for cause if Court doesn't comply with Section V.C., *Quarterly Reports and Audits* and V.E., *Non- Waiver of Fees*.

If either Party is subject to a lack of appropriations that are necessary for that Party's performance of its obligations under this Contract, the Contract is subject to immediate cancellation or termination, without penalty to either Party.

**D. Amendments.**

This contract may only be amended by mutual written agreement of the Parties.

**E. Miscellaneous.**

1. The parties shall use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to resolve any disputes under this Contract; provided



however nothing in this paragraph shall preclude either Party from pursuing any remedies available under Texas law.

2. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to either Party or the State of Texas.
3. Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without written amendment hereto, and shall become effective on the date designated by such law or by regulation.

#### **CERTIFICATIONS**

The Parties certify that (1) the Contract is authorized by the governing body of each party; (2) the purpose, terms, rights, and duties of the Parties are stated within the Contract; and (3) each party will make payments for the performance of governmental functions or services from current revenues available to the paying party.

The undersigned signatories have full authority to enter into this Contract on behalf of the respective Parties.

**Court\***

**Department of Public Safety**

**Authorized Signatory**

**Driver License Division Chief or Designee**

**Title**

**Date**

**Date**

\*An additional page may be attached if more than one signature is required to execute this Contract on behalf of the Court. Each signature block must contain the person's title and date.



**CITY OF BAY CITY**  
 1901 FIFTH STREET  
 BAY CITY, TEXAS 77414  
 (979) 245-2137  
 FAX: (979) 323-1626

## AGENDA ITEM SUBMISSION FORM

Any item(s) to be considered for action by the City Council, must be included on this form, and be submitted along with any supporting documentation. Completed Agenda Item Submission forms must be submitted to the City Secretary's Office no later than 4:00 p.m. on the Monday of the week prior to the Regular Council meeting.

**Requestor Name:** Penewitt, Kelly **Date Submitted:** 02/21/2024  
*Last, First* *MM/DD/YYYY*

**Requestor Type :** City Staff **Meeting Date:** 2/27/2024  
*Citizen/City Staff/Council Member* *MM/DD/YYYY*

**Position Title** Interim Director of Parks and Recreation  
*For City Staff Only*

**Agenda Location:** Discussion Item  
*(e.g.: Consent Agenda/ Discussion Item/ Public Hearing/ Executive Session/ Presentation)*

### Agenda Content:

**Discuss, consider, and/or approve a Memorandum of Understanding between the City of Bay City, Texas and Bay City Gas Company for construction and maintenance of BMX Bike Park at City Field.**

### Executive Summary of Item:

On November 14<sup>th</sup>, Kevin Hecht, Director of Bay City Gas Company made a presentation to City Council about converting an existing park property to a bike park. City Field is currently underutilized by residents and could be turned into a BMX Bike Park. The existing park has infrastructure in place that makes it a desirable location to provide additional recreational opportunities to the youth of our community.

Bay City Gas Company and the City of Bay City will work together to construct and maintain the park. The MOU outlines the expectations of each party as to the construction and maintenance of the park.

Recommendation: Staff recommends City Council approve the MOU with Bay City Gas Company.

Attachment: Memorandum of Understanding

**Memorandum of Understanding  
Between the City of Bay City  
and Bay City Gas Company  
for Construction and Maintenance of BMX Park**

This Memorandum of Understanding (the “MOU”) is entered into by and between the City of Bay City, Texas (“City”), and Bay City Gas Company (“BCGC”), collectively “the Parties.”

**Recitals**

**Whereas** the City and BCGC desire to enter into an MOU whereby the Parties would design, construct, manage, maintain, program, and operate a BMX Bicycle Park, as more particularly set forth herein; (the “Park”);

**Whereas** the City is stewards of public lands in the City, and the Parties recognize through cooperation, these publicly-held lands can be used to meet broader community needs for recreation and open space than either party can provide separately;

**Whereas** the Texas Interlocal Cooperation Act, codified at Chapter 791 of the Texas Government Code, authorizes the Parties to this Agreement who are governmental entities to contract with one another to perform governmental functions and services; and

**Agreement**

**Now Therefore**, in consideration of the mutual representations, warranties, covenants and promises herein contained, the parties hereto agree as follows:

**Article 1  
Goals of Mutual Cooperation**

1.1 **Purpose.** The purpose of this MOU is to establish and define the roles of each Party in relation to the Park; to provide for the Parties’ expectations regarding the construction and operation of the Park, and to provide for disposition of the Property in the event of termination of this MOU.

1.2 **Term.** This MOU will begin effective the date of final execution, below, and will continue until terminated in accordance with Paragraph 1.3.

1.3 **Termination.** Either Party may terminate this MOU in the event of a material breach of an obligation by the other Party that is not timely cured. If a Party intends to terminate this MOU as a result of a material breach, the Party must provide to the breaching Party a written notice of intent to terminate, identifying the breach or default and providing thirty (30) days for the breaching Party to cure the breach on or before the expiration of such 30 days by performing the defaulted obligation or, if such breach cannot reasonably be cured within 30 days, responding with an acceptable plan to cure the breach, which plan shall not unreasonably be rejected.

## Article 2 BMX Park Cost Sharing

2.1 **Responsibilities of the City.** The City shall be responsible presently and in the future for the following.

(a) **The Land.** The City shall provide the land for the BMX park at the location of the City Park currently known as the City Field, located at 3212 Avenue E, Bay City, Texas 77414;

(b) **Maintenance.** The City shall maintain the buildings, facilities, and other improvements outside of the perimeter walking track in a safe, clean and attractive condition and free of any litter. The City shall remove all trash and debris left on or near the tracks, and make sure that the park is free of any unsafe or dangerous conditions that may form outside of the BMX tracks;

(c) **Restroom.** The City shall maintain the existing restrooms of the park. Providing the public with functional, clean, and sanitary bathrooms; and

(d) **Rest Area Shade Structure.** The City shall provide a canopy shade of at least 100 square feet for the rest area that provides shade and UV protection for the patrons of the park. The parties agree that any expense in excess of \$5,000 shall be split equally by the Parties.

(e) **Picnic Tables.** The City shall purchase and install two (2) picnic tables at BCGC's expense, not to exceed the amount \$2,500.00 and shall be from a vendor previously used by the City. The Parties agree that any expense in excess of \$2,500.00, but not to exceed \$3,500.00, for the purchase of the picnic tables shall be split equally by the Parties.

(f) **Donations.** The City shall, through its police department, donate impounded bikes to BCGC to be given away to members of the community. The City and BCGC agree that the recipient(s) of the donated bikes shall have met any requirements set forth by BCGC before they are able to take the bike home.

(g) **Signage.** The City shall construct and install signage as designed by BCGC and approved by the Parties.

(h) **Construction.** The city shall assist BCGC in the construction of the BMX Park by providing the following:

- i. City shall remove existing backstop, dugouts, and other structures that are not to be included in the park design;
- ii. City shall provide grader or other earth moving equipment, if available to BCGC for initial construction work; and
- iii. City shall supply and deliver dirt and fill as requested by BCGC for initial construction and ongoing maintenance needs. BCGC will reimburse material cost only if purchased from a 3<sup>rd</sup> party vendor.

2.2 **Responsibilities of BCGC.** BCGC shall be responsible presently and in the future for the following:

(a) **Design.** BCGC shall design the BMX trails for the Park and provide the design plans to the City for approval prior to commencement of construction. BCGC shall not commence construction of the trails prior to receiving written approval of the design, such approval not to be unreasonably withheld.

(b) **Construction.** BCGC shall construct the BMX trails within the Park in accordance with the design approved by the City.

(c) **Security Lights.** BCGC shall repair existing lights or purchase and install new security lights for the Park. The Parties anticipate that the cost of the lights shall not exceed \$2,500.00 and agree that any cost for the purchase of the lights in excess of \$2,500.00 shall be split evenly between the parties. Lighting costs that exceed \$2,500 shall be agreed upon by both parties to ensure budget appropriation is in place. The lights will be approved by the City prior to purchase if new lighting is necessary for the BMX Bike Park.

(d) **Signage.** Signs are required to have the City and BCGC logo. It is required that there be at a minimum a sign for the following; BMX Park rules, skills rules, and the name of the park.

2.3 **Shared Responsibilities.** The Parties agree that upon completion of construction of the Park, the Parties shall continue to cooperate in the ongoing maintenance and operation of the Park as follows:

(a) **Continuing Maintenance.** The Parties agree to share one half (1/2) of the cost for any future improvements, labor, and/or repairs related to the BMX park. This shall include minimizing the presence of any ruts, rocks, loose dirt, potholes, or similar conditions that may form on or around the track. The Parties also agree to share one half (1/2) of the cost for future amenity improvements such as picnic tables, park lighting, and shade structures.

(b) **Promotion.** The Parties shall promote the Park on their respective social media pages (i.e. Facebook, etc.). The City shall also promote the Park on the City website. BCGC shall promote the Park on the company website and the billing invoices that go out to the community. BCGC shall make efforts to engage civic clubs to support maintenance work, provide free bicycles, and/or to provide free bicycles helmets. Such participating civic organizations may be allowed to be recognized on the park signage.

### **Article 3 Dispute Resolution**

3.1 **Dispute Resolution.** While it is understood that the Parties shall strive in good faith to work collaboratively to fulfill the purpose of the MOU, each Party recognizes that legitimate conflicts may arise regarding the construction of the Park. Should a conflict related to construction arise, the Parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this MOU, the Parties will first attempt to resolve the dispute by taking the following steps:

(a) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied Party to the other Party, which notice shall request a written response to be delivered to the dissatisfied Party not less than 5 days after receipt of the notice of dispute.

(b) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied Party, the dissatisfied Party shall give notice to that effect to the other Party whereupon each Party shall appoint a person having authority over the activities of the respective Parties who shall promptly meet, in person, in an effort to resolve the dispute, which meeting and deadline for resolution shall occur not later than ten (10) days after notice is given pursuant to this subdivision (2).

(c) Should these efforts fail to timely resolve the dispute, in the opinion of the dissatisfied Party, the Parties shall mediate the dispute through the use of a mutually selected independent mediator, which mediation shall occur on or before 30 days after the failure of resolution at the step provided in subdivision (3). Should mediation efforts fail to resolve the dispute, either Party may terminate this MOU by providing written notice to the other. This MOU

shall terminate 10 days after receipt of such notice unless the Parties can come to an amenable resolution before the expiration of the 10-day notice period.

3.2 **Deadlines.** All deadlines with regard to steps in the process of resolution may be extended by written agreement of the Parties.

#### **Article 4 Miscellaneous Provisions**

4.1 **Compensation.** The City and BCGC shall not be entitled to any compensation for work performed pursuant to this MOU.

4.2 **Nondiscrimination.** There shall be no discrimination of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, age, handicap, ancestry, or national origin in the administration of this Park.

4.3 **Severability.** In the event any provision of this MOU shall be found to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity, legality, and enforceability of the remainder of this MOU.

4.4 **Entire MOU.** This MOU constitutes the entire MOU between the Parties on the subject matter hereof and supersedes any and all prior MOUs, arrangements, and understanding, oral or written, between the Parties relating to this MOU.

4.5 **Amendments.** This MOU may be amended at any time only in writing by the Parties with mutual consent and authorization of their respective entities.

4.6 **Recitals.** The recitals hereto are incorporated herein for all purposes.

**In witness whereof,** the Parties hereto certify by their signatures below that they are duly authorized to sign this MOU.

ATTEST:

CITY OF BAY CITY, TEXAS:

\_\_\_\_\_  
JEANNA THOMPSON  
City Secretary

\_\_\_\_\_  
ROBERT K. NELSON  
Mayor

ATTEST:

BAY CITY GAS COMPANY:

\_\_\_\_\_  
THOMAS GWOSDZ  
Attorney

\_\_\_\_\_  
KEVIN HECHT  
Director

## RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS AUTHORIZING THE BAY CITY COMMUNITY DEVELOPMENT CORPORATION TO ENTER INTO A PERFORMANCE AGREEMENT WHICH PROVIDES ECONOMIC INCENTIVES TO 3D EFFICIENCIES LLC, DBA FIT FOR LIFE FOR THE EXPANSION OF FIT FOR LIFE IN BAY CITY, TEXAS AND PROVIDING INCENTIVES NOT TO EXCEED A TOTAL AMOUNT OF \$80,000.00 OVER THE FIVE YEAR TERM OF THE AGREEMENT (SECOND READING)**

WHEREAS, the City of Bay City is a home rule city governed by its City Charter, and with a population of less than 20,000 inhabitants; and

WHEREAS, the Bay City Community Development Corporation, (BCCDC) is Type B development corporation established pursuant to the Texas Local Government Code Chapter 505, subchapter B; and

WHEREAS, in accordance with Texas Local Government Code Section 505.158 the BCCDC is authorized provide land, building, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the board of directors to promote new or expanded business development projects; and

WHEREAS, in accordance with Texas Local Government Code Section 505.158 in order for the BCCDC's action to become final for projects, which require an expenditure of more than \$10,000, the city council must adopt a resolution authorizing the project after giving the resolution at least two (2) separate readings; and

WHEREAS, the BCCDC has identified the proposed expansion project by 3D EFFICIENCIES LLC, DBA FIT FOR LIFE, located at 2200 Avenue F, Bay City, Texas, as a Project qualified to receive expenditures from the corporation;

WHEREAS, at its Regular Board Meeting held, January 29, 2024, the BCCDC held a public hearing, and considered, and voted to approve an agreement that provides for the granting of incentives for the Project, over a term of five years that shall not exceed a total amount of \$80,000.00; and

WHEREAS, at the public hearing the BCCDC received testimony from the grant applicant that it would invest \$170,884.79 for the design, construction and material associated with improvements for the existing business, and create at least three new jobs during the term of the agreement; and

WHEREAS, a copy of the agreement approved by the BCCDC is attached hereto as Exhibit "A"

WHEREAS, the City Council finds BCCDC grant shall promote new or expanded business development:

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

Section One.

In accordance with Texas Local Government Code Section 505.158, the City Council of Bay City, Texas, hereby authorizes the Project as described in the recitals above.

PASSED AND APPROVED AFTER A FIRST READING ON FEBRUARY 13, 2024, AND A SECOND READING AND VOTE AT BAY CITY, TEXAS ON THIS 27th DAY OF FEBRUARY, 2024.

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ROBERT K. NELSON, MAYOR  
CITY OF BAY CITY, TEXAS

ATTEST:

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JEANNA THOMPSON, CITY SECRETARY  
CITY OF BAY CITY, TEXAS

APPROVED AS TO FORM:

---

CITY ATTORNEY



Performance Agreement Between  
Bay City Community Development Corporation  
and 3D Efficiencies LLC, DBA Fit for Life

Lender: Bay City Community Development Corporation  
1112 7th Street  
Bay City, TX 77414

Borrower: 3D Efficiencies LLC, DBA Fit for Life  
2200 Avenue F  
Bay City, TX 77414

THIS PERFORMANCE AGREEMENT between BAY CITY COMMUNITY DEVELOPMENT CORPORATION a non-profit economic development corporation created by the City of Bay City, Texas, as authorized by the Development Corporation Act of 1979 ("Lender") and 3D Efficiencies LLC, DBA Fit for Life, a Texas Limited Liability Company, ("Borrower"), is made and executed on the following recitals, terms and conditions.

WHEREAS, Borrower intends to improve its business with property improvements to include renovation of existing structures, site work, infrastructure, and construction at 2200 Avenue F, Bay City, Texas;

WHEREAS, Lender at its Board Meeting on October 30, 2023, with final approval on January 29, 2024, after notice and public hearing, approved a loan to Borrower which loan provides incentives for Borrower to purchase such materials and make such improvements; and

WHEREAS, Borrower understands and agrees that: (a) in granting, renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements, as set forth and provided for in this Agreement; (b) the granting, renewing, or extending of any Loan by Lender at all times shall be subject to Lender's sole judgment and discretion; and (c) all such Loans shall be and shall remain subject to the terms and conditions as set forth in this Agreement.

SECTION 1. TERM.

This Agreement shall be effective as of February 27, 2024, and shall continue thereafter until all obligations of Borrower to Lender have been performed in full and the parties terminate this Agreement in writing, or on the Loan Maturity Date, unless terminated sooner under the provisions hereof.

## SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Texas Uniform Commercial Code.

a. Agreement. The word "Agreement" means this Performance Agreement, together with all exhibits and schedules attached to this Performance Agreement from time to time, if any.

b. Borrower. The word "Borrower" means 3D Efficiencies LLC, DBA Fit for Life, a Texas Limited Liability Company.

c. City. The word "City" means the City of Bay City, Matagorda County, Texas.

d. Employee. The word "Employee" means a full-time employee of Borrower, working a minimum of thirty-two (32) hours per week, who shall be employed in a position physically based at the Facility, and shall include a combination of part-time equivalent positions. The word "Part-time employee" means a part-time employee of Borrower, working a minimum of twenty (20) hours per week, on average, who shall be employed in a position physically based at the Facility, and shall include a combination of part-time equivalent positions.

e. Event of Default. The words "Event of Default" mean and include any of the Events of Default set forth below in the section entitled "Events of Default."

f. Facility. The word "Facility" means the construction project at 2200 Avenue F, Bay City, Texas 77414.

g. Indebtedness. The word "Indebtedness" means and includes without limitation all Loans, together with all other obligations, debts and liabilities of Borrower to Lender, or any one or more of them, as well as all claims by Lender against Borrower, or any one or more of them; whether now or hereafter existing, voluntary or involuntary, due or not due, absolute or contingent, liquidated or unliquidated; whether Borrower may be liable corporately or jointly with others; whether Borrower may be obligated as a guarantor, surety, or otherwise; whether recovery upon such Indebtedness may be or hereafter may become otherwise unenforceable.

h. Lender. The word "Lender" means the BAY CITY COMMUNITY DEVELOPMENT CORPORATION, a non-profit economic development corporation created by the City of Bay City, Texas, as authorized by the Development Corporation Act of 1979.

i. Loan. The word "Loan" or "Loans" means and includes any and all loans and financial accommodations from Lender to Borrower, whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations

described in this Agreement and described on any exhibit or schedule attached to this Agreement.

j. Loan Maturity Date. The word "Loan Maturity Date" means the date five years after the date the initial payment is due.

k. Note. The word "Note" means the non-interest bearing Promissory Note of even date herewith executed by and between the parties hereto in the principal amount of EIGHTY THOUSAND AND NO/100 DOLLARS (\$80,000.00), due upon demand and payable on or before the Loan Maturity Date.

l. Property. The word "Property" means the parcel occupied by Borrower and located at 2200 Avenue F, Bay City, Texas 77414.

m. Related Documents. The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments and documents, whether now or hereafter existing, executed in connection with Borrower's Indebtedness to Lender.

n. Required Jobs. The words "Required Jobs" means three (3) jobs for Part-time Employees or Part-Time Equivalent positions at the Facility.

### SECTION 3. AFFIRMATIVE COVENANTS.

Borrower covenants and agrees with Lender that, while this Agreement is in effect, it shall comply with the following terms and conditions:

a. Loan Advances. Upon execution of this Agreement, Borrower shall receive a one-time Loan Advance EIGHTY THOUSAND AND NO/100 DOLLARS (\$80,000.00).

b. Borrower Obligations.

(1) Required Jobs. Borrower shall create the Required Jobs for the Project within six months of the date of this agreement, and the Required Jobs shall be maintained at the Facility for at least five years.

(2) Certificate of Completion. If required by Bay City building code regulations then in effect, Borrower shall obtain a Certificate of Completion for the improvements within one year of the date of this agreement, 2024, or within ten days of completion.

c. Compliance Certificates. Borrower shall provide Lender with compliance certificates when requested, such certificates specifying or reflecting:

- (1) an existing and valid Certificate of Completion for the new improvements to the Facility if required by Bay City building code regulations then in effect; and
- (2) an annual verification of the Required Jobs, indicating the number of positions and the total gross pay for all employees; this obligation shall cease upon fulfillment of the agreement by either final payment or loan forgiveness.

d. Performance. Borrower agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Borrower and Lender.

#### SECTION 4. CESSATION OF ADVANCES.

If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to advance or disburse Loan proceeds if:

- (1) Borrower becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or
- (2) during the pendency of an Event of Default.

#### SECTION 5. LOAN FORGIVENESS.

The Loan Advance shall be eligible for forgiveness annually after the completion of the renovation. The dollar amount of eligible forgiveness shall be calculated by multiplying (i) the number of Required Jobs that were cumulatively created during the first year following the renovation and which same Jobs remain at the Facility on the one year anniversary date, by (ii) \$5,333.33, up to, but not exceeding, \$16,000.00 per year for up to five years. Notwithstanding the provisions hereof and the obligations contained in the Note executed incident hereto, provided Borrower has not defaulted under Section 6 during the Term of this Performance Agreement and is not in default on the Loan Maturity Date, all advances not otherwise forgiven as eligible forgiveness of the Loan Maturity Date pursuant to the foregoing sentence shall be due and payable on the Loan Maturity Date.

#### SECTION 6. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- a. Certificate of Completion. Failure of Borrower to receive a Certificate of Completion if required by Bay City building code regulations then in effect in accordance with Section 3(b)(2) above;
- b. False Statements: Any warranty, representation or statement made or furnished to Lender by or on behalf of Borrower under this Agreement or the Related Documents that is false or intentionally misleading in any material respect, either now or at the time made or furnished;
- c. Insolvency. Borrower's insolvency, appointment of receiver for any part of Borrower's property, any assignment for the benefit of creditors of Borrower, any type of creditor workout for Borrower, or the commencement of any proceeding under any bankruptcy or insolvency laws by Borrower or against Borrower and not dismissed within sixty (60) days of filing thereof;
- d. Ad Valorem Taxes. Failure of Borrower to pay, prior to delinquency, all taxes and assessments levied or assessed upon Borrower's real property improvements or business personal property; and/or
- e. Undocumented workers. Borrower certifies that Borrower does not and will not knowingly employ an undocumented worker in accordance with - Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Borrower is convicted of a violation under 8 U.S.C. § 1324a (f), Borrower shall be in default hereunder;
- f. Other Defaults. Failure of Borrower after written notice and thirty (30) days opportunity to cure, to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents, or failure of Borrower to comply with or to perform any other term, obligation, covenant or condition contained in any other written agreement between Lender and Borrower, and specifically, should Borrower sublet or assign any of its interest in any portion of the Facility to any unrelated or unaffiliated entity without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

#### SECTION 7. EFFECT OF AN EVENT OF DEFAULT.

If any Event of Default shall occur and upon thirty (30) days written notice and opportunity to cure Borrower has not cured such Event of Default within 30 days of written notice, then all commitments of Lender under this Agreement immediately shall terminate (including any obligation to make Loan advances), and all amounts previously advanced under the Loan, not otherwise forgiven under Section 5, will become immediately due and payable, all without notice of any kind to Borrower, at the option of Lender, except for an Event of Default described in the "Insolvency" subsection above, in which case such acceleration shall be automatic and not

optional. Any Default which may be cured by the payment of money shall not extend beyond the 30-day period referenced herein. Any amounts due and payable shall not accrue interest until they are deemed to be past due as provided in the Note.

#### SECTION 8. INDEMNIFICATION.

Borrower shall indemnify, save, and hold harmless Lender, its directors, officers, agents, attorneys, and employees (collectively, the "Indemnitees") from and against:

- (1) any and all claims, demands, actions or causes of action that are asserted against any Indemnatee if the claim, demand, action or cause of action relates to tortious interference with contract or business interference, or wrongful or negligent use of Lender's loan advances by Borrower or its agents and employees;
- (2) any administrative or investigative proceeding by any governmental authority related to a claim, demand, action or cause of action in which Lender is a disinterested party;
- (3) any claim, demand, action or cause of action which contests or challenges the legal authority of Lender or Borrower to enter into this Agreement; and
- (4) any and all liabilities, losses, costs, or expenses (including reasonable attorneys' fees and disbursements) that any Indemnatee suffers or incurs as a result of any of the foregoing; provided, however, that Borrower shall have no obligation under this Section to Lender with respect to any of the foregoing to the extent that such claims or liabilities arise out of the negligence or willful misconduct of Lender or the breach by Lender of this Agreement.

If any claim, demand, action or cause of action is asserted against any Indemnatee, such Indemnatee shall promptly notify Borrower, but the failure to so promptly notify Borrower shall not affect Borrower's obligations under this Section unless such failure materially prejudices Borrower's right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. If requested by Borrower in writing, as so long as no default beyond notice and cure periods or Event of Default shall have occurred and be continuing, such Indemnatee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit Borrower to participate in such contest. Any Indemnatee that proposes to settle or compromise any claim, demand, action, cause of action or proceeding for which Borrower may be liable for payment of indemnity hereunder shall give Borrower written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain Borrower's concurrence thereto.

## SECTION 9. BORROWER'S REPRESENTATIONS.

By execution hereof, the signatories warrant and represent that they have the requisite authority to execute this Agreement and the Related Documents and that the representations made herein, and in the Related Documents, are true and accurate in all respects.

## SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

a. Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

b. Applicable Law and Venue. This Agreement has been delivered to Lender and accepted by Lender in the State of Texas. Borrower agrees to submit to the jurisdiction of the courts of Matagorda County, State of Texas, and that venue is proper in said County. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and applicable Federal laws.

c. Employee Hiring, Materials and Supplies Purchase. Although not an Event of Default or a condition to any disbursement or advance of the Loan or any portion thereof, Lender requests that Borrower use good faith efforts to satisfy its need for all additional employees from Bay City residents and purchase all materials, supplies and services necessary to affect the construction and subsequent occupancy of the Property from Bay City merchants and businesses.

d. Community Involvement. Although not an Event of Default or a condition to any disbursement or advance of the Loan or any portion thereof, Borrower agrees to use good faith efforts to actively participate in community and charitable organizations and/or activities, the purpose of which are to improve the quality of life in Bay City, and to actively encourage its Bay City employees to be involved in such organizations and/or activities.

e. Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

f. Notices. All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the

party's address. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address.

g. Severability. If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

h. Survival. All warranties, representations, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement shall be considered to have been relied upon by Lender and will survive the making of the Loan and delivery to Lender of the Related Documents, regardless of any investigation made by Lender or on Lender's behalf.

i. Attorney's Fees and Costs. In the event of any action at law or in equity between the parties to enforce any of the provisions hereof, to the extent allowed by law any unsuccessful party to such litigation shall pay to the successful party all costs and expenses, including reasonable attorneys' fees (including costs and expenses incurred in connection with all appeals) incurred by the successful party, and these costs, expenses and attorneys' fees may be included in and as part of the judgment. A successful party shall be any party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment.

j. Time is of the Essence. Time is of the essence in the performance of this Agreement.

k. Counterparts. This Agreement may be executed in counterparts, and such counterparts together shall constitute but one original of the Agreement. Each counterpart shall be equally admissible in evidence, and each original shall fully bind each party who has executed it.

l. Waiver. No failure or delay by a party to insist upon the strict performance of any term, condition or covenant of this Agreement, or to exercise any right, power or remedy hereunder shall constitute a waiver of the same or any other term of this Agreement or preclude such party from enforcing or exercising the same or any such other term, conditions, covenant, right, power or remedy at any later time.

m. Authority. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto and each party hereby certifies to the other that any and all necessary resolutions extending said authority have been duly passed and are not in full force and effect.



This Agreement is executed by BAY CITY COMMUNITY DEVELOPMENT CORPORATION upon and by the authority of the BAY CITY COMMUNITY DEVELOPMENT CORPORATION by formal action taken at a properly constituted meeting on January 29, 2024.

BORROWER ACKNOWLEDGES HAVING READ ALL OF THE PROVISIONS OF THIS PERFORMANCE AGREEMENT, AND BORROWER AGREES TO ITS TERMS. THIS AGREEMENT SHALL BE EFFECTIVE AS OF February 27, 2024, which is the date of approval of the Resolution approving the project by the City of Bay City.

**SIGNED AND APPROVED:**

BAY CITY COMMUNITY DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
JESSICA RUSSELL, Its Executive Director

Date: \_\_\_\_\_

3D EFFICIENCIES LLC, DBA FIT FOR LIFE, Maker

By: \_\_\_\_\_  
DUSTIN CLEMENTS, Manager

Date: \_\_\_\_\_

## PROMISSORY NOTE

\$80,000.00

February 27, 2024

3D EFFICIENCIES LLC, DBA FIT FOR LIFE, a Texas limited liability company, ("Maker"), for value received, promises and agrees to pay unto the order of BAY CITY COMMUNITY DEVELOPMENT CORPORATION ("Payee"), at its offices located at 1112 7th St, Bay City, Texas 77414, in lawful money of the United States of America, the principal sum of EIGHTY THOUSAND AND NO/100 DOLLARS (\$80,000.00), or so much as shall be advanced, said sums to accrue no interest, unless and until past due.

TERMS OF PAYMENT: The principal of this Note is due on demand, but in any event, on or before February 26, 2029. Notwithstanding the foregoing, advances hereunder shall be made in accordance with the terms and provisions of the Performance Agreement executed as of even date herewith between Maker and Payee, and such advances shall be forgiven according to said Performance Agreement after such advance if Maker is not then in default under the Performance Agreement beyond notice and cure periods. As such, Payee shall make no demand on principal under this Note except for upon occurrence of an Event of Default as that term is defined in the Performance Agreement.

ALL PAST due principal shall bear interest until paid at 4.00% per annum.

ADVANCES made hereunder are also governed by the Performance Agreement of even date herewith.

IF DEFAULT is made in the payment of any interest or principal hereof, as and when the same is or becomes due, or if an Event of Default occurs under any instrument securing the payment hereof or executed in connection herewith, including the Performance Agreement, the owner and holder of this Note may declare all sums owing hereon due and payable pursuant to the terms of the Performance Agreement within thirty (30) days of the date of notice. If default is made in the payment of this Note at maturity (regardless of how its maturity may be brought about), and the same is placed in the hands of an attorney for collection, or suit is filed hereon, or proceedings are had in bankruptcy, probate, receivership or other judicial proceedings for the establishment or collection of any amount called for hereunder, or any amount payable or to be payable hereunder is collected through any such proceedings, Maker agrees and is also to pay to the owner and holder of this Note a reasonable amount as attorneys' or collection fees.

Except as provided herein and in the Performance Agreement, upon an Event of Default only, MAKER, co-makers, permitted assigns, sureties and guarantors, and each of them, expressly waive demand and presentment for payment, notice of nonpayment, protest, notice of protest, notice of dishonor, notice of intent to accelerate the maturity hereof, notice of the acceleration of the maturity hereof, bringing of suit and diligence in taking any action to collect amounts called for hereunder and in the handling of securities at any time existing in connection herewith; and are and shall be jointly, severally, directly and primarily liable for the payment of all sums owing and to be owing hereon, regardless of and without any notice, diligence, act or omission as or with respect to the collection of any amount called for hereunder or in connection with any right, lien,

interest or property at any and all times had or existing as security for any amount called for hereunder.

IT IS the intention of Maker and Payee to conform strictly to applicable usury laws. Accordingly, if the transactions contemplated hereby would be usurious under applicable law (including the laws of the State of Texas and the laws of the United States of America), then, in that event, notwithstanding anything to the contrary herein or in any agreement entered into in connection with or as security for this Note, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under applicable law that is taken, reserved, contracted for, charged or received under this Note or under any of the other aforesaid agreements or otherwise in connection with this Note shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be canceled automatically and, if theretofore paid, shall be credited on the Note by the holder hereof (or, to the extent that this Note shall have been or would thereby be paid in full, refunded to the Maker); and (ii) in the event that maturity of this Note is accelerated by reason of an election by the holder hereof resulting from any Event of Default, or in the event of any required or permitted prepayment, then such consideration that constitutes interest may never include more than the maximum amount allowed by applicable law, and excess interest, if any, provided for in this Note or otherwise shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on this Note (or, to the extent that this Note shall have been or would thereby be paid in full, refunded to the Maker).

THIS NOTE has been executed and delivered in and shall be construed in accordance with and governed by the laws of the State of Texas and of the United States of America, except that the Chapter 346 of the Texas Finance Code, as amended (which regulates certain revolving credit loan accounts and revolving tri-party accounts) shall not apply hereto.

Maker's address for notice is 3D EFFICIENCIES LLC, DBA FIT FOR LIFE, c/o Dustin Clements, 2200 Avenue F, Bay City, Texas 77414.

3D EFFICIENCIES LLC, DBA FIT FOR LIFE, Maker

By: \_\_\_\_\_  
DUSTIN CLEMENTS, Manager



**CITY OF BAY CITY**  
 1901 FIFTH STREET  
 BAY CITY, TEXAS 77414  
 (979) 245-2137  
 FAX: (979) 323-1626

## AGENDA ITEM SUBMISSION FORM

Any item(s) to be considered for action by the City Council must be included on this form and be submitted along with any supporting documentation. Completed Agenda Item Submission forms must be submitted to the City Secretary's Office no later than 4:00 p.m. on the Monday of the week prior to the Regular Council meeting.

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**Requestor Name:** Lopez, Gabriel **Date Submitted:** 2/20/2024  
*Last, First* *MM/DD/YYYY*

**Requestor Type:** City Staff **Meeting Date:** 2/27/2024  
*Citizen/City Staff/Council Member* *MM/DD/YYYY*

**Position Title** Engineering Technician  
*For City Staff Only*

**Agenda Location:** Discussion Item  
*(e.g.: Consent Agenda/ Discussion Item/ Public Hearing/ Executive Session/ Presentation)*

### Agenda Content:

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**Discuss, consider, and/or approve the selection of engineering, geotechnical, and architectural service providers to assist with project implementation for various City projects utilizing local, state and federal funding for the City of Bay City**

### Executive Summary of Item:

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The City of Bay City plans to apply for grant and loan funding from various state and federal agencies to support infrastructure improvements in the City of Bay City. The selected grants and loans will help to fund improvements to the City's infrastructure currently identified in the City's Capital improvement Plan. The plan is to use these funds to improve the City's water, wastewater, and transportation systems at various locations in the City.

This agenda item is to select engineering, geotechnical and architectural services as required by state law in addition to state and federal grants or loans. The City solicited statements of qualifications for these services and qualifications were due February 1, 2024. A Selection Review Committee was appointed to review all qualifications to select qualified firms for the designated services.

12 firms submitted qualifications to provide engineering, geotechnical and/or architectural services. The firms approved will be used to provide project services and contract commitments are contingent upon funding and successful negotiation of a contract. Based on the Selection Review Committee's scoring criteria, it is the committee's recommendation to move forward with the following firms. **(see Attachment A)**

## Attachment A

### Civil Engineering Firms

Aguirre & Fields	Engineering (Street and Bridge Repairs and Construction)
Civil Corps	Engineering/Surveyors
Civil PEs	Engineering (Airport)
Garver, LLC	Engineering (Water/Wastewater)
Huitt-Zollars	Engineering
Joiner Architects	Architects
Lynn Engineering	Engineering/Surveyors
Urban Engineering	Engineering
Vogler & Spencer	Engineering

### Geotechnical Firms

GeoTech Engineers	Geotechnical
Terracon	Geotechnical
ECS	Geotechnical/Architectural

### Architectural Firms

Joiner Architects	Architectural
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## AGENDA ITEM SUBMISSION FORM

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**Requestor Name:** Blomquist, Herbert **Date Submitted:** 2/20/2024  
*Last, First* *MM/DD/YYYY*

**Requestor Type:** City Staff **Meeting Date:** 2/27/2024  
*Citizen/City Staff/Council Member* *MM/DD/YYYY*

**Position Title** Director of Public Works  
*For City Staff Only*

**Agenda Location:** Discussion Item  
*(e.g.: Consent Agenda/ Discussion Item/ Public Hearing/ Executive Session/ Presentation)*

### Agenda Content:

**Discuss, consider, and/or approve the Contract Work Order No. 11 with Garver, LLC for assessment services and preliminary engineering phase services for the 5<sup>th</sup> Street waterline rehabilitation project.**

### Executive Summary of Item:

The Drinking Water State Revolving Fund, authorized by the Safe Water Drinking Act, provides low-cost financial assistance for planning, acquisition, design, and construction of water infrastructure. Eligible applicants for the DWSRF include publicly and privately-owned community water systems, including nonprofit water supply corporations and non-profit non-community public water systems.

The City Council authorized \$12 million in funding from the Texas Water Development Board (TWDB) to make critical improvements to Bay City's water systems. These improvements will include upgrades to our existing water plants and to the water distribution system.

This agenda item is to approve a contract between the City of Bay City and Garver, LLC in the amount of \$198,195.00 for Garver to assist the City with inspection methodology and results, estimated construction costs, and recommendations for rehabilitating sections of the existing 12" ductile iron waterline along Fifth Street from Avenue G to Norvell Avenue. The work includes project administration, historical data review, a waterline condition assessment, a waterline leak detection assessment, and a prioritized rehabilitation plan with recommendations for next steps (repairs).

It is the staff's recommendation to approve Contract Work Order No.11 with Garver, LLC so the City can move forward with the rehabilitation of the 5<sup>th</sup> Street waterline from Avenue G to Norvell Avenue.

**EXHIBIT A****WORK ORDER NO. 11****CITY OF BAY CITY****5th Street Waterline Assessment  
Preliminary Engineering Phase Services  
Project No. W09-2302644**

This WORK ORDER ("Work Order") is made by and between the **City of Bay City** (hereinafter referred to as "Owner") and **Garver, LLC**, (hereinafter referred to as "Garver") in accordance with the provisions of the MASTER AGREEMENT FOR PROFESSIONAL SERVICES executed on October 27, 2020 (the "Agreement").

Under this Work Order, the Owner intends to assess the 5<sup>th</sup> Street waterline to identify the rehabilitation required to reduce water loss and pipe failures.

Generally, the scope of services includes historical data review, structural condition assessment, and leak detection assessment for the existing 12-inch ductile iron water line along 5th Street within the City from Avenue G to Norvell Avenue. Garver will conduct a holistic review of the historical and field investigation data towards developing rehabilitation recommendations to mitigate water loss and repair structural degradation. The final Water Line Condition Assessment Report will document inspection methodology, results, estimated construction cost, and recommendations for rehabilitating sections of the existing 12-inch ductile iron water line along 5th Street.

Garver will provide professional services as described herein. Terms not defined herein shall have the meaning assigned to them in the Agreement.

**1. SCOPE OF SERVICES**

1.1. Refer to APPENDIX A – SCOPE OF SERVICES.

**2. PAYMENT**

2.1. The lump sum amount to be paid under this Agreement is **\$198,195.00**. The total amount under this Agreement is **\$198,195.00**. For informational purposes, a breakdown of Garver's estimated costs is included in APPENDIX B – FEE SUMMARY.

**3. APPENDICES**

3.1. The following Appendices are attached to and made a part of this Work Order:  
Appendix A – Scope of Services  
Appendix B – Fee Summary



This Work Order may be executed in two (2) or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

The effective date of this Work Order shall be the last date written below.

CITY OF BAY CITY

GARVER, LLC

By: \_\_\_\_\_  
*Signature*

By: \_\_\_\_\_  
*Signature*

Name: \_\_\_\_\_  
*Printed Name*

Name: Daniel N. Olson, P.E.  
*Printed Name*

Title: \_\_\_\_\_

Title: Vice President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_



# Appendix A

## SCOPE OF SERVICES

### CITY OF BAY CITY, TEXAS 5th Street Water Line Assessment Preliminary Engineering and Assessment Services

#### I. Background

Generally, the scope of services includes historical data review, structural condition assessment, and leak detection assessment for the existing 12-inch ductile iron water line along 5<sup>th</sup> Street within the City of Bay City from Avenue G to Norvell Avenue. Garver will conduct a holistic review of the historical and field investigation data towards developing rehabilitation recommendations to mitigate water loss and repair structural degradation. The final Water Line Condition Assessment Report will document inspection methodology, results, estimated construction cost, and recommendations for rehabilitating sections of the existing 12-inch ductile iron water line along 5<sup>th</sup> Street.

#### II. Scope of Work

The following scope of work describes the services to be provided.

##### A. Task I – Project Administration

1. Project Kickoff Meeting: Garver will conduct a project kickoff meeting with the City of Bay City (City) and other project stakeholders, as applicable. The purpose of the meeting will be to discuss the project approach, schedule, data needs, and confirm project goals.
2. Project Management Plan (PMP) and Quality Control Plan (QCP): Garver will develop and submit for approval a PMP and QCP that will describe the project organizational chart, communication protocols, document management, quality control procedures, and other technical and administrative aspects of the project management.
3. Project Schedule: Garver will develop and maintain a project schedule that shall be used and periodically updated throughout the project for reporting progress to City. The project schedule shall be updated at least monthly to reflect current progress and status of ongoing tasks.
4. Project Coordination: Garver will coordinate the field activities of Garver personnel, subconsultants, and inform the City of any assistance needed from City staff. All site access permissions will be coordinated with City in advance. Garver will coordinate the work of all subconsultants throughout the project.
5. Progress Meetings: Garver will facilitate bi-monthly progress meetings to update City on activities in the prior period, results of investigations, upcoming activities, and any issues that may impact the schedule or budget. Garver will prepare and distribute meeting minutes after each progress meeting. This scope includes up to 3 progress meetings during the project.
6. Monthly Invoicing: Garver will prepare and submit monthly invoices to City, which shall include a progress report and updated project schedule.

##### B. Task II – Historical Data Review

1. Desktop Analysis: Garver will compile historical data (as available) for the existing 12-inch ductile iron water line alignment along 5<sup>th</sup> Street from Avenue G to Norvell Avenue. The

following items are identified for inclusion in the desktop analysis:

- a. Historical aerial imagery compilation and review.
  - b. Documentation of connections to the existing 12-inch ductile iron water line.
  - c. Historical work order review as provided by the City.
2. Historical Data Review documentation will be compiled and delivered as part of the Water Line Assessment Technical Memorandum

## **C. Task III – Water Line Condition Assessment**

1. Garver will work with a subconsultant to perform a condition assessment for the existing 12-inch ductile iron water line along 5<sup>th</sup> Street. The results of the water line condition assessment will be utilized to identify segments of water line that may require rehabilitation or replacement. It is anticipated that up to 8,000 linear feet of 12-inch ductile iron water line will be inspected.
2. Garver will review the reports submitted by the subconsultant from a quality and completeness perspective in accordance with the Project Management Plan.
3. Garver will evaluate the reports provided by the subconsultant to define the recommended future level of effort for water line rehabilitation, which will be included as part of the Water Line Assessment Technical Memorandum.

## **D. Task IV – Water Line Leak Detection Assessment**

1. Garver will work with a subconsultant to perform traditional leak detection for the existing 12-inch water line along 5<sup>th</sup> Street from Avenue G to Norvell Avenue.
2. Garver will review the reports submitted by the subconsultant from a quality and completeness perspective in accordance with the Project Management Plan.
3. Garver will evaluate the reports provided by the subconsultant to define the recommended future level of effort for water line rehabilitation.

## **E. Task V – Water Line Assessment Technical Memorandum**

At the conclusion of the water line condition and leak detection assessment tasks, an engineering analysis of field survey data will be performed to develop recommendations for prioritized water line repairs. A description of field investigations, engineering analysis, and recommendations towards rehabilitation of the existing 12-inch ductile iron water line along 5<sup>th</sup> street will be included in the Water Line Assessment Technical Memorandum. The Technical Memorandum will provide a comprehensive water line rehabilitation strategy coordinated with the City, and include the following:

- Estimated total project costs for rehabilitation and improvement for critical or defective sections of existing 12-inch ductile iron water line along 5<sup>th</sup> Street in accordance with AACE Class 5 estimation standards.
  - Prioritized rehabilitation plan based on applicable rehabilitation method, material, and costs.
  - Recommendations for next steps.
1. Garver will submit a Draft Water Line Condition Assessment Technical Memorandum to the

# Appendix A

ITEM #9.

City for review and comment. The Draft Technical Memorandum will be submitted in electronic (.pdf) format. City will provide comments on the Draft Technical Memorandum within 21 calendar days of submission.

2. Garver will conduct a Draft Technical Memorandum Review Workshop with the City and other interested stakeholders. The workshop will review the findings of the field investigations, prioritized areas for rehabilitation, as well as the costs and rehabilitation methods that are proposed in the recommendations.
3. Garver will incorporate the comments and feedback from the City in the Final Water Line Assessment Technical Memorandum.
4. Submit documentation to TWDB for Engineering Feasibility Report review and address comments.
5. Garver will conduct a quality review of the deliverables according to the PMP.

## III. Additional Services

Additional Services are to be authorized as needed after written confirmation by the City. Additional services include the following:

1. Easement and Property Acquisition
2. Subsurface Utility Engineering (SUE)
3. Geotechnical Investigation
4. Environmental Site Assessment

## DELIVERABLES

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

1. Electronic copy (pdf) of the Water Line Condition Assessment Reports.
2. Electronic copy (pdf) of the Water Line Leak Detection Assessment Reports.
3. Electronic copy (pdf) of the Draft Water Line Assessment Technical Memorandum.
4. Electronic copy (pdf) of the Final Water Line Assessment Technical Memorandum.
5. Electronic files as requested.

## EXTRA WORK

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

1. Detailed Design Services (future authorization)
2. Construction Phase Services (future authorization).
3. Traffic Control Plan (TCP).
4. Stormwater Pollution Protection Plan (SWPPP).
5. Construction materials testing.
6. Redesign for the City's convenience or due to changed conditions after previous alternate direction and/or approval.
7. Submittals or deliverables in addition to those listed herein.
8. Design of any utilities relocation beyond those listed herein.

# Appendix A

ITEM #9.

## Schedule

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

Phase Description	Calendar Days
Kickoff Meeting	10 days from Notice to Proceed
Notice to Proceed Issued for Water Line Condition Assessment	14 days from Kickoff Meeting
Notice to Proceed Issued for Water Line Leak Detection Assessment	14 days from Kickoff Meeting
Draft Water Line Assessment Technical Memorandum	60 days from receipt of subconsultant reports from Water Line Condition Assessment and Water Line Leak Detection Assessment tasks
Draft Water Line Assessment Technical Memorandum Review Workshop	14 days after delivery of Draft Water Line Assessment Technical Memorandum
Final Water Line Assessment Technical Memorandum	30 days from Draft Water Line Assessment Technical Memorandum Review Workshop

\*Note: for planning purposes, 10 days are assumed for City review from receipt of a DRAFT submittal until comments are expected to be received.

## Appendix B

### City of Bay City 5th Street Water Line Assessment Work Order is Lump Sum

#### FEE SUMMARY

<b>Basic Services Section</b>	<b>Estimated Fees</b>
Task 1 - Program and Project Management	\$ 20,316.00
Task 2 - Historical Data Review	\$ 6,596.00
Task 3 - Water Line Condition Assessment	\$ 105,575.00
Task 4 - Water Line Leak Detection Assessment	\$ 13,568.00
Task 5 - Water Line Assessment Technical Memorandum	\$ 52,140.00
<b>Subtotal for Basic Services Section</b>	<b>\$ 198,195.00</b>



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**Requestor Name:** Mason, James **Date Submitted:**                       
*Last, First* *MM/DD/YYYY*

**Requestor Type :** City Staff **Meeting Date:** 02/27/2024  
*Citizen/City Staff/Council Member* *MM/DD/YYYY*

**Position Title** Airport Manager  
*For City Staff Only*

**Agenda Location:** Regular  
*(e.g.: Consent Agenda/ Discussion Item/ Public Hearing/ Executive Session/ Presentation)*

### Agenda Content:

**Discuss, consider, and/or approve: a resolution between the City of Bay City and Texas Department of Transportation for 90/10 reimbursement grant funding to install an updated automated weather observing system at the Bay City Regional Airport and authorize the Mayor to execute a contract between the City of Bay City and Texas Department of Transportation.**

### Executive Summary of Item:

The airport's 20-year-old, automated weather observing system (AWOS) has reached its useful life and needs to be upgraded. This project is a FY24 City Council Goal (Infrastructure) and is in our FY24 CIP. This project is estimated to cost approximately \$200,000; the city has a 10% match or \$20,000. This resolution authorizes TxDOT to enter into a reimbursement grant with the city to upgrade and replace the AWOS system. The city acts as our own agent for the administration of contracts necessary for the implementation.

**RESOLUTION NO. \_\_\_\_\_**

WHEREAS, the CITY OF BAY CITY desires to install an automated weather observing system at the Bay City Regional Airport; and

WHEREAS, the total project cost is estimated to be \$200,000; and

WHEREAS, the CITY OF BAY CITY hereby offers 10% of project costs to match 90% state funds, currently estimated to be \$20,000 in local funds; and

WHEREAS, local funds will be available to meet project expenditures; and

WHEREAS, the CITY OF BAY CITY agrees to operate and maintain the installed automated weather observing system for the useful life of the asset; and

WHEREAS, the City of Bay City intends to request financial assistance from the Texas Department of Transportation for installation of the automated weather observing system for these improvement; and

NOW, THEREFORE, BE IT RESOLVED, that the CITY OF BAY CITY hereby directs the MAYOR to execute on behalf of the CITY OF BAY CITY, at the appropriate time, and with the appropriate authorizations of this governing body, all contracts and agreements with the Texas Department of Transportation, , represented by the Texas Department of Transportation, and such other parties as shall be necessary and appropriate for the implementation of the improvements to the BAY CITY REGIONAL AIRPORT.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_  
Robert K. Nelson, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Jeanna Thompson, City Secretary

\_\_\_\_\_  
Anne Marie Odefey, City Attorney



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**Requestor Name:** Mason, James **Date Submitted:** MM/DD/YYYY  
*Last, First*

**Requestor Type :** City Staff **Meeting Date:** 02/27/2024  
*Citizen/City Staff/Council Member* *MM/DD/YYYY*

**Position Title** Airport Manager  
*For City Staff Only*

**Agenda Location:** Regular  
*(e.g.: Consent Agenda/ Discussion Item/ Public Hearing/ Executive Session/ Presentation)*

### Agenda Content:

**Discuss, consider, and/or approve: a resolution between the City of Bay City and Texas Department of Transportation to act as agent for the runway 13/31 rehab project at the Bay City Regional Airport and authorize the Mayor to execute a contract between the City of Bay City and Texas Department of Transportation.**

### Executive Summary of Item:

The airport's current runway is 50+ years old, with severe cracking and deterioration, which has caused it to lose its ability to maintain its weight rating, therefore it needs to be replaced. This project is a FY24 City Council Goal (Infrastructure) and is in our FY24 & FY 25 CIP. This project has an approximate total cost of \$4,030,000. The city has a total match of 10% or \$403,000. The FY24 cost would be for engineering and design at approximately \$20,000. The BCCDC has agreed to cover the match for the engineering & design. The remainder is FY25 CIP and may be reduced by possible future grant funding. This resolution authorizes TxDOT to act as our agent and for the administration of contracts necessary for the implementation.



**RESOLUTION NO. \_\_\_\_\_**

WHEREAS, the CITY OF BAY CITY intends to make certain improvements to the Bay City Regional Airport; and

WHEREAS, the general description of the project is described as: Runway 13/31 design and construction for rehab; and

WHEREAS, the CITY OF BAY CITY intends to request financial assistance from the Texas Department of Transportation for these improvements; and

WHEREAS, total project cost are estimated to be \$4,030,000, and the City of Bay City will be responsible for 10% of the total project costs currently estimated to be \$403,000; and

WHEREAS, the CITY OF BAY CITY names the Texas Department of Transportation as its agent for the purposes of applying for, receiving and disbursing all funds for these improvements and for the administration of contracts necessary for the implementation of these improvements;

NOW, THEREFORE, BE IT RESOLVED, that the CITY OF BAY CITY hereby directs the MAYOR to execute on behalf of the CITY OF BAY CITY, at the appropriate time, and with the appropriate authorizations of this governing body, all contracts and agreements with the State of Texas, represented by the Texas Department of Transportation, and such other parties as shall be necessary and appropriate for the implementation of the improvements to the BAY CITY REGIONAL AIRPORT.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_  
Robert K. Nelson, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Jeanna Thompson, City Secretary

\_\_\_\_\_  
Anne Marie Odefey, City Attorney