



**CITY OF WHARTON
FINANCE COMMITTEE MEETING**

**Monday, March 25, 2024
5:30 PM**

***CITY HALL 120 EAST CANEY STREET
WHARTON, TEXAS 77488***

**NOTICE OF
CITY OF WHARTON
FINANCE COMMITTEE MEETING**

Notice is hereby given that a Finance Committee Meeting will be held on Monday, March 25, 2024, at 5:30 PM at the Wharton City Hall, 120 East Caney Street, Wharton, Texas, at which time the following subjects will be discussed to-wit:

SEE ATTACHED AGENDA

Dated this 21st day of March 2024.

By: 
Joseph R. Pace, City Manager

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Finance Committee Meeting is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board, at City Hall of said City or Town in Wharton, Texas, a place convenient and readily accessible to the general public at all times, and said Notice was posted on March 21, 2024, at 4:30 p.m. and remained so posted continuously for at least 72 hours preceding the scheduled time of said Meeting.

The Wharton City Hall is wheelchair accessible. Access to the building and special parking is available at the primary entrance. Persons with disabilities, who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's Office at (979) 532-4811 Ext. 225 or by FAX (979) 532-0181 at least two (2) days prior to the meeting date. BRAILLE IS NOT AVAILABLE.

Dated this 21st day of March 2024.

CITY OF WHARTON

By: 
Paula Favors
City Secretary



A G E N D A
CITY OF WHARTON
Finance Committee Meeting
Monday, March 25, 2024
City Hall - 5:30 PM

Call to Order.

Roll Call.

Public Comments.

Review & Consider:

1. Minutes from the meeting held February 26, 2024.
2. Resolution: A resolution of the Wharton City Council authorizing the purchase of one (1) PowerPro2, stair chair, LifePak15, and PowerPro-ProCare from Stryker Medical for the Emergency Medical Services Department and authorizing the City Manager of the City of Wharton to execute all documents related to the said purchase.
3. Resolution: A resolution of the Wharton City Council approving a Professional Engineering Services Agreement with Quiddity Engineering, LLC, to submit the City of Wharton Wastewater Treatment Plant No. 1 Application for Renewal of Permit WQ0010381001 to the Texas Commission on Environmental Quality and authorizing the Mayor of the City of Wharton to execute all documents related to said agreement.
4. Resolution: A resolution of the Wharton City Council approving a Professional Engineering Services Agreement with Quiddity Engineering, LLC, to develop and submit the Environmental Protection Agency's (EPA) Lead and Copper Rule Revision (LCRR) to the Texas Commission on Environmental Quality and authorizing the Mayor of the City of Wharton to execute all documents related to said agreement.
5. Resolution: A resolution of the Wharton City Council entering into a Reimbursement Agreement with Wharton 55, LLC, for Public Improvement District No. 2 and authorizing the Mayor of the City of Wharton to execute all documents related to said agreement.

Adjournment.

City of Wharton
120 E. Caney Street
Wharton, TX 77488

FINANCE COMMITTEE

Meeting Date:	3/25/2024	Agenda Item:	Minutes from the meeting held February 26, 2024.
Attached is a copy of the draft minutes from the meeting held on February 26, 2024.			
City Manager: Joseph R. Pace		Date: Thursday, March 21, 2024	
Approval: 			
Mayor: Tim Barker			

**MINUTES
OF
CITY OF WHARTON
FINANCE COMMITTEE MEETING
120 EAST CANEY STREET
WHARTON, TEXAS 77488
Monday, February 26, 2024–6:15 p.m.**

City Manager Joseph R. Pace declared a meeting of the City Council Finance Committee duly open for the transaction of business at 6:15 p.m.

Committee Members present: Mayor Tim Barker; Councilmember Larry Pittman, and Councilmember Russell Machann.

Committee Members absent: None.

City Council Members present: None.

Staff members present: City Manager Joseph R. Pace; Assistant to the City Manager Brandi Jimenez; City Secretary Paula Favors; Finance Director Joan Andel; Chief of Police Terry David Lynch; Public Works Director Roderick Semien; Lieutenant Ariel Soltura; HR Generalist Selena Rios and EMS Director Christy Gonzales.

Staff members absent: None.

Visitors: None.

Public Comments. There were no public comments.

The first item on the agenda was to review and consider minutes from the meeting held on February 12, 2024. Councilmember Russell Machann made a motion to approve the minutes as presented. Councilmember Larry Pittman seconded the motion. All voted in favor.

The second item on the agenda was to review and consider City of Wharton Proficiency Allowances:

- A. Resolution: A resolution of the Wharton City Council updating the proficiency allowance for the City of Wharton Employees.

City Secretary Paula Favors stated to the Committee that although some of the proficiency allowances have been in place for several years, the City Staff was recommending that it be updated to add Bilingual Proficiency, Basic Animal Control Officer Proficiency Pay, and Water License D Proficiency Pay. She stated that at the February 12, 2024, Committee Meeting concerns were brought forth regarding the Bilingual Proficiency Pay and how it would be administered. She addressed those concerns to the Committee. After some discussion, Mayor Tim Barker made a motion to recommend to the City Council to approve the updates to the proficiency allowance for Bilingual Proficiency, Basic Animal Control Officer Proficiency Pay, and Water License D Proficiency Pay. Councilmember Larry Pittman seconded the motion. All voted in favor.

The third item on the agenda was adjournment.

The meeting was adjourned at 6:30 p.m.

Joseph R. Pace, City Manager

City of Wharton
120 E. Caney Street
Wharton, TX 77488

FINANCE COMMITTEE

Meeting Date:	3/25/2024	Agenda Item:	Resolution: A resolution of the Wharton City Council authorizing the purchase of one (1) PowerPro2, stair chair, LifePak15, and PowerPro-ProCare from Stryker Medical for the Emergency Medical Services Department and authorizing the City Manager of the City of Wharton to execute all documents related to the said purchase.
<p>Attached is a memorandum from EMS Director Christy Gonzales regarding the purchase of one (1) PowerPro2, stair chair, LifePak15, and PowerPro-ProCare from Stryker Medical.</p> <p>Also attached is the quote in the amount of \$106,635.41.</p> <p>Ms. Gonzales will be present to answer any questions.</p>			
City Manager: Joseph R. Pace		Date: Thursday, March 21, 2024	
Approval: 			
Mayor: Tim Barker			

City of Wharton
EMERGENCY MEDICAL SERVICES
2010 N. Fulton
WHARTON, TEXAS 77488

Item-2.

INTERDEPARTMENTAL MEMO

DATE: MARCH 12, 2024
TO: JOSEPH R. PACE, CITY MANAGER
FROM: CHRISTY GONZALES, EMS DIRECTOR
RE: STRYKER MEDICAL – POWER PRO 2, STAIR CHAIR, AND LIFEPAK 15 PURCHASE

Mr. Pace,

Attached is a quote provided by Stryker Medical for one (1) PowerPro2, Stair Chair, LifePak 15, and PowerPro—ProCare. The total amount of the quote is \$106,635.41. The equipment purchased will outfit our sixth ambulance. I ask if we can place this on the Council's next agenda for their review. Should you have any questions, please feel free to call.

Thank you,

Christy Gonzales

Christy Gonzales, Director WEMS



PowerPro 2, Chair, and Lifepak 15

Quote Number: 10886227

Remit to: **Stryker Medical**

Version: 1

P.O. Box 93308

Chicago, IL 60673-3308

Prepared For: WHARTON CITY EMS

Rep: Tim Garza

Attn:

Email: tim.garza@stryker.com

Phone Number:

Quote Date: 03/12/2024

Expiration Date: 06/10/2024

Contract Start: 03/12/2024

Contract End: 03/11/2025

Delivery Address

Sold To - Shipping

Bill To Account

Name: WHARTON CITY EMS

Name: WHARTON CITY EMS

Name: CITY OF WHARTON

Account #: 20006887

Account #: 20006887

Account #: 20128430

Address: 2010 N FULTON ST

Address: 2010 N FULTON ST

Address: 120 E CANEY ST

WHARTON

WHARTON

WHARTON

Texas 77488-2823

Texas 77488-2823

Texas 77488-5006

Equipment Products:

#	Product	Description	U/M	Qty	Sell Price	Total
1.0	650700450301	ASSEMBLY, BATTERY CHARGER	PCE	1	\$1,404.90	\$1,404.90
2.0	650707000002	KIT, ALVARIUM BATTERY, SERVICE	PCE	1	\$981.90	\$981.90
3.0	650700450102	ASSEMBLY, POWER CORD, NORTH AM	PCE	1	\$32.40	\$32.40
4.0	650705550001	6507 POWER PRO 2, HIGH CONFIG	PCE	1	\$33,516.00	\$33,516.00
5.0	6252000000	Stair-PRO Model 6252	PCE	1	\$4,511.68	\$4,511.68
5.1	6252009001	Stair-Pro Operations Manual	PCE		\$0.00	\$0.00
5.2	6250001162	In-Service Video (DVD)	PCE		\$0.00	\$0.00
5.3	6252026000	Common Components	PCE		\$0.00	\$0.00
5.4	6250021000	2 Piece ABS Panel Seat	PCE		\$0.00	\$0.00
5.5	6250160000	Polypropelene Restraint Set(Plastic Buckles)	PCE		\$0.00	\$0.00
5.6	6252022000	Main Frame Assy Option	PCE		\$0.00	\$0.00
5.7	6250024000	Standard Length Lower LiftHandles	PCE		\$0.00	\$0.00
5.8	6252027000	Footrest Option	PCE		\$375.36	\$375.36
5.9	6252024000	No IV Clip Option	PCE		\$0.00	\$0.00
6.0	99577-001957	LIFEPAK 15 V4 Monitor/Defib - Manual & AED, Trending, Noninvasive Pacing, SpO2, SpCO, NIBP, 12-Lead ECG, EtCO2, BT. Incl at N/C: 2 pr QC Electrodes (11996-000091) & 1 Test Load (21330-001365) per device, 1 Svc Manual CD (26500-003612) per order	PCE	1	\$38,693.70	\$38,693.70



PowerPro 2, Chair, and Lifepak 15

Quote Number: 10886227

Remit to: **Stryker Medical**

Version: 1

P.O. Box 93308
Chicago, IL 60673-3308

Prepared For: WHARTON CITY EMS

Rep: Tim Garza

Attn:

Email: tim.garza@stryker.com

Phone Number:

Quote Date: 03/12/2024

Expiration Date: 06/10/2024

Contract Start: 03/12/2024

Contract End: 03/11/2025

#	Product	Description	U/M	Qty	Sell Price	Total
7.0	41577-000288	LP15 ACCRY SHIPKIT,AHA,S	PCE	1	\$0.00	\$0.00
8.0	11577-000004	Station Battery Charger - For the LP15	PCE	1	\$2,161.55	\$2,161.55
9.0	21330-001176	LP 15 Lithium-ion Battery 5.7 amp hrs	PCE	4	\$530.40	\$2,121.60
10.0	11996-000323	Masimo RED LNC?? Patient Cable, 4 FT. For use with LNCs Patient Sensors.	PCE	1	\$241.40	\$241.40
11.0	11171-000017	Masimo LNCS DCI, Adult SpO2 only Reusable Sensor. For use with LNC Patient Cable.	PCE	1	\$381.65	\$381.65
12.0	11171-000032	Masimo Rainbow DCI-DC8, Adult Reusable Direct Connect SpO2, SpCO, SpMet Sensor, 8 FT	PCE	1	\$1,192.55	\$1,192.55
13.0	21300-008159	LIFEPAK 15 NIBP Straight Hose, 6'	PCE	1	\$80.75	\$80.75
14.0	11160-000011	NIBP Cuff-Reusable, Infant	PCE	1	\$25.50	\$25.50
15.0	11160-000013	NIBP Cuff-Reusable, Child	PCE	1	\$28.90	\$28.90
16.0	11160-000015	NIBP Cuff-Reusable, Adult	PCE	1	\$34.85	\$34.85
17.0	11160-000017	NIBP Cuff -Reusable, Large Adult	PCE	1	\$39.95	\$39.95
18.0	11160-000019	NIBP Cuff-Reusable, Adult X Large	PCE	1	\$56.95	\$56.95
19.0	11577-000002	LIFEPAK 15 Basic carry case w/right & left pouches; shoulder strap (11577-000001) included at no additional charge when case ordered with a LIFEPAK 15 device	PCE	1	\$378.25	\$378.25
20.0	11220-000028	LIFEPAK 15 Carry case top pouch	PCE	1	\$68.00	\$68.00
21.0	11260-000039	LIFEPAK 15 Carry case back pouch	PCE	1	\$96.90	\$96.90
22.0	11577-000001	LIFEPAK 15 Shoulder strap	PCE	1	\$0.00	\$0.00
24.0	21330-001365	Test load (for use with QUICK COMBO therapy cable)	PCE	1	\$0.00	\$0.00
Equipment Total:						\$86,424.75

Trade In Credit:

Product	Description	Qty	Credit Ea.	Total Credit
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ProCare Products:



PowerPro 2, Chair, and Lifepak 15

Quote Number: 10886227

Remit to: **Stryker Medical**

Version: 1
 Prepared For: WHARTON CITY EMS
 Attn:

P.O. Box 93308
 Chicago, IL 60673-3308
 Rep: Tim Garza
 Email: tim.garza@stryker.com
 Phone Number:

Quote Date: 03/12/2024
 Expiration Date: 06/10/2024
 Contract Start: 03/12/2024
 Contract End: 03/11/2025

#	Product	Description	Qty	Sell Price	Total
25.1	POWERPRO-PROCARE	Power Pro 2 for 6507 POWER PRO 2, HIGH CONFIG 03/13/2024 - 03/12/2029 √ Parts, Labor, Travel √ Preventative Maintenance √ Batteries Service √ Smart Equip. Management	1	\$7,773.25	\$7,773.25
25.2	STR-CHAIR-PROCARE	Stair-Pro for Stair-PRO Model 6252 03/13/2024 - 03/12/2030 √ Parts, Labor, Travel √ Preventative Maintenance	1	\$1,647.00	\$1,647.00
25.3	LIFEPAK-FLD-PROCARE	Lifepak 15 for LIFEPAK 15 V4 Monitor/Defib - Manual & AED, Trending, Noninvasive Pacing, SpO2, SpCO, NIBP, 12-Lead ECG, EtCO2, BT. Incl at N/C: 2 pr QC Electrodes (11996-000091) & 1 Test Load (21330-001365) per device, 1 Svc Manual CD (26500-003612) per order 03/13/2024 - 03/12/2028 √ Parts, Labor, Travel √ Preventative Maintenance √ Batteries Service	1	\$8,198.88	\$8,198.88
ProCare Total:					\$17,619.13

Data Solutions:

#	Product	Description	Qty	Sell Price	Total
23.0	11996-000474	4G Modem: Verizon Cellular (for use on customer data plan; purchased separately)	1	\$1,314.10	\$1,314.10
Data Solutions Total:					\$1,314.10

Price Totals:

Estimated Sales Tax (0.000%):	\$0.00
Freight/Shipping:	\$1,277.43
Grand Total:	\$106,635.41

Prices: In effect for 30 days

Terms: Net 30 Days



PowerPro 2, Chair, and Lifepak 15

Quote Number: 10886227

Remit to: **Stryker Medical**

P.O. Box 93308

Chicago, IL 60673-3308

Version: 1

Prepared For: WHARTON CITY EMS

Rep: Tim Garza

Attn:

Email: tim.garza@stryker.com

Phone Number:

Quote Date: 03/12/2024

Expiration Date: 06/10/2024

Contract Start: 03/12/2024

Contract End: 03/11/2025

Terms and Conditions:

Deal Consummation: This is a quote and not a commitment. This quote is subject to final credit, pricing, and documentation approval. Legal documentation must be signed before your equipment can be delivered. Documentation will be provided upon completion of our review process and your selection of a payment schedule. Confidentiality Notice: Recipient will not disclose to any third party the terms of this quote or any other information, including any pricing or discounts, offered to be provided by Stryker to Recipient in connection with this quote, without Stryker's prior written approval, except as may be requested by law or by lawful order of any applicable government agency. A copy of Stryker Medical's terms and conditions can be found at https://techweb.stryker.com/Terms_Conditions/index.html.

PENDING APPROVAL

**CITY OF WHARTON
RESOLUTION NO. 2024-XX**

A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHORIZING THE PURCHASE OF ONE (1) POWERPRO2, STAIR CHAIR, LIFEPAK15, AND POWERPRO-PROCARE FROM STRYKER MEDICAL FOR THE EMERGENCY MEDICAL SERVICES DEPARTMENT AND AUTHORIZING THE CITY MANAGER OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO THE SAID PURCHASE.

WHEREAS, The Emergency Medical Services Department is in need of one (1) PowerPro2, stair chair, LifePak15, and PowerPro-ProCare to outfit a sixth ambulance; and,

WHEREAS, The total cost of the said purchase is in the amount of \$106,635.41; and,

WHEREAS, The Wharton City Council wishes to approve the purchase of one (1) PowerPro2, stair chair, LifePak15, and PowerPro-ProCare for the Emergency Medical Services Department in the amount of \$106,635.41; and,

WHEREAS, The Wharton City Council wishes to authorize the City Manager of the City of Wharton to execute all documents related to said purchase.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. The Wharton City Council hereby authorizes the City Manager to execute all documents related to the purchase of one (1) PowerPro2, stair chair, LifePak15, and PowerPro-ProCare for the Emergency Medical Services Department in the amount of \$106,635.41.

Section II. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 25th day of March 2024.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

City of Wharton
 120 E. Caney Street
 Wharton, TX 77488

FINANCE COMMITTEE

Meeting Date:	3/25/2024	Agenda Item:	Resolution: A resolution of the Wharton City Council approving a Professional Engineering Services Agreement with Quiddity Engineering, LLC, to submit the City of Wharton Wastewater Treatment Plant No. 1 Application for Renewal of Permit WQ0010381001 to the Texas Commission on Environmental Quality and authorizing the Mayor of the City of Wharton to execute all documents related to said agreement.
<p>The City of Wharton’s permit for the operation of Wastewater Treatment Plant No. 1 will expire on February 26, 2025. The renewal permit application must be submitted for review no later than August 30, 2024, which is 180 calendar days prior to the permit expiration date.</p> <p>Attached is a resolution and agreement authorizing the Mayor to submit the application on the City’s behalf. Quiddity Engineering, LLC, was engaged by the City to prepare the application.</p> <p>Public Works Director Roderick Semien will be present to answer any questions.</p>			
City Manager: Joseph R. Pace		Date: Thursday, March 21, 2024	
Approval: 			
Mayor: Tim Barker			



City of Wharton
Public Works Department
1005 E. Milam Street ° Wharton, TX 77488
Phone (979) 532-2491 ext. 801 ° Fax (979) 531-1744

MEMORANDUM

Date: March 14, 2024
To: Joseph R. Pace, City Manager
From: Roderick Semien, Public Works Director
Subject: Proposal for Professional Engineering Services with Quiddity Engineering, LLC for the TPDES Permit Renewal Application for Wastewater Treatment Plant No. 1

Attached, please find the proposal from Quiddity Engineering, LLC, to conduct the preparation of the application and coordination with TCEQ on the permit renewal, which expires on February 26, 2025, for the City of Wharton Wastewater Treatment Plant No. 1. The permit renewal application is to be submitted to TCEQ no later than August 30, 2024. Quiddity Engineering, LLC has completed permit renewals on behalf of the City of Wharton in years past.

Please place this on the City Council agenda for March 25, 2024.

If you have any questions, please contact me at 979-532-2491 Ext. 801. Thank you.

March 7, 2024

City of Wharton
Mr. Joseph R. Pace
City Manager
120 East Caney Street
Wharton, Texas 77488

Re: Proposal for WWTP No. 1 TPDES Permit Renewal 2024

Dear Mr. Pace:

Quiddity Engineering, LLC (Quiddity) appreciates the opportunity to support the City of Wharton (City) in meeting the requirements included in the Texas Commission on Environmental Quality's (TCEQ) Texas Pollutant Discharge Elimination System (TPDES) permit renewal for WWTP No. 1. The services included in this proposal consist of preparing the permit application and coordinating with the TCEQ on permit approval.

PROJECT UNDERSTANDING

The City of Wharton (City) owns and operates a 1.50 million gallons per day (MGD) Wastewater Treatment Plant (WWTP), referred to as WWTP No. 1, that is located at 900 County Road 188 in Wharton County, Texas 77488. The WWTP permitted through the Texas Pollutant Discharge Elimination System (TPDES) by the Texas Commission on Environmental Quality (TCEQ) under Permit Number WQ0010381001, expires on February 26, 2025.

The Engineer understands the City intends to renew TPDES Permit Number WQ0010381001, with the assumption no changes are required to the current plant phase of 1.5 MGD. The TCEQ requires this permit renewal application be submitted for review no later than August 30, 2024, which is 180-calendar days prior to the permit expiration date. The renewal will include the following scope of service.

SCOPE OF SERVICES

Based on our understanding of the TCEQ's permit renewal application process, the Engineer will perform the following scope of services.

TPDES Permit Application

- Complete the TPDES permit renewal application including Administrative Report 1.0, Supplemental Permit Information Form (SPIF), Technical Report 1.0, Technical Report 2.0, Technical Report 4.0, Technical Report 5.0, Technical Report 6.0 and Core Data Form.
- Prepare exhibits including Original USGS Map, Flow Schematics, and Service Area Map.
- Coordinate with the Operator to have effluent sampled and analyzed. Operator is responsible for scheduling and payment of all services related to effluent testing, analysis, and testing results.
- Submit all documents to the City for review and approval, followed by submission to the TCEQ.

City of Wharton
 Page 2
 March 7, 2024

Should the TCEQ require additional forms, exhibits, or documentation to be completed and submitted beyond the standard expectations noted above, those services can be provided for Additional Services.

Permit Coordination

- Respond to TCEQ regarding comments to deem the application administratively complete.
- Review Notice of Receipt of Application and Intent to Obtain Water Quality Permit Renewal, coordinate with newspaper publishers to publish the notice and deliver the completed application for public display.
- Respond to TCEQ regarding comments during the technical review process.
- Review and summarize the draft permit and provide comments to the TCEQ.
- Review Notice of Application and Preliminary Decision, coordinate with newspaper publishers to publish the notice and to have complete draft permit placed on public display.
- Summarize the final permit requirements and distribute the final permit to the Client.

Project Management

- Project Management to include invoicing, monthly email status updates, and maintenance of schedule through the estimated permit coordination period outline in the project schedule.

Reimbursable Expenses

Reimbursable expenses under this contract will include items such as reproduction costs, delivery charges, mileage, renewal fees, advertising fees, etc.; and will be charged based on actual usage in accordance with the attached Standard Rates. All future effluent sampling and analysis costs will be managed and paid by the City.

DELIVERABLES

1. Permit Application (electronic version);
2. Draft Permit with Summary (electronic version); and
3. Amended TPDES Permit with Summary (electronic version).

COMPENSATION

The estimated engineering cost to perform the described scope of work is summarized below:

A. TPDES Permit Renewal (Lump Sum)		\$ 24,000
B. Reimbursable Expenses (Cost + 10%)		\$ 6,000
	ESTIMATED TOTAL	\$ 30,000
C. Additional Services (Hourly As Requested)		\$ 5,000

City of Wharton
 Page 3
 March 7, 2024

Notes:

Subcontract costs shall be billed at invoiced cost plus 10% for oversight, administration, and processing paperwork.

During the permitting process, various situations may arise that are outside of the services described above and may necessitate additional services. These situations could include TCEQ required stream modeling, public comment or hearing request, additional studies, feasibilities, or cost analyses required by TCEQ, a contested permit, environmental or archaeological research request from TCEQ, or other non-standard issues requested by TCEQ. In any of these events, we can perform additional engineering services to assist with the permitting process for additional compensation. The need for these additional services are outside the Engineer’s control. The City will be notified if any additional services are necessary prior to proceeding, including an estimated proposal for the additional effort.

If other Additional or Reimbursable Services are required to complete this permit, the estimated cost for these tasks will be presented to the City for negotiation and approval, once their need and magnitude are mutually determined.

PROJECT SCHEDULE

The Engineer understands the Project Scope of Services outlined herein should be completed within the four hundred and twenty (420) calendar days. The Engineer proposes to initiate the Project five (5) calendar days after receiving written authorization from the CITY to proceed. It is understood the Engineer’s ability to complete the subsequential tasks within the established timeframe is depended upon receipt of any existing, available, and necessary information from the CITY at the beginning of the project, and the CITY’s timely review and approval of the Engineer’s draft and final permit application. Note that dates shown are estimated based on the CITY’s approval of the proposal and completion on the permit application.

Submit Permit Application	120	calendar days
<u>Permit Coordination</u>	<u>300</u>	<u>calendar days*</u>
TOTAL DURATION	420	calendar days

*The 300-calendar days are outside the Engineer’s control, and the estimate is based on recent review times from the TCEQ on similar permit applications. If the TCEQ receives public comment, the permit is contested, or the TCEQ requires additional items, the schedule will be substantially delayed, and will be beyond the Engineer’s control. These would require a longer delivery and additional costs to complete.

SPECIAL CONSIDERATION

This proposal is based on the following special considerations:

1. This proposal shall be subject to the General Conditions of the Agreement provided in the proposal.



City of Wharton
Page 4
March 7, 2024

- 2. Reimbursable expenses including outside services not performed by the Engineer shall be provided in accordance with the enclosed Schedule of Reimbursable Expenses. This schedule is subject to revision each year. These services typically include reproduction, mailings, and deliveries.
- 3. Services requested by the City that are outside the scope of this proposal will be performed for additional compensation under a separate work authorization.

AUTHORIZATION

We thank you for the opportunity to submit this proposal and look forward to working with you on this project. The proposed compensation amounts shall be considered in their entirety for the scope of services. Should the Client wish to contract with the Engineer for only a portion of the work, the Engineer reserves the right to negotiate individual scope items on their own merits. This proposal shall be valid for thirty (30) calendar days from this date and may be extended upon written approval by the Engineer.

Sincerely,

Matthew B. Breazeale, PE
Vice President

BTG/mbb

Enclosures

APPROVED BY:

Signature

Name and Title

Date

GENERAL CONDITIONS OF AGREEMENT
QUIDDITY ENGINEERING, LLC

Item-3.

PROCEEDING WITH SERVICES

These General Conditions of Agreement are a part of the Agreement for Professional Services (Agreement) between CLIENT and Quiddity Engineering, LLC (ENGINEER). CLIENT agrees that these General Conditions of Agreement shall be binding upon CLIENT when CLIENT requests that ENGINEER proceed with ENGINEER's services described in the proposed Agreement that they accompany. Signing of the Agreement or requesting that ENGINEER proceed with services shall be CLIENT's authorization for ENGINEER to proceed unless stated otherwise in the Agreement.

STANDARD OF CARE

ENGINEER's services performed under this Agreement shall be performed in a manner consistent with that level of care and skill ordinarily exercised by members of the engineering profession currently practicing in the same discipline, locality, conditions and circumstances as ENGINEER. ENGINEER makes no representations or warranties, express or implied, with respect to this Agreement, its performance or in any report, opinion or Document, as defined below, prepared by ENGINEER.

PAYMENT

The CLIENT, recognizing that timely payment is a material part of the consideration of this Agreement, shall pay ENGINEER for services performed and reimbursable expenses incurred in accordance with ENGINEER's then-current rate schedule and direct expense reimbursement policy. Invoices shall be submitted by ENGINEER on a monthly basis, and the full amount shall be due and payable to ENGINEER upon receipt. If the CLIENT disputes any portion of an invoice, the CLIENT shall notify ENGINEER in writing within seven (7) calendar days of the invoice date and pay that portion of the invoice not in dispute. The CLIENT shall pay any excise, VAT, gross receipts, or sales tax imposed upon ENGINEER's services.

The CLIENT shall pay ENGINEER the lesser of the highest non-usurious interest rate or 0.75% per month on the due but unpaid balance owed ENGINEER beginning thirty (30) days from receipt of the respective invoices. Payment thereafter shall be first applied to accrued interest and then to principal.

CLIENT INFORMATION

ENGINEER shall be entitled to rely upon the completeness and accuracy of information supplied by or through CLIENT.

OWNERSHIP OF DOCUMENTS

All documents, including original drawings, opinions of probable construction cost, specifications, field notes, and data provided or furnished by ENGINEER pursuant to this AGREEMENT are instruments of service in respect to the Project and ENGINEER shall retain ownership and property interest therein whether or not the project is completed. The CLIENT may make and retain copies for the use of the Project by the CLIENT and others; however, such documents are not intended or suitable for reuse by the CLIENT or others on extensions of the Project or on any other Project. Any such reuse without written approval or adaptation by ENGINEER for the specific purpose intended shall be at the CLIENT'S sole risk and without liability to ENGINEER, and the CLIENT shall

indemnify and hold harmless ENGINEER from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

COST ESTIMATES

Cost estimates prepared by ENGINEER represent its judgment as a design professional familiar with the construction industry. The CLIENT recognizes, however, that ENGINEER has no control over the cost of labor, materials, or equipment; over the contractor's methods of determining prices; or over competitive bidding or market conditions. Accordingly, ENGINEER cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget or any cost estimates prepared by ENGINEER.

CONSTRUCTION PHASE SERVICES

When providing any services during the construction phase, ENGINEER shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Contractor's Work, nor shall it be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Documents.

INSURANCE

ENGINEER agrees to maintain: Workers' Compensation Insurance to cover all of its personnel engaged in performing services for the CLIENT under this Agreement; Commercial General Liability and Automobile insurance; and Professional Liability Insurance. Certificates of insurance are available upon request.

CONSEQUENTIAL DAMAGES

TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES WAIVE ALL CLAIMS AGAINST EACH OTHER FOR ANY CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF USE OF THE PROJECT AND LOSS OF PROFIT, INCURRED BY EITHER PARTY ALLEGEDLY DUE TO THE FAULT OF THE OTHER REGARDLESS OF THE NATURE OF THE FAULT.

LIMITATION OF LIABILITY

The CLIENT and ENGINEER, having balanced their respective risks and rewards to be realized under this Agreement, agree that the total liability of ENGINEER to CLIENT for any Loss, as defined below, whether arising under this Agreement, any services provided or the project shall not exceed in the aggregate the total professional fee paid to ENGINEER. The CLIENT waives any and all Loss and claims for Loss against ENGINEER in excess of such limitation. CLIENT further waives all claims for Loss against the individual owners, shareholders, or employees of ENGINEER and shall look solely to ENGINEER for satisfaction of any such claims of Loss.

THE TERM "LOSS" MEANS ANY AND ALL ACTUAL AND ALLEGED LOSS, COSTS AND DAMAGES OF ANY NATURE (INCLUDING WITHOUT LIMITATION, ACTUAL, SPECIAL AND CONSEQUENTIAL DAMAGES, VICARIOUS LIABILITY, PERSONAL INJURY, DEATH, PROPERTY DAMAGE

GENERAL CONDITIONS OF AGREEMENT
QUIDDITY ENGINEERING, LLC

Item-3.

INCLUDING LOSS OF USE THEREOF, AND ECONOMIC LOSS); AND ANY EXPENSE (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEY'S AND EXPERTS' FEES AND COSTS OF LITIGATION AND DEFENSE) CLAIMED THROUGH ANY DIRECT CLAIMS, CROSS-CLAIMS, COUNTERCLAIMS OR CLAIMS FOR SUBROGATION, CONTRIBUTION OR INDEMNITY THAT ARISE, IN WHOLE OR IN PART, IN CONNECTION WITH THIS AGREEMENT, ITS PERFORMANCE OR INTERPRETATION OR WITH RESPECT TO THE PROJECT OR SERVICES THE AGREEMENT DESCRIBES.

INDEMNIFICATION

THE CLIENT AND ENGINEER INTEND THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL OF THE TERMS OF THIS AGREEMENT AND ANY OF ITS CONSTITUENT PARTS THAT REQUIRE CLIENT TO INDEMNIFY, DEFEND, HOLD HARMLESS OR RELEASE ENGINEER OR THAT WAIVE ANY CLAIMS OR DAMAGES AGAINST ANY OTHER PARTY SHALL BE ENFORCED REGARDLESS OF WHETHER ANY SUCH CLAIMS, CAUSES OF ACTION, LOSS OR DAMAGES ARE CAUSED, OR ARE ALLEGED TO BE CAUSED, BY ANY NEGLIGENCE, NEGLIGENT MISREPRESENTATION, BREACH OF CONTRACT OR BREACH OF ANY OTHER DUTY OR OBLIGATION OF THE PARTY INDEMNIFIED, DEFENDED, HELD HARMLESS OR RELEASED OR OF ANY PARTY AGAINST WHOM SUCH CLAIMS, CAUSES OF ACTION, LOSS OR DAMAGES ARE WAIVED. ANY SUCH INDEMNITY, DEFENSE, HOLD HARMLESS, RELEASE OBLIGATIONS OR WAIVER PROVISION SHALL SURVIVE TERMINATION OR EXPIRATION OF THE AGREEMENT.

TERMINATION

Either party may terminate this AGREEMENT with or without cause at any time prior to completion of ENGINEER's services upon seven (7) days' written notice to the other party at the addresses of record. The CLIENT shall pay ENGINEER for all serves performed and reimbursable expenses incurred through the date of termination.

ADDITIONAL TERMS

Neither party may assign, sublet, or transfer this Agreement or their interest in this Agreement without the prior written consent of the other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the CLIENT or ENGINEER.

In the event any one or more provisions of this Agreement, or the application thereof to any person or circumstance, shall for any reason be held invalid, illegal or unenforceable in any respect, any such invalidity, illegality or unenforceability shall be deemed stricken and shall not affect any other provision of this Agreement or the application of such provisions to other persons or circumstances, and the balance of this Agreement shall be enforced to the greatest extent permitted by law.

This Agreement shall be governed by the laws of the State of Texas. Exclusive venue for any dispute between the parties concerning the Agreement, its interpretation or performance, or the project shall be in a district court in Harris County, Texas.

SCHEDULE OF HOURLY RATES
Effective August 1, 2022

ENGINEERING PERSONNEL

Design Engineer I	\$125
Design Engineer II	\$145
Professional Engineer I	\$170
Professional Engineer II	\$195
Professional Engineer III	\$225
Professional Engineer IV	\$255
Professional Engineer V	\$275
Practice Leader	\$295

DESIGNERS/DRAFTING PERSONNEL

CAD I	\$ 80
CAD II	\$100
CAD III	\$120
Designer I	\$130
Designer II	\$150
Designer III	\$170
GIS I	\$ 95
GIS II	\$130
GIS III	\$160
GIS IV	\$220

ELECTRICAL ENGINEERING PERSONNEL

Electrical Design Engineer I	\$135
Electrical Design Engineer II	\$155
Electrical Professional Engineer I	\$185
Electrical Professional Engineer II	\$210
Electrical Professional Engineer III	\$240
Electrical Professional Engineer IV	\$270
Electrical Professional Engineer V	\$295

SURVEYING PERSONNEL

1-Person Field Crew	\$145
2-Person Field Crew	\$195
3-Person Field Crew	\$240
4-Person Field Crew	\$270
Survey Technician I	\$100
Survey Technician II	\$110
Project Surveyor I	\$105
Project Surveyor II	\$125
Project Surveyor III	\$145
Project Surveyor IV	\$175
Chief of Survey Crews	\$150
Certified Photogrammetrist	\$175
Remote Pilot I	\$ 95
Remote Pilot II	\$130
Remote Pilot III	\$170
Visual Observer	\$ 95
LIDAR Tech	\$105
Aerial Tech	\$ 90
Registered Professional Land Surveyor	\$195
Survey Manager	\$225

CONSTRUCTION PERSONNEL (Includes Mileage)

Construction Manager I	\$125
Construction Manager II	\$145
Construction Manager III	\$170
Construction Manager IV	\$190
Construction Manager V	\$230
Field Project Representative I	\$ 80
Field Project Representative II	\$100
Field Project Representative III	\$120
Specialist Field Project Representative I	\$135
Specialist Field Project Representative II	\$145
Senior Specialist Field Project Representative	\$160

SPECIALIST

Specialist I	\$115
Specialist II	\$145
Specialist III	\$215
Specialist IV	\$250

OFFICE PERSONNEL

Engineer's Assistant I	\$ 75
Engineer's Assistant II	\$ 85
Engineer's Assistant III	\$ 95
Admin I	\$ 75
Admin II	\$ 95
Admin III	\$125
Accounting Manager	\$130
Corporate/Project Accountant	\$110

PLANNING PERSONNEL

Planner I	\$105
Planner II	\$145
Planner III	\$175
Planner Manager	\$250

**CITY OF WHARTON
RESOLUTION NO. 2024-XX**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A PROFESSIONAL ENGINEERING SERVICES AGREEMENT WITH QUIDDITY ENGINEERING, LLC, TO SUBMIT THE CITY OF WHARTON WASTEWATER TREATMENT PLANT NO. 1 APPLICATION FOR RENEWAL OF PERMIT WQ0010381001 TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID AGREEMENT.

WHEREAS, The Wharton City Council wishes to engage the services of Quiddity Engineering, LLC, to provide professional engineering services for the TPDES Permit Renewal Application for Wastewater Treatment Plant No. 1; and,

WHEREAS, Quiddity Engineering, LLC, wishes to provide said services for the TPDES Permit Renewal Applications for Wastewater Treatment Plant No. 1; and,

WHEREAS, The City of Wharton and Quiddity Engineering, LLC, wishes to be bound by the conditions of said Professional Engineering Services Agreement; and,

WHEREAS, The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute the agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute a Professional Engineering Services Agreement with Quiddity Engineering, LLC, for the TPDES Permit Renewal Application for Wastewater Treatment Plant No. 1.

Section II. The City of Wharton and Quiddity Engineering, LLC, are hereby bound by the conditions as set forth in the agreement.

Section III. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 25th day of March 2024.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

City of Wharton
120 E. Caney Street
Wharton, TX 77488

FINANCE COMMITTEE

Meeting Date:	3/25/2024	Agenda Item:	Resolution: A resolution of the Wharton City Council approving a Professional Engineering Services Agreement with Quiddity Engineering, LLC, to develop and submit the Environmental Protection Agency's (EPA) Lead and Copper Rule Revision (LCRR) to the Texas Commission on Environmental Quality and authorizing the Mayor of the City of Wharton to execute all documents related to said agreement.
<p>Attached you will find the proposal from Quiddity Engineering, LLC, to assist the City of Wharton with the Environmental Protection Agency's (EPA) Lead and Copper Rule Revision (LCRR) development and submission to the Texas Commission on Environmental Quality (TCEQ). The service included in the agreement is assisting the City of Wharton in developing and submitting the Initial Lead Service Line Inventory (LSLI). Due to recent changes in the Lead and Copper Rule, the EPA requires an inventory of all lead service lines within the public water system (40 CFR 141.84). The LSLI must be completed and submitted to TCEQ by October 16, 2024.</p> <p>Public Works Director Roderick Semien will be present to answer any questions.</p>			
City Manager: Joseph R. Pace		Date: Thursday, March 21, 2024	
Approval: 			
Mayor: Tim Barker			



City of Wharton
Public Works Department
1005 E. Milam Street ° Wharton, TX 77488
Phone (979) 532-2491 ext. 801 ° Fax (979) 531-1744

MEMORANDUM

Date: March 19, 2024
To: Joseph R. Pace, City Manager
From: Roderick Semien, Director of Public Works
Subject: Proposal for Professional Engineering Services with Quiddity Engineering, LLC, for the Lead and Copper Rule Revisions (LCRR) Initial Lead Service Line Inventory (LSLI).

Attached please find the proposal from Quiddity Engineering, LLC, to assist the City of Wharton with development and submission of the initial lead service line inventory (LSLI). Due to recent changes of the Lead and Copper Rule, the Environment Protection Agency (EPA) requires an inventory of all lead service lines, within the public water system (40 CFR 141.84). The LSLI must be completed and submitted to the Texas Commission on Environmental Quality (TCEQ) by October 16, 2024.

Please place this on the City Council agenda for March 25, 2024.

If you have any questions, please contact me at 979-532-2491 Ext. 801. Thank you.



March 7, 2024

City of Wharton
Mr. Joseph R. Pace
City Manager
120 East Caney Street
Wharton, Texas 77488

Re: Proposal for Support with Lead and Copper Rule Revisions (LCRR)
Initial Lead Service Line Inventory Task

Dear Mr. Pace:

Quiddity Engineering, LLC (Quiddity) appreciates the opportunity to support the City of Wharton (City) in meeting the requirements included in the Environment Protection Agency's (EPA) Lead and Copper Rule Revisions (LCRR). The services included in this proposal consist of assisting the City of Wharton (Wharton or City) with the development and submission of the initial lead service line inventory (or LSLI) to the Texas Commission on Environmental Quality (TCEQ) by the October 16, 2024, deadline.

LCRR LEAD SERVICE LINE INVENTORY PROJECT UNDERSTANDING

On December 16, 2021, the Environment Protection Agency (EPA) announced new changes to the Lead Copper Rule. Regardless of a public water system's lead levels or known presence of lead service lines, the 2021 EPA Lead and Copper Rule Revisions (LCRR) require all public water systems to develop a lead service line (LSL) inventory. The inventory will identify all services lines within the public water system and classify each service lines' material type as lead, non-lead, galvanized requiring replacement or lead status unknown. Classification for both the public and private sides of the service lines must be included. The inventory and supporting documentation must be submitted to the Texas Commission on Environmental Quality (TCEQ) by October 16, 2024. To assist in classifying the service lines, the following guidance and clarification has been provided by the TCEQ:

- Service lines construction after 1988 can be categorized as Non-Lead. In Texas, the 1986 EPA Lead Ban officially went into effect in 1988. This ban date (post-1988) can be used as a cutoff date to classify a service line as non-lead as long as there is documented evidence of when the service line was installed.

In this initial inventory, the focus is to develop a comprehensive inventory by reviewing various historical documents and records. Field investigations are not required by the LCRR but are encouraged to assess the accuracy of the historical records and gather additional information when a service line material is unknown. It is strongly recommended to minimize the number of unknowns included in the initial inventory since any "Unknown" included will require public notice in compliance with the LCRR. Based on information provided from the City, it is our understanding there is estimated to be approximately 1,500 service lines constructed pre-1988.

City of Wharton
Page 2
March 7, 2024

The LCRR also includes requirements for public water systems to prepare a lead service line replacement plan, changes to Lead and Copper sampling, water system reporting, various public notice and education requirements, and the introduction of a new lead trigger level and action steps. Additionally, the EPA recently released the Lead and Copper Rule Improvements (or the LCRI) which includes additional requirements associated with replacing all lead service lines within 10-years following the new LCRI compliance date. At this time, the regulations included in the LCRI have not been finalized but are expected to have an effective date of October 16, 2024, with a compliance date 3-years after the effective date. Services to undertake the additional requirements included in the LCRR, and future LCRI, are not part of this scope of work and will be addressed, if needed or requested by the City, in future proposals.

Wharton has requested Quiddity develop the City's initial LSL inventory and make the formal submission to the TCEQ by the October 16, 2024, deadline. Quiddity has prepared a scope of services which outlines the specific tasks required to complete this work.

SCOPE OF SERVICES

Based on our understanding of the City's water system, the Engineer will perform the following scope of services to complete the City's initial LSL inventory.

Step 1 – Records Research and Data Composition

- Coordinate with City Staff to gather and review information for all water service lines including approximate construction dates of public and private service lines, pipe material, line size, and location.
- Coordinate with City Staff to gather and review City records including, but not limited to record drawings, GIS database information, work orders, and related documents (water tap data, service line repair records, water meter replacement program information), meter records, customer service inspection records, historical lead sampling data, satellite imagery, and appraisal district property information.
- Coordinate with the commercial and institutional customers to receive historical service line information if available.
- Compile and format all the records required for each service line into the LSL inventory database template.
- Preparation of a records research summary table.
- Preparation of a field verification locations exhibit for the City's review and use by the field investigation team(s). The field verification locations will be based on the service lines in which the material type is unable to be determined using historical records and lead sampling information.

Step 2 – Field Verifications Process

2a – Field Verifications Coordination

- Develop City's LSL Inventory GIS application layer and enter proposed field investigation locations into GIS for use with the ESRI's Field Maps application (GIS based) to collect required field documentation.



City of Wharton
Page 3
March 7, 2024

- Hold a kick-off meeting with the City staff and field team(s) to verify and confirm requirements of investigations and discuss use of ESRI’s Field Maps application.
- Work with the City’s Staff and Attorney to prepare customer access agreements, if required.
- Review and track field investigation data and progress.

2b – Field Investigations

- Initiate field investigation work based on results of Step 1, Step 2a and agreement from City Staff.
- Field investigation documentation will require investigation team(s) to utilize ESRI’s Field Maps application (GIS based) to collect required field documentation at each selected location.

Fees for field investigations are based on an initial estimate of 1,500 locations. The final number, and conditions under which the fieldwork is performed (i.e. requires unexpected excavation), will be determined in Step 1. If more field investigations are required, additional fees may be requested, and Quiddity will request additional work authorization.

Step 3 – LSL Inventory Submittal and Exhibit for Public Use

- Compile and format the field verification data into the LSLI inventory database and update LSL inventory exhibit for public use.
- Finalize the TCEQ LSL inventory form for submission.
- Submit the LSL inventory and certification to the TCEQ and finalize the LSLI exhibit for public use.

Reimbursable Expenses

Reimbursable expenses under this contract will include items such as reproduction costs, delivery charges, mileage, etc.; and will be charged based on actual usage in accordance with the attached Standard Rates.

DELIVERABLES

1. Proposed field investigation location list and exhibit for City Staff approval;
2. LSL inventory and certification, submitted to TCEQ, by compliance date; and
3. LSL inventory exhibit (for public use).

COMPENSATION

The estimated engineering cost to perform the described scope of work is summarized below:

• Step 1 – Records Research and Data Composition (Hourly)	\$ 12,000
• Step 2a – Field Verifications Coordination (Hourly)	\$ 7,500
• Step 2b – Field Verifications (Variable – Estimated Only)	\$ 55,000 *
• Step 3 – LSL Inventory Submittal and Exhibit (Hourly)	\$ 5,000
• Reimbursable Expenses (Cost + 10%)	\$ 500
ESTIMATED TOTAL	\$ 80,000 **



City of Wharton
Page 4
March 7, 2024

Notes:

* Fees for field investigations are based on an initial estimate of 1,500 locations. The final number, and conditions under which the fieldwork is performed (i.e. requires unexpected excavation), will be determined in Step 1. If more field investigations are required, additional fees may be requested, and Quiddity will request additional work authorization.

**The compensation amount shown is estimated based on the assumed level of effort to support the City with the LCRR. The contract type is hourly based on the attached Rate Schedule. If additional time and compensation is needed, Quiddity will request additional work authorization. The scope of work for the LSL inventory is for the initial preparation and submission of the LSL inventory to comply with the October 16, 2024, deadline and is based on our understanding of the current requirements from the TCEQ and EPA. Additional updates or changes required by the TCEQ or EPA to comply with the LCRR and upcoming LCRI regulations are outside of this scope of work.

We request authorization to proceed with the Scope of Services for a total estimated cost of \$80,000 per the estimated fees above. Engineering services will be billed on an hourly basis unless noted otherwise in accordance with the PSA.

PROJECT SCHEDULE

The Engineer will complete the scope of services defined herein according to the following schedule. Note that the dates shown are contingent upon receipt of written notice-to-proceed by the Client and work being initiated by March 2024.

Step 1 – Records Research and Data Composition	60 calendar days
Step 2 – Field Verification Process (includes step 2a and 2b)	150 calendar days*
Step 3 – LSL Inventory Submittal and Exhibit for Public Use	45 calendar days
<hr/>	
TOTAL DURATION	255 calendar days

** Field verification duration will depend on the number of sites required to be field verified and the willingness of customers to participate in the field verification process. The number of sites requiring field verification is assumed to be 1,500 but may vary depending on the results of Step 1 and 2a above.*

SPECIAL CONSIDERATION

This proposal is based on the following special considerations:

1. This proposal shall be subject to the General Conditions of the Agreement provided in the proposal.
2. Reimbursable expenses including outside services not performed by the Engineer shall be provided in accordance with the enclosed Schedule of Reimbursable Expenses. This schedule is subject to revision each year. These services typically include reproduction, mailings, and deliveries.



City of Wharton
Page 5
March 7, 2024

- 3. Services requested by the City that are outside the scope of this proposal will be performed for additional compensation under a separate work authorization.
- 4. The Engineer will not be liable for any non-compliance related issues if the Client is unable to fulfill the requirements outlined in the proposal.

AUTHORIZATION

We thank you for the opportunity to submit this proposal and look forward to working with you on this project. The proposed compensation amounts shall be considered in their entirety for the scope of services. Should the Client wish to contract with the Engineer for only a portion of the work, the Engineer reserves the right to negotiate individual scope items on their own merits. This proposal shall be valid for thirty (30) calendar days from this date and may be extended upon written approval by the Engineer.

Sincerely,



Matthew B. Breazeale, PE
Vice President

PDM/
Enclosures

APPROVED BY:

Signature

Name and Title

Date

GENERAL CONDITIONS OF AGREEMENT

QUIDDITY ENGINEERING, LLC

PROCEEDING WITH SERVICES

These General Conditions of Agreement are a part of the Agreement for Professional Services (Agreement) between CLIENT and Quiddity Engineering, LLC (ENGINEER). CLIENT agrees that these General Conditions of Agreement shall be binding upon CLIENT when CLIENT requests that ENGINEER proceed with ENGINEER's services described in the proposed Agreement that they accompany. Signing of the Agreement or requesting that ENGINEER proceed with services shall be CLIENT's authorization for ENGINEER to proceed unless stated otherwise in the Agreement.

STANDARD OF CARE

ENGINEER's services performed under this Agreement shall be performed in a manner consistent with that level of care and skill ordinarily exercised by members of the engineering profession currently practicing in the same discipline, locality, conditions and circumstances as ENGINEER. ENGINEER makes no representations or warranties, express or implied, with respect to this Agreement, its performance or in any report, opinion or Document, as defined below, prepared by ENGINEER.

PAYMENT

The CLIENT, recognizing that timely payment is a material part of the consideration of this Agreement, shall pay ENGINEER for services performed and reimbursable expenses incurred in accordance with ENGINEER's then-current rate schedule and direct expense reimbursement policy. Invoices shall be submitted by ENGINEER on a monthly basis, and the full amount shall be due and payable to ENGINEER upon receipt. If the CLIENT disputes any portion of an invoice, the CLIENT shall notify ENGINEER in writing within seven (7) calendar days of the invoice date and pay that portion of the invoice not in dispute. The CLIENT shall pay any excise, VAT, gross receipts, or sales tax imposed upon ENGINEER's services.

The CLIENT shall pay ENGINEER the lesser of the highest non-usurious interest rate or 0.75% per month on the due but unpaid balance owed ENGINEER beginning thirty (30) days from receipt of the respective invoices. Payment thereafter shall be first applied to accrued interest and then to principal.

CLIENT INFORMATION

ENGINEER shall be entitled to rely upon the completeness and accuracy of information supplied by or through CLIENT.

OWNERSHIP OF DOCUMENTS

All documents, including original drawings, opinions of probable construction cost, specifications, field notes, and data provided or furnished by ENGINEER pursuant to this AGREEMENT are instruments of service in respect to the Project and ENGINEER shall retain ownership and property interest therein whether or not the project is completed. The CLIENT may make and retain copies for the use of the Project by the CLIENT and others; however, such documents are not intended or suitable for reuse by the CLIENT or others on extensions of the Project or on any other Project. Any such reuse without written approval or adaptation by ENGINEER for the specific purpose intended shall be at the CLIENT'S sole risk and without liability to ENGINEER, and the CLIENT shall

indemnify and hold harmless ENGINEER from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

COST ESTIMATES

Cost estimates prepared by ENGINEER represent its judgment as a design professional familiar with the construction industry. The CLIENT recognizes, however, that ENGINEER has no control over the cost of labor, materials, or equipment; over the contractor's methods of determining prices; or over competitive bidding or market conditions. Accordingly, ENGINEER cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget or any cost estimates prepared by ENGINEER.

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ENGINEER agrees to maintain: Workers' Compensation Insurance to cover all of its personnel engaged in performing services for the CLIENT under this Agreement; Commercial General Liability and Automobile insurance; and Professional Liability Insurance. Certificates of insurance are available upon request.

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LIMITATION OF LIABILITY

The CLIENT and ENGINEER, having balanced their respective risks and rewards to be realized under this Agreement, agree that the total liability of ENGINEER to CLIENT for any Loss, as defined below, whether arising under this Agreement, any services provided or the project shall not exceed in the aggregate the total professional fee paid to ENGINEER. The CLIENT waives any and all Loss and claims for Loss against ENGINEER in excess of such limitation. CLIENT further waives all claims for Loss against the individual owners, shareholders, or employees of ENGINEER and shall look solely to ENGINEER for satisfaction of any such claims of Loss.

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GENERAL CONDITIONS OF AGREEMENT
QUIDDITY ENGINEERING, LLC

INCLUDING LOSS OF USE THEREOF, AND ECONOMIC LOSS); AND ANY EXPENSE (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEY'S AND EXPERTS' FEES AND COSTS OF LITIGATION AND DEFENSE) CLAIMED THROUGH ANY DIRECT CLAIMS, CROSS-CLAIMS, COUNTERCLAIMS OR CLAIMS FOR SUBROGATION, CONTRIBUTION OR INDEMNITY THAT ARISE, IN WHOLE OR IN PART, IN CONNECTION WITH THIS AGREEMENT, ITS PERFORMANCE OR INTERPRETATION OR WITH RESPECT TO THE PROJECT OR SERVICES THE AGREEMENT DESCRIBES.

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THE CLIENT AND ENGINEER INTEND THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL OF THE TERMS OF THIS AGREEMENT AND ANY OF ITS CONSTITUENT PARTS THAT REQUIRE CLIENT TO INDEMNIFY, DEFEND, HOLD HARMLESS OR RELEASE ENGINEER OR THAT WAIVE ANY CLAIMS OR DAMAGES AGAINST ANY ANOTHER PARTY SHALL BE ENFORCED REGARDLESS OF WHETHER ANY SUCH CLAIMS, CAUSES OF ACTION, LOSS OR DAMAGES ARE CAUSED, OR ARE ALLEGED TO BE CAUSED, BY ANY NEGLIGENCE, NEGLIGENT MISREPRESENTATION, BREACH OF CONTRACT OR BREACH OF ANY OTHER DUTY OR OBLIGATION OF THE PARTY INDEMNIFIED, DEFENDED, HELD HARMLESS OR RELEASED OR OF ANY PARTY AGAINST WHOM SUCH CLAIMS, CAUSES OF ACTION, LOSS OR DAMAGES ARE WAIVED. ANY SUCH INDEMNITY, DEFENSE, HOLD HARMLESS, RELEASE OBLIGATIONS OR WAIVER PROVISION SHALL SURVIVE TERMINATION OR EXPIRATION OF THE AGREEMENT.

TERMINATION

Either party may terminate this AGREEMENT with or without cause at any time prior to completion of ENGINEER's services upon seven (7) days' written notice to the other party at the addresses of record. The CLIENT shall pay ENGINEER for all serves performed and reimbursable expenses incurred through the date of termination.

ADDITIONAL TERMS

Neither party may assign, sublet, or transfer this Agreement or their interest in this Agreement without the prior written consent of the other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the CLIENT or ENGINEER.

In the event any one or more provisions of this Agreement, or the application thereof to any person or circumstance, shall for any reason be held invalid, illegal or unenforceable in any respect, any such invalidity, illegality or unenforceability shall be deemed stricken and shall not affect any other provision of this Agreement or the application of such provisions to other persons or circumstances, and the balance of this Agreement shall be enforced to the greatest extent permitted by law.

This Agreement shall be governed by the laws of the State of Texas. Exclusive venue for any dispute between the parties concerning the Agreement, its interpretation or performance, or the project shall be in a district court in Harris County, Texas.

SCHEDULE OF HOURLY RATES
Effective January 2021 - Subject to Annual Revision

ENGINEERING PERSONNEL

Design Engineer I	\$110
Design Engineer II	\$130
Professional Engineer I	\$150
Professional Engineer II	\$170
Professional Engineer III	\$195
Professional Engineer IV	\$225
Professional Engineer V	\$240
Practice Leader	\$260

ELECTRICAL ENGINEERING PERSONNEL

Electrical Design Engineer I	\$120
Electrical Design Engineer II	\$140
Electrical Professional Engineer I	\$165
Electrical Professional Engineer II	\$180
Electrical Professional Engineer III	\$200
Electrical Professional Engineer IV	\$235
Electrical Professional Engineer V	\$250

CONSTRUCTION PERSONNEL (Includes Mileage)

Construction Manager I	\$110
Construction Manager II	\$130
Construction Manager III	\$150
Construction Manager IV	\$170
Construction Manager V	\$195
Field Project Representative I	\$ 65
Field Project Representative II	\$ 90
Field Project Representative III	\$110
Specialist Field Project Representative I	\$120
Specialist Field Project Representative II	\$135
Senior Specialist Field Project Representative	\$150

SPECIALIST

Specialist I	\$100
Specialist II	\$125
Specialist III	\$195
Specialist IV	\$240

PLANNING PERSONNEL

Planner I	\$ 95
Planner II	\$125
Planner III	\$155
Planner Manager	\$225

DESIGNERS/DRAFTING PERSONNEL

CAD Operator I	\$ 60
CAD Operator II	\$ 85
CAD Operator III	\$100
Designer I	\$100
Designer II	\$120
Designer III	\$140
GIS I	\$ 85
GIS II	\$110
GIS III	\$145
GIS IV	\$180

SURVEYING PERSONNEL

1-Person Field Crew	\$130
2-Person Field Crew	\$180
3-Person Field Crew	\$220
4-Person Field Crew	\$250
Scanner Equipment	\$100
Survey Technician I	\$ 85
Survey Technician II	\$ 95
Project Surveyor I	\$ 90
Project Surveyor II	\$105
Project Surveyor III	\$125
Project Surveyor IV	\$150
Chief of Survey Crews	\$110
Certified Photogrammetrist	\$140
Remote Pilot I	\$ 85
Remote Pilot II	\$115
Remote Pilot III	\$150
Visual Observer	\$ 85
LiDAR Tech	\$ 95
Aerial Tech	\$ 80
Registered Professional Land Surveyor	\$170
Survey Manager	\$195

OFFICE PERSONNEL

Engineer's Assistant I	\$ 60
Engineer's Assistant II	\$ 75
Engineer's Assistant III	\$ 85
Admin I	\$ 60
Admin II	\$ 80
Admin III	\$105
Assistant Controller/ Chief Accountant	\$120
Corporate/Project Accountant	\$100

**CITY OF WHARTON
RESOLUTION NO. 2024-XX**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A PROFESSIONAL ENGINEERING SERVICES AGREEMENT WITH QUIDDITY ENGINEERING, LLC, TO DEVELOP AND SUBMIT THE ENVIRONMENTAL PROTECTION AGENCY’S (EPA) LEAD AND COPPER RULE REVISION (LCRR) TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID AGREEMENT.

WHEREAS, The Wharton City Council wishes to engage the services of Quiddity Engineering, LLC, to provide professional engineering services for the development and submission of the Environmental Protection Agency’s (EPA) Lead and Copper Rule Revision (LCRR) to the Texas Commission on Environmental Quality (TCEQ); and,

WHEREAS, Quiddity Engineering, LLC, wishes to provide said services for the development and submission of the Environmental Protection Agency’s (EPA) Lead and Copper Rule Revision (LCRR) to the Texas Commission on Environmental Quality (TCEQ) ; and,

WHEREAS, The City of Wharton and Quiddity Engineering, LLC, wishes to be bound by the conditions of said Professional Engineering Services Agreement; and,

WHEREAS, The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute the agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute a Professional Engineering Services Agreement with Quiddity Engineering, LLC, for the development and submission of the Environmental Protection Agency’s (EPA) Lead and Copper Rule Revision (LCRR) to the Texas Commission on Environmental Quality (TCEQ).

Section II. The City of Wharton and Quiddity Engineering, LLC, are hereby bound by the conditions as set forth in the agreement.

Section III. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 25th day of March 2024.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

City of Wharton
 120 E. Caney Street
 Wharton, TX 77488

FINANCE COMMITTEE

Meeting Date:	3/25/2024	Agenda Item:	Resolution: A resolution of the Wharton City Council entering into a Reimbursement Agreement with Wharton 55, LLC, for Public Improvement District No. 2 and authorizing the Mayor of the City of Wharton to execute all documents related to said agreement.
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Attached is the Reimbursement Agreement received from Wharton 55, LLC for Public Improvement District No. 2. The agreement sets out the creation of a PID Reimbursement Fund where all bond proceeds and assessments received will be deposited, and all PID Project costs will be paid for from this fund. The City will not be responsible for obtaining the bond funds.

The City's PID/TIRZ Consultants, as well as Paul Webb, City Attorney, have reviewed the document and recommend presenting it to the City Council for approval.

Finance Director Joan Andel will be present to answer any questions.

City Manager: Joseph R. Pace	Date: Thursday, March 21, 2024
Approval: 	
Mayor: Tim Barker	



City of Wharton
120 E. Caney Street ° Wharton, TX
77488
Phone (979) 532-2491° Fax (979) 532-
0181

MEMORANDUM

To: Mr. Joseph R. Pace
City Manager

From: Joan Andel

Date: March 20, 2024

Re: Reimbursement Agreement

Mr. Pace,

Attached is the Reimbursement Agreement received from Wharton 55, LLC for the Public Improvement District No. 2. The agreement sets out the creation of a PID Reimbursement Fund where all bond proceeds and assessments received will be deposited into and all PID Project Costs will be paid for from this fund. The City will not be responsible for obtaining the bond funds.

Our PID/TIRZ consultants, as well as Paul Webb, City Attorney, have reviewed the document and recommend presenting it to the City Council for approval.

Please place this item on the Finance Committee meeting on Monday, March 25, 2024, and also on the City Council agenda for the same day.

Should you have any questions, please contact me.

Thank you.

REIMBURSEMENT AGREEMENT
City of Wharton Public Improvement District No. __

This Reimbursement Agreement (this “Agreement”) is entered into by WHARTON 55, LLC, a Texas limited liability company (“Developer”), and the CITY OF WHARTON, TEXAS (the “City”), effective as of _____ (the “Effective Date”) in relation to the City of Wharton Public Improvement District No. __ (the “PID”). Developer and the City are individually referred to herein as a “Party” and collectively as the “Parties.”

SECTION 1.
RECITALS

1.1 WHEREAS, capitalized terms used in this Agreement shall have the meanings given to them in Section 2;

1.2 WHEREAS, unless otherwise defined: (1) all references to “sections” shall mean sections of this Agreement; (2) all references to “exhibits” shall mean exhibits to this Agreement which are incorporated as part of this Agreement for all purposes; and (3) all references to “ordinances” or “resolutions” shall mean ordinances or resolutions adopted by the City Council;

1.3 WHEREAS, Developer and the City have entered into a Development Agreement, effective as of November 15, 2022, relating to the development of the property within the PID and the financing of public improvements within the PID;

1.4 WHEREAS, the City Council has approved a PID Creation Resolution authorizing the creation of the PID pursuant to the authority of the Act dated _____, covering approximately 55 contiguous acres within the City's corporate limits;

1.5 WHEREAS, prior to the issuance of PID Bonds, Developer has paid and may continue to pay for the Actual Costs of the PID Projects benefitting the property within the PID;

1.6 WHEREAS, this Agreement is a “reimbursement agreement” authorized by Section 372.023(d)(1) of the Act;

1.7 WHEREAS, the recitals: (a) are part of this Agreement for all purposes; (b) are true and correct; and (c) each Party has relied upon such recitals in entering into this Agreement; and

NOW THEREFORE, for and in consideration of the mutual obligations of the Parties set forth herein, the Parties agree as follows:

SECTION 2.
DEFINITIONS

“Act” means Chapter 372, Texas Local Government Code, as amended.

“Actual Cost(s)” means with respect to PID Projects, the actual costs paid or incurred by or on behalf of the Developer, including: (1) the costs incurred by the Developer, or on behalf of the Developer (either directly or through affiliates) or the City for the design, planning, financing,

administration/management, acquisition, installation, construction and/or implementation of such PID Projects; (2) the fees paid for obtaining permits, licenses, or other governmental approvals for such PID Projects; (3) the costs incurred by or on behalf of the Developer for external professional costs, such as engineering, geotechnical, surveying, land planning, architectural landscapers, appraisals, legal, accounting, and similar professional services; (4) all labor, bonds, and materials, including equipment and fixtures, by contractors, builders, and materialmen in connection with the acquisition, construction, or implementation of the PID Projects; (5) all related permitting, and public approval expenses, architectural, engineering, legal and consulting fees, and governmental fees and charges; and (6) costs to implement, administer, and manage the above-described activities. Actual Costs refers to the PID Project costs actually incurred.

“Annual Collection Costs” means the actual or budgeted costs and expenses related to the operation of the PID, including, but not limited to, costs and expenses for: (1) the PID administrator; (2) legal counsel, engineers, accountants, financial advisors, and other consultants engaged by the City; (3) calculating, collecting, and maintaining records with respect to Assessments and Annual Installments; (4) preparing and maintaining records with respect to Assessment Rolls and annual service plan updates; (5) paying and redeeming PID Bonds; (6) investing or depositing Assessments and Annual Installments; (7) complying with the Service and Assessment Plan and the Act with respect to the PID Bonds, including the City’s continuing disclosure and arbitrage rebate requirements; and (8) the paying agent/registrar and Trustee in connection with PID Bonds, including their respective legal counsel. Annual Collection Costs collected but not expended in any year shall be carried forward and applied to reduce Annual Collection Costs for subsequent years.

“Annual Installment” means the annual installment payment of an Assessment, as calculated by the PID administrator and approved by the City Council, that includes: (1) principal; (2) interest; and (3) Annual Collection Costs.

“Assessed Parcel(s)” means any parcel within the PID against which an Assessment is levied.

“Assessment(s)” means an assessment levied against Assessed Parcels pursuant to the provisions of the Act for payment of PID Project Costs, including the payment of PID Bonds and obligations under this Agreement.

“Assessment Ordinance” means the ordinance(s) adopted by the City Council levying Assessments on an Assessed Parcel within the PID to pay PID Project Costs, PID Bonds and obligations under this Agreement.

“Assessment Revenue” means the revenues received by the City from the collection of Assessments, including Prepayments, Annual Installments, and Foreclosure Proceeds.

“Assessment Roll” means any assessment roll for the Assessed Parcel within the PID, as updated, modified or amended from time to time in accordance with the procedures set forth herein and in the Act, including updates prepared in connection with the issuance of PID Bonds or any annual service plan update.

“Authorized Improvements” means (1) improvements authorized by Section 372.003 of

the Act, (2) the costs of issuance of the PID Bonds, and (3) the costs of the formation of the PID. Authorized Improvements includes PID Projects.

“Bond Indenture” means the indenture of trust pursuant to which PID Bonds are issued.

“Bond Proceeds” mean the proceeds derived from the issuance and sale of PID Bonds that are deposited into the PID Project Fund and made available to pay PID Project Costs including design, engineering, construction and inspection costs in accordance with this Agreement and any Bond Indenture or SAP.

“Budgeted Cost” means the estimated cost for an Authorized Improvement as provided for in the Service and Assessment Plan.

“Certificate for Payment” means a certificate (substantially in the form of Exhibit A or as attached to the Bond Indenture or as otherwise approved by Developer and the City Representative) executed by a representative of Developer and approved by the City Representative, delivered to the City Representative (and/or, if applicable, to the Trustee named in the Bond Indenture), specifying the work performed and the amount charged (including materials and labor costs) for PID Project Costs, and requesting payment of such amount from the appropriate fund or funds. Each certificate shall include supporting documentation in the standard form for City construction projects and evidence that the PID Projects (or their completed segment(s)) covered by the certificate have been inspected by the City.

“City Council” means the governing body of the City.

“City Representative” means the Mayor or City Manager of the City, who are hereby authorized by the City Council to undertake the actions referenced herein.

“Closing Disbursement Request” means a request in the form of Exhibit B or as otherwise approved by the Parties and the trustee named in the Bond Indenture.

“Cost Overrun” means, with respect to each Authorized Improvement, the amount of the Actual Cost paid for the Authorized Improvement in excess of the Budgeted Cost for such Authorized Improvement as provided for in the Service and Assessment Plan.

“Default” is defined in Section 4.6.1.

“Delinquent Collection Costs” mean costs related to the foreclosure on an Assessed Parcel and the costs of collection of delinquent Assessments, delinquent Annual Installments, or any other delinquent amounts due under the Service and Assessment Plan, including penalties and reasonable attorney’s fees actually paid, but excluding amounts representing interest and penalty interest.

“Development Agreement” means that certain Development Agreement, effective as of November 15, 2022, by and between the Developer and the City.

“Developer Advances” mean monetary advances made by Developer to pay PID Project Costs.

“Developer Continuing Disclosure Agreement” means the Continuing Disclosure Agreement of Developer executed contemporaneously with the issuance and sale of PID Bonds.

“Failure” is defined in Section 4.6.1.

“Final Completion” means completion of an Authorized Improvement in compliance with existing City standards for dedication under the City’s ordinances and the Development Agreement.

“Maturity Date” is the date one year after the final scheduled and non-delinquent Annual Installment is collected.

“PID” means the City of Wharton Public Improvement District No. __ created by the PID Creation Resolution.

“PID Bonds” means the bonds issued pursuant to the provisions of the Act in one or more series to fund PID Project Costs or to reimburse Developer for PID Project Costs.

“PID Creation Resolution” means the resolution passed and approved by the City Council on _____ authorizing the creation of the PID.

“PID Pledged Revenue Fund” means the Pledged Revenue Fund, as defined in the Bond Indenture, established or to be established by the City (and segregated from all other funds of the City) into which the City deposits Assessment Revenue securing PID Bonds issued and still outstanding, as described in the Bond Indenture.

“PID Project Fund” means the Project Fund, as defined in the Bond Indenture, including all accounts created within such fund, established or to be established by the City (and segregated from all other funds of the City) into which the City deposits Bond Proceeds in the amounts and as described in the Bond Indenture.

“PID Reimbursement Fund” means the fund established by the City under this Agreement (and segregated from all other funds of the City) into which the City deposits Assessment Revenue until they are required to be deposited into the PID Pledged Revenue Fund.

“PID Projects” means the public improvements or services to be constructed or acquired by or on behalf of the Developer within the PID and described in the SAP, whether the SAP defines such public improvements or services as PID Projects or utilizes another term.

“PID Project Costs” mean the actual costs of the PID Projects.

“Reimbursement Agreement Balance” is defined in Section 3.3.1.

“Service and Assessment Plan” or “SAP” means the service and assessment plan and any updates thereto approved by the City Council, prepared in relation to the property within the PID.

“Trustee” is defined in Section 3.5.2.

SECTION 3.
FUNDING PROJECT COSTS

3.1 Fund Deposits.

3.1.1 Unless and until PID Bonds are issued, the City shall bill, collect, and immediately deposit all Assessment Revenue into the PID Reimbursement Fund, which PID Reimbursement Fund is hereby created and established as a fund under this Agreement. After the issuance and delivery of PID Bonds for the PID Projects, the City shall bill, collect, and immediately deposit all Assessment Revenue in the manner set forth in the Bond Indenture. The City shall also deposit Bond Proceeds in the manner set forth in the Bond Indenture. Annual Installments shall be billed and collected by the City (or by any person, entity, or governmental agency permitted by law) in the same manner and at the same time as the City ad valorem taxes are billed and collected. Funds in the PID Project Fund shall only be used in accordance with the Bond Indenture. Funds in the PID Reimbursement Fund shall only be used to pay all or any portion of the Reimbursement Agreement Balance in accordance with this Agreement.

3.1.2 The City hereby confirms, covenants, and agrees that for so long as amounts are due to Developer under this Agreement and/or for so long as PID Bonds are outstanding, that the City will do the following in the manner and to the maximum extent permitted by applicable law, subject to any conflicting provisions in the Bond Indenture: (a) take and pursue all actions necessary to cause the Assessments to be levied and collected; (b) take and pursue all actions necessary to cause the liens related to the Assessments to be enforced continuously, including diligently prosecuting an action in district court to foreclose for delinquent or nonpayment of Assessments, including Annual Installments; and (c) take and pursue all actions necessary to cause no reduction, abatement or exemption of the Assessments. Notwithstanding the foregoing, the City shall not be required under any circumstances to purchase or make payment for the purchase of the delinquent Assessments or the corresponding Assessed Parcel. The City shall not be required under any circumstances to expend any funds for Delinquent Collection Costs or Annual Collection Costs in connection with its covenants and agreements under this Section or otherwise other than funds for such purpose on deposit in the PID Reimbursement Fund. Notwithstanding its collection efforts, if the City fails to receive all or any part of the Assessment Revenue and, as a result, is unable to make transfers from the PID Reimbursement Fund for payments to the Developer as required under this Agreement, such failure and inability shall not constitute a Failure or Default by the City under this Agreement. The Bond Indenture shall control in the event of any conflicts with this Agreement.

3.2 Payment of PID Project Costs.

3.2.1 Unless or until PID Bonds are issued to pay PID Project Costs, Developer may elect to make Developer Advances to pay such PID Project Costs. Prior to the City's adoption of an ordinance authorizing the issuance of a series of PID Bonds, Developer shall provide evidence of available funds of the Developer or of financial security from the project lender evidencing that sufficient funds are available and reserved for completion of the PID Projects or portion thereof to be funded by PID Bonds. If such evidence of financial security is not available, Developer shall deposit into the PID Project Fund an amount equal to the remaining costs not funded by the PID Bonds necessary to pay PID Project Costs.

3.2.2 Bond Proceeds (i) may be used to construct PID Projects and directly pay PID Project Costs in lieu of Developer Advances and reimbursement and (ii) shall be used in the manner provided in the Bond Indenture. Developer may, but shall not have the obligation to, make Developer Advances, unless the Bond Proceeds on deposit in the PID Project Fund are insufficient to pay any remaining PID Project Costs, in which case Developer shall make Developer Advances to pay the deficit.

3.2.3 As evidence of Developer Advances required in connection with the issuance of PID Bonds, Developer shall submit to the City for approval all information related to such costs that would be required by a Closing Disbursement Request at least fifteen (15) business days prior to the closing of the PID Bonds. The Developer shall also make Developer Advances to pay for Cost Overruns (after applying cost savings or reallocation of budget line items to reflect actual costs). An individual line item exceeding its estimated cost shall not be construed as a Cost Overrun; rather, the cost for each phase within the PID shall be viewed in its entirety. Upon the Final Completion of an Authorized Improvement and payment of all outstanding invoices for such Authorized Improvement, if the Actual Costs of such Authorized Improvement is less than the Budgeted Cost (a "Cost Underrun"), any remaining budgeted cost, as shown in the Service and Assessment Plan, will be available to pay Cost Overruns on any other Authorized Improvement. The City Representative shall promptly confirm that such remaining amounts are available to pay such Cost Overruns, and the Developer, the PID administrator and the City Representative will agree how to use such moneys to secure the payment and performance of the work for other Authorized Improvements. Any Cost Underrun for any Authorized Improvement is available to pay Cost Overruns on any other Authorized Improvement. The lack of Bond Proceeds or other funds in the PID Project Fund shall not diminish the obligation of Developer to pay PID Project Costs.

3.3 Payment of Reimbursement Agreement Balance.

3.3.1 Unless or until PID Bonds are issued, the City agrees to pay Developer solely from funds on deposit in the PID Reimbursement Fund, and Developer shall be entitled to receive payments from the City, from such source for amounts shown on each Certificate for Payment (which amounts include only PID Project Costs paid by or at the direction of Developer) (any unpaid amount owed Developer for all Certificates of Payment is referred to as the "Reimbursement Agreement Balance"). Upon the issuance of PID Bonds, the City agrees to pay Developer first from funds on deposit in the PID Project Fund and then from funds on deposit in the PID Reimbursement Fund, if any; and, notwithstanding anything in this Agreement to the contrary, the maximum amount that Developer may be reimbursed under this Agreement shall be equal to the amount of Bond Proceeds on deposit in the PID Project Fund plus amounts in the PID Reimbursement Fund, if any, plus simple interest on the unpaid principal balance of the Reimbursement Agreement Balance at a rate not to exceed the rates permitted under subsections (e)(1) and (e)(2) of Section 372.023 of the Act, or if PID Bonds are issued, then the interest rate on the PID Bonds; provided, however, that the interest rate for the unpaid balance of the Reimbursement Agreement Balance as set forth in this paragraph shall not exceed the rates permitted under subsections (e)(1) and (e)(2) of Section 372.023 of the Act. Interest on the unpaid principal balance of the Reimbursement Agreement Balance shall begin to accrue at the City's acceptance of the PID Projects.

3.3.2 The obligation of the City to pay the Reimbursement Agreement Balance is payable solely from the PID Reimbursement Fund or from Bond Proceeds on deposit in the PID Project Fund. No other City funds, revenue, taxes, income, or property shall be used. Payments from the PID Reimbursement Fund shall be applied in accordance with this Agreement. Each payment from the PID Reimbursement Fund shall be accompanied by an accounting that certifies the Reimbursement Agreement Balance as of the date of the payment and that itemizes all deposits to and disbursements from the fund since the last payment. If there is a dispute over the amount of any payment, the City shall nevertheless pay the undisputed amount, and the Parties shall use all reasonable efforts to resolve the disputed amount before the next payment is made.

3.4 PID Bonds. The City, in its sole, legislative discretion, may issue PID Bonds, in one or more series, when and if the City Council determines it is financially feasible for the purposes of: (a) paying all or a portion of the Reimbursement Agreement Balance; or (b) paying PID Project Costs directly. PID Bonds issued for such purpose will be secured by and paid solely as authorized by the Bond Indenture. Upon the issuance of PID Bonds for such purpose, Developer's right to receive payments each year in accordance herewith shall be subordinate to the deposits required under the Bond Indenture related to any outstanding PID Bonds. The failure of the City to issue PID Bonds shall not constitute a Failure by the City or otherwise result in a Default by the City. Upon the issuance of the PID Bonds, Developer has a duty to construct related PID Projects and shall not be relieved of such duty even if there are insufficient funds in the PID Project Fund to pay PID Project Costs.

3.5 Disbursements and Transfers at and after Bond Closing.

3.5.1 If PID Bonds are issued, the City will cause the Trustee under the Bond Indenture to pay from the Bond Proceeds at closing of the PID Bonds approved amounts from the appropriate account to the City, Developer, or their designees, as applicable, which costs may include payment for costs of issuance and payment of costs incurred in the establishment, administration, and operation of the PID and any other eligible items for which funds have been expended by Developer and the City as of the time of the delivery of the PID Bonds. In order to receive such a disbursement, Developer shall execute a Closing Disbursement Request substantially in the form attached hereto as Exhibit B to be delivered to the City no less than fifteen (15) business days prior to the scheduled closing date for the PID Bonds for payment in accordance with the provisions of the Bond Indenture. In order to receive additional disbursements from the applicable fund under the Bond Indenture, if PID Bonds are issued, or from the PID Reimbursement Fund, Developer shall execute a Certificate for Payment, no more frequently than monthly, to be delivered to the City for payment in accordance with the provisions of the Bond Indenture, if applicable, and/or this Agreement.

3.5.2 Upon receipt of a Certificate for Payment (along with all accompanying documentation reasonably required by the City) from Developer, the City shall conduct a review in order to confirm that such request is complete, to confirm that the work for which payment is requested was performed in accordance with all applicable governmental laws, rules and regulations and applicable plans therefor with the terms of this Agreement and any other agreement between the Parties related to property in the PID, and to verify and approve PID Project Costs of such work specified in such Certificate for Payment. The City shall also conduct such review as is required to confirm the matters certified in the Certificate for Payment. The Developer agrees

to cooperate with the City in conducting each such review and to provide the City with such additional information and documentation as is reasonably necessary for the City to conclude each such review. Within fifteen (15) business days following receipt of any Certificate for Payment, the City shall either: (a) approve the Certificate for Payment and (i) forward it to the trustee bank named in the Bond Indenture (the “Trustee”) for payment or (ii) pay such amount from the PID Reimbursement Fund; or, (b) provide Developer with written notification of disapproval of all or part of a Certificate for Payment, specifying in detail the basis for any such disapproval. Any disputes shall be resolved as required by Section 3.3.2 herein. If PID Bonds are issued, the City shall deliver the approved or partially approved Certificate for Payment to the Trustee for payment.

3.6 Obligations Limited. The obligations of the City under this Agreement shall not, under any circumstances, give rise to or create a charge against the general credit or taxing power of the City or constitute a debt or other obligation of the City payable from any source other than the PID Reimbursement Fund or the PID Project Fund. Unless approved by the City, no other City funds, revenues, taxes, or income of any kind other than the funds on deposit in the PID Reimbursement Fund or the PID Project Fund shall be used to pay: (a) the PID Project Costs; (b) the Reimbursement Agreement Balance, even if the Reimbursement Agreement Balance is not paid in-full on or before the Maturity Date; or (c) debt service on any PID Bonds. None of the City or any of its elected or appointed officials or any of its officers, employees, consultants, or representatives shall incur any liability hereunder to Developer or any other party in their individual capacities by reason of this Agreement or their acts or omissions under this Agreement.

3.7 Obligation to Pay. If Developer is then in current compliance with its obligations under the Development Agreement, the Developer Continuing Disclosure Agreement if applicable, and this Agreement, and is not delinquent in payment of the Special Assessments and paying property taxes, then following the inspection and approval of any portion of the PID Projects for which Developer seeks reimbursement of the PID Project Costs by submission of a Certificate for Payment or City approval of a Closing Disbursement Request, the obligations of the City under this Agreement to pay disbursements (whether to Developer or to any person designated by Developer) identified in any Closing Disbursement Request or in any Certificate for Payment are unconditional and not subject to any defenses or rights of offset except as may be provided in any Bond Indenture.

3.8 City Delegation of Authority. All PID Projects shall be constructed by or at the direction of Developer in accordance with the Development Agreement and this Agreement and any other applicable agreement between the Parties related to property in the PID. Developer shall perform, or cause to be performed, all of its obligations and shall conduct, or cause to be conducted, all operations with respect to the construction of PID Projects in a good and workmanlike manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. Developer has sole responsibility of ensuring that all PID Projects are constructed in a good and workmanlike manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. Developer shall, at all time, employ adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction, and installation of all PID

Projects to be acquired and accepted by the City from Developer. If any PID Projects are or will be on land owned by the City, the City hereby grants to Developer a license to enter upon such land for purposes related to construction (and maintenance pending acquisition and acceptance) thereof. Inspection and acceptance of PID Projects will be in accordance with applicable City ordinances and regulations.

3.9 Security for PID Projects. The Developer shall provide or cause to be provided a one (1) year maintenance bond relating to the PID Projects. Nothing in this Agreement shall be deemed to prohibit Developer or the City from contesting in good faith the validity or amount of any mechanics or materialman’s lien and/or judgment nor limit the remedies available to Developer or the City with respect thereto so long as such delay in performance shall not subject the PID Projects to foreclosure, forfeiture, or sale. In the event that any such lien and/or judgment with respect to the PID Projects is contested, Developer shall be required to post or cause the delivery of a surety bond or letter of credit, whichever is preferred by the City, in an amount reasonably determined by the City, not to exceed one hundred percent (100%) of the disputed amount.

3.10 Ownership and Transfer of PID Projects. The Developer shall furnish to the City a preliminary title report for land related to the PID Projects to be acquired and accepted by the City from Developer and not previously dedicated or otherwise conveyed to the City. The report shall be made available for City review and approval at least fifteen (15) business days prior to the scheduled transfer of title. The City shall approve the preliminary title report unless it reveals a matter which, in the reasonable judgment of the City, would materially affect the common use and enjoyment subscribed to such PID Projects. If the City objects to any preliminary title report, the City shall not be obligated to accept title to the applicable PID Projects until Developer has cured the objections to the reasonable satisfaction of the City.

SECTION 4.
ADDITIONAL PROVISIONS

4.1 Term. The term of this Agreement shall begin on the Effective Date and shall continue until the earliest to occur of: (i) the Maturity Date, (ii) the date on which the Reimbursement Agreement Balance is paid in full, or (iii) the date on which the PID Bonds are fully retired.

4.2 No Competitive Bidding. Construction of the PID Projects shall not require competitive bidding pursuant to Section 252.022(a)(9), Texas Local Government Code, as amended. All plans and specifications, but not construction contracts, shall be reviewed and approved, in writing, by the City prior to Developer selecting the contractor.

4.3 Independent Contractor. In performing this Agreement, Developer is an independent contractor and not the agent or employee of the City.

4.4 Audit. The City Representative shall have the right, during normal business hours and upon three (3) business days’ prior written notice to Developer, to review all books and records of Developer pertaining to costs and expenses incurred by Developer with respect to any of the PID Projects. For a period of two (2) years after completion of the PID Projects, books shall be

maintained in accordance with customary real estate accounting principles.

4.5 Representations and Warranties.

4.5.1 The Developer represents and warrants to the City that: (a) Developer has the authority to enter into and perform its obligations under this Agreement; (b) Developer has the financial resources, or the ability to obtain sufficient financial resources, to meet its obligations under this Agreement; (c) the person executing this Agreement on behalf of the Developer has been duly authorized to do so; (d) this Agreement is binding upon Developer in accordance with its terms; (e) the Developer is current on all taxes, assessments, fees and obligations to the City; (f) the Developer is not in default under the Development Agreement or any other agreement with the City related to the PID; and (g) the execution of this Agreement and the performance by Developer of its obligations under this Agreement do not constitute a breach or event of default by Developer under any other agreement, instrument, or order to which Developer is a party or by which Developer is bound.

4.5.2 The City represents and warrants to Developer that: (a) the City has the authority to enter into and perform its obligations under this Agreement; (b) the person executing this Agreement on behalf of the City has been duly authorized to do so; (c) this Agreement is binding upon the City in accordance with its terms; and (d) the execution of this Agreement and the performance by the City of its obligations under this Agreement do not constitute a breach or event of default by the City under any other agreement, instrument, or order to which the City is a party or by which the City is bound.

4.6 Default/Remedies.

4.6.1 If either Party fails to perform an obligation imposed on such Party by this Agreement (a “Failure”) and such Failure is not cured after written notice and the expiration of the cure periods provided in this section, then such Failure shall constitute a “Default.” If a Failure is monetary, the non-performing Party shall have ten (10) business days within which to cure. If the Failure is non-monetary, the non-performing Party shall have thirty (30) days within which to cure. However, if the non-monetary Failure is of such a nature that it cannot reasonably be expect to be cured within thirty (30) days, then the Party who failed to perform shall have such time as is necessary to cure the default, so long as the failing Party commences the cure within thirty (30) days and diligently pursues such cure to completion.

4.6.2 If Developer is in Default, the City shall have available all remedies at law or in equity; provided, however, no default by Developer shall entitle the City to terminate this Agreement, cease collection of the Assessments and deposit of the Assessment Revenues, or to withhold properly due payments to Developer from the PID Reimbursement Fund or the PID Project Fund in accordance with this Agreement and the Bond Indenture or on deposit in the PID Reimbursement Fund.

4.6.3 Subject to Section 3.7, if the City is in Default, Developer shall have available all remedies at law or in equity; provided, however, that no Default by the City shall entitle Developer to terminate this Agreement and that any financial obligation of the City will only be payable from monies available under the Bond Indenture or under this Agreement.

4.7 Remedies Outside the Agreement. Nothing in this Agreement constitutes a waiver by the City of any remedy the City may have outside this Agreement against Developer or any other person or entity involved in the design, construction, or installation of the PID Projects. The obligations of Developer hereunder shall be those of a Party hereto and not as an owner of property in the PID. Nothing herein shall be construed as affecting the City's or Developer's rights or duties to perform their respective obligations under other agreements, use regulations, or subdivision requirements relating to the development property in the PID.

4.8 Applicable Law; Venue. This Agreement is being executed and delivered and is intended to be performed in the State of Texas. Except to the extent that the laws of the United States may apply, the substantive laws of the State of Texas shall govern the interpretation and enforcement of this Agreement. In the event of a dispute involving this Agreement, venue shall lie in any court of competent jurisdiction in Wharton County, Texas.

4.9 Notice. Any notice referenced in this Agreement must be in writing and shall be deemed given at the addresses shown below: (a) when delivered by a nationally recognized delivery service such as FedEx or UPS with evidence of delivery signed by any person at the delivery address regardless of whether such person is the named addressee; or (b) 72 hours after deposited with the United States Postal Service, Certified Mail, Return Receipt Requested.

To the City: City of Wharton, Texas
Attn: Joseph R. Pace, City Manager
120 E. Caney St.
Wharton, TX 77488

With a copy to: City of Wharton, Texas
Attn: City Attorney
120 E. Caney St.
Wharton, TX 77488

To Developer: Wharton 55, LLC
Attn: Brian Jarrard
5005 Riverway Dr., Suite 210
Houston, TX 77056

With a copy to: John G. Cannon
Coats Rose, P.C.
9 Greenway Plaza, Suite 1000
Houston, TX 77046

Any Party may change its address by delivering notice of the change in accordance with this section.

4.10 Conflicts; Amendment. In the event of any conflict between this Agreement and any other instrument, document, or agreement by which either Party is bound, the provisions and

intent of the Bond Indenture controls. This Agreement may only be amended by written agreement of the Parties.

4.11 Severability. If any provision of this Agreement is held invalid by any court, such holding shall not affect the validity of the remaining provisions.

4.12 Non-Waiver. The failure by a Party to insist upon the strict performance of any provision of this Agreement by the other Party, or the failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by such other Party with the provisions of this Agreement.

4.13 Third Party Beneficiaries. Nothing in this Agreement is intended to or shall be construed to confer upon any person or entity other than the City and Developer, any rights under or by reason of this Agreement. All provisions of this Agreement shall be for the sole and exclusive benefit of the City and Developer.

4.14 Counterparts. This Agreement may be executed in multiple counterparts, which, when taken together, shall be deemed one original.

4.15 Employment of Undocumented Workers. During the term of this Agreement, Developer agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), Developer shall repay the amount of any Reimbursement Payment or other funds received by Developer from City from the date of this Agreement to the date of such violation within 120 days after the date Developer is notified by City of such violation, plus interest at the rate of 4% compounded annually from the date of violation until paid. Developer is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of Developer or by a person with whom Developer contracts.

4.16 Boycott Israel. Developer verifies that the Developer (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Developer) does not Boycott Israel and agrees that during the term of this Agreement (Contract as applicable) will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.

4.17 Verification Pursuant to Chapters 2252 and 2270 of the Texas Government Code. As of the Effective Date, the Developer represents that, to the extent this Agreement constitutes a "governmental contract" within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required or permitted by or under applicable federal law, neither Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Developer is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201 (as enacted by Acts 2017, 85th Leg., ch. 96, Senate Bill 253) or 2252.153 of the Texas Government Code.

4.18. Verifications Pursuant to Chapter 2274, Texas Government Code. (a) To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott

energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the Developer to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, “boycott energy companies,” a term defined in Section 2274.001(1), Texas Government Code (as enacted by such Senate Bill) by reference to Section 809.001, Texas Government Code (also as enacted by such Senate Bill), shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above.

(b) To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to enable the Developer to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification and the following definitions, ‘discriminate against a firearm entity or firearm trade association,’ a term defined in Section 2274.001(3), Texas Government Code (as enacted by such Senate Bill), (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association, (b) ‘firearm entity,’ a term defined in Section 2274.001(6), Texas Government Code (as enacted by such Senate Bill), means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (defined in Section 2274.001(4), Texas Government Code, as enacted by such Senate Bill, as weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (defined in Section 2274.001(5), Texas Government Code, as enacted by such Senate Bill, as devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (defined in Section 2274.001(1), Texas Government Code, as enacted by such Senate Bill, as a loaded cartridge case, primer, bullet, or

propellant powder with or without a projectile) or a sport shooting range (defined in Section 250.001, Texas Local Government Code, as a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting), and (c) ‘firearm trade association,’ a term defined in Section 2274.001(7), Texas Government Code (as enacted by such Senate Bill), means any person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

4.19 Form 1295. The Developer represents that it has complied with Texas Government Code, Section 2252.908 and in connection therewith, the Developer has completed a Texas Ethics Commission Form 1295 Certificate generated by the Texas Ethics Commission’s electronic filing system in accordance with the rules promulgated by the Texas Ethics Commission. The Developer further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate. The Parties agree that, except for the information identifying the City and the contract identification number, the City is not responsible for the information contained in the Form 1295 completed by the Developer. The information contained in the Form 1295 completed by the Developer has been provided solely by the Developer and the City has not verified such information.

4.20 Assignment. The Developer may, in its sole discretion, assign this Agreement with respect to all or part of the property within the PID from time to time to any party in connection with the sale of the property within the PID or any portion thereof so long as the assigned rights and obligations are assumed without modifications to this Agreement. The Developer shall provide the City thirty (30) days prior written notice of any such assignment. Upon such assignment or partial assignment, the Developer shall be fully released from any and all obligations under this Agreement and shall have no further liability with respect to this Agreement for the part of the property within the PID so assigned.

[Execution pages follow.]

CITY:

CITY OF WHARTON, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

Attest:

By: _____
City Secretary

Approved as to form:

By: _____
City Attorney

DEVELOPER:

WHARTON 55, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A**FORM OF CERTIFICATE FOR PAYMENT**

The undersigned is an agent of Wharton 55, LLC, a Texas limited liability company (“Developer”), and requests payment from the City of Wharton, Texas (the “City”) out of the [*PID Project Fund (as defined in the Bond Indenture) / PID Reimbursement Fund*] in the amount of \$_____ for labor, materials, fees, and/or other general costs related to the creation, acquisition, or construction of certain PID Projects providing a special benefit to property within the City of Wharton Public Improvement District No. __. Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the City of Wharton Public Improvement District No. __ Reimbursement Agreement, effective _____ (the “Reimbursement Agreement”). In connection with the above referenced payment, Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of Developer, is qualified to execute this Certificate for Payment Form on behalf of Developer, and is knowledgeable as to the matters set forth herein.
2. The payment requested for the below referenced PID Projects has not been the subject of any prior payment request submitted for the same work to the City or, if previously requested, no disbursement was made with respect thereto.
3. The amount listed below is a true and accurate representation of the PID Project Costs associated with the creation, acquisition, or construction of said PID Projects and such costs: (a) are in compliance with the Reimbursement Agreement; and (b) are consistent with the Service and Assessment Plan.
4. Developer is in compliance with the terms and provisions of the Development Agreement, Developer Continuing Disclosure Agreement, Reimbursement Agreement and the Service and Assessment Plan.
5. Developer has timely paid all ad valorem taxes and annual installments of special assessments it owes or an entity Developer controls owes, located in the City of Wharton Public Improvement District No. __ and has no outstanding delinquencies for such assessments.
6. All conditions set forth in the Bond Indenture for the payment hereby requested have been satisfied.
7. The work with respect to the PID Projects referenced below (or its completed segment, section, or portion thereof) has been completed, and the City has inspected such PID Projects.
8. Developer agrees to cooperate with the City in conducting its review of the requested payment, and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.
9. No more than ninety-five percent (95%) of the budgeted or contracted hard costs for PID Project Costs identified may be paid until the work with respect to such PID Project Costs (or

segment) has been completed and the City has accepted such PID Project Costs (or segment). One hundred percent (100%) of soft costs (e.g., engineering costs, inspection fees and the like) may be paid prior to City acceptance of such PID Projects Costs (or segment)

10. The Developer confirms that based on all prior amounts paid to Developer from the PID Reimbursement Fund as of the date of this Certification for Payment and based on the percentage of completion of the PID Project Costs as of the date of this Certification for Payment as verified by the City payment of the amounts requested in this Certification for Payment, taking into account all prior payments for the PID Project Costs and the amount of work related to the PID Project Costs remaining to be completed as of the date of this Certification for Payment will not cause the amounts on deposit in the PID Reimbursement Fund to fall below the amount necessary to complete the remaining PID Project Costs taking into account the amounts available to the Developer under its private loan, a line of credit and/or any other form acceptable to the City.

Payments requested are as follows:

- a. X amount to Person or Account Y for Z goods or services.
- b. Payment / Wire Instructions

Attached hereto are invoices, cancelled checks, receipts, purchase orders, change orders, and similar instruments which support and validate the above requested payments. Also attached hereto are "**bills paid**" **affidavits and supporting documentation** in the standard form for City construction projects.

Pursuant to the Reimbursement Agreement, after receiving this payment request, the City has inspected the Authorized Improvements (or completed segment) and confirmed that said work has been completed in accordance with approved plans and all applicable governmental laws, rules, and regulations.

I hereby declare that the above representations and warranties are true and correct.

[remainder of page left blank intentionally]

DEVELOPER:

WHARTON 55, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____
Date: _____

APPROVAL OF REQUEST BY CITY

The City is in receipt of the attached Certificate for Payment, acknowledges the Certificate for Payment, acknowledges that the PID Projects (or its completed segment) covered by the certificate have been inspected by the City, and otherwise finds the Certificate for Payment to be in order. After reviewing the Certificate for Payment, the City approves the Certificate for Payment and directs _____ to make such payments from the PID Project Fund to Developer or to any person designated by Developer.

CITY OF WHARTON, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

Exhibit B**FORM OF CLOSING DISBURSEMENT REQUEST**

The undersigned is an agent for Wharton 55, LLC, a Texas limited liability company (“Developer”) and requests payment to Developer (or to the person designated by Developer) from the applicable account of the PID Project Fund from _____ (the “Trustee”) in the amount of _____ (\$_____) to be transferred from the applicable account of the PID Project Fund upon the delivery of the PID Bonds for costs incurred in the establishment, administration, and operation of City of Wharton Public Improvement District No. __ (the “District”) and costs associated with the issuance of PID Bonds, as follows.

Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the Indenture of Trust by and between the City and the Trustee dated as of _____ (the “Indenture”) relating to the [_____] (the “PID Bonds”).

In connection with the above referenced payment, Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of Developer, is qualified to execute this Closing Disbursement Request on behalf of Developer, and is knowledgeable as to the matters set forth herein.

2. The payment requested for the below referenced establishment, administration, and operation of the District at the time of the delivery of the PID Bonds have not been the subject of any prior payment request submitted to the City.

3. The amount listed for the below costs is a true and accurate representation of the PID Project Costs associated with the establishment, administration and operation of the District at the time of the delivery of the PID Bonds, and such costs are in compliance with the Service and Assessment Plan.

4. The Developer is in compliance with the terms and provisions of the Reimbursement Agreement, the Bond Indenture, and the Service and Assessment Plan.

5. All conditions set forth in the Indenture and the Reimbursement Agreement for the payment hereby requested have been satisfied.

6. The Developer agrees to cooperate with the City in conducting its review of the requested payment, and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

Payments requested hereunder shall be made as directed below:

[Information regarding Payee, amount, and deposit instructions attached]

I hereby declare that the above representations and warranties are true and correct.

DEVELOPER:

WHARTON 55, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____
Date: _____

APPROVAL OF REQUEST BY CITY

The City is in receipt of the attached Closing Disbursement Request, acknowledges the Closing Disbursement Request, and finds the Closing Disbursement Request to be in order. After reviewing the Closing Disbursement Request, the City approves the Closing Disbursement Request and directs payment to be made from Costs of Issuance Account upon delivery of the PID Bonds.

CITY OF WHARTON, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

**CITY OF WHARTON
RESOLUTION NO. 2024 - XX**

A RESOLUTION OF THE WHARTON CITY COUNCIL ENTERING INTO A REIMBURSEMENT AGREEMENT WITH WHARTON 55, LLC, FOR PUBLIC IMPROVEMENT DISTRICT NO. 2 AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID AGREEMENT.

WHEREAS, The Wharton City Council wishes to enter into a Reimbursement Agreement with Wharton 55, LLC for Public Improvement District (PID) No. 2; and,

WHEREAS, The Wharton City Council will create a Public Improvement District (PID) Reimbursement Fund where all assessments and PID bond proceeds will be deposited into, and all payments to the developer will be paid; and,

WHEREAS, The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute all documents related to said agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute all documents related to the Reimbursement Agreement with Wharton 55, LLC for Public Improvement District (PID) No. 2.

Section II. That this resolution should become effective immediately upon its passage.

Passed, Approved, and Adopted this 25th day of March 2024.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary