



CITY COUNCIL REGULAR MEETING CITY OF BAY CITY

Tuesday, April 27, 2021 at 6:00 PM
COUNCIL CHAMBERS | 1901 5th Street

COUNCIL MEMBERS

Mayor: Robert K Nelson

Mayor Pro Tem: Jason W. Childers

Council Members: Brent P. Marceaux, Becca Sitz, Floyce Brown, Jim Folse

Bay City is committed to developing and enhancing the long-term prosperity, sustainability, and health of the community.

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

INVOCATION & PLEDGE

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

Councilwoman Becca Sitz

CERTIFICATION OF QUORUM

MISSION STATEMENT

The City of Bay City is a community that fosters future economic growth, strives to deliver superior municipal services, invests in quality of life initiatives and is the gateway to the great outdoors. We encourage access to our unique historical and eco-cultural resources while maintaining our small-town Texas charm.

Councilwoman Becca Sitz

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.

APPROVAL OF MINUTES

- 1. Minutes of Public Hearing on April 13, 2021**
- 2. Minutes of Regular Council meeting on April 13, 2021**

CONSENT AGENDA ITEMS FOR CONSIDERATION AND/OR APPROVAL

- 3. Ratification of a Resolution of the City of Bay City applying for a Crime Victim and Liaison Grant with the Office of the Attorney General, Crime Victim Services Division.**

REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL

- 4. Discussions ~ Economic Action Committee financials. Christy Pustejovsky, EAC Director**
- 5. Ordinance ~ discuss, consider, and/or approve an Ordinance amending the City Code of Ordinances Chapter 46 Flood; Division 2 ("Administration"); Providing for a cumulative and conflict clause, providing for a severability clause; and providing for an effective date. Alyssa Dibbern, Engineering Tech**
- 6. Agreement ~ Discuss and take action to approve the Grant Agreement for Flood Infrastructure Fund between the Texas Water Development Board and the City of Bay City, Matagorda County, Texas; TWDB Commitment no, G1001242, TWDB Project No. 40055, TWDB Resolution No. 21-006. Alyssa Dibbern, Engineering Tech**
- 7. Report ~ Discuss, consider, and/or approve the City's Quarterly Financial and Investment Report for quarter ending March 31, 2021. Scotty Jones, Finance Director**
- 8. Ordinance ~ Discuss, consider, and/or approve and Ordinance of the City of Bay City, Texas, adopting a "Budget Amendment #2" to the "Annual Budget of the City of Bay City, Texas, for the fiscal year 2021"; providing for supplemental appropriation and/or transfer of certain funds; providing for severability; and providing other matters related to the subject. Scotty Jones, Finance Director**
- 9. Agreement ~ Discuss, consider, and/or approve an Interlocal Agreement between the City of Bay City, Texas and Harris County regarding use of Public Safety Communications Systems. Scotty Jones, Finance Director**
- 10. Resolution ~ Discuss, Consider, and/or approve the Resolution of Denial of AEP's application for approval of a distribution cost recovery factor. Scott Jones, Finance Director**
- 11. Discussion ~ update on Nile Valley Road progress.**

12. **Discussion ~ discuss downtown parking options along Highway 35 (7th Street).**

CLOSED / EXECUTIVE SESSION

13. **Pursuant to the Texas Government Code Section 551.074 (To discuss appointment, employment, evaluation, responsibilities and duties, reassignment, discipline or dismissal of an officer or employy, or to hear a complaint or charge against an officer or employee: City Manager.**
14. **Pursuant to Texas Government Code 551.071(2) to consult with its attorney regarding legal representation in gas dispute.**

OPEN SESSION

Discuss, consider and/or take action on item(s) listed in Executive/Closed Session, (if any).

ITEMS / COMMENTS & MAYOR AND COUNCIL MEMBERS

ADJOURNMENT

AGENDA NOTICES:

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

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

Executive Sessions Authorized: This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney.

This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

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, April 23, 2021 before 6:00 p.m.** Any questions concerning the above items, please contact Mayor Robert K. Nelson at (979) 245-2137.

CITY OF BAY CITY

MINUTES • APRIL 13, 2021

**COUNCIL
CHAMBERS | 1901
5th Street**

City Council Public Hearing

5:00 PM

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



Mayor

Robert K. Nelson

Councilman

Jim Folse

Mayor Pro Tem

Jason W. Childers

Councilman

Brent P. Marceaux

Councilwoman

Becca Sitz

Councilwoman

Floyce Brown

Bay City is committed to developing and enhancing the long-term prosperity, sustainability, and health of the community.

CALL TO ORDER

The Public Hearing was called to order at 5:07 pm by Mayor Robert K. Nelson.

CERTIFICATION OF QUORUM**PRESENT**

Mayor Robert K. Nelson
Councilwoman Floyce Brown
Councilwoman Jim Folse
Councilwoman Becca Sitz

Quorum present.

ABSENT

Mayor Pro Tem Jason W. Childers
Councilman Brent P. Marceaux

Also present was Shawna Burkhart, City Manager and Anne Marie Odefey, City Attorney,

APPROVAL OF AGENDA

Motion made by Councilwoman Folse to approve the agenda. Seconded by Councilwoman Sitz. Voting Yea: Mayor Nelson, Councilwoman Brown, Councilwoman Folse, Councilwoman Sitz. Motion carried.

PUBLIC HEARING**Public Hearing to receive public comments on the City of Bay City's Federal Environmental review for the proposed new Northeast Water Plant site funded through the Texas Water Development Board Drinking Water State Revolving Fund.**

Dan Olson with Garver Engineering introduced his associate Tracy Michel, Lead Environmental Scientist. Ms. Michel gave a presentation on the North Water Plant (not the Northeast) site on highway 60.

Councilwoman Sitz was concerned about the location right on highway 60 that could be valuable commercial property for future generation.

There were no comments or questions from the public.

ADJOURNMENT

Motion made by Councilwoman Brown to adjourn the meeting, Seconded by Councilwoman Folse.

Voting Yea: Mayor Nelson, Councilwoman Brown, Councilwoman Folse, Councilwoman Sitz.

Motion carried and the meeting adjourned at 5:20 pm.

PASSED AND APPROVED, this ____ day of _____, 2021.

ROBERT K. NELSON, MAYOR

CITY OF BAY CITY, TEXAS

JEANNA THOMPSON

CITY SECRETARY

CALL TO ORDER

The meeting was called to order at 6:00 pm by Mayor Robert K. Nelson.

INVOCATION & PLEDGE

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

Councilwoman Floyce Brown

CERTIFICATION OF QUORUM**PRESENT**

Mayor Robert K. Nelson
 Councilwoman Floyce Brown
 Councilman Jim Folse
 Councilwoman Becca Sitz

Quorum present

ABSENT

Mayor Pro Tem Jason W. Childers
 Councilman Brent P. Marceaux

Also present was Shawna Burkhart, City Manager, and Anne Marie Odefey, City Attorney.

MISSION STATEMENT

The City of Bay City is a community that fosters future economic growth, strives to deliver superior municipal services, invests in quality of life initiatives and is the gateway to the great outdoors. We encourage access to our unique historical and eco-cultural resources while maintaining our small-town Texas charm.

APPROVAL OF AGENDA

Motion made by Councilwoman Brown to approve the agenda, Seconded by Councilman Folse. Voting Yea: Mayor Nelson, Councilwoman Brown, Councilman Folse, Councilwoman Sitz. Motion carried.

PUBLIC COMMENTS

David Torrez, 1616 cottonwood, stated that he was concerned about trucks parking at gym and other areas downtown. He was also concerned about rebar on 12th street road.

APPROVAL OF MINUTES

- 1. Minutes of Regular Council Meeting on March 23, 2021**

Motion made by Councilwoman Sitz to approve the minutes of March 23, 2021, Seconded by Councilman Folse. Voting Yea: Mayor Nelson, Councilwoman Brown, Councilman Folse, Councilwoman Sitz. Motion carried.

CONSENT AGENDA ITEMS FOR CONSIDERATION AND/OR APPROVAL

2. Ratification of P3 Works Agreement to provide Administration Services for Public Improvement District.

Motion made by Councilwoman Sitz to approve, Seconded by Councilwoman Brown. Voting Yea: Mayor Nelson, Councilwoman Brown, Councilman Folse, Councilwoman Sitz. Motion carried.

REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL

3. Public Hearing ~ Public Hearing to receive public comments on the City of Bay City's Federal Environmental review for the proposed new Northeast Water Plant site funded through the Texas Water Development Board Drinking Water State Revolving Fund.

Dan Olson with Garver Engineering introduced his associate Tracy Michel, Lead Environmental Scientist. Ms. Michel gave a presentation on the Northeast Water Plant site on highway 35. Councilwoman Sitz stated that she was concerned about using future prime commercial real estate for a water plant. David Torrez, citizen, stated that he does not believe this benefits the city residents, just Tenaris. Shawna Burkhart added that the land is from a development agreement.

4. Variance ~ Discuss, consider, and/or approve a variance to Chapter 22 set back requirements at Meadowlawn S/D, Lot 5 & N 1/2 Lot 6, Block 9 (1900 Mary Street). (Maria Monroy)

Shawn Burkhart, City Manager, stated that Ms. Monroy had come before Variance Committee and the committee decided they needed a survey to determine the property lines. Ms Monroy was unable to get the survey due to attorney deceased. During COVID last summer, Ms Monroy had asked how far back but did not get a response due to office closures and vendor placed the shed to close to property line. Asking Council to approve the variance. Complainant was notified but does not recall making the complaint.

Motion made by Councilwoman Sitz to approve the variance to the set back requirements, Seconded by Councilman Folse. Voting Yea: Mayor Nelson, Councilwoman Brown, Councilman Folse, Councilwoman Sitz. Motion carried.

5. Agreement ~ Discuss, consider, and/or approve a Work Order between the City of Bay City and Gaver, LLC for project no. 21W09105 Water Meter Replacement Program.

Mr. Dan Olson with Garver Engineering reviewed the agreement. The agreement is to assist with bidding for the water replacement project. Scotty Jones, Finance Director, added that the agreement was reimbursable.

Motion made by Councilwoman Brown to approve the agreement, Seconded by Councilwoman Sitz. Voting Yea: Mayor Nelson, Councilwoman Brown, Councilman Folse, Councilwoman Sitz. Motion carried.

6. Resolution ~ Discuss, consider, and/or adopt a Resolution to designate authorize signatures to execute documents on behalf of the City of Bay City for the 2020 Texas CDBG program grant no. 72220002 for sidewalk improvements.

Alyssa Dibbern, Engineering Tech, presented the resolution and stated the sidewalk improvements were between Avenue I and H, and Avenue H and G.

Motion made by Councilwoman Sitz to approve the signature resolution, Seconded by Councilman Folse. Voting Yea: Mayor Nelson, Councilwoman Brown, Councilman Folse, Councilwoman Sitz. Motion carried.

7. Resolution ~ Discuss, consider, and/or adopt a Resolution adopting required Community Development Block Grant Civil Rights policies.

Motion made by Councilwoman Sitz to approve the civil rights policy resolution, Seconded by Councilman Folse. Voting Yea: Mayor Nelson, Councilwoman Brown, Councilman Folse, Councilwoman Sitz. Motion carried.

8. Proclamation ~ A proclamation declaring April as Fair Housing Month. Alyssa

Mayor introduced and read the Fair Housing Proclamation.

9. Grant ~ Discuss, consider, and/or authorize the City of Bay City to issue requests for proposals (RFP) for administrative services and requests for qualifications (RFQ) for professional services for the American Rescue Plan Act of 2021.

Scotty Jones, Finance Director, stated that there is more funding available supporting COVID Support. Ms. Jones added this was a no match grant and there is time to plan before 2024.

Motion made by Councilwoman Sitz to approve the City to issue RFP's for administrative services and RFQ's for professional services for the American Rescue Plan Act of 2021, Seconded by Councilwoman Brown. Voting Yea: Mayor Nelson,

Councilwoman Brown, Councilman Folse, Councilwoman Sitz. Motion carried.

10. Discussion ~ discussions regarding downtown parking on 7th Street and limit to vehicle length.

Councilman James Folse stated that three times he had to drive around a vehicle parked on 35. Shawna Burkhart informed that a 3rd party hired did not stripe correctly and has to come back and re-stripe. Councilman James Folse thought that the parking spaces would be angled more with a line and compact only. Mayor Nelson added that we have to have TxDOT permission and have been working on a resolution. Councilwoman Brown says its time we do something. Councilwoman Sitz stated that there have been many accidents and reports and she is hoping we can resolve. Item to be placed on future agenda to discuss more.

CLOSED / EXECUTIVE SESSION

Items on Executive Session were tabled.

- 11. Pursuant to Texas Government Code Section 551.087, (1) to discuss commercial or financial information that BCCDC has received from a business prospect that BCCDC seeks to have locate, stay, or expand in Bay City and with which BCCDC is conducting economic development negotiations; and/or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).**
- 12. Pursuant to the Texas Government Code Section 551.074 (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: City Manager.**

ITEMS / COMMENTS & MAYOR AND COUNCIL MEMBERS

Councilwoman Brown stated that she noticed the street sweeper was fixed and out sweeping. Shawna Burkhart replied that the sweeper is not working properly. Ms. Odefey stated that we got an extended warranty and Ms. Burkhart she would address it with the Public Works Director. Councilwoman Brown says she spoke with John Deer and they would train someone to operate the sweeper.

Councilwoman Sitz announced that we have a group of do-gooder called "Inspire Bay City" who are repainting concrete signs and power washing funded by the Beautify Bay City project.

Anne Marie Odefey stated that Judge Hardin has signed the dismissal of the Bay City Housing Authority lawsuit.

Councilwoman Sitz requested Nile Valley update next meeting

Mayor stated the BASF will let another contractor/city to correct damage on the railroad crossing.

ADJOURNMENT

Motion made by Councilwoman Brown to adjourn, Seconded by Councilwoman Sitz. Voting Yea: Mayor Nelson, Councilwoman Brown, Councilman Folse, Councilwoman Sitz. Motion carried and the meeting adjourned at 7:00 pm.

PASSED AND APPROVED, this ____ day of _____, 2021.

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

JEANNA THOMPSON
CITY SECRETARY

(SAMPLE FORM OF RESOLUTION OF GOVERNING BODY)

R-2021-0008

RESOLUTION OF GOVERNING BODY—REQUIRED

REQUIRED TO BE SUBMITTED WITH THE APPLICATION BY 11:59 P.M. CDT, Friday, APRIL 23, 2021. IF THE TIMING OF THE APPLICATION DUE DATE AND REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT OR OTHER REQUIREMENTS PREVENT THE GOVERNING BODY FROM REVIEWING AND APPROVING THE RESOLUTION, THEN IT MAY BE SUBMITTED TO THE OAG AFTER THE DUE DATE.

LEGAL NAME OF APPLICANT: City of Bay City Police Department

UNIQUE APPLICATION NUMBER (if applicable): 2022-1092343654

Be it known as follows:

WHEREAS, the City of Bay City Police Department, [Name of Applicant] has applied or wishes to apply to the Office of the Attorney General (OAG) for the following grant program (initial one):
Other Victim Assistance Grant (OVAG)
Victim Coordinator and Liaison Grant (VCLG)

WHEREAS, the City Council of Bay City, [Name of Governing Body of Applicant, such as City Council, County Commissioners' Court or Board of Directors], has considered and supports the Application filed or to be filed with the OAG;

WHEREAS, the City of Bay City Police Department, [Name of Applicant] has designated or wishes to designate the following individual as the "Authorized Official" who is given or has been given the power to apply for, accept, reject, alter, or terminate that certain grant with the OAG, as well as given the authority to sign all grant adjustment requests, inventory reports, progress reports and financial reports or any other official documents related to the grant on behalf of the grantee:

Name of Person Designated as "Authorized Official": Robert Lister

Position Title: Chief of Police

NOW THEREFORE, BE IT RESOLVED that this governing body approves the submission of the Application to the OAG, as well as the designation of the Authorized Official.

[Signature]
Signature

Robert K. Nelson
Printed Name

4/21/21
Date

ORDINANCE NO. _____

**ORDINANCE AMENDING THE CITY CODE OF ORDINANCES
CHAPTER 46 FLOOD; DIVISION 2 (“ADMINISTRATION”);
PROVIDING FOR A CUMULATIVE & CONFLICTS CLAUSE,
PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR
AN EFFECTIVE DATE.**

Be it Ordained by the City Council of the City of Bay City that the following amendments are adopted as Amendments to Chapter 46; Division 2; Section 46-47(b)(9) of the Code of Ordinances.

Section One. The following additions are to be made to Section 46-47 of Chapter 46, Division 2 of the Code of Ordinances. All insertions are made with red colored letters are shown as such.

Section 46-47(b) – The duties and responsibilities of the floodplain administrator shall include, but not limited to: –

(9) When a regulatory floodway has not been designated, the floodplain administrator must require that no new construction, substantial improvements or other development (including fill) shall be permitted within zones A1—30 **and AE** on the community's FIRM unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood at all at any point within the community..

Section Two. Cumulative and Conflicts. This Ordinance shall be cumulative of all provisions of ordinances of the City of Bay City, Texas, except where the provisions of the Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed. Any and all previous versions of this Ordinance to the extent that they are in conflict herewith are repealed.

Section Three. Severability. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

Section Four. Effective Date. This Ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

PASSED AND APPROVED on this ____ day of _____, 2020.

ITEM #5.

Robert K. Nelson, Mayor
City of Bay City

ATTEST:

APPROVED AS TO FORM:

Jeanna Thompson, City Secretary
City of Bay City

Anne Marie Odefey, City Attorney

<u>Council Member:</u>	<u>Voted Aye</u>	<u>Voted No</u>	<u>Absent</u>
Robert K. Nelson Mayor	_____	_____	_____
Julie L. Estlinbaum	_____	_____	_____
Bill Cornman	_____	_____	_____
Jason Childers, Mayor Pro Tem	_____	_____	_____
Becca Sitz	_____	_____	_____
Brent Marceaux	_____	_____	_____

R-2021- _____

Authorized Representative Agreement Execution Resolution

A RESOLUTION by the City Council of the City of Bay City (the "City") authorizing Mayor Robert K. Nelson, the Designated Representative of the City, to execute an agreement with the Texas Water Development Board for funding in the amount of \$88,740.

WHEREAS, the Texas Water Development Board made a commitment to provide grant assistance in the form of a grant in the amount of \$88,740 to the City to finance a flood project upon execution of a grant agreement; therefore

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BAY CITY:

SECTION 1. Approval of Agreement. The agreement setting out the terms and conditions of the financial assistance between the Texas Water Development Board and the City is approved and the City's Designated Representative is authorized to execute the agreement on behalf of the City.

SECTION 2. Effective Date. This Resolution shall become effectively immediately after its adoption.

PASSED AND APPROVED, this the _____ day of _____, 2021.

ATTEST: _____

By: _____

(Seal)



Grant Agreement Flood Infrastructure Fund

TEXAS WATER DEVELOPMENT BOARD

AND

CITY OF BAY CITY

MATAGORDA COUNTY, TEXAS

TWDB COMMITMENT NO. G1001242

TWDB PROJECT NO. 40055

TWDB RESOLUTION NO. 21-006

CITY OF BAY CITY
TWDB COMMITMENT NO. G1001242
TWDB PROJECT NO. 40055
TWDB RESOLUTION NO. 21-006

GRANT AGREEMENT

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Project Budget EXHIBIT D

THE STATE OF TEXAS §
 COUNTY OF TRAVIS §

TWDB Commitment No. G1001242

**GRANT AGREEMENT
 BETWEEN THE
 TEXAS WATER DEVELOPMENT BOARD
 AND THE
 CITY OF BAY CITY**

WHEREAS, the City of Bay City (City), located in Matagorda County, has filed an application with the Texas Water Development Board (TWDB) for financial assistance from the Flood Infrastructure Fund to finance a flood project identified as Project No. 40055; and

WHEREAS, on January 28, 2021 the TWDB determined that the City qualifies for financial assistance pursuant to Texas Water Code § 15.534 and the applicable Flood Intended Use Plan (FIUP) and agreed pursuant to the TWDB Resolution to provide a grant in the amount of \$88,740 to the City;

WHEREAS, the City will provide a local share of \$217,260 in the form of cash contributions from the City; and

WHEREAS, the TWDB and the City are the Parties to this Agreement.

NOW, THEREFORE, the Parties mutually agree to adhere to the terms of this Agreement and to administer the Grant Funds provided through this Agreement in conformance with all applicable state and federal laws and regulations, the TWDB Resolution, TWDB guidance, and all terms and conditions set forth herein.

ARTICLE I. DEFINITIONS

The following terms, as used in this Agreement, have the meanings assigned below:

Agreement means this Grant Agreement and the attached exhibits.

Construction Account means an account dedicated to the payment of Project costs, as defined by 31 TAC § 363.2(8) and required by the TWDB Resolution.

Eligible Expenses means the expenses allowed by TWDB program requirements and authorized by the TWDB in the approved Project Budget. Expenses incurred prior to March 12, 2020 are not Eligible Expenses.

Executive Administrator means the Executive Administrator of the TWDB or a designated representative.

Force Majeure means a failure or delay in a Party's performance under this Agreement that is caused by acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either Party and that by exercise of due foresight such Party could not reasonably have been expected to avoid, and that, by the exercise of all reasonable due diligence, such Party is unable to overcome.

Grant Funds means the amount of financial assistance from the TWDB under Commitment Number G1001242 in the amount of \$88,740 to finance the Project.

Outlay Report means TWDB form regarding the total amount of costs incurred relating to the Project for the specified period.

Parties or Party means TWDB and the City and their authorized successors and assignees.

Project means the project for which the TWDB is providing financial assistance under this Agreement and as further described in the TWDB Resolution and identified as Project No. 40055.

State means the State of Texas.

Surplus Funds means those grant funds remaining after the City has submitted final accounting to the Executive Administrator pursuant to 31 TAC § 363.42(a)(2)(C), including interest earned.

TAC means the Texas Administrative Code.

TWDB means the Texas Water Development Board.

TWDB Resolution means TWDB Resolution No. 21-006, dated January 28, 2021, approving the application for financial assistance filed by the City and authorizing the execution of this Agreement.

ARTICLE II. AUTHORITY AND RECITALS

2.1. AUTHORITY. This Agreement is authorized by Texas Water Code Chapter 15, Subchapter I and is also governed by Texas Water Code, Chapter 6; 31 TAC Chapter 363, Subchapters A and D; and the TWDB Resolution.

2.2. RECITALS. The Parties agree that the following representations are true and correct and form the basis of this Agreement:

- A. The TWDB may provide financial assistance in the form of a grant for all or a portion of the Project costs in an amount that the TWDB has determined to be eligible.

- B. On January 28, 2021, the TWDB considered an application filed by the City for financial assistance for a flood project. Based on the representations made by the City in that application, the TWDB adopted the TWDB Resolution in which the TWDB:
 - 1. determined that the City qualifies for a grant and is eligible for financial assistance; and
 - 2. made a commitment to provide financial assistance consisting of a grant in the amount of \$88,740 for the planning of the Project.
- C. The TWDB and the City enter this Agreement to memorialize and set forth the terms and conditions for the Grant Funds. The Executive Administrator is authorized to execute this Agreement on behalf of the TWDB pursuant to the TWDB Resolution, which is attached to this Agreement as **EXHIBIT A**. The City is authorized to execute this Agreement through its authorized representative designated in a resolution duly adopted by the governing body of the City, a copy of which is attached hereto as **EXHIBIT B**.
- D. If the City signs this Agreement with a false statement or it is subsequently determined that the City has violated any of the representations, guarantees, warranties, certifications, or affirmations included in the Agreement, the City will be in default under the Agreement and TWDB may terminate or void the Agreement.
- E. The City and the TWDB act in their individual capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party will not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
- F. The City represents and warrants that the provision of financial assistance under this Agreement will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. The City also represents that if any existing or potential conflict arises during the term of this contract, it will immediately notify TWDB.

ARTICLE III. LEGAL REQUIREMENTS

3.1. APPLICABLE LAWS. In consideration of the performance of the mutual agreements set forth in this Agreement, the City, by and through its designated and authorized representatives, agrees to plan the Project in compliance with the following:

- A. all federal laws and regulations that may be applicable to the Project;
- B. Texas Water Code Chapter 15, Subchapter I; and
- C. 31 TAC Chapter 363.

3.2. PROCUREMENT. The City must engage in competitive procurements for work on the Project. All purchases for goods, services, or commodities made with funds provided under this Agreement will comply with State and local procurement and contracting laws.

3.3. IRON AND STEEL. The City will abide by all applicable construction contract requirements related to the use of iron and steel products and manufactured goods produced in the United States, as required by Texas Water Government Code, Chapter 2252, Subchapter G.

3.4 NATIONAL FLOOD INSURANCE PROGRAM. The appropriate entities within the PLANNING/PROJECT AREA must currently enforce and continue to enforce floodplain management standards at least equivalent to National Flood Insurance Program minimum standards and may exceed the National Flood Insurance Program minimum standards.

3.5 TERRORIST WATCH LIST. The City certifies that it will not enter into a contract with any contractor or subcontractor that is listed on the federal government's terrorism watch list as described in Executive Order 13224.

3.6 FOREIGN TERRORIST ORGANIZATION. The City certifies that it will not enter into a contract with any contractor or subcontractor that is engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Texas Government Code § 2252.152.

3.7 HUMAN TRAFFICKING PROHIBITION. Under Texas Government Code § 2155.0061, the City certifies that the City is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

3.8 PRIOR DISASTER RELIEF. Texas Government Code §§ 2155.006 and 2261.053 prohibit state agencies from accepting a response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Texas Government Code § 418.004, occurring after September 24, 2005. Under Texas Government Code §§ 2155.006 and 2261.053, the City certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

3.9 LOBBYING PROHIBITION. The City represents and warrants that TWDB's payments to the City and the City's receipt of appropriated or other funds under the contract are not prohibited by Texas Government Code §§ 556.005 or 556.0055, related to the prohibition on payment of state funds to a lobbyist or for lobbying activities.

ARTICLE IV. PLANNING

- 4.1. PROJECT REQUIREMENTS.** The City must comply with the following requirements.
- A. Plans and Specifications. The City will construct the Project in accordance with the plans and specifications as sealed by a State licensed engineer and as approved by the Executive Administrator in compliance with 31 TAC § 363.41, as applicable.
 - B. Changes to Plans and Specifications. The City will not make or implement any changes to the scope of the Executive Administrator's approved Project or to the specifications for the Project without the written approval of the Executive Administrator.
 - C. Project Schedule. The City will adhere to the TWDB approved Project schedule, attached as **EXHIBIT C**. The City must not exceed or revise the Project schedule except upon written approval from the TWDB. The City must not delay the Project completion date except by amendment to this Agreement.
 - D. Project Budget. The City will be solely responsible for all costs that exceed the TWDB approved Project Budget, attached as **EXHIBIT D**. The City must notify the Executive Administrator immediately of all changes to the Project Budget, including when it appears that the Project Budget may not be sufficient to complete the Project.
 - E. Personnel. City must assign only qualified personnel to perform the services required to execute the Project as required under this Agreement. City is responsible for ensuring that any contractor or subcontractor also assigns only qualified personnel. Qualified personnel are persons who are properly licensed to perform the work and who have sufficient knowledge, skill, and ability to perform the tasks and services required herein according to the standards of performance and care for their trade or profession.
 - F. Professional Standards. City must provide the services and deliverables in accordance with applicable professional standards. City represents and warrants that it is authorized to acquire contractors and/or subcontractors with the requisite qualifications, experience, personnel and other resources to perform in the manner required by this Agreement.
- 4.2. PROGRESS REPORTS.** The City must submit quarterly status reports on the progress of the project in accordance with the Resolution.

ARTICLE V. SPECIAL COVENANTS AND REPRESENTATIONS

- 5.1. CONDITIONS FOR DISBURSEMENT OF GRANT FUNDS.** No Grant Funds will be deposited into Construction Account or released by the Executive Administrator until the applicable requirements and conditions in the TWDB Resolution and 31 TAC § 363.43, relating to Release of Funds, are met.

5.2. DELIVERY OF GRANT FUNDS. The TWDB will deposit the Grant Funds in the City's Construction Account at the direction of the Executive Administrator.

A. Outlay Reports and Invoices. The City must submit TWDB Outlay Report forms identifying:

1. the total amount of expenses incurred by the City for the period covered by the Outlay Report; and
2. identification and description of the City's share of the total costs for the billing period, if applicable; and
3. invoices, receipts, or other documentation satisfactory in form and in substance to the TWDB sufficient to establish the requested amount as an eligible expense incurred by the City.

B. Release of Funds. The Executive Administrator will authorize the release of Grant Funds when Outlay Reports have been approved by the TWDB.

5.3. ELIGIBLE EXPENSES. The City must use Grant Funds for Eligible Expenses. The City must return any Grant Funds that are used for expenses that cannot be verified as eligible or that are ineligible. The amount of Grant Funds used for any ineligible or unverified expenses will be credited against verified Eligible Expenses. If the total amount of Eligible Expenses is insufficient to fully offset the amount of improperly expended Grant Funds, the City must use other funds to fully repay the TWDB. This Section 5.3, Ineligible Expenses, survives the termination or expiration of this Agreement.

5.4. FINAL ACCOUNTING. The City will provide a final accounting of funds expended on the Project pursuant to 31 TAC § 363.42 and return any Surplus Funds from the grant. This Section 5.4, Final Accounting, survives the termination or expiration of this Agreement.

5.5. WATER AUDIT. If the City is a retail public utility as defined in Texas Water Code § 13.002 and the City provides potable water, then the City annually must perform and file a water audit computing the City's most recent annual system water loss with the TWDB. The first water audit will be submitted by May 1st following the passage of one year after the effective date of this Agreement and then by May 1st every year thereafter during the term of this Agreement. The City agrees to comply with 31 TAC § 358.6 relating to water audits. This Section 5.5, Water Audit, survives the termination or expiration of this Agreement.

5.6. ANNUAL FINANCIAL AUDIT. During the Term of this Agreement, the City must submit an annual audit of the general purpose financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) by a certified public accountant or licensed public accountant. Audits must be submitted to the TWDB no later than 180 days after the close of the City's fiscal year.

5.7. INVESTMENT AND COLLATERALIZATION OF PUBLIC FUNDS. Grant proceeds are public funds and, as such, these proceeds must be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257.

5.8. SPECIAL CONDITIONS. The City must deposit into the City's construction account (or Project fund, as applicable), the City's cash contribution of funds, based on the Board approved grant percentage, necessary to complete the upcoming phase(s) or portion of the phase of the Project, as approved by the Executive Administrator.

ARTICLE VI. INTELLECTUAL PROPERTY

6.1. OWNERSHIP OF WORKS. It is agreed that all works developed by the City and any subcontractors using funds provided under this Agreement or otherwise rendered in or related to the performance in whole or part of this Agreement, including but not limited to reports, drafts of reports, material, data, drawings, studies, analyses, notes, plans, computer programs and codes, or other work products, whether final or intermediate, are the joint property of the TWDB and the City. The City hereby conveys co-ownership of such works to the TWDB as they are created in whole or part. If present conveyance is ineffective under applicable law, the City agrees to convey a co-ownership interest of such works to the TWDB after creation and to provide written documentation of such conveyance upon request by the TWDB. The TWDB and the City each have full and unrestricted rights to use such works with no compensation obligation.

6.2. SUBCONTRACTORS. The City must include terms and conditions in all contracts or other engagement agreements with any subcontractors as are necessary to secure these rights and protections and must require that subcontractors include similar such terms and conditions in any contracts or other engagements with their subcontractors.

ARTICLE VII. NON-PERFORMANCE, TERMINATION, AND REMEDIES

7.1. STOP WORK ORDERS.

- A. Stop Work Order (SWO). The Executive Administrator may issue a written SWO to the City at any time for failure to comply with any provision of this Agreement. The SWO will provide the City with notice of the facts supporting the determination to issue the SWO. The SWO may require cessation of work immediately or at a definite future date. The SWO will provide the City with a specified time to cure.
- B. City's Response. The City must provide a written response to the SWO and will provide the Executive Administrator with a detailed plan to address and cure the

conditions causing the SWO. The City must provide the response within five business days from its receipt of the SWO.

- C. Executive Administrator's Reply. The Executive Administrator may accept, reject, or amend the City's plan and will provide notice of such action to the City within five business days of receipt of the plan. The Executive Administrator may issue an amended SWO that allows resumption of work contingent upon the City's execution of the plan to cure. The Executive Administrator may modify the City's plan to cure only in a manner consistent with the terms and conditions of this Agreement.
- D. City's Option. The City must notify the Executive Administrator within five business days whether it accepts the amended plan. If the City does not accept the amended plan, the Executive Administrator may terminate this Agreement. Upon successful completion of the plan to cure the conditions causing the SWO, the City will continue work to complete all obligations under this Agreement.

7.2. TERMINATION. The TWDB may terminate this Agreement, in whole or in part, at any time, without penalty to the TWDB. Upon receipt of a written notice of termination, the City will immediately discontinue all work in connection with the performance of this Agreement and will promptly cancel all existing orders or other financial commitments chargeable to funding provided pursuant to this Agreement provided, however, that any costs for Eligible Expenses incurred prior to the receipt of such written notice by the City will be payable from the funding provided pursuant to this Agreement.

Within thirty (30) days of the notice of termination, the City must submit a statement showing in detail the work performed, all payments received by the City, and all payments made by or due from the City to any contractor prior to the date of termination.

7.3. SURVIVAL OF TERMS AND CONDITIONS. Termination or expiration of this Agreement for any reason will not release either Party from any liabilities or obligations set forth in this Agreement that:

1. the Parties have expressly agreed will survive any such termination or expiration, if any; or
2. by their nature, would be intended to be applicable following any such termination or expiration.

7.4. REAL ESTATE. If the City purchases real estate for the Project with Grant Funds and any of the real estate or portion of the real estate is not used for the Project, the City will repay to the TWDB the full amount of the Grant Funds for purchase of the real estate that is not used for the Project. Such amount will be due and payable within 90 days after termination or expiration of this Agreement.

7.5. REMEDIES.

- A. The City will have all remedies available in law or equity.
- B. The TWDB must have all remedies available in law or equity, including remedies available under Texas Water Code §§ 6.114 and 6.115.
- C. Notwithstanding the availability of all remedies listed above, pursuant to 31 TAC § 363.406(d), if TWDB determines non-performance of the terms of this Agreement, TWDB may require repayment of all or part of the funds provided by grant assistance or impose sanctions such as prohibition of further board financial assistance.
- D. This Section 7.5 survives the termination or expiration of this Agreement.

ARTICLE VIII. GENERAL TERMS AND CONDITIONS

8.1 NEPOTISM. The City must comply with Texas Government Code Chapter 573 by ensuring that no officer, employee or member of City’s governing body votes or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition does not prohibit the employment of a person who has been continuously employed for a period of two years prior to the election or appointment of the officer, employee or governing body member related to such person in the prohibited degree.

8.2. OPEN MEETINGS. The City must comply with Texas Government Code Chapter 551, which requires all regular, special or called meetings of governmental bodies to be open to the public, except as otherwise provided by law.

8.3. EXCESS OBLIGATIONS PROHIBITED/NO DEBT AGAINST THE STATE. This Agreement is subject to termination or cancellation without penalty to TWDB, either in whole or in part, subject to the availability of state funds.

8.4. INSURANCE AND INDEMNIFICATION.

- A. The City must at all times keep insured with a responsible insurance company or companies such portions of the Project as are customarily insured by political subdivisions in the State that operate like properties in similar locations under similar circumstances. The City will insure against risks, accidents, casualties, or loss in an amount that is customarily carried by such municipalities and political subdivisions and is at least sufficient to protect the TWDB’s interest in the Project.
- B. The City is solely responsible for liability resulting from acts or omissions of the City, its employees, contractors, or agents. The City will indemnify and hold the TWDB and the State harmless to the extent that the City may do so in accordance with State law.

C. Grant Funds for the Project must not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law.

8.5. PERMITS. The City will be responsible for timely filing applications for all licenses, permits, registrations, and other authorizations that the City has identified in the application for financial assistance as required for the planning of the Project. The City will submit copies of all of these final licenses, permits, registrations, and other authorizations issued by local, state, and federal agencies to the TWDB within thirty (30) days of receipt from the issuing agency.

8.6. RECORDS. The City will comply with all terms and conditions relating to records of the Project as follows:

A. Duty to Maintain Records. The City will maintain financial accounting records relating to the Project in accordance with Generally Accepted Accounting Principles. The City must also require its contractors to maintain financial accounting records consistent with Generally Acceptable Accounting Principles and with State laws applicable to government accounting. All accounting and other financial documentation will be accurate, current, and will reflect recordation of the transactions at or about the time the transactions occurred;

B. Duty to Retain Records. The City will retain all financial records and supporting documents and any other documents pertinent to the Project in accordance with the requirements of applicable State law relating to retention and access to records. The TWDB requires the City to retain all records related to this Agreement for a period of three (3) years after Project completion;

C. Public Records. The City understands and agrees that all documents relating to this Agreement are subject to the Public Information Act, Texas Government Code, Chapter 552, and that such documents may not be withheld from public disclosure, except in accordance with law and with the rulings of the Texas Attorney General. The City is required to make any information created or exchanged pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge. The City must promptly respond to a request by the TWDB for copies of any of the City's records related to this Agreement; and

D. Access to Records.

1. State Auditor. By executing this Agreement, the City accepts the authority of the Texas State Auditor's Office to conduct audits and investigations in connection with all Grant Funds received pursuant to this Agreement. The City must comply with directives from the Texas State Auditor and must cooperate in any such investigation or audit. The City agrees to provide the Texas State Auditor with access to any information the Texas State Auditor considers relevant to the investigation or audit. The City also agrees to include a provision in any contract or subcontract related to this Agreement that requires the contractor and the subcontractor to submit to audits and investigations by the Texas State Auditor's Office in connection with all Grant Funds received pursuant to the contract or subcontract.
2. TWDB. The City agrees that the standards of administration, property management, audit procedures, procurement and financial management, and the records and facilities of the City and its contractors are subject to audit and inspection by the TWDB and by any other authorized state or federal entity. All books, documents, papers, and records of the City related to this Agreement must be made available for audit, examination, excerption, and transcription by the TWDB within a reasonable time after a request from the TWDB.

E. Proprietary and Confidential Information. City warrants and represents that any information that is proprietary or confidential and is received by City from TWDB will not be disclosed to any third party without the written consent of TWDB, whose consent will not be unreasonably withheld.

8.7. UPDATING INFORMATION. The City must provide the TWDB with updated information, reports, statements, and certifications as requested by the Executive Administrator relating to the financial condition of the City or the Project and the use of Grant Funds. The City will promptly notify the TWDB of any material change in the activities, prospects, or conditions of the City relating to the Project, or its ability to observe and perform its duties, covenants, and agreements under this Grant Agreement.

8.8. FORCE MAJEURE. Unless otherwise provided, neither the City nor the TWDB nor any agency of the State will be liable to the other for any delay in or failure of performance of a requirement contained in this Agreement caused by *Force Majeure*. The existence of such causes of delay or failure will extend the period of performance until after the causes of delay or failure have been removed provided the non-performing Party exercises all reasonable due diligence to perform. Each Party must inform the other in writing with proof of receipt within five (5) business days of the existence of such *Force Majeure* or otherwise waive this right as a defense.

8.9. NON-ASSIGNABILITY. The terms and conditions of the financial assistance provided by this Agreement may not be assigned, transferred, or subcontracted in any manner without the express written consent of the TWDB.

8.10. ENTIRE AGREEMENT AND AMENDMENT. This Agreement, which incorporates all attached Exhibits, constitutes the entire agreement between the Parties. This Agreement may be amended only in writing signed by the Parties. The changes allowed under Section 4.1 do not require an amendment to this Agreement unless a change to the Project Schedule, **EXHIBIT C**, or the Project Budget, **EXHIBIT D**, results in a different project completion date or total budget amount.

8.11. NO WAIVER. The failure of any Party to insist upon the strict performance of any of the terms, provisions, or conditions of this Agreement will not be construed as a waiver or relinquishment for the future of the strict performance of any such term, provision, or condition or any other term, provision, or condition.

8.12. LAW AND VENUE. The validity, operation, and performance of this Agreement will be governed and controlled by the laws of the State of Texas and applicable federal regulations, and the terms and conditions of this Agreement will be construed and interpreted in accordance with the laws of the State. The Parties understand and agree that this Agreement is for the provision of financial assistance for the planning, design, acquisition and construction of the Project and as such all or part of the performance of the terms and obligations of the Agreement will be performed in Matagorda County, Texas. Notwithstanding the location of the Project, the Parties understand and agree that any proceeding brought for any breach of this Agreement involving the TWDB will be in Travis County, Texas. This section does not waive the sovereign immunity of the State or the TWDB.

8.13. NOTICES. All notices, notifications, or requests required or permitted by this Agreement will be in writing and will be transmitted by (1) email and (2) personal delivery or transmitted by United States certified mail, return receipt requested, postage prepaid, to the addresses of the Parties shown below. Notice shall be effective when received by the Party to whom notice is sent.

Email:

Dain.Larsen@twdb.texas.gov

Personal delivery to mail:

Texas Water Development Board
Attn: Executive Administrator
1700 N. Congress Ave., 6th Floor
Austin, Texas 78711-3231

City of Bay City
Attn: Mayor
1901 5th Street
Bay City, Texas 77414

8.14. TERM. This Agreement is effective on the date signed by the Executive Administrator. The Agreement will expire upon successful completion of the Project and Final Accounting in accordance with Section 5.4 of this Agreement.

8.15. SURVIVAL OF TERMS AND CONDITIONS. This Article VIII, General Terms and Conditions, survives the termination or expiration of this Agreement.

TEXAS WATER DEVELOPMENT BOARD	CITY OF BAY CITY
<hr/> Jeff Walker Executive Administrator	<hr/> Robert Nelson Mayor
<hr/> Date	<hr/> Date

EXHIBIT A
TWDB Resolution No. 21-006

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
 APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE
 IN THE AMOUNT OF \$88,740 TO THE CITY OF BAY CITY
 FROM THE FLOOD INFRASTRUCTURE FUND
 THROUGH
 THE EXECUTION OF A GRANT AGREEMENT IN THE AMOUNT OF \$88,740
 (21-006)**

WHEREAS, the City of Bay City (City), located in Matagorda County, Texas, has filed an application for financial assistance from the Flood Infrastructure Fund (FIF) in accordance with Texas Water Code Chapter 15, Subchapter I, to finance planning of a regional drainage study, a flood project identified as Project No. 40055; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$88,740 through execution of a Grant Agreement, all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, the City will provide a local share of \$217,260 in the form of a cash contribution from the City; and

WHEREAS, the TWDB hereby finds:

1. that the application and financial assistance requested meet the requirements of Texas Water Code, Chapter 15, Subchapter I; 31 TAC Chapter 363, Subchapters A and D; and the State Fiscal Year 2020 Flood Intended Use Plan (FIUP);
2. the City has demonstrated a sufficient level of cooperation among eligible political subdivisions and has included all of the eligible political subdivisions substantially affected by the flood project in accordance with Texas Water Code § 15.536(2);
3. that no debt obligations are to be assumed by the City for the financial assistance and no taxes or revenues are required to be pledged by the City in accordance with Texas Water Code § 15.536(3);
4. that the City is eligible to receive grant funding in accordance with Texas Water Code § 15.534 and the applicable FIUP;
5. that the request for financial assistance does not include redundant funding for activities already performed and/or funded through another source, in accordance with the FIUP; and
6. that the City has demonstrated that the application meets the requirements of the FIUP related to the National Flood Insurance Program in the area to be served by the Project; and

7. that the Project was developed using the best and most recent available data, in accordance with the FIUP; and
8. that the current water audit has been completed by the City and filed with the TWDB in accordance with Texas Water Code § 16.0121.

NOW THEREFORE, based on these findings, the TWDB resolves as follows:

A commitment is made by the TWDB to the City of Bay City for financial assistance in the amount of \$88,740 from the Flood Infrastructure Fund, to be evidenced by the execution of a Grant Agreement. This commitment will expire on July 31, 2021.

Such commitment is conditioned as follows:

Standard Conditions:

1. this commitment is contingent on availability of TWDB funds on hand;
2. this commitment is contingent upon the City's continued compliance with all applicable laws, rules, policies, and guidance (as these may be amended from time to time to adapt to a change in law, in circumstances, or any other legal requirement), including but not limited to 31 TAC Chapter 363;

The Following Conditions Must Be Included in the Grant Agreement:

3. the Grant Agreement must provide that the City will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
4. the Grant Agreement must contain a provision requiring the City to maintain insurance coverage sufficient to protect the TWDB's interest in the project;
5. the Grant Agreement must include a provision requiring a final accounting to be made of the total sources and authorized use of Project funds within 60 days of the completion of the Project;
6. the Grant Agreement must include a provision stating that the City shall return any grant funds that are determined to be surplus funds remaining after completion of the Project and completion of a final accounting, including any interest earned on the grant funds;
7. the Grant Agreement must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Grant Agreement that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;

8. financial assistance proceeds are public funds and, as such, the Grant Agreement must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256 and the Public Funds Collateral Act, Government Code, Chapter 2257;
9. financial assistance proceeds shall not be used by the City when sampling, testing, removing, or disposing of contaminated soils and/or media at the Project site. The Grant Agreement shall include an environmental indemnification provision wherein the City agrees to indemnify, hold harmless, and protect the TWDB from any and all claims, causes of action, or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment, recycling, and disposition of any contaminated sewage sludge, contaminated sediments, and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials, and employees as a result of activities relating to the Project to the extent permitted by law;
10. the Grant Agreement must contain a provision requiring the City to submit quarterly status reports on the progress of the project that details information requested by the Executive Administrator. The Executive Administrator may withhold authorization to release funds from escrow or adjust the amount of funds to be released from escrow based on the receipt of the quarterly status reports and the projected quarterly needs for the project;
11. prior to release of funds for the relevant services, and if required under the TWDB's financial assistance program and if not previously provided with the application, the City shall submit executed contracts for engineering and, if applicable, financial advisor and legal services, for the Project that are satisfactory to the Executive Administrator. Fees to be reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the contract, and acceptable to the Executive Administrator;
12. prior to closing, when any portion of financial assistance is to be held in escrow or in trust, the City shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;

PROVIDED, however, the commitment is subject to the following special conditions:

Special Conditions:

13. prior to closing, the City shall execute a Grant Agreement in a form and substance acceptable to the Executive Administrator; and

14. prior to release of funds for each Project phase or portion of a Project phase, the City must deposit into the City's construction account (or Project fund, as applicable), the City's cash contribution of funds, based on the Board-approved grant percentage, necessary to complete the upcoming phase(s) or portion of the phase of the Project, as approved by the Executive Administrator.

APPROVED and ordered of record this, the 28th day of January, 2021.


TEXAS WATER DEVELOPMENT BOARD



Peter M. Lake, Chairman

DATE SIGNED: 1/29/21

ATTEST:



Jeff Walker, Executive Administrator

EXHIBIT B
City of Bay City Resolution

EXHIBIT C

Project Schedule

Bay City
40055 Regional Drainage Study

Project Schedule:

Project Task	Schedule Date
Planning Report Completion	September 15, 2021

EXHIBIT D

Project Budget



Project Budget Summary
Bay City
 40055 - Regional Drainage Study

Budget Items	TWDB Funds	Local and Other Funds	Total
Special Services			
Project Management (by engineer)	\$5,713.00	\$13,987.00	\$19,700.00
Special Service Other (H&H Analysis)	\$74,327.00	\$181,973.00	\$256,300.00
Surveying	\$8,700.00	\$21,300.00	\$30,000.00
Subtotal for Special Services	\$88,740.00	\$217,260.00	\$306,000.00
Total	\$88,740.00	\$217,260.00	\$306,000.00

~ **DISCUSS, CONSIDER, AND/OR APPROVE THE CITY'S QUARTERLY FINANCIAL AND INVESTMENT REPORT FOR THE QUARTER ENDING MARCH 31, 2021**



EXECUTIVE SUMMARY

QUARTERLY FINANCIAL & INVESTMENT REPORT

BACKGROUND: Quarterly financial reports provide the most accurate reflection of the quarter activity for each major fund. Reports are provided to City Council via email with a formal presentation at the next available Council meeting. In addition, the Finance Committee meets quarterly to review the Investment Report in detail. This time also serves as an opportunity to discuss the City's finances. In the event that financial decisions or budgetary amendments need attention prior to this date-the Finance Director shall request a Special Called Meeting. All reports are posted to the City's website along with other financial information.

FINANCIAL IMPLICATIONS: Timely financial data provides City Council time to make informed decisions to prevent any negative financial implications.

IMPACT ON COMMUNITY SUSTAINABILITY: The report provides financial information to the public. (i.e., costs of services, revenue sources)

RECOMMENDATION: Staff recommends City Council approve the Quarterly Financial & Investment Report.

ATTACHMENTS: Quarterly Financial Report for Quarter Ending March 31, 2021



CITY OF BAY CITY

FY 2021 2nd Quarter Financial Report

As of March 31, 2021

The City of Bay City Finance Department is dedicated to excellence in local government, comprehensive fiscal management, compliance and reporting. The Monthly Report is used to provide our internal and external customers financial reporting with easy to read narratives regarding the City's financial position.

This report represents a general overview of financial operations through **March 2021**, the sixth month, and **50.00%** of FY 2021.

1. The **Financial Summaries** provide comparative data for revenues and expenditures by fund. Data shows current monthly and year to date information as it relates to budget. Beginning fund balances are estimates until the final audit is complete.
 - The **General Fund** is the general operating fund of the City. It is used to account for all financial resources except those accounted for in other specific funds. This fund includes all general tax revenues and other receipts that are not restricted by law or contractual agreement to some other fund. General operating expenditures, fixed charges and capital improvement costs not paid through other funds are paid from this fund.
 - The **Public Utility Fund** accounts for the operations costs to provide water and sewer services to the citizens of Bay City.
 - The **Airport Fund** is used to account for the operations of the Airport, and to account for the rent generated from its T-hangers and fuel sold.
 - The **Hotel/Motel Occupancy Tax Fund** was established to directly enhance and promote tourism and the convention and hotel industry or other expenses as approved by State Law.
2. The **Investment Report** provides a description of investment activity during the quarter.

This report does not include all funds related to the City of Bay City's Operations—please refer to the City's Comprehensive Annual Financial Report & the City's Annual Budget available on the City's website (www.cityofbaycity.org).

Go to the Finance Department's Web Page for all financial transparency information. This includes audits, budgets, quarterly reports, and check registers

General Fund Overview

Revenue Highlights

Revenues total \$9,106,661 or 58.5% of the budget.

- Property Tax. The certified value totaled \$898 million. Through March, the City received \$4,040,393 or (92%) of the 4.4-million-dollar property tax maintenance and operation budget. Most property taxes will be received by January to avoid penalties.
- Sales tax. Second Quarter Sales Tax Allocation to the City is **down** 9.5% (\$149,152) as compared to the second quarter in prior year.
- Franchise fees are in line with budget. Licenses & Permits are under the budget target, however this should level out over time. (timing of permits pulled)
- Fines and penalties (Court Fines) are under budget expectations by \$8,000.
- Charges for services represents sanitation fees - \$1,276,229 (50% of budget).
- Miscellaneous Revenue appears below budget; however this is due to the timing of grant payments and/or interlocal agreements. (i.e. Bay City Gas Company, County, BCCDC)

General Fund Expenditure Highlights

Expenditures total \$6,845,499 or 42.6% of budget.

Most departments are under the 50% budget target. Budgets that are over the budget target are primarily due to the following:

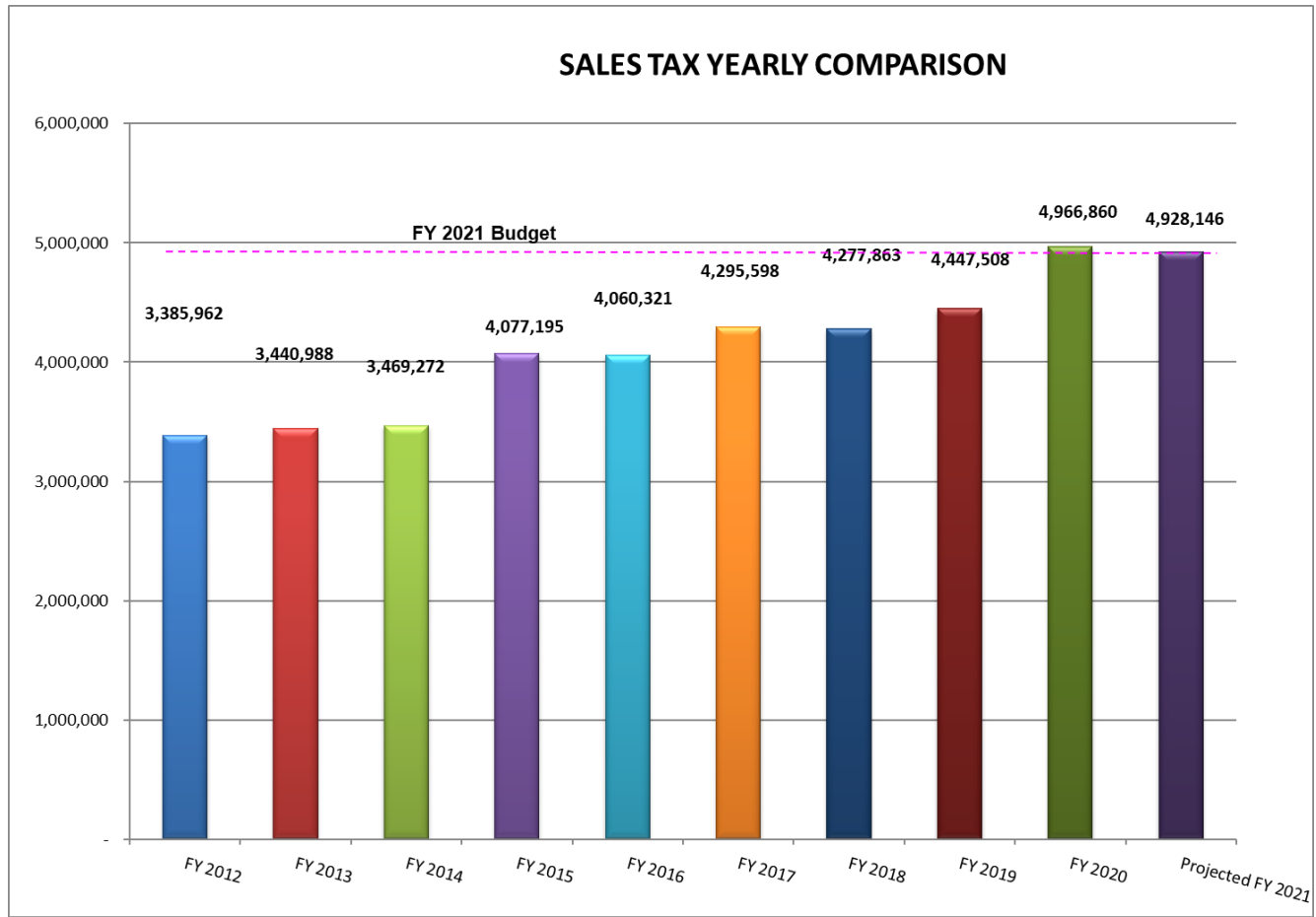
- Fire Department- timing of support payment to Volunteer Fire Department
- Recycling Center- HGAC grant (refurbishing bins)- amendment

Fund Balance

The General Fund's fund balance is budgeted to decrease by \$489,265 to purchase capital items (4 police units & the City's premier splashpad). **The City's reserve level currently meets the minimum policy of 25%.** See bottom of page 3 for more clarification. The unaudited beginning cash position (October 1, 2020) was 4.5 million which represents approximately 30% operating expenditures including transfers. Transfers include departments/funds such as Information Technology, Facilities/Equipment Maintenance, and the Bay City Airport. The City plans to maintain reserves that meet or minimally exceed the 25% reserve requirement. The goal is to maintain reserves between 90 & 120 days. Reserves above 90 days or 25% may be used to fund non-reoccurring expenditures (i.e. capital projects).

GENERAL FUND FINANCIAL SUMMARY

General Fund (Fund 11)					
Percent of Fiscal Year Complete	50%				
	Total Budget	YTD Actual*	(Over)Under Budget to Date	% FY 2021 Budget	
Beginning Fund Balance (Unaudited)	\$ 4,482,693	\$ 4,482,693	Pre-Audit		
REVENUES					
Property Taxes	4,391,617	4,040,393	351,224	92.0%	
Sales Tax	4,725,000	2,286,160	2,438,840	48.4%	
Other Local Taxes (Franchise)	1,326,000	665,499	660,501	50.2%	
Charges for Services (Sanitation)	2,565,000	1,288,771	1,276,229	50.2%	
Fines & Penalties	201,000	89,728	111,272	44.6%	
Licenses & Permits	192,500	74,634	117,866	38.8%	
Miscellaneous	1,489,586	325,725	1,163,861	21.9%	
Transfers (Hotel/Motel & Utility)	671,500	335,750	335,750	50.0%	
Total Revenues	\$ 15,562,203	\$ 9,106,661	\$ 6,455,542	58.5%	
EXPENDITURES					
City Secretary	111,745	49,968	61,777	44.7%	
City General Services	3,279,806	1,101,027	2,178,780	33.6%	
Administrative Council	307,405	138,165	169,240	44.9%	
Main Street	65,000	27,831	37,169	42.8%	
Human Resources	264,874	128,149	136,725	48.4%	
Municipal Court	344,249	144,600	199,649	42.0%	
Finance	341,670	167,271	174,399	49.0%	
Code Enforcement	312,750	102,012	210,738	32.6%	
Police	4,732,749	2,359,106	2,373,643	49.8%	
Animal Impoundment	170,712	79,272	91,440	46.4%	
Fire Department	198,863	121,747	77,116	61.2%	
Street and Bridgne	3,513,461	1,509,446	2,004,015	43.0%	
Recycling Center	170,180	90,212	79,968	53.0%	
Parks	1,160,083	379,215	780,868	32.7%	
Riverside Park	201,909	65,039	136,870	32.2%	
Recreation	101,823	47,668	54,155	46.8%	
Pool Operations	286,352	123,841	162,511	43.2%	
Library	487,837	210,929	276,908	43.2%	
Total Expenditures	\$ 16,051,468	\$ 6,845,499	\$ 9,205,969	42.6%	
*YTD does not includes encumbrances					
Net Revenue (Expenditures)	\$ (489,265)	\$ 2,261,162			
Ending Fund Balance	\$ 3,993,428	\$ 6,743,855			
% of Operating Reserves	25%	42%			
Fund Balance Target 90 days (25%)	\$ 4,012,867				
Over/(Under) min Policy Level (25%)	\$ (19,439)				



	2nd Quarter		% Change from	
	Fiscal Year 2020	Fiscal Year 2021	Prior Year	Variance
January	477,720.61	470,742.79	-1.46%	(6,977.82)
February	611,567.87	471,009.57	-22.98%	(140,558.30)
March	474,582.44	472,966.32	-0.34%	(1,616.12)
Total	1,563,870.92	1,414,718.68	-9.54%	(149,152.24)
City General Fund (75%)	1,172,903.19	1,061,039.01		(111,864.18)
BCCDC (25%)	390,967.73	353,679.67		(37,288.06)
	1,563,870.92	1,414,718.68		(149,152.24)

Budget FY 2021	Projected Sales Tax	Exceeding Budget
4,725,000	4,928,146	203,146

Public Utility Fund Overview

Revenue Highlights

- As a percentage of budget, total Water & Sewer Revenue is 48% and in line with budget expectations. (City bills one month in arrears)
- Miscellaneous Income is below the budget mark due to low interest rate environment.

Expenditure Highlights

- Total expenditures for the Utility Fund are 47% of budget.

Most utility departments are within budget parameters. Budgets that are over the budget target are primarily due to the following:

- Utility Maintenance- emergency water and sewer repairs

PUBLIC UTILITY FUND FINANCIAL SUMMARY

Utility Fund (Fund 61)					
Percent of Fiscal Year Complete	50%				
	Total Budget	YTD Actual*	(Over)Under Budget to Date	% FY 2021 Budget	
Beginning Fund Balance	\$ 2,250,906	\$ 2,250,906	Pre-Audit		
REVENUES					
Charges for Services	8,177,000	3,949,335	4,227,665	48%	
Fines & Penalties	140,000	56,223	83,777	40%	
Miscellaneous	58,000	6,392	51,608	11%	
Total Revenues	8,375,000	4,011,951	4,363,049	48%	
EXPENDITURES					
Utility General	321,069	129,289	191,780	40%	
Utility Maintenance	2,131,236	1,166,111	965,125	55%	
Water & WWTP Division	1,959,599	890,391	1,069,208	45%	
Warehouse Operations	3,963,096	1,716,173	2,246,923	43%	
Total Expenditures	\$ 8,375,000	\$ 3,901,963	\$ 4,473,037	47%	
*YTD does not include encumbrances					
Net Revenue (Expenditures)	\$ -	\$ 109,988			
Ending Fund Balance	\$ 2,250,906	\$ 2,360,894			
% of Operating Reserves	27%	28%			
Target 90 days (25%)	2,093,750				
Over/(Under) Target	\$ 157,156				
<i>Designated for capital projects</i>					
<i>Some encumbered from Prior Year</i>					
City is budgeting \$406,848 in depreciation until year 1 TWDB debt payment is known.					

Airport Fund Overview

Revenue Highlights

- As a percentage of budget, core Airport revenues are at budget expectations.
- General Fund (Transfers In) subsidizes the Airport by \$225,000-\$250,000 each year.
- The Bay City Community Development Corporation is contributing \$100,000 for the Taxiway project that is accounted for in a separate capital project fund.

Expenditure Highlights

- As a percentage of budget, total expenditures are 35%.

AIRPORT FUND FINANCIAL SUMMARY

Municipal Airport Fund (Fund 64)				
Percent of Fiscal Year Complete	50%			
	Total Budget	YTD Actual*	(Over)Under Budget to Date	% FY 2021 Budget
Beginning Fund Balance	\$ 77,254	\$ 77,254	Pre-Audit	
REVENUES				
Charges for Services	-	-	-	0%
Miscellaneous (Rentals, Grants)	157,500	85,519	71,981	54%
Transfers (General Fund)	225,000	112,500	112,500	50%
Other Revenue (Fuel Sales)	180,500	86,034	94,466	48%
Total Revenues	\$ 563,000	\$ 284,053	\$ 278,947	50%
EXPENDITURES				
Personnel	215,400	84,676	130,724	39%
Supplies & Materials	175,400	54,314	121,086	31%
Other Charges & Services	114,050	36,605	77,445	32%
Repairs & Maintenance	126,900	43,971	82,929	35%
Capital Expenditures	-	-	-	0%
Transfers	-	-	-	0%
Total Expenditures	\$ 631,750	\$ 219,566	\$ 412,184	35%
*YTD does not include encumbrances				
Net Revenue (Expenditures)	\$ (68,750)	\$ 64,487		
Ending Fund Balance	\$ 8,504	\$ 141,741		
<i>No minimum Fund Balance Policy</i>				
<i>General Fund subsidizes approx.</i>				
<i>\$225,000-250,000 each year</i>				

Civic & Cultural Arts Fund (Hotel /Motel Fund) Overview

Revenue Highlights

- As a percentage of budget, total Hotel/Motel Fund is below budget target of 50%, this is due the timing of hotel payments and ongoing COVID-19 suspected impact. Most hotels remit tax on a monthly or quarterly basis. (January - March receipts will not be remitted until April)
- Miscellaneous Income: Civic Center rentals are at 70% which is above the budget target.

Expenditure Highlights

- As a percentage of budget, total expenditures are within budget parameters.
- Hotel General is above the budget target due to the timing of payment made to the Museum.

HOTEL/MOTEL FUND FINANCIAL SUMMARY

Civic & Cultural Arts Fund (Fund 25)				
Percent of Fiscal Year Complete	50%			
	Total Budget	YTD Actual*	(Over)Under Budget to Date	% FY 2021 Budget
Beginning Fund Balance	\$ 611,955	\$ 611,955	Pre-Audit	
Revenues				
Hotel Occupancy Tax	\$ 650,000	\$ 148,337	\$ 501,663	23%
Interest Income	1,000	83	\$ 917	8%
Rental Fees- Civic Center	55,000	38,700	\$ 16,301	70%
Other Income- Special Events	1,500	30	\$ 1,470	2%
Other Income- Civic Center	2,500	6,658	\$ (4,158)	266%
Total Revenues	\$ 710,000	193,806	\$ 516,194	27%
Expenditures				
Hotel General	\$ 126,500	90,521	35,979	72%
Tourism Department	287,020	93,536	193,484	33%
Civic Center	378,480	109,066	269,414	29%
Bay City Theatre	260,000	1,386	258,614	1%
Total Expenditures	\$ 1,052,000	\$ 294,510	\$ 757,490	28%
*YTD does not include encumbrances				
Net Revenue (Expenditures)	\$ (342,000)	\$ (100,704)		
Ending Fund Balance	\$ 269,955	\$ 511,252		
<i>Proposed to maintain \$50,000</i>				

Departmental Highlights - Quarter Activity

Building Department New Homes



9 NEW RESIDENTIAL HOMES (YTD = 17 Homes)

Value Added: Unknown

Commercial Permits

BUSINESS

0 for QTR 2 (YTD= 2 permits)

Value Added: \$330K (Shipley's 76K; TSO 254K)

Total Estimated Taxes= \$2,161

	Jan-March 2020	Jan-March 2021
Building Inspections	446*	289*
Fire Inspections	1	2
COC Issued	3	None

*City and Bureau Veritas (3rd Party) handle inspections

Street and Bridge

Utility

	Jan-March 2020	Jan-March 2021		Jan-March 2020	Jan-March 2021
Concrete Pavement Repair	4	5	Water Leaks	103	130
Ditch Cleaning	12	6	Meter Leaks	29	20
Asphalt Pavement Repair	46	44	Sewer Repairs	149	118
Utility/Asphalt/Concrete Repair	17	4	Low Pressure Reads	7	12
Signs	5	3	Meter Swaps	144	17
Traffic Control Devices	10	8	Water/Sewer Taps	4	14

Police Statistics

	Jan-March 2020	Jan-March 2021
Calls for service	8,433	8,341
Arrests	288	254
Cases assigned to CID	547	448
Cases cleared by CID	775	585

Civic Center

	YTD 2020	YTD 2021
Total Revenue	\$43,875	\$38,688
Total Expenditures	\$103,825	\$109,066

OTHER FINANCIAL NOTES

Governmental Funds

General Fund

Meeting reserve policy!

Amendments: Drainage Study, HGAC Grant, Public Safety Building Feasibility Study

Proprietary Funds

Public Utility Fund

Amendment: Utility Maintenance (infrastructure repairs)—monitoring for next quarter

Airport

None

Monitoring:

Sales Tax – very good trend from October to December. January, February, and March payments were lower than prior year (down \$150,000). YTD down approximately \$50,000 from prior year. However, the City is still in line with budget but will continue to monitor.

Hotel Tax Revenue- Anticipate loss due to ongoing COVID-19. April hotel tax reports will be a better indicator of current and possible future impacts. Industrial activity in the area may offset some loss.

Investment Report 2nd Quarter Fiscal Year 2021

The City has a weighted average portfolio of 5 days with an average book yield of .37%. The City is liquid with 100% of the portfolio in a 0-1-year maturity. Average interest rates have declined since prior quarter except for fixed term investments. Most short-term investments average less than .5%. Investment earnings are \$14,012 for the quarter and down \$22,717 as compared to the same quarter last year. The investment strategy currently is to stay short with diversification (Checking, Investment Pools, and Securities less than 3 years to maturity) to minimize interest rate risk in the future.

March 31, 2021 Balances

	Total Bal by Type	% of Portfolio
IBC	\$ 5,335,288.10	32%
Prosperity Bank	\$ 311,988.04	2%
Prosperity Bank- Money Market	\$ 4,356,715.27	27%
Petty Cash/Cash Drawers	\$ 4,112.00	0%
Texpool	\$ 2,056,360.01	13%
Texas Class	\$ 3,311,293.95	20%
CD's	\$ -	0%
Securities	\$ 989,000.00	6%
	\$16,364,757.37	100 %

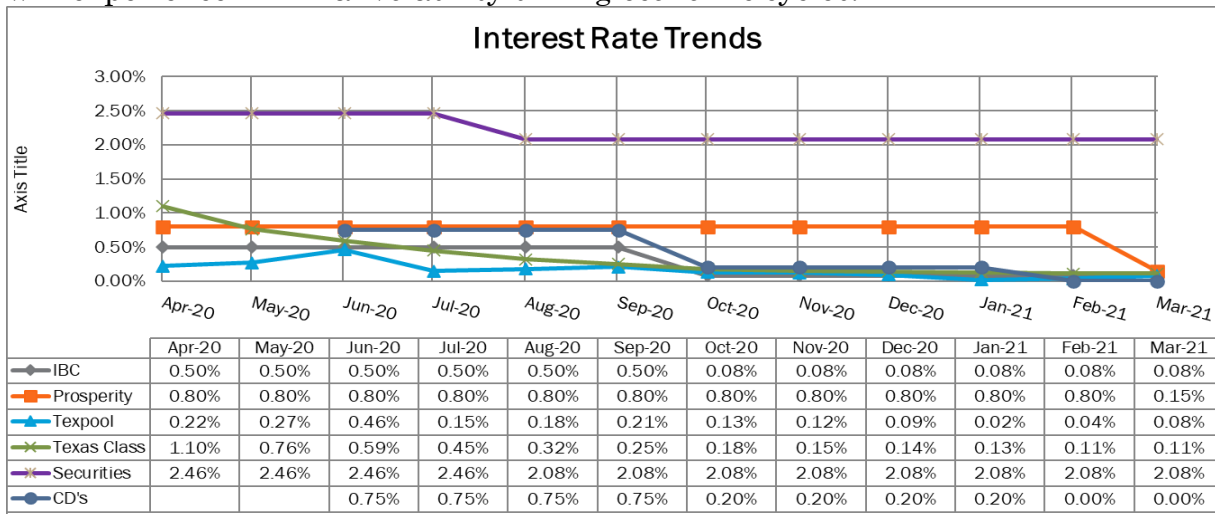
Interest Earnings

Interest received during the 2nd quarter totaled \$ 14,012 and represents interest paid on checking accounts and investments.

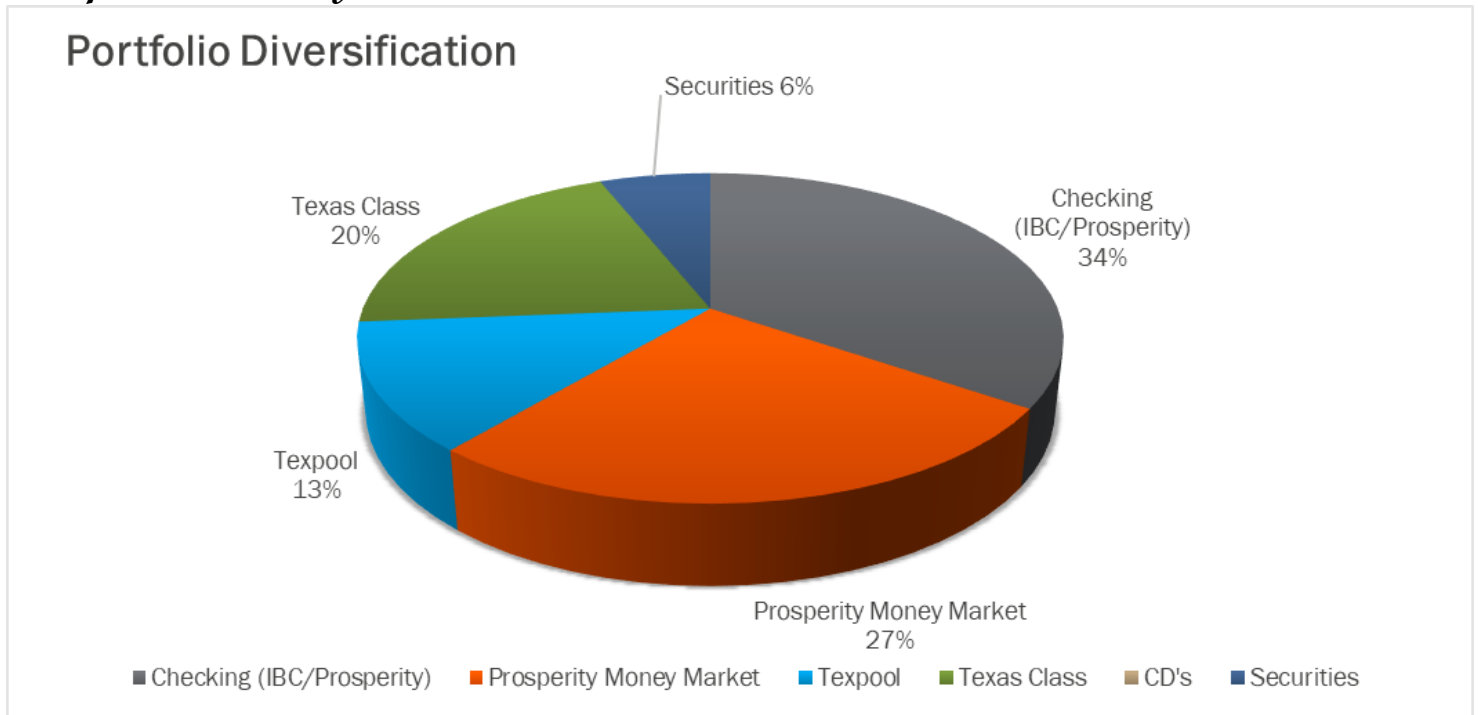
Portfolio	Qtr 03-31-21	Qtr 03-31-20	Over Prior Year
Interest Received	\$14,012	\$36,729	<\$22,717>

Portfolio Diversification

Portfolio Diversification is used to create a structure to reduce investment risks and a portfolio that will experience minimal volatility during economic cycles.




Portfolio Maturity Schedule



The goal is to ladder the City’s portfolio. Due to some economic uncertainty and low interest rates, staying short for investment purposes is the strategy for any investments.

Years to Maturity	Face Value	% Total
0-1	\$16,364,757.37	100%
1-2	\$ 0	0%
Total	\$16,364,757.37	100%

 City of BAY CITY vs. Benchmarks for Quarter Ending March 31, 2021						
BOOK VALUE	MARKET VALUE	Unrealized Gain/⟨Loss⟩	Average Book Yield	Benchmark Pools	Benchmark 90 Day T-Bill	
\$ 16,364,757	\$ 16,369,367	4,610.00	0.37%	0.09%	0.04%	
Weighted Average						
Maturity	4.76 Day(s)		0.37% Yield			

**BUDGET~ DISCUSS, CONSIDER, AND/OR APPROVE AN ORDINANCE ADOPTING
BUDGET AMENDMENTS FOR THE QUARTER ENDING MARCH 31, 2021.**



EXECUTIVE SUMMARY
BUDGET AMENDMENTS

BACKGROUND: The legal level of budgetary control for the City of Bay City lies at the departmental level. Any revisions that alter the amount of total expenditures/expenses of the department must be approved by City Council.

FINANCIAL IMPLICATIONS: Amending the budget provides a revised parameter for the budget.

RECOMMENDATION: Staff recommends City Council approve the budget amendments as presented.

ATTACHMENTS: Ordinance and Budget Amendments

BUDGET AMENDMENT

ITEM #8.

DEPARTMENT: General Fund **Date:** 3/31/2021

- Reason for Budget Amendment:** (Please indicate)
- X 1. New revenues (originally unbudgeted) are available.
2. Actual revenues (originally unbudgeted) have exceeded the original adopted budget.
3. A new project, program or special expenditure has been authorized.
- X 4. Transfer reclassification of original adopted budget to realign budget to actual transaction activity as presently needed.

Brief Description of Request: FY2021: General Fund- Police, Recycling Center, and Streets

Account Description	Fund #	Account #	Expenditure	Exp. Decrease	Notes
			Increase or Revenue Decrease	or Rev. Increase	
			Debit	Credit	
CE- Vehicles	11	450-4615	\$ 6,000		Increase in Vehicle Cost
CE- Building	11	450-4610	\$ 36,000		Architectural Services
Prior Year Fund Balance	11	3999		\$ 42,000	Using Cash Reserve to fund PD Costs
			Police Dept.		
R & M- Furniture & Equip.	11	479-4505	\$ 16,500		Grant to Refurbish Recycle Bins
Grants- Various Sources	11	3633		\$ 16,500	HGAC Grant
			HGAC Grant- Recycling Bins		
Engineering Services	11	475-4419	\$ 291,666		Regional Drainage Study
Grants- Various Sources	11	3633		\$ 88,740	TWDB Grant
Other Income	11	3699		\$ 138,666	Interlocal Agreements
Other Income- BCCDC	11	3698		\$ 64,260	Interlocal Agreement
			Drainage Study		
The amendments above relate to the following:					
Order for Police Unit (Explorer) from FY 2020 was cancelled due to no timely delivery. Amendment is for difference in Explorer vs Tahoe cost.					
Architectural Services relate to Public Safety Building Pre-Design and Feasibility Study					
HGAC Grant- \$16,500 to refurbish the City's recycle bins					
The Cost of the Regional Drainage Study will be shared by the BCCDC, MCDCC#1, MCEDC, Prec. 1 & 2, & City. A portion of the study will also be funded through the TWDB.					
TOTAL			\$ 350,166	\$ 350,166	

Dept. Head Signature: _____

Finance Director Signature: _____

City Manager: _____

Date: _____

4-22-21

Date: _____

Date: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BAY CITY, TEXAS, ADOPTING A "BUDGET AMENDMENT #2 TO THE "ANNUAL BUDGET OF THE CITY OF BAY CITY, TEXAS, FOR THE FISCAL YEAR 2021"; PROVIDING FOR SUPPLEMENTAL APPROPRIATION AND/OR TRANSFER OF CERTAIN FUNDS; PROVIDING FOR SEVERABILITY; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT.

WHEREAS, by Ordinance No. 1651, the City of Bay City, Texas, adopted its "Annual Budget" for Fiscal Year 2021;

WHEREAS, the City Council has determined the revenues and/or reserves are available for supplement appropriation and/or transfer of certain funds interdepartmentally is economically feasible and in the best interest of prudent budgeting; and

WHEREAS, the City Council desires to amend said Original General Budget to reflect such supplemental appropriation and/or transfer in the fiscal year 2021; now, therefore,

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

Section 1. The facts and matters set forth in the preamble of this Ordinance are hereby to be true and correct.

Section 2. The "Annual Budget" of the City of Bay City, Texas, for the Fiscal Year 2021, is hereby amended as shown on "Budget Amendment #2" to the Original Budget of the City of Bay City, Texas, for the Fiscal Year 2021, attached hereto. These amendments are for municipal purposes. Said Budget Amendment shall be attached to and made a part of such Annual Budget by the City Secretary and shall be filed as required by state law, a true ad correct copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes.

Section 3. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held constitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Bay City, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or constitutional, whether there be one or more parts.

PASSED AND APPROVED on first and final reading this 27th day of April 2021.

CITY OF BAY CITY, TEXAS

Robert K. Nelson, Mayor

ATTEST:

Jeanna Thompson, City Secretary

APPROVED as to FORM:

Anne Marie Odefey, City Attorney

<u>Council Member:</u>	<u>Voted Aye</u>	<u>Voted No</u>	<u>Absent</u>
Brent Marceaux	_____	_____	_____
Jim Folse	_____	_____	_____
Floyce Brown	_____	_____	_____
Becca Sitz	_____	_____	_____
Jason Childers Mayor Pro-Tem	_____	_____	_____

Robert K. Nelson, Mayor

ATTEST:

Jeanna Thompson, City Secretary

APPROVED AS TO FORM AND SUBSTANCE:

Anne Marie Odefey, City Attorney

~DISCUSS, CONSIDER, AND/OR APPROVE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF BAY CITY, TEXAS AND HARRIS COUNTY, TEXAS REGARDING USE OF PUBLIC SAFETY COMMUNICATIONS SYSTEM



EXECUTIVE SUMMARY

**INTERLOCAL AGREEMENT – COMMUNICATION SYSTEM
(RADIOS)**

BACKGROUND:

On September 25, 2007, Harris County and the City entered into an agreement. This agreement provides the City's access to Harris County's communications system—this system allows communicates among various public safety agencies. The interlocal was amended in August 2012 to clarify billing processes. The City's Interlocal Agreement with Harris County is outdated hence a new interlocal is attached. The term is one (1) year --thereafter will automatically renew for a max of five (5) years.

FINANCIAL IMPLICATIONS: Harris County bills the City annually. Other users of the system reimburse the City based on an allocation (radios). The most recent Harris County annual bill was \$59,035. The City and Matagorda County pay approximately 80% of this cost. Other entities such as EMS, Matagorda Hospital and BCISD contribute the rest.

IMPACT ON COMMUNITY SUSTAINABILITY: This enables all law enforcement agencies to communicate through the same system and share in infrastructure cost.

RECOMMENDATION: Staff recommends City Council approve the Interlocal Agreement.

ATTACHMENTS: Interlocal Agreement

**INTERLOCAL AGREEMENT
FOR USE OF PUBLIC SAFETY COMMUNICATIONS SYSTEMS**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This Agreement is made pursuant to chapter 791 of the Texas Government Code and entered into by and between **Harris County, Texas** (the “County”), acting by and through its governing body, the Harris County Commissioners Court, and **City of Bay City** (the “User”), acting by and through its governing body and in accordance with the Interlocal Cooperation Act Tex. Gov’t Code §§ 791.001, *et. seq.*, as amended.

RECITALS:

The County owns a public safety trunked radio system that is licensed by the Federal Communications Commission (the “FCC”), which permits radio communications and transmissions via radio units;

The County operates a Mobility Services Program which builds, procures, hosts and/or administers mobile technologies including mobile applications, devices and supporting equipment;

The User desires to obtain access to the County’s communications systems in order to communicate among various public safety units;

The County finds that allowing User access to the County’s communication systems will predominantly serve a public purpose;

The County will ensure the public receives a proper return benefit for allowing User access to the County’s communication systems; and

The County will retain sufficient control over all network equipment to ensure the public purpose is maintained.

NOW, THEREFORE, the parties, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

T E R M S:

I.

For purposes of this Agreement, the following definitions apply:

- A. Primary Dispatch System:
A communications system upon which the User, its agents, employees or assigns rely primarily when it desires or attempts the engagement of radio communications or radio transmissions of energy among its Radio Units;
- B. Priority Access:
An assigned level of system access that determines the choice of access to the Radio System between two or more Radio Units seeking use simultaneously;
- C. SmartZone Regional Radio System:
Combination of multiple Trunked Radio System(s) in and about Harris County operating under a single centralized controller as a regional radio system and managed by Harris County Universal Services;
- D. Project 25 Regional Radio System:
Combination of multiple Trunked Radio System(s) in and about Harris County operating under a single centralized controller as a regional radio system and managed by Harris County Universal Services;
- E. Radio System:
The combination of the SmartZone Regional Radio System and the Project 25 Regional Radio System;
- F. Radio Unit:
Mobile, stationary, or portable voice radio communication units communicating among themselves at certain air wave frequencies; and
- G. System Code Identification Number:
An identification number that allows Radio Units to gain access to the Radio System to enable the Radio Units to communicate among themselves at certain airwave frequencies, providing a Primary Dispatch System for a User's Radio Units;
- H. Radio Authentication:
Radio authentication utilizes the Project 25 TIA102.AACE Link Layer Authentication standard. It is over-the-air compatible with other P25 manufacturer's equipment that incorporates the Link Layer standard. One of the key issues a system manager must address is minimizing the use of unauthorized radios, whether they have been lost or stolen, or have been cloned illegitimately. The Radio Authentication solution provides an extra level of verification, every time a radio registers to the system; and

- I. Project 25 (P25) Phase 2
(P25) Phase 2 refers to P25 requirements and standards for a digital Common Air Interface (CAI), Time Division Multiple Access (TDMA) based, which provides one voice channel per 6.25 kHz channel spectrum efficiency. The current standards effort focuses on 2-slot TDMA which provides two voice traffic channels in a 12.5 kHz allocation.
- J. Interoperable Mobile Applications
Products and services made available at User's option to access the County's public safety communication systems using various technologies beyond land mobile radio.

II.

The County agrees that during the term of this Agreement, it will provide one or more of the following Services, in accordance with User's signed quote(s):

- A. Allow the User to have access to its Radio System to engage in radio communications among its Radio Units as a Primary Dispatch System, which includes the following:
- i. Providing the User with a Systems Code Identification Number for a maximum of six hundred (600) Radio Units combined;
 - ii. Upon being notified that one or more of the User's Radio Units have been lost or stolen, attempting to disable the lost or stolen Radio Units;
 - iii. Providing the same level of Priority Access to the Radio System for the User as that afforded the County;
- B. Provide installation and repair services on a Time and Material Basis, to the extent resources are available and solely at its discretion, to equipment used on the Radio System; and
- C. Provide Users with the option to adopt or subscribe to various products and services as part of its Mobility Services Program.

III.

During the term of this Agreement, the User agrees to:

- A. Affirm that the County assumes no cost or responsibility for providing the Radio Units that will have access to the County's Radio System;
- B. Give the County at least ten (10) days prior written notice of its intent to increase, decrease, or otherwise change the number of Radio Units that have access to the County's Radio System, or to make changes to interoperable mobile application subscription services. However, notwithstanding the previous sentence, in no event may

the User increase the number of Radio Units above the maximum number of units set forth in Paragraph II (A);

- C. Notify the County that one or more of its Radio Units have been lost or stolen within twenty-four (24) hours of determining that the Radio Units have been lost or stolen;
- D. Use the System Code Identification Number described in this Agreement to access the County's radio system as a Primary Dispatch System; and
- E. Observe and abide by all applicable statutes, laws, rules and regulations, including, but not limited to, those of the FCC. In addition, the User agrees to observe and abide by any applicable administrative rules promulgated by the County from and after the date such rules become effective and have been delivered to User. Further, the User acknowledges that, should any of these statutes, rules, regulations or administrative rules change during the term of this Agreement and if the change necessitates a modification of the Agreement, the modification may be effectuated by the County without incurring any liability for this modification. Should the County notify the User of any such change, the User shall have thirty (30) days to review and agree to any proposed changes made to this Agreement. If assent to the change is not given, this Agreement terminates.

IV.

If the User requests access to the Radio System, the User expressly understands and agrees to pay the County for said access at a rate specified in the Fee Schedule attached hereto and incorporated herein. The User expressly agrees to pay said monthly charges in full after the end of each month during the term of this Agreement, based upon the number of the Radio Units then in service. Should the User change the number of Radio Units in service during a monthly billing period, the monthly charge will be increased or decreased proportionally. Notwithstanding any provision to the contrary, the parties agree that the County may provide such monthly invoices to the User by email sent to a mutually agreed upon email address.

V.

The User expressly understands and agrees to pay the County for the programming of the User's radios for use on the Radio System at a rate specified in the Fee Schedule, attached hereto and incorporated herein, upon initial access to the Radio System. Should the User's Radio Units require maintenance that destroys the original programming referred to above, after such maintenance each radio will be reprogrammed to the standard configuration at the rate specified in the attached Fee Schedule. In any instance in which the County performs Radio Unit programming services, the User agrees to pay the County the entire amount owed for the programming of Radio Units within thirty (30) days of the invoice date of such services.

VI.

If the User desires to gain access to the County's Radio System for use of any Radio Units, all radios, regardless of Manufacturer, must contain active P25 Phase 2 TDMA and Radio Authentication options. Any radio without these featured options will not be activated.

VII.

To the extent resources are available and solely at its discretion, County may provide radio equipment installation and radio services upon request of the User. If these services are provided, the User agrees to pay the County on a Time and Material basis at the rate specified in the Fee Schedule attached hereto and incorporated herein. The County agrees to invoice the User after the services are rendered, and the User agrees to pay invoices within thirty (30) days of the invoice date. Solely at the discretion of the County, the User may purchase certain additional parts and accessories from the County at a price set by the County. The County agrees to invoice the User after the parts and/or accessories are supplied to the User. The User agrees to pay the invoice within thirty (30) days of the invoice's date.

It is expressly understood that the County neither warrants nor assumes any responsibility for installation or use of equipment or for the reliability or adequacy of services provided hereunder. Further, by requesting that the County provide these services, the User assumes the total risk of any loss associated with the installation of the radio equipment; any loss resulting from the use of the radio equipment so installed; and any loss resulting from the use of radio equipment to which other radio services have been provided by the County.

VIII.

Mobility Services Program: The County provides Users with the option of adopting the following products and services at the rates specified in the Fee Schedule for various interoperable mobile applications ("apps") and other technologies beyond land mobile radio:

- A. Mobile Apps
 - i. App licenses- County will bill monthly subscriptions for end user licenses for applications selected by User;
 - ii. App administration- includes account creation/deletion, group management, will be bundled into the monthly subscription fee;
 - iii. App setup- includes planning and configuration for app deployment;
 - iv. App training- end user training of mobile apps;
 - v. App support- may be bundled into the monthly subscription or billed separately depending on the application and end user preferences.

- B. Equipment
 - i. Equipment rental
 - ii. Equipment programming and configuration
 - iii. Inventory management

The User expressly agrees to pay monthly charges for interoperable mobile applications products and services selected by User in full after the end of each month during the term of this Agreement. Notwithstanding any provision to the contrary, the parties agree that the County may provide such monthly invoices to User by email sent to a mutually agreed upon email address.

IX.

It is expressly understood and agreed that the County may increase the fees provided in this Agreement by giving the User written notice of its intention to increase fees at least ninety days (90) before the effective date of the proposed increase. Should such increase become effective during a term of this Agreement, the increase will be prorated based upon the number of months remaining in the then current term of this Agreement. In the event of such mid-term fee increase, the User agrees to pay the total, prorated fee increase on or before thirty (30) days after the effective date of the fee increase. The User agrees to pay the County the entire amount owed from the fee increase within thirty (30) days of receiving notice. Notice may be in the form of an invoice.

X.

The term of this Agreement is one (1) year and shall commence on the date this Agreement is executed by the User. Thereafter, this Agreement will automatically renew for successive one-year terms for a maximum of five (5) years unless it is terminated by either party by giving the other party prior written notice of its intention to terminate not less than thirty (30) days prior to the expiration of the term of this Agreement. Notwithstanding the preceding, this Agreement terminates:

- A. Immediately if all or substantially all of the authorization held by the County or the User is revoked by the FCC or its successor agency; or
- B. Upon either party giving the other party thirty (30) days prior written notice of its intent to terminate. Should the User terminate this Agreement as provided in this paragraph, the User agrees that payment in full of all obligations owed to the County by the User is a condition precedent to termination. Should either party terminate the Agreement, the User is entitled to a refund of the pro rata share of any prepayment.

XI.

If the User fails to make any payment of any sum due under this Agreement and such failure continues for forty-five (45) days after the County has given the User written notice of such failure, then the User is in default under this Agreement. In the event of the User's default, the County has the right to terminate the Agreement, deny the User any service provided by the County under this Agreement, and retain all moneys paid to the County pursuant to the terms and conditions of this Agreement as liquidated damages. Each and every right and remedy of the County and User are cumulative to and not in lieu of each and every other such right and remedy afforded by law and equity.

XII.

Should the County fail to perform as provided under the terms of this Agreement, the User’s sole remedy is termination of this Agreement, and the County agrees to make a refund to the User of the portion of the pre-paid fee based upon that fractional part of the one-year term remaining under this Agreement.

XIII.

It is expressly understood and agreed that one hundred percent (100%) coverage of any area at all times is improbable. There may be adverse transmission condition such as short-term unpredictable meteorological effects and sky-wave interference from distant stations that can interrupt the Radio System. Likewise, there are other causes beyond reasonable control of the County, including, but not limited to, motor ignition and other electrical noise that may be minimized by corrective devices at the User’s expense. Any surveys, studies, research, or other measures taken to ensure the adequacy of coverage provided to the User under this Agreement are the sole responsibility and expense of the User.

XIV.

All notices and communications permitted or required under this Agreement are to be mailed by United States Postal Service, certified mail, return-receipt requested, to the following addresses:

FOR THE COUNTY: All notices and communications must be mailed as follows:

Original to: 1. Universal Services
406 Caroline, 4th Floor
Houston, TX 77002-2027

and

Copy to: 2. Commissioners Court of Harris County
Harris County Administration Building
1001 Preston, 9th Floor
Houston, TX 77002-1891
Attention: Clerk of Commissioners Court

FOR THE USER: City of Bay City
1901 5th Street
Bay City, TX 77414
Attention: Scotty Jones, Finance Director

E-Invoicing Address: accountspayable@cityofbaycity.org
sjones@cityofbaycity.org

These addresses may be changed upon giving prior written notice to the other party. All mailed notices and communications are deemed given and complete upon depositing them in the United States Mail. Notwithstanding any provision to the contrary, the parties agree that the County may provide monthly invoices to the User by email sent to a mutually agreed upon email address.

XV.

Neither party hereto shall sell, assign, or transfer any of its rights or obligations under this Agreement in whole or in part, without the prior written consent of the other party. This Agreement shall bind and benefit the County and the User and shall not bestow any rights upon any third party.

XVI.

This Agreement is governed by and construed according to the laws of the State of Texas. Exclusive venue of any action or claim arising out of this Agreement is Harris County, Texas. Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon the default or failure by an appropriate remedy, shall not be considered a waiver of strict compliance with any other obligation hereunder, and shall not be considered a waiver of the exercise of any rights or remedies occurring as a result of any future development or failure of performance.

XVII.

The User will pay its obligations hereunder from available current revenues. User shall have the right to cancel this Agreement at the end of any current fiscal year (fiscal year defined as September 1 through August 31) if funds are not allotted for the next fiscal year to continue this Agreement.

XVIII.

This instrument contains the entire Agreement between the parties relating to the rights granted and the obligation assumed. Any modifications concerning this Agreement are of no force and effect unless in writing and executed by both parties except for those modifications effectuated pursuant to the provisions of Paragraph III (E).

This Agreement may be executed in multiple counterparts, each having equal force and effect of an original. This Agreement shall become binding and effective only after it has been authorized and approved by the governing bodies of each governmental entity, as evidenced by the signature of the appropriate authority.

[EXECUTION PAGE FOLLOWS]

CITY OF BAY CITY

HARRIS COUNTY

By: _____
ROBERT K. NELSON
MAYOR

By: _____
LINA HIDALGO
COUNTY JUDGE

Date: _____

ATTEST:

APPROVED AS TO FORM:
VINCE RYAN
COUNTY ATTORNEY

By: _____
Jeanna, Thompson
City Secretary

By: _____
Amy Samples
Assistant County Attorney
20GEN1551

RESOLUTION~ DISCUSS, CONSIDER AND/OR APPROVE A RESOLUTION OF THE CITY OF BAY CITY TEXAS FINDING THAT AEP TEXAS INC.’S APPLICATION TO AMEND ITS DISTRIBUTION COST RECOVERY FACTORS TO INCREASE DISTRIBUTION RATES WITHIN THE CITY SHOULD BE DENIED; AUTHORIZING PARTICIPATION WITH THE CITIES SERVED BY AEP TEXAS; AUTHORIZING HIRING OF LEGAL COUNSEL; FINDING THAT THE CITY’S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY THE COMPANY; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.



EXECUTIVE SUMMARY

BACKGROUND:

In June 2018, the City joined the Texas Coalition for Affordable Power (“TCAP”) which is a non-profit political subdivision corporation established by the 2010 merger of Cities Aggregation Power Project, Inc. (“CAPP”) and South Texas Aggregation Project, Inc. (“STAP”), both created in 2001 to aggregate members’ power needs in order to negotiate better electric prices for their members. TCAP is one of the largest political subdivision aggregation groups in Texas with political subdivision members that purchase approximately 1.3 billion kWh annually.

On April 6, 2021, AEP Texas Inc. (“AEP” or “Company”) filed an Application to Amend its Distribution Cost Recover Factors (“DCRF”) to Increase Distribution Rates with each of the cities in their service area. In the filing, the Company asserts that it is seeking an increase in distribution revenues of approximately \$54.56 million (an approximately \$2.60 increase to the average residential customer’s bill from the rates just approved in the Company’s rate case).

The resolution authorizes the City to join with the Cities Served by AEP (“Cities”) to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy, including settlement, to pursue.

Purpose of the Resolution:

The purpose of the Resolution is to deny the DCRF application proposed by AEP.

Explanation of “Be It Resolved” Paragraphs:

1. This section authorizes the City to participate with Cities as a party in the Company’s DCRF filing, PUC Docket No. 51984.
2. This section authorizes the hiring of Lloyd Gosselink and consultants to review the filing, negotiate with the Company, and make recommendations to the City regarding reasonable rates. Additionally, it authorizes Cities to direct any necessary administrative proceedings or court litigation associated with an appeal of this application filed with the PUC.
3. This paragraph finds that the Company’s application is unreasonable and should be denied.
4. This section states that the Company’s current rates shall not be changed.
5. The Company will reimburse Cities for their reasonable rate case expenses. Legal counsel and consultants approved by Cities will submit monthly invoices that will be forwarded to AEP for reimbursement.
6. This section recites that the Resolution was passed at a meeting that was open to the public and that the consideration of the Resolution was properly noticed.
7. This section provides that AEP and counsel for Cities will be notified of the City’s action by sending a copy of the approved and signed Resolution to counsel.

FINANCIAL IMPLICATIONS:

AEP will reimburse Cities for their reasonable rate case expenses. Legal counsel and consultants approved by Cities will submit monthly invoices that will be forwarded to AEP for reimbursement.

RECOMMENDATION:

Recommend City Council approve Resolution as stated.

ATTACHMENTS:

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF BAY CITY, TEXAS FINDING THAT AEP TEXAS INC.’S APPLICATION TO AMEND ITS DISTRIBUTION COST RECOVERY FACTORS TO INCREASE DISTRIBUTION RATES WITHIN THE CITY SHOULD BE DENIED; AUTHORIZING PARTICIPATION WITH THE CITIES SERVED BY AEP TEXAS; AUTHORIZING HIRING OF LEGAL COUNSEL; FINDING THAT THE CITY’S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY THE COMPANY; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.

WHEREAS, the City of Bay City, Texas (“City”) is an electric utility customer of AEP Texas Inc. (“AEP” or “Company”), and a regulatory authority with an interest in the rates and charges of AEP; and

WHEREAS, the City is a member of the Cities Served by AEP (“Cities”), a membership of similarly situated cities served by AEP that have joined together to efficiently and cost effectively review and respond to electric issues affecting rates charged in AEP’s service area; and

WHEREAS, on or about April 6, 2021 AEP filed with the City an Application to Amend its Distribution Cost Recovery Factor (“DCRF”), PUC Docket No. 51984, seeking to increase electric distribution rates by approximately \$54.56 million (an approximately \$2.60 increase to the average residential customer’s bill from the rates just approved in the Company’s rate case); and

WHEREAS, all electric utility customers residing in the City will be impacted by this ratemaking proceeding if it is granted; and

WHEREAS, Cities are coordinating its review of AEP’s DCRF filing with designated attorneys and consultants to resolve issues in the Company’s application; and

WHEREAS, Cities members and attorneys recommend that members deny the DCRF.

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

Section 1. That the City is authorized to participate with Cities in PUC Docket No. 51984.

Section 2. That subject to the right to terminate employment at any time, the City of hereby authorizes the hiring of the law firm of Lloyd Gosselink and consultants to negotiate with the Company, make recommendations to the City regarding reasonable rates, and to direct any necessary administrative proceedings or court litigation associated with an appeal of this application filed with the PUC.

Section 3. That the rates proposed by AEP to be recovered through its DCRF charged to customers located within the City limits, are hereby found to be unreasonable and shall be denied.

Section 4. That the Company shall continue to charge its existing rates to customers within the City.

Section 5. That the City's reasonable rate case expenses shall be reimbursed in full by AEP within 30 days of presentation of an invoice to AEP.

Section 6. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

Section 7. That a copy of this Resolution shall be sent to Leila Melhem, American Electric Power Service Corporation, 400 West 15th Street, Suite 1520, Austin, Texas 78701 and to Thomas Brocato, General Counsel to the Cities, at Lloyd Gosselink Rochelle & Townsend, 816 Congress Ave., Suite 1900, Austin, Texas 78701.

PASSED AND APPROVED this _____ day of _____, 2021.

Robert K. Nelson, Mayor

ATTEST:

Jeanna Thompson, City Secretary

APPROVED AS TO FORM:

Anne Marie Odefey, City Attorney