



6611 W. Cross Creek Bend Lane, PO Box 279  
Fulshear, Texas 77441  
Phone: 281-346-1796 ~ Fax: 281-346-2556  
[www.FulshearTexas.gov](http://www.FulshearTexas.gov)

**CITY COUNCIL:**

**MAYOR:** Aaron Groff                      **MAYOR PRO-TEM:** Lisa Martin                      **COUNCIL MEMBER:** Kent Pool  
**COUNCIL MEMBER:** Jason Knape                      **COUNCIL MEMBER:** Kaye Kahlich                      **COUNCIL MEMBER:** Debra Cates  
**COUNCIL MEMBER:** Joel Patterson                      **COUNCIL MEMBER:** Sarah B. Johnson

**STAFF:**

**CITY MANAGER:** Jack Harper                      **CITY SECRETARY:** Mariela Rodriguez                      **CITY ATTORNEY:** Byron Brown

---

**SPECIAL CITY COUNCIL MEETING**

**February 21, 2023**

---

NOTICE IS HEREBY GIVEN OF A SPECIAL CITY COUNCIL MEETING OF THE CITY OF FULSHEAR TO BE HELD ON **Tuesday, February 21, 2023 AT 5:30 PM** IN THE CITY OF FULSHEAR MUNICIPAL COMPLEX, 6611 W. CROSS CREEK BEND LANE, FULSHEAR, TX 77441 FOR CONSIDERING THE FOLLOWING ITEMS. THE CITY COUNCIL RESERVES THE RIGHT TO ADJOURN INTO EXECUTIVE SESSION AT ANY TIME DURING THE COURSE OF THIS MEETING TO DISCUSS ANY MATTERS LISTED ON THE AGENDA, AS AUTHORIZED BY THE TEXAS GOVERNMENT CODE, INCLUDING, BUT NOT LIMITED TO, SECTIONS 551.071 (CONSULTATION WITH ATTORNEY), 551.072 (DELIBERATIONS ABOUT REAL PROPERTY), 551.073 (DELIBERATIONS ABOUT GIFTS AND DONATIONS), 551.074 (PERSONNEL MATTERS), 551.076 (DELIBERATIONS ABOUT SECURITY DEVICES), 551.087 (ECONOMIC DEVELOPMENT), 418.175.183 (DELIBERATIONS ABOUT HOMELAND SECURITY ISSUES) AND AS AUTHORIZED BY THE TEXAS TAX CODE, INCLUDING, BUT NOT LIMITED TO, SECTION 321.3022 (SALES TAX INFORMATION).

Incidental Meeting Notice: A quorum of the City of Fulshear City Council, Planning and Zoning Commission, City of Fulshear Development Corporation (Type A), Fulshear Development Corporation (Type B), Parks and Recreation Commission, Historic Preservation and Museum Commission, Zoning Board of Adjustment, Charter Review Commission, or any or all of these, may be in attendance at the meeting specified in the foregoing notice, which attendance may constitute a meeting of such governmental body or bodies as defined by the Texas Open Meetings Act, Chapter 551, Texas Government Code. Therefore, in addition to the foregoing notice, notice is hereby given of a meeting of each of the above-named governmental bodies, the date, hour, place, and subject of which is the same as specified in the foregoing notice.

Notice Pertaining to Social Distancing Requirements: In accordance with the Texas Open Meetings

Act, Chapter 551, Government Code, this meeting shall be open to the public, except as provided by said Act. However, any members of the public who attend the meeting are individually responsible for complying with any applicable proclamation or order issued by the governor or any local official which may be in effect at the time of the meeting, including but not limited to any restrictions which may require such members of the public to implement social distancing, to minimize social gatherings, or to minimize in-person contact with people who are not in the same household.

**I. CALL TO ORDER**

**II. QUORUM AND ROLL CALL**

**III. CITIZEN'S COMMENTS**

*THIS IS AN OPPORTUNITY FOR CITIZENS TO SPEAK TO COUNCIL RELATING TO AGENDA AND NON-AGENDA ITEMS. SPEAKERS ARE ADVISED THAT COMMENTS CANNOT BE RECEIVED ON MATTERS WHICH ARE THE SUBJECT OF A PUBLIC HEARING ONCE THE HEARING HAS BEEN CLOSED. SPEAKERS ARE REQUIRED TO REGISTER IN ADVANCE AND MUST LIMIT THEIR COMMENTS TO THREE (3) MINUTES.*

**IV. BUSINESS**

- A. CONSIDERATION AND POSSIBLE ACTION TO APPROVE ORDINANCE NO. 2023-1410 APPOINTING BYRON BROWN AS CITY ATTORNEY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE DATE**
- B. CONSIDERATION AND POSSIBLE ACTION TO APPROVE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF FULSHEAR AND FORT BEND COUNTY FOR THE ADMINISTRATION OF THE MAY 6, 2023 GENERAL ELECTION**
- C. CONSIDERATION AND POSSIBLE ACTION TO APPROVE THE FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT 2022-012 FOR DESIGN SERVICES FOR THE NEW 1.0 MGD EAST FULSHEAR WASTEWATER TREATMENT PLANT AT CROSS CREEK RANCH (WW22B)**
- D. CONSIDERATION AND POSSIBLE ACTION TO APPROVE A PROFESSIONAL SERVICES AGREEMENT 2023-014 FOR DESIGN SERVICES FOR THE FM 359 SANITARY SEWER (WW23A) AND WATER LINE (W23B) EXTENSIONS**
- E. CONSIDERATION AND POSSIBLE ACTION TO APPROVE A PROFESSIONAL SERVICES AGREEMENT 2023-015 FOR DESIGN SERVICES FOR THE DOWNTOWN FULSHEAR WASTEWATER TREATMENT PLANT EXPANSION (WW22A)**
- F. CONSIDERATION AND POSSIBLE ACTION TO APPROVE A PROFESSIONAL SERVICES AGREEMENT 2022-012 FOR ENGINEERING DESIGN SERVICES FOR THE NEW 4.0 MGD LIFT STATION AND 20 INCH FORCE MAIN (WW22C)**
- G. CONSIDERATION AND POSSIBLE ACTION TO APPROVE ORDINANCE NO. 2023-1411, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS, UPDATING AND CODIFYING A SCHEDULE OF FEES**

**V. ADJOURNMENT**

NOTE: IN COMPLIANCE WITH THE AMERICAN WITH DISABILITIES ACT, THIS

FACILITY IS WHEELCHAIR ACCESSIBLE AND ACCESSIBLE PARKING SPACES ARE AVAILABLE. REQUESTS FOR ACCOMMODATIONS OR INTERPRETIVE SERVICE MUST BE MADE AT LEAST 48 BUSINESS HOURS PRIOR TO THIS MEETING. PLEASE CONTACT THE CITY SECRETARY'S OFFICE AT 281-346-1796 FOR FURTHER INFORMATION.

I, MARIELA RODRIGUEZ, CITY SECRETARY OF THE CITY, DO HEREBY CERTIFY THAT THE ABOVE NOTICE OF MEETING AND AGENDA FOR THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS WAS POSTED ON FRIDAY, FEBRUARY 17, 2023 by 5:00 P.M. IN PLACE CONVENIENT AND READILY ACCESSIBLE AT ALL TIMES TO THE GENERAL PUBLIC, IN COMPLIANCE WITH CHAPTER 551, TEXAS GOVERNMENT CODE.

---

MARIELA RODRIGUEZ, CITY SECRETARY

**AGENDA MEMO  
BUSINESS OF THE CITY COUNCIL  
CITY OF FULSHEAR, TEXAS**

**AGENDA OF:** 2/21/2023

**ITEMS:** IV.A.

**DATE  
SUBMITTED:**

**DEPARTMENT:** Administration

**PREPARED BY:**

**PRESENTER:**

**SUBJECT:** CONSIDERATION AND POSSIBLE ACTION TO APPROVE ORDINANCE NO. 2023-1410 APPOINTING BYRON BROWN AS CITY ATTORNEY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE DATE

**Expenditure Required:**

**Amount Budgeted:**

**Funding Account:**

**Additional Appropriation Required:**

**Funding Account:**

**EXECUTIVE SUMMARY**

This item was requested by City Council.

**RECOMMENDATION**

**ATTACHMENTS:**

Description	Upload Date	Type
Ordinance No. 2023-1410	2/14/2023	Ordinance

ORDINANCE NO. 2023-1410

**AN ORDINANCE OF THE CITY OF FULSHEAR, TEXAS, APPOINTING BYRON BROWN AS CITY ATTORNEY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE DATE.**

\* \* \* \* \*

**WHEREAS**, Section 4.04(a) of the City of Fulshear home-rule charter states that “[t]he City Council shall appoint, by at least a two-thirds supermajority of the full City Council, a licensed attorney of the State of Texas to be the City Attorney, who shall be subject to the direction and supervision of the City Council”; and

**WHEREAS**, the City Council previously appointed Mr. Byron Brown as Acting City Attorney; and

**WHEREAS**, the City Council desires to appoint Mr. Byron Brown as City Attorney;

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

**Section 1.** Mr. Byron Brown is hereby appointed as City Attorney.

**Section 2.** The City Attorney shall be deemed the chief legal officer of the City and shall represent the City in all matters pending in any forum without further specific authorization of the City and shall, in addition, perform such other services as shall be required and provided for under the charter and code of ordinances of the City. The City Attorney, or other such attorneys selected by him, shall represent the City in all litigation. The City Attorney, or other such attorneys selected by him, shall appear in front of all official bodies, boards, and commissions of the City as may be required by the matters pending before such bodies, boards, and commissions.

**Section 3.** In accordance with Section 4.04 of the City’s charter, this Ordinance may only be adopted, amended, or repealed by at least a two-thirds supermajority of the full City Council.

**Section 4. Severability.** In the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and, the City Council of the City of Fulshear, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

**Section 5. Repeal.** All other ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

**Section 6. Effective date.** This Ordinance shall be and become effective at 12:01 a.m. on February 22, 2023.

**PASSED, APPROVED, and ADOPTED** this, the 21st day of February, 2023.

---

Aaron Groff, Mayor

**ATTEST:**

---

Mariela Rodriguez, City Secretary

**AGENDA MEMO  
BUSINESS OF THE CITY COUNCIL  
CITY OF FULSHEAR, TEXAS**

**AGENDA OF:** 2/21/2023

**ITEMS:** IV.B.

**DATE  
SUBMITTED:** 2/6/2023

**DEPARTMENT:** Administration

**PREPARED BY:** Katie Lewis

**PRESENTER:** Mariela Rodriguez

**SUBJECT:** CONSIDERATION AND POSSIBLE ACTION TO APPROVE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF FULSHEAR AND FORT BEND COUNTY FOR THE ADMINISTRATION OF THE MAY 6, 2023 GENERAL ELECTION

**Expenditure Required:**

**Amount Budgeted:**

**Funding Account:**

**Additional Appropriation Required:**

**Funding Account:**

**EXECUTIVE SUMMARY**

The City of Fulshear is holding a General Election on May 6, 2023 for the purpose of electing Council members for District 1, 4, 5 and At-Large positions. As such, the City desires to use the County's electronic voting system and to compensate the County for such use and to share in certain other expenses connected with joint elections in accordance with the applicable provisions of Chapters 31 and 271 of the Texas Elections Code, as amended.

It is estimated that the City's obligation under the terms of this agreement shall be \$8,722.00. The exact amount of the City's obligation under the terms of this agreement shall be calculated after the May 6, 2023 election (or runoff election, if applicable), and if the amount of the City's obligation exceeds the amount deposited, the City shall pay to Fort Bend County the balance due within thirty (30) days after the receipt of the final invoice from the Elections Administrator.

**RECOMMENDATION**

Staff recommends that City Council take action to approve the Interlocal Agreement between the City of Fulshear and Fort Bend County for the administration of the May 2023 General Election (and runoff election, if applicable).

**ATTACHMENTS:**

Description	Upload Date	Type
City of Fulshear May 2023 Election Agreement	2/14/2023	Backup Material

THE STATE OF TEXAS  
COUNTY OF FORT BEND

JOINT ELECTION AGREEMENT AND CONTRACT FOR ELECTION SERVICES

THIS CONTRACT made by and between Fort Bend County, a body corporate and politic under the laws of the State of Texas, acting herein by and through the Fort Bend County Elections Administrator pursuant to Texas Election Code Section 31.092, hereinafter referred to as the "County", and the City of Fulshear hereinafter referred to as "Political Subdivision," for a joint May 6, 2023 election pursuant to Texas Election Code Section 271.002 .

*RECITAL*

The City of Fulshear is holding a General Election on May 6, 2023 (at the expense of the Political Subdivision) for the purpose of electing Municipal Officers.

The County owns the Election Systems & Software EVS 6020 Voting System consisting of the ExpressVote Ballot Marking Device, the ExpressTouch electronic tabulation device, the DS-200 Precinct Tabulator, and the DS-450 Central Scanner and tabulator, which have been duly approved by the Secretary of State pursuant to Texas Election Code Chapter 122 as amended, and is compliant with the accessibility requirements set forth by Texas Election Code Section 61.012. Political Subdivision desires to use the County's electronic voting system and to compensate the County for such use and to share in certain other expenses connected with joint elections in accordance with the applicable provisions of Chapters 31 and 271 of the Texas Election Code, as amended.

NOW THEREFORE, in consideration of the mutual covenants, agreements, and benefits to the parties, IT IS AGREED as follows:

I. ADMINISTRATION

The parties agree to hold a "Joint Election" in accordance with Chapter 271 of the Texas Election Code and this agreement. The Fort Bend County Elections Administrator, hereinafter referred to as "Elections Administrator", shall coordinate, supervise, and handle all aspects of administering the Joint Election as provided in this agreement. Political Subdivision agrees to pay the County for equipment, supplies, services, and administrative costs as provided in this agreement. The Elections Administrator shall serve as the administrator for the Joint Election; however, the Political Subdivision shall remain responsible for the lawful conduct of its election. The Elections Administrator shall provide advisory services in connection with decisions to be made and actions to be taken by the officers of the Political Subdivision.

It is understood that other political subdivisions may wish to participate in the use of the County's electronic voting system and polling places, and it is agreed that the County may enter into other joint election agreements and contracts for election services for those purposes on terms and conditions generally similar to those set forth in this contract. Political Subdivision agrees that the County may enter into joint election agreements with other political subdivisions that may have territory located partially or wholly within the boundaries of Political Subdivision, and in such case all parties sharing common territory shall share a joint ballot on the County's electronic voting system at the applicable polling places. In such cases, costs shall be pro-rated among the participants according to Section X of this contract.

At each polling location, joint participants shall share voting equipment and supplies to the extent possible. The participating parties shall share a mutual ballot in those precincts where jurisdictions overlap. However, in no instance shall a voter be permitted to receive a ballot containing an office or proposition stating a measure on which the voter is ineligible to vote. Multiple ballot styles shall be available in those shared polling places where jurisdictions do not overlap.



## II. LEGAL DOCUMENTS

Political Subdivision shall be responsible for the preparation, adoption, and publication of all required election orders, resolutions, notices, and any other pertinent documents required by the Texas Election Code and/or Political Subdivision's governing body, charter, or ordinances.

**Preparation of the necessary materials for notices and the official ballot shall be the responsibility of Political Subdivision, including translation to languages other than English.** Political Subdivision shall provide a copy of their respective election orders and notices to the Elections Administrator.

## III. VOTING LOCATIONS

The County has adopted a countywide polling place program. Voters who reside in Fort Bend County who wish to participate in this Joint Election may cast a ballot at any polling place open for this election. Voters who do not reside in Fort Bend County but within the boundaries of Political Subdivision and wish to participate in this Joint Election shall be assigned to one Early Voting and one Election Day polling location. The Elections Administrator shall select and arrange for the use of and payment for all Election Day voting locations. The proposed voting locations are listed in Attachment A of this agreement. In the event a voting location is not available, the Elections Administrator will arrange for use of an alternate location with the approval of the Political Subdivision. The Elections Administrator shall notify the Political Subdivision of any changes from the locations listed in Attachment A.

If polling places for the May 6, 2023 joint election are different from the polling place(s) used by Political Subdivision in its most recent election, the County agrees to post a notice no later than May 6, 2023 at the entrance to any previous polling places in the jurisdiction stating that the polling location has changed and stating the polling place names and addresses in effect for the May 6, 2023 election.

## IV. ELECTION JUDGES, CLERKS, AND OTHER ELECTION PERSONNEL

The County shall be responsible for the appointment of the presiding judge and alternate judge for each polling location in accordance with Chapter 32 of the Texas Election Code. The Elections Administrator shall make emergency appointments of election officials if necessary.

Upon request by the Elections Administrator, Political Subdivision agrees to assist in recruiting polling place officials who are bilingual (fluent in both English and Spanish).

The Elections Administrator shall notify all election judges of the eligibility requirements of Subchapter C of Chapter 32 of the Texas Election Code, and will take the necessary steps to ensure that all election judges appointed for the Joint Election are eligible to serve.

The Elections Administrator shall arrange for the training and compensation of all election judges and clerks. The Elections Administrator shall arrange for the date, time, and place for presiding election judges to pick up their election supplies. Each presiding election judge will be sent a letter from the Elections Administrator notifying the person of the appointment, the time and location of training and distribution of election supplies, and the number of election clerks that the presiding judge may appoint.

Each election judge and clerk will receive compensation at an hourly rate established by the County pursuant to Texas Election Code Section 32.091. Judges and Clerks will be compensated for actual time working at a polling place, time spent preparing the polling location prior to Election Day, and time spent attending any training classes required to successfully conduct the election. The election judge will receive an additional sum of \$25.00 for picking up the election supplies prior to Election Day and for returning the supplies and equipment to the central counting station after the polls close.

The Elections Administrator may employ other personnel necessary for the proper administration of the election, including such part-time help as is necessary to prepare for the election, to ensure the timely delivery of supplies during early voting and on Election Day, and for the efficient tabulation of ballots at the central counting station. Part-time personnel working in support of the Early Voting Ballot Board and/or central counting station on election night will be compensated at the rate set by the County.

It is agreed by all parties that at all times and for all purposes hereunder, all election judges, clerks, and all other personnel involved in this election are independent contractors and are not employees or agents of the County. No statement contained in this Agreement shall be construed so as to find any judge, clerk, or any other election personnel an employee or agent of the County, and no election personnel shall be entitled to the rights, privileges, or benefits of County employees except as otherwise stated herein, nor shall any election personnel hold himself out as an employee or agent of the County, unless considered a county employee as determined by the Fort Bend County Human Resources Department. It is further agreed by all parties that at all times and for all purposes hereunder, all election judges, clerks, and all other personnel involved in this election are independent contractors and are not employees or agents of Political Subdivision. No statement contained in this Agreement shall be construed so as to find any judge, clerk, or any other election personnel an employee or agent of Political Subdivision, and no election personnel shall be entitled to the rights, privileges, or benefits of Political Subdivision employees except as otherwise stated herein, nor shall any election personnel hold himself out as an employee or agent of Political Subdivision, unless considered an employee of the City of Fulshear as determined by the Human Resources Department of the City of Fulshear.

#### V. PREPARATION OF SUPPLIES AND VOTING EQUIPMENT

The Elections Administrator shall arrange for all election supplies and voting equipment including, but not limited to official ballots, sample ballots, voter registration lists, and all forms, signs, maps and other materials used by the election judges at the voting locations. At each polling location, joint participants shall share voting equipment and supplies to the extent possible. The participating parties shall share a mutual ballot in those precincts where jurisdictions overlap. However, in no instance shall a voter be permitted to receive a ballot containing an office or proposition stating a measure on which the voter is ineligible to vote. Multiple ballot styles shall be available in those shared polling places where jurisdictions do not overlap. The Elections Administrator shall provide the necessary voter registration information, maps, instructions, and other information needed to enable the election judges in the voting locations that have more than one ballot style to conduct a proper election.

Political Subdivision shall furnish the Elections Administrator a list of candidates and/or propositions showing the order and the exact manner in which the candidate names and/or proposition(s) are to appear on the official ballot (including titles and text in each language in which Political Subdivision's ballot is to be printed). This list shall be delivered to the Elections Administrator prior to the deadlines as described in section XVI. Political Subdivision shall be responsible for proofreading and approving the ballot insofar as it pertains to Political Subdivision's candidates and/or propositions.

If the boundaries of the political subdivision extend into another county, it shall be the responsibility of the political subdivision to request a poll book from the voter registrar of those counties and provide to the Elections Administrator within five calendar days before the start of Early Voting. It shall also be the responsibility of the Political Subdivision to request copies of Ballot by Mail applications from the Early Voting Clerk of those counties. Applications for ballot should be provided the latter of 45 days prior to Election Day, or 5 days after the calling of the election by the governing body of the political subdivision.

#### VI. EARLY VOTING

The participating authorities agree to conduct joint early voting and to appoint the Election Administrator as the Early Voting Clerk in accordance with Sections 31.097 and 271.006 of the Texas Election Code. The participating authorities agree to appoint the Elections Administrator's permanent county employees as deputy early voting clerks. The participating authorities further agree that the Elections Administrator may appoint other deputy early voting clerks to assist in the conduct of early voting as necessary, and that these additional deputy early voting clerks shall be compensated at an hourly rate set by the County pursuant to Section 83.052 of the Texas Election Code.

Early Voting by personal appearance will be held at the locations, dates, and times listed in Attachment “B” of this document. Any qualified voter of the Joint Election may vote early by personal appearance at any one of the joint early voting locations.

As Early Voting Clerk, the Elections Administrator shall receive applications for early voting ballots to be voted by mail in accordance with Chapters 31 and 86 of the Texas Election Code. Any requests for early voting ballots to be voted by mail received by Political Subdivision shall be forwarded immediately by fax or courier to the Elections Administrator for processing. Political Subdivision shall provide to the Elections Administrator copies of all ballot by mail applications submitted by voters who do not reside in Fort Bend County but within the boundaries of Political Subdivision.

Upon request, the Elections Administrator shall provide Political Subdivision a copy of the early voting report on a daily basis and a cumulative final early voting report following the election.

#### VII. EARLY VOTING BALLOT BOARD

The County shall appoint an Early Voting Ballot Board (EVBB) to process early voting results from the Joint Election. The Presiding Judge of Central Count, with the assistance of the Elections Administrator, shall appoint two or more additional members to constitute the EVBB. The Elections Administrator shall determine the number of EVBB members required to efficiently process the early voting ballots.

#### VIII. CENTRAL COUNTING STATION AND ELECTION RETURNS

The Elections Administrator shall be responsible for establishing and operating the central counting station to receive and tabulate the voted ballots in accordance with the provisions of the Texas Election Code and of this agreement.

The participating authorities hereby, in accordance with Section 127.002, 127.003, and 127.005 of the Texas Election Code, appoint the following central counting station officials:

Counting Station Manager:	John Oldham, Elections Administrator
Tabulation Supervisor:	Chase Wilson, Assistant Elections Administrator
Presiding Judge:	Maria Rose Gonzalez, Elections Coordinator

The counting station manager or his representative shall deliver timely cumulative reports of the election results as precincts report to the central counting station and are tabulated. The manager shall be responsible for releasing cumulative totals and precinct returns from the election to the joint participants, candidates, press, and general public by distribution of hard copies or electronic transmittals by facsimile (when so requested) and by posting to the Elections Administrator’s web page located at “[www.fortbendvotes.org](http://www.fortbendvotes.org)”.

The Elections Administrator will prepare the unofficial canvass reports after all precincts have been counted, and will deliver a copy of the unofficial canvass to the Political Subdivision as soon as possible after all returns have been tabulated. All participating authorities shall be responsible for the official canvass of their respective elections.

The Elections Administrator shall be responsible for conducting the post-election manual recount required by Section 127.201 of the Texas Election Code unless a waiver is granted by the Secretary of State. Notification and copies of the recount, if waiver is denied, will be provided to each participating authority and the Secretary of State’s Office.

## IX. RUNOFF ELECTION

Political Subdivision shall have the option of extending the terms of this agreement through its runoff election, if applicable. In the event of such runoff election, the terms of this agreement shall automatically extend unless the Political Subdivision notifies the Elections Administrator in writing within 10 days of the original election.

Political Subdivision and the elections Administrator shall reserve the right to reduce the number of early voting locations and/or Election Day voting locations in any runoff election.

## X. ELECTION EXPENSES AND ALLOCATION OF COSTS

Political Subdivision agrees to share the costs of administering the Joint Election. Allocation of costs, unless specifically stated otherwise, is mutually agreed to be shared among the total number of political subdivisions. Costs for polling places shared by the County, Political Subdivision, and other political subdivisions shall be pro-rated among the participants to this agreement.

Any expenses incurred in the rental of polling place facilities shall be pro-rated among the participants to this agreement.

It is agreed that the normal rental rate charged for the County's voting equipment used on Election Day shall be pro-rated among the participants to this agreement.

Costs for Early Voting by Personal Appearance shall be allocated as shown in Attachment C of this document.

Political Subdivision agrees to pay the County an administrative fee equal to ten percent (10%) of its total billable costs in accordance with Section 31.100(d) of the Texas Election Code.

## XI. WITHDRAWAL FROM CONTRACT DUE TO CANCELLATION OF ELECTION

Political Subdivision may withdraw from this agreement and the Joint Election should it cancel its election in accordance with Sections 2.051 - 2.053 of the Texas Election Code. Political Subdivision is fully liable for any expenses incurred by the County on behalf of Political Subdivision plus an administrative fee of ten percent (10%) of such expenses. Any monies deposited with the county by Political Subdivision shall be refunded, minus the aforementioned expenses and administrative fee if applicable.

## XII. RECORDS OF THE ELECTION

The Elections Administrator is hereby appointed general custodian of the voted ballots and all records of the Joint Election as authorized by Section 271.010 of the Texas Election Code.

Access to the election records shall be available to each participating authority as well as to the public in accordance with applicable provisions of the Texas Election Code and the Texas Public Information Act. The election records shall be stored at the offices of the Elections Administrator or at an alternate facility used for storage of county records. The Elections Administrator shall ensure that the records are maintained in an orderly manner so that the records are clearly identifiable and retrievable.

Records of the election shall be retained and disposed of in accordance with the provisions of Section 66.058 of the Texas Election Code. If records of the election are involved in any pending election contest, investigation, litigation, or open records request, the Elections Administrator shall maintain the records until final resolution or until final judgment, whichever is applicable. It is the responsibility of Political Subdivision to bring to the attention of the Elections Administrator any notice of pending election contest, investigation, litigation or open records request that may be filed with Political Subdivision.

### XIII. RECOUNTS

A recount may be obtained as provided by Title 13 of the Texas Election Code. Political Subdivision agrees that any recount shall take place at the offices of the Elections Administrator, and that the Elections Administrator shall serve as Recount Supervisor and Political Subdivision's official or employee who performs the duties of a secretary under the Texas Election Code shall serve as Recount Coordinator.

### XIV. MISCELLANEOUS PROVISIONS

1. It is understood that to the extent space is available, that other districts and political subdivisions may wish to participate in the use of the County's election equipment and voting places, and it is agreed that the Elections Administrator may contract with such other districts or political subdivisions for such purposes and that in such event there may be an adjustment of the pro-rata share to be paid to the County by the participating authorities.
2. The Elections Administrator shall file copies of this document with the Fort Bend County Treasurer and the Fort Bend County Auditor in accordance with Section 31.099 of the Texas Election Code.
3. In the event that legal action is filed contesting Political Subdivision's election under Title 14 of the Texas Election Code, Political Subdivision shall choose and provide, at its own expense, legal counsel for the County, the Elections Administrator, and additional election personnel as necessary.
4. Nothing in this contract prevents any party from taking appropriate legal action against any other party and/or other election personnel for a breach of this contract or a violation of the Texas Election Code.
5. The parties agree that under the Constitution and laws of the State of Texas, neither the County nor Political Subdivision can enter into an agreement whereby either party agrees to indemnify or hold harmless another party; therefore, all references of any kind, if any, to indemnifying or holding or saving harmless for any reason are hereby deleted.
6. This agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend or Harris Counties, Texas.
7. In the event of one of more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
8. All parties shall comply with all applicable laws, ordinances, and codes of the State of Texas, all local governments, and any other entities with local jurisdiction.
9. The waiver by any party of a breach of any provision of this agreement shall not operate as or be construed as a waiver of any subsequent breach.

Any amendments of this agreement shall be of no effect unless in writing and signed by all parties hereto.

XV. COST ESTIMATES AND DEPOSIT OF FUNDS

It is estimated that Political Subdivision's obligation under the terms of this agreement shall be \$8,722.00. The Political Subdivision agrees to pay to the County a deposit of \$5,230.00 which is approximately sixty (60) percent of the total estimated obligation of Political Subdivision to the County under this agreement. This deposit shall be paid to the County within ten (10) days of the City's receipt of this agreement, authorized by the governing bodies of both parties and fully executed by both parties. The exact amount of the Political Subdivision's obligation under the terms of this agreement shall be calculated after the May 6, 2023 election (or runoff election, if applicable), and if the amount of the Political Subdivision's obligation exceeds the amount deposited, the Political Subdivision shall pay to the County the balance due within thirty (30) days after receipt of the final invoice from the Elections Administrator. However, if the amount of the Political Subdivision's obligation is less than the amount deposited, the County shall refund to the Political Subdivision the excess amount paid within thirty (30) days after final costs are calculated.

XVI. RESULT OF NON-COMPLIANCE OF DEADLINES

The Political Subdivision agrees that it shall provide ballot details to the Elections Office not later than the 68th day (February 27, 2023) before the election. It is understood that if the ballot details are not provided to the Elections Office by the 64th day before the election (March 03, 2023) that the Elections Office may impose a penalty fee of \$1000.00 assessed to the total cost. It is also understood that if the ballot details are not provided to the Elections Office by the 60th day before Election Day (March 7, 2023), this contract will be declared null and void and it will be the responsibility of the political entity to conduct a separate election.

IN TESTIMONY HEREOF, this agreement, its multiple originals all of equal force, has been executed on behalf of the parties hereto as follows, to-wit:

- (1) It has on the \_\_\_\_\_ day of \_\_\_\_\_, 2023 been executed on behalf of Fort Bend County by the Elections Administrator pursuant to the Texas Election Code Section 31.092 so authorizing;
- (2) It has on the \_\_\_\_\_ day of \_\_\_\_\_, 2023 been executed on behalf of the City of Fulshear by its Presiding Officer or authorized representative, pursuant to an action by the Governing Body of the City of Fulshear.

FORT BEND COUNTY

By \_\_\_\_\_  
John Oldham  
Elections Administrator

CITY OF FULSHEAR:

By \_\_\_\_\_

**General and Special Election**  
**May 6, 2023**  
**Election Day Voting Centers**

Page 1 of 1  
 Revised 02/06/23  
 Draft

**Elecciones generales y especiales**  
**6 de mayo de 2023**  
**Centros de votación el día de las elecciones**

COUNTYWIDE POLLING PLACE	Voting Location	ADDRESS	CITY	ZIP
Beasley City Hall	CITY HALL BACK BOARDROOM	319 S. Third Street	BEASLEY, TX	77417
Bowie Middle	Main Hallway by Gym	700 Plantation Dr	RICHMOND, TX	77406
Brazos Bend Baptist Church	Education Building	22311 FM 762 Rd	NEEDVILLE, TX	77461
Briarchase Missionary Bapt Ch.	Fellowship hall	16000 Blueridge Rd	MISSOURI CITY, TX	77489
Chasewood Clubhouse	Level 1 (Clubhouse Facility)	7622 Chasewood Dr	MISSOURI CITY, TX	77489
Cinco Ranch Branch Library	Meeting Room	2620 Commercial Center Blvd.	KATY, TX	77494
Clayton Oaks Assisted Living	Activity Room "Big"	21175 Southwest Freeway	RICHMOND, TX	77469
Clements HS	ROPES Building	4200 Elkins Rd	SUGAR LAND, TX	77479
Commonwealth Clubhouse	Clubhouse	4330 Knightsbridge Blvd	SUGAR LAND, TX	77479
Crockett Middle	Girls Gym	19001 Beechnut St	RICHMOND, TX	77407
Elkins HS	Front lobby	7007 Knights Ct	MISSOURI CITY, TX	77459
Fairgrounds Bldg D	Main Building	4310 Highway 36 S	ROSENBERG, TX	77471
Fort Bend ISD Admin. Bldg.	Lobby	16431 Lexington Blvd	SUGAR LAND, TX	77479
Four Corners Community Center	"Sprint Room"	15700 Old Richmond Road	SUGAR LAND, TX	77498
Fulshear HS	Front of Auditorium	9302 Charger Way	FULSHEAR, TX	77441
Garcia Middle	Gym Area Hallway	18550 Old Richmond Rd	SUGAR LAND, TX	77478
George Bush HS	Gym Foyer	6707 FM 1464 RD	RICHMOND, TX	77407
Great Oaks Baptist Church	Parish Hall	7101 FM 2759 Rd	RICHMOND, TX	77469
Hightower HS	Front Lobby	3333 Hurricane Ln	MISSOURI CITY, TX	77459
Hunters Glen Elem	Gym	695 Independence Blvd	MISSOURI CITY, TX	77459
Imperial Park Recreation Center	Meeting Room	234 Matlage Way	SUGAR LAND, TX	77478
Jacks Conference Center	Main Room	3232 Austin Pkwy	SUGAR LAND, TX	77479
Jones Creek Ranch Park	Main Room	7714 FM 359 Rd	RICHMOND, TX	77406
Jordan HS	Performing Arts Center Lobby	27500 Fulshear Bend Dr	FULSHEAR, TX	77441
Kempner HS	Side hallway thru student park	14777 Voss Rd	SUGAR LAND, TX	77498
Kendleton Church of God	ED Building	619 FM 2919 Rd	KENDLETON, TX	77417
Kroger Riverstone	Community Room	18861 University Blvd	SUGAR LAND, TX	77479
Lake Olympia Club House	Ballroom	180 Island Blvd	MISSOURI CITY, TX	77459
Lantern Lane Elem.	cafeteria	3323 Mission Valley Dr	MISSOURI CITY, TX	77459
Lexington Creek Elem	Gymnasium	2335 Dulles Ave	MISSOURI CITY, TX	77459
Lindsey Elem	TBD	2431 Joan Collier Trace	KATY, TX	77494
Living Word Lutheran Church	Life Center - Courtyard Side	3700 South Mason Road	KATY, TX	77450
Lost Creek Conference Center	Main Room	3703 Lost Creek Blvd	SUGAR LAND, TX	77478
M.R. Massey Admin. Bldg.	Event Space	1570 W. Sycamore Rd	FRESNO, TX	77545
Maryam Islamic Center	Multi-purpose Area/Room	504 Sartartia Rd	SUGAR LAND, TX	77479
Meadows Place City Hall	Council Chambers	1 Troyan Dr	MEADOWS PLACE, TX	77477
Mission Bend Library	Meeting Room	8421 Addicks Clodine Rd	HOUSTON, TX	77083
Missouri City Baptist Church	Multipurpose Building	16816 Quail Park Dr	MISSOURI CITY, TX	77489
Missouri City Visitors Center	Main Room	1522 Texas Parkway	MISSOURI CITY, TX	77489
Mustang Community Center	Classroom	4521 FM 521 Rd	FRESNO, TX	77545
Pinnacle Senior Center	Multi-purpose Room	5525 Hobby St	HOUSTON, TX	77053
Quail Valley Elem	Main Room	3500 Quail Village Dr	MISSOURI CITY, TX	77459
Quail Valley Fund Office	Board Room	3603 Glenn Lakes Ln	MISSOURI CITY, TX	77459
Reese Tech Ctr	B116 - Physical Therapy Room	12300 University Blvd	SUGAR LAND, TX	77479
Richmond Water Mnt. Facility	1st room to the right	110 N 8th St	RICHMOND, TX	77469
Ridge Point HS	Gym Foyer	500 Waters Lake Blvd.	MISSOURI CITY, TX	77459
Ridgegate Community Ass'n	Main Room	5855 West Ridgecreek Dr	HOUSTON, TX	77489
Ridgemont Early Childhood Ctr	Extended Day Room	5353 Ridgecreek Circle	HOUSTON, TX	77053
River Park Recreation Ctr.	Rec Center	5875 Summit Crk Drive	SUGAR LAND, TX	77479
Road and Bridge (Needville)	Meeting Room	3743 School St	NEEDVILLE, TX	77461
Rosenberg Annex Building	varies	4520 Reading Rd	ROSENBERG, TX	77471
Sartartia Middle	Front Area	8125 Homeward Way	SUGAR LAND, TX	77479
Sienna Annex	Community Room	5855 Sienna Springs Way	MISSOURI CITY, TX	77459
Simonton City Hall	Meeting Room	35011 FM 1093	SIMONTON, TX	77476
Stafford City Hall	Large Conference Room	2610 S Main St	STAFFORD, TX	77477
Sugar Lakes Clubhouse	Clubhouse	930 Sugar Lakes Dr	SUGAR LAND, TX	77478
Sugar Land Branch Library	Meeting Room	550 Eldridge Rd	SUGAR LAND, TX	77478
Sugar Land Church of God	Fellowship Hall	1715 Eldridge Rd	SUGAR LAND, TX	77478
Thompsons City Hall	Community Center	520 Thompson Oil Field Road	THOMPSONS, TX	77481
Townewest Towne Hall	Main Room	10322 Old Towne Ln	SUGAR LAND, TX	77498
University Branch Library	Meeting Room 1	14010 University Blvd	SUGAR LAND, TX	77479
Westlake Preparatory Academy	Back Classroom	23300 Bellaire Blvd	RICHMOND, TX	77406

**Fort Bend County Early Voting Schedule**  
**May 6, 2023 General Election**  
*Calendario de votación anticipada del condado*  
*de Fort Bend Elecciones generales del 6 de mayo de 2023*

Early Voting Location	Hours( <i>Horas</i> )			
	Monday – Friday April 24 – 28, 2023 ( <i>lunes – viernes</i> ) (24-28 de abril, 2023)	Saturday April 29, 2023 ( <i>sábado</i> ) (29 de abril, 2023)	Sunday April 30, 2023 ( <i>domingo</i> ) (30 de abril, 2023)	Monday – Friday May 1 – May 2, 2023 ( <i>lunes – martes</i> ) (1 – 2 de mayo, 2023)
<b>Bowie Middle</b> 700 Plantation Dr, Richmond <b>Clements High School</b> 4200 Elkins Road, Sugar Land <b>Commonwealth Clubhouse</b> 4330 Knightsbridge Blvd, Sugar Land <b>Fort Bend ISD Administration Building</b> 16431 Lexington Blvd, Sugar Land <b>Four Corners Community Center</b> 15700 Old Richmond Rd, Sugar Land <b>Fulshear High School</b> 9302 Charger Way, Fulshear <b>Hightower High School</b> 3333 Hurricane Ln, Missouri City <b>Jacks Conference Center</b> 3232 Austin Pkwy, Sugar Land <b>Jones Creek Ranch Park</b> 7714 FM 359 Rd, Richmond <b>Kroger Riverstone</b> 18861 University Blvd, Sugar Land <b>Meadows Place City Hall</b> 1 Troyan Dr, Meadows Place <b>Missouri City Visitors Center</b> 1522 Texas Pkwy, Missouri City <b>Quail Valley Fund Office</b> 3603 Glenn Lakes Ln, Missouri City <b>Reese Technical Center</b> 12300 University Dr, Sugar Land <b>Ridge Point High School</b> 500 Waters Lake Blvd, Missouri City <b>Road and Bridge (Needville)</b> 3743 School St, Needville <b>Rosenberg Annex Building</b> 4520 Reading Rd, Rosenberg <b>Sienna Annex</b> 5855 Sienna Springs Way, Missouri City	<p style="text-align: center;"><b>All Sites are open 7:00 A.M. To 7:00 P.M.</b></p>	<p style="text-align: center;"><b>All Sites are open 8:00 A.M. To 5:00 P.M.</b></p>	<p style="text-align: center;"><b>All Sites are open 12:00 Noon To 6:00 P.M.</b></p>	<p style="text-align: center;"><b>All Sites are open 7:00 A.M. To 7:00 P.M.</b></p>
<b>Chasewood Clubhouse</b> 7622 Chasewood Dr, Missouri City <b>Great Oaks Baptist Church</b> 7101 FM 2759 Rd, Richmond <b>Lost Creek Conference Center</b> 3703 Lost Creek Blvd, Sugar Land <b>Richmond Water Maintenance Facility</b> 110 N 8 <sup>th</sup> Street, Richmond <b>Sugar Land Branch Library</b> 550 Eldridge Rd, Sugar Land	<p style="text-align: center;"><b>All Sites are open 7:00 A.M. To 7:00 P.M.</b></p>	<p style="text-align: center;"><b>All Sites are open 8:00 A.M. To 5:00 P.M.</b></p>	<p style="text-align: center;"><b>All Sites are CLOSED (<i>Todos los sitios están cerrados</i>)</b></p>	<p style="text-align: center;"><b>All Sites are open 7:00 A.M. To 7:00 P.M.</b></p>
<b>Beasley City Hall</b> 319 S 3 <sup>rd</sup> Street, Beasley <b>Cinco Ranch Branch Library</b> 2620 Commercial Center Blvd, Katy <b>Stafford City Hall</b> 2610 South Main Street, Stafford	<p style="text-align: center;"><b>All Sites are open 8:00 A.M. To 5:00 P.M.</b></p>	<p style="text-align: center;"><b>All Sites are open 8:00 A.M. To 5:00 P.M.</b></p>	<p style="text-align: center;"><b>All Sites are CLOSED (<i>Todos los sitios están cerrados</i>)</b></p>	<p style="text-align: center;"><b>All Sites are open 7:00 A.M. To 7:00 P.M.</b></p>



**City of Fulshear proposed Election Services Contract  
Estimate for the conduct of the May 6, 2023 Election**

**A. Statistical Information**

1. Number of Registered Voters	<u>12,165</u>
2. Number of Precincts	<u>3</u>
3. Number of election day polling places (excluding early voting)	<u>          </u>
4. Number of polling places shared with another entity	<u>          </u>
5. Number of public buildings used as polling places	<u>          </u>
6. Number of early voting stations	<u>          </u>
7. Voting system:	<u>Hybrid</u>

**B. Cost of Election**

						Estimate	Actual
1. Early Voting and Election Day personnel <i>(TEC § 32.091, 32.092, 32.114, 83.052, 271.013)</i>							
	Clerks	x	Rate	x	Hours / Entities		
a. Early voting clerks	<u>3</u>	x	<u>\$20</u>	x	<u>110 / 3</u>	<u>\$2,200</u>	<u>\$0.00</u>
	<u>2</u> Location(s)	x	Clerks	x	Rate x Hours / Entities		
b. Election day judges / clerks	<u>1</u>	x	<u>\$20</u>	x	<u>14 / 3</u>	<u>\$280</u>	<u>\$0.00</u>
Election day judges / clerks	<u>3</u>	x	<u>\$17</u>	x	<u>14 / 3</u>	<u>\$714</u>	<u>\$0.00</u>
2. Early Voting Ballot Board & central counting station personnel <i>(TEC § 87.005, 127.006)</i>							
a. Clerks and Judges						<u>\$150</u>	<u>\$0.00</u>
3. Election Day Field Techs and Other Temp workers						<u>\$100</u>	<u>\$0.00</u>
4. Elections Administration Dept. Staff overtime <i>(TEC § 31.100(e))</i>						<u>\$100</u>	<u>\$0.00</u>
	Subtotal of Labor Cost					\$3,544	
5. FICA & Workers Comp				11.45% x	\$3,544 =	<u>\$406</u>	
6. Election supplies & equipment							
<b>Early Voting</b>	Quant	x	Cost	/	Entities		
a. Early Voting supply kits	<u>1</u>	x	<u>\$35</u>	/	<u>2</u>	<u>\$18</u>	<u>0.00</u>
b. Early Voting ExpressVotes	<u>4</u>	x	<u>\$175</u>	/	<u>2</u>	<u>\$350</u>	<u>0.00</u>
c. Early Voting ExpressTouch	<u>1</u>	x	<u>\$150</u>	/	<u>2</u>	<u>\$75</u>	<u>0.00</u>
d. Early Voting DS-200	<u>1</u>		<u>\$250</u>		<u>2</u>	<u>\$125</u>	<u>0.00</u>
e. Wireless Communication (phone & hot	<u>1</u>	x	<u>\$75</u>	/	<u>2</u>	<u>\$37</u>	<u>0.00</u>
f. Ballot Stock	<u>1500</u>		<u>0.12</u>		<u>2</u>	<u>\$90</u>	<u>\$0.00</u>
7. <b>Election Day</b>							
g. Election Day supply kits	<u>2</u>	x	<u>\$35</u>	/	<u>2</u>	<u>\$35</u>	<u>\$0.00</u>
h. Election Day ExpressVotes	<u>4</u>	x	<u>\$175</u>	/	<u>2</u>	<u>\$350</u>	<u>\$0.00</u>
i. Election Day ExpressTouch	<u>2</u>	x	<u>\$150</u>	/	<u>2</u>	<u>\$150</u>	<u>\$0.00</u>
j. Election Day DS-200	<u>2</u>		<u>\$250</u>		<u>2</u>	<u>\$250</u>	<u>\$0.00</u>
k. Wireless Communication (phones & hot	<u>2</u>	x	<u>\$75</u>	/	<u>2</u>	<u>\$38</u>	<u>\$0.00</u>
l. Ballot Stock	<u>600</u>	x	<u>0.12</u>	/	<u>2</u>	<u>\$36</u>	<u>\$0.00</u>
8. Delivery of Voting Equipment & Supplies							
a. Early Voting & Election Day						<u>\$1,650</u>	<u>\$0.00</u>
9. Polling Place Rental							

(TEC § 43.031, 43.033)

a. Election (number of polling places rented)		<u>\$0</u>	<u>\$0.00</u>
10 Publication of electronic voting system notices )			
(TEC § 127.096(a))			
a. Election		<u>\$25</u>	<u>\$0.00</u>
11. Miscellaneous election expenses (itemize)			
a. Ger			
Ballot Layout & Coding		<u>\$400</u>	<u>\$0.00</u>
Absentee Ballots -Printed & Mailed			
<u>300</u> Ballots x <u>\$1</u>		<u>\$300</u>	<u>\$0.00</u>
Mileage reimbursements		<u>\$50</u>	<u>\$0.00</u>
Posting of Bond			
<u>0</u> Locations x <u>\$3</u>		<u>\$0</u>	<u>          </u>
Printing of Notices			
<u>0</u> Pages x <u>0</u> Locations x <u>\$0.03</u>		<u>\$0</u>	<u>          </u>
	<i>SUBTOTAL</i>	<u>\$7,929</u>	<u>          </u>
12. Election Services Contract Administrative Fee	<u>10%</u>		
(TEC § 31.100(d))			
a. Election		<u>\$793</u>	<u>          </u>
13. <b>Cost of Joint election</b>		<b><u>\$8,722</u></b>	<b><u>\$0.00</u></b>

**AGENDA MEMO  
BUSINESS OF THE CITY COUNCIL  
CITY OF FULSHEAR, TEXAS**

**AGENDA OF:** 2/21/2023 **ITEMS:** I.V.C.  
**DATE** 1/8/2023 **DEPARTMENT:** Public Works  
**SUBMITTED:**

**PREPARED BY:** Cliff Brouhard, City Engineer **PRESENTER:** Cliff Brouhard, City Engineer  
**SUBJECT:** CONSIDERATION AND POSSIBLE ACTION TO APPROVE THE FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT 2022-012 FOR DESIGN SERVICES FOR THE NEW 1.0 MGD EAST FULSHEAR WASTEWATER TREATMENT PLANT AT CROSS CREEK RANCH (WW22B)

**Expenditure Required:** \$2,451,000.00  
**Amount Budgeted:** FY 22 \$473,000 FY 23 \$1,978,000.00  
**Funding Account:** 501-000-5802-01

**Additional Appropriation Required:**  
**Funding Account:**

**EXECUTIVE SUMMARY**

As part of the Council approved water and wastewater master plan, Design and construction of a wastewater treatment plant (WWTP) located at the existing Cross Creek Ranch wastewater treatment site was established as a priority project. This WWTP will consist of a 1.0 MGD treatment plant with required associated appurtenances. In April of 2022 Council authorized \$473,000 for the preliminary engineering review (PER) for this project to Enprotec / Hibbs & Todd, Inc. (EHT). The PER took the design process to 30% completion. The PER is nearing completion and staff is ready to proceed to full design for this project. City staff recommended EHT for the PER portion of this project and recommends that EHT be authorized to continue with the final design and construction phase of WW22B Design Services for the new 1.0 MGD East Fulshear wastewater treatment plant at Cross Creek Ranch. This final phase is estimated at \$1,978,000.

The professional service agreement and scope have been reviewed by Public Works/Engineering, Finance, and Legal. Staff recommend approval.

**RECOMMENDATION**

City Council approve the amended Professional Service Agreement 2022-012 with Enprotec / Hibbs & Todd, Inc. for the final design & construction phase of project WW22B in the amount not to exceed \$2,451,000.

**ATTACHMENTS:**

Description	Upload Date	Type
1st Amend PSA Design Services 2022-12	2/15/2023	Exhibit
Exhibit A&B Scope	2/16/2023	Exhibit
WW21B Site	2/15/2023	Exhibit

**FIRST AMENDMENT TO**  
**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES**  
**#2022-012**  
**WW22B NEW 1.0 MGD EAST FULSHEAR WASTEWATER TREATMENT PLANT AT CROSS**  
**CREEK RANCH SITE**

This *First Amendment to Agreement* (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”), by and between the CITY OF FULSHEAR, TEXAS (the “City”), a Texas municipality, and ENPROTEC / HIBBS & TODD, INC. (the “Professional Service Provider”). Collectively, the City and the Professional Service Provider may be referred to as the “Parties.”

WHEREAS, the City and Professional Service Provider entered into an *Agreement for Professional Design Services*, dated April 20, 2022 (the “Agreement for Professional Design Services”); and

WHEREAS, the City and Professional Service Provider would like to amend the Agreement for Professional Design Services as set forth herein.

NOW, THEREFORE, for and in consideration of the sum of \$10 and other valuable consideration, the Parties mutually agree as follows (any capitalized word not otherwise defined in this Agreement has the definition given to it in the Agreement for Professional Services):

1. **Section 4. a** of the Agreement for Professional Design Services is deleted in its entirety, and the following language is substituted in its place:

**“a. *Contract Sum.*** The City shall compensate the Professional Service Provider for the performance of the Services per the professional design proposal in *Exhibit A* and in accordance with the Standard Rate Schedule contained in the attached and incorporated *Exhibit B*. **The total fees paid under this Agreement shall not exceed \$2,451,000.00.”**

2. The document attached as *Exhibit A* to the Agreement for Professional Design Services is deleted in its entirety and is replaced with the document attached to this Agreement as *Exhibit A*, which is incorporated by reference to this Agreement and into the Agreement for Professional Design Services.
3. The document attached as *Exhibit B* to the Agreement for Professional Design Services is deleted in its entirety and is replaced with the document attached to this Agreement as *Exhibit B*, which is incorporated by reference to this Agreement and into the Agreement for Professional Design Services.

EFFECTIVE as of \_\_\_\_\_, 2023.

**PROFESSIONAL SERVICE PROVIDER:**

**Enprotec / Hibbs & Todd, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

**CITY:**

**CITY OF FULSHEAR, TEXAS**

By: \_\_\_\_\_

**JACK HARPER, *City Manager***

**EXHIBIT A**

**AMENDED SCOPE OF SERVICES**

**FOR**

**1.0 MGD EAST WASTEWATER TREATMENT PLANT AT CROSS CREEK RANCH**

**December 25, 2022**

This **amended** Exhibit A is part of the Agreement between Enprotec / Hibbs & Todd, Inc. (Engineer) and the City of Fulshear (City) for a project generally described as:

Implementation of a new 1.0 million gallon per day (MGD) East Wastewater Treatment Plant (WWTP) at the Cross Creek Ranch (CCR) site.

**SCOPE OF SERVICES**

The Engineer agrees to furnish the City with the following specific services:

**BASIC ENGINEERING SERVICES**

**TASK 1 CONCEPTUAL PLANNING AND PROJECT MANAGEMENT**

- 1.1 Conduct a Project Kickoff Meeting. Meeting shall include key members of the Engineer's Project Team and the City's Project Team. The meeting will focus on the scope of work, schedule, deliverables, protocols for communication throughout the project, and coordination of initial data collection activities.
- 1.2 Establish treatment recommendations and design considerations for the proposed WWTP.
  - 1.2.1 Develop process alternatives for the WWTP. Develop process flow schematics and conceptual site layouts for each process alternative.
  - 1.2.2 Conduct site visits to examine operating plants using proposed treatment process alternatives. Travel expenses for City are not included in this scope of work.
  - 1.2.3 Provide background documentation on the conceptual treatment processes proposed including installation lists, references, operational requirements, and published capital, operations, and maintenance costs.
  - 1.2.4 Conduct Process Alternatives and Technology Review Workshop with the City. Based on this meeting, develop specific criteria for plant operations, staffing, instrumentation & control systems, support facilities, and other issues that might impact process design, facility layout and supporting infrastructure.
  - 1.2.5 Develop concept level opinions of probable cost for each of the treatment alternatives. Costs will include planning-level operation and maintenance costs. Include a conceptual project development schedule for each alternative.

- 1.2.6 Conduct Conceptual Plan Review and Process Ranking Development Workshop. During the meeting, develop method for ranking alternatives that includes economic and non-economic factors by defining issues to be considered and weighted importance of each issue. Using this data, develop a ranking of each alternative.
  - 1.2.7 Prepare Technical Memorandum – Process Alternatives and Conceptual Design to document activities conducted under Task 1.2.
- 1.3 Project Management:
- 1.3.1 Conduct monthly project update meetings with the City, as necessary.
  - 1.3.2 Provide project management activities to properly plan the work, sequence, manage, coordinate, schedule, and monitor the scope tasks and completion of the tasks.
  - 1.3.3 Conduct internal team coordination meetings as required to accomplish the work.
  - 1.3.4 Coordinate, prepare, and review monthly invoices for payment.
  - 1.3.5 Maintain and update on a monthly basis, an action item log, a decision log, and project change log.
  - 1.3.6 Coordinate, as necessary, with the Texas Water Development Board for funding of the construction of the WWTP.
  - 1.3.7 Submit to the City, at identified project milestones established below, an Opinion of Probable Construction Cost which indicates the cost of each category of work involved in construction of the Project. In providing opinions of cost, financial analysis, economic feasibility projections, and schedules for the Project, the Engineer has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, the Engineer makes no warranty that the City's actual Project cost, financial aspects, economic feasibility, or schedules will not vary from the Engineer's opinions, analyses, projections, or estimates.
- 1.4 Deliverables:
- 1.4.1 Kick-off Meeting: Electronic copy of the meeting minutes.
  - 1.4.2 Process Alternatives and Technology Review Workshop: Electronic record of workshop materials, discussions and decisions.

1.4.3 Conceptual Plan Review and Process Ranking Development Workshop: Electronic record of workshop materials, discussions and decisions.

1.4.4 Technical Memorandum – Process Alternatives and Conceptual Design: Electronic copy and five (5) “hard” copies for DRAFT review. Final electronic copy.

## TASK 2 PRELIMINARY DESIGN PHASE

After acceptance by the City of the Conceptual Planning Deliverables established under Task 1.4 above, Engineer shall:

- 2.1 Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
- 2.2 Provide necessary field surveys and topographic and utility mapping for preliminary design purposes. Utility mapping will be based upon information obtained from utility owners. Complete deed research of existing WWTF site and adjacent properties to verify buffer zone requirements have been met for proposed permit amendment, and support Owner in development restrictive easements as necessary to support proposed WWTF expansion.
- 2.3 Advise City if additional reports, data, information, or services are necessary and assist City in obtaining such reports, data, information, or services.
- 2.4 Based on the information contained in the Preliminary Design Phase documents, prepare a revised Opinion of Probable Construction Cost, and assist City in collating the various cost categories which comprise Total Project Costs.
- 2.5 Perform or provide the following additional Preliminary Design Phase tasks or deliverables:

### **EAST WASTEWATER TREATMENT PLANT – 1.0 MGD**

#### a. Preliminary Design – Schematic Phase

##### 1) Produce these deliverables:

- Process loads and flows.
- Process design parameters list.
- Major process equipment control table.
- Equipment tagging conventions.
- Geotechnical investigation plan.
- Preliminary process schematics.
- Preliminary control systems block diagrams.
- Preliminary major process P&IDs.



b. Preliminary Design - Spatial Design Phase

1) Spatial design shall proceed after submission of schematic phase deliverables to the City. Produce these deliverables:

- Equipment list.
- Site utility analysis.
- Preliminary Items
  - Initial geotechnical investigation.
  - Process equipment information and data.
  - Site layout.
  - Process structure layouts including main piping and valves.
  - Civil/site and process/civil sections of Basis of Design Memorandum.
  - Sketch sections through major process facilities.
  - Facility and building layouts.

c. Preliminary Design – Basis of Design

1) After the City has received spatial design criteria, complete preliminary design deliverables including:

- Basis of Design Memorandum.
- Layouts of process piping and major equipment.
- Hydraulic profile.
- Revised site plan.
- Power distribution functional diagram.
- Process facility sections.
- SCADA communication system block diagram for communication between identified City facilities.
- Conceptual building layouts.
- Opinion of Probable Construction Cost update.
- Project schedule update.
- Project trend register update identifying changes to scope affecting cost or schedule.

d. The Basis of Design Memorandum is the most important deliverable from this phase. It is the means to communicate scope, objectives, and details of the project to the City, regulatory agencies, and the design team. Information in the Basis of Design Memorandum includes:

- General project scope and background references.
- Design criteria, including:
  - Flow rates - initial and future.
  - Water quality - physical, chemical and biological.

- o Design objectives, including treated water quality.
- Sludge quantities and types.
- Site considerations, including subsurface conditions, flood elevations, drainage requirements, etc.
- Primary systems Process and Instrumentation Diagrams (P&IDs), and Process Flow Diagrams.
- Preliminary site plan and building layouts.
- Preliminary hydraulic profile of treatment facilities.
- Process and hydraulic systems.
- Sludge processing systems and handling.
- Chemical feed and storage.
- Operational monitoring and control systems.
- Utility requirements.

2.6 Project Management:

- 2.6.1 Conduct monthly project update meetings with the City, as necessary.
- 2.6.2 Provide project management activities to properly plan the work, sequence, manage, coordinate, schedule, and monitor the scope tasks and completion of the tasks.
- 2.6.3 Conduct internal team coordination meetings as required to accomplish the work.
- 2.6.4 Coordinate, prepare, and review monthly invoices for payment.
- 2.6.5 Maintain and update on a monthly basis, an action item log, a decision log, and project change log.

2.7 Deliverables:

- 2.7.1 Furnish 5 “hard” and 1 “electronic” review copies of the Preliminary Design Phase documents and any other deliverables to the City. Revise the Preliminary Design Phase documents and any other deliverables in response to City’s comments, as appropriate, and furnish to City 5 “hard” and 1 “electronic” copies of the revised Preliminary Design Phase documents, revised Opinion of Probable Construction Cost, and any other deliverables.

Engineer’s services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised Opinion of Probable Construction Cost, and any other deliverables have been delivered to the City.

The Schedule for Performance is established as follows:

**EAST WWTP – 1.0 MGD\***

**Conceptual Planning / Preliminary Design: February 28, 2023.**

## TASK 3 SPECIAL SERVICES

The following Special Services are agreed to between the City and Engineer as essential components for successful completion of the Project. These Special Services shall be provided by the Engineer as a part of the Basic Engineering Services set forth in this Exhibit A.

### 3.1 Geotechnical Investigations

3.1.1 Perform soil borings at the WWTP site required for design of facility improvements. Perform soil testing and develop foundation design parameters for plant facilities. Provide the results of geotechnical investigations in the bound report, sealed by an engineer licensed to practice in Texas.

### 3.2 Discharge Permit Modification Application:

3.2.1 Engineer will prepare a discharge permit application for the proposed WWTP.

- a. Participate in a pre-application meeting with TCEQ staff.
- b. Finalize application forms and attachments that are required to be submitted to the TCEQ for a Texas Pollutant Discharge Elimination System permit. Forms and attachments will be revised, as appropriate, based on comments from the City after its review of draft application.
- c. Prepare copies of the final application for submittal to TCEQ.
- d. Assist in processing the permit application through the TCEQ. Provide support during the TCEQ administrative review and technical review processes for the development of the draft permit. Prepare responses to the TCEQ review comments. Review draft permit. Identify concerns to provision in the draft permit. Prepare letter for submittal to TCEQ with recommendations for changes to the permit. Communicate with TCEQ during processing of permit application to track status and to obtain TCEQ interoffice technical memorandums that present basis for permit requirements that have been placed in the permit.
- e. Coordinate with City legal representation as required regarding the application.

### 3.3 Authorities Having Jurisdiction and Permits:

**3.3.1 The Engineer shall assist the City in connection with the City's responsibility, if any, for filing documents required for the approval of governmental authorities having jurisdiction over the Project. This coordination shall include submitting to the following agencies, when required:**

- Texas Commission on Environmental Quality
- A Registered Accessibility Specialist for the Texas Department of Licensing and Regulatory to verify conformance with the Texas Accessibility Standards
- City Departments
- Texas Parks and Wildlife
- U.S. Army Corps of Engineers
- U.S. Fish and Wildlife
- Texas Historical Commission
- General Land Office

3.3.2 Costs for filing applications, permits, etc. shall be paid directly by the City.

3.4 Preparing and furnishing to City Record Drawings shown appropriate record information based on Project annotated record documents received from Contractor.

3.5 Preparation of operations and maintenance manual for the WWTP. Operations and maintenance manuals will be compiled from equipment vendor materials. Develop a Plan of Operations outlining the intent and procedures for plant operation to meet discharge permit parameters.

3.6 Resident Project Representative:

3.6.1 Engineer shall furnish a Resident Project Representative (“RPR”), assistants, and other field staff to assist Engineer in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Subtask will provide part-time representation during construction of the Work.

3.6.2 Through such additional observations of Contractor’s work in progress and field checks of materials and equipment by the RPR and assistants, Engineer shall endeavor to provide further protection for City against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Contractor’s work in progress, supervise, direct, or have control over the Contractor’s Work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor’s work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor’s performing and furnishing the Work, or responsibility of construction for Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents.

3.6.3 The duties and responsibilities of the RPR are limited to those of Engineer in the Agreement with the City and in the Contract Documents, and are further limited and described as follows:

- a. **General:** RPR is Engineer’s agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer

regarding RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor, keeping City advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with City with the knowledge of and under the direction of Engineer.

- b. **Schedules:** Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
- c. **Conferences and Meetings:** Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- d. **Liaison:**
  - 1) Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent.
  - 2) Assist Engineer in serving as City's liaison with Contractor when Contractor's operations affect City's on-site operations.
  - 3) Assist in obtaining from City additional details or information, when required for proper execution of the Work.
- e. **Interpretation of Contract Documents:** Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
- f. **Shop Drawings and Samples:**
  - 1) Record date of receipt of Samples and approved Shop Drawings.
  - 2) Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
  - 3) Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been reviewed by Engineer.
- g. **Modifications:** Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's

recommendations to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.

**h. *Review of Work and Rejection of Defective Work:***

- 1) Conduct on-site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
- 2) Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

**i. *Inspections, Tests, and System Startups:***

- 1) Consult with Engineer in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- 2) Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate City's personnel, and that contractor maintains adequate records thereof.
- 3) Observe, record, and report to Engineer appropriate details relative to the test procedures and systems startups.
- 4) Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

**j. *Records:***

- 1) Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, addenda, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents,

progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project related documents.

- 2) Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- 3) Record names, addresses and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- 4) Maintain records for use in preparing Project documentation.
- 5) Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

**k. *Reports:***

- 1) Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- 2) Draft and recommend to Engineer, proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- 3) Furnish to Engineer and City copies of all inspection, test, and system startup reports.
- 4) Report immediately to Engineer the occurrence of any Site accidents, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.

**l. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submissions and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.**

**m. *Certificates, Operation and Maintenance Manuals:* During the course**

of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to City prior to payment for that part of the Work.

n. **Completion:**

- 1) Before Engineer issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- 2) Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
- 3) Participate in a final inspection in the company of Engineer, City, and Contractor and prepare a final list of items to be completed or corrected.
- 4) Observe whether all items on final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

3.6.4 Resident Project Representative shall not:

- a. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including “or-equal” items).
- b. Exceed limitations of Engineer’s authority as set forth in this Agreement or the Contract Documents.
- c. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor’s superintendent.
- d. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor’s work unless such advice or directions are specifically required by the Contract Documents.
- e. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of City or Contractor.



- f. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
- g. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- h. Authorize City to occupy the Project in whole or in part.
- i. Be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the work.

**3.7 Construction Materials Testing:**

- 3.7.1 Engineer shall furnish construction materials testing (CMT) services for the projects.
- 3.7.2 Testing shall be in conformance with the specifications, drawings, and any local authorities having jurisdiction.

**3.8 Owner's Contingency:**

- 3.8.1 Engineer shall provide additional services to the City above and beyond the other services already identified in the original contract and in this amendment, at the City's direction. Owner's Contingency is included to allow for use of changes in scope at the direction of the City. Budget will not be utilized without documented authorization from the City's Public Works Director or other City-authorized representative.

**TASK 4 FINAL DESIGN PHASE**

After acceptance by the City of the Preliminary Design Phase documents, revised Opinion of Probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any City-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, Engineer shall:

- 4.1 Provide technical criteria, written descriptions, and design data for City's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist City in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
- 4.2 Advise City of any adjustments to the Opinion of Probable Construction Cost known to Engineer.

- 4.3 Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. If appropriate, Specifications shall conform to the 16-division format of the Construction Specifications Institute.**

Perform or provide the following additional Final Design Phase tasks or deliverables:

**EAST WASTEWATER TREATMENT PLANT – 1.0 MGD**

**4.3.1 Detailed Design – Construction Contract Documents Level 1**

- a. Construction documents will be prepared for the purposes of procuring a qualified contractor to perform the work. The Level 1 deliverables are as follows:

- Contract front-end documents.
- Secondary systems P&ID drawings.
- Equipment control descriptions.
- Chemical feed systems P&ID drawings.
- Site plan.
- General site arrangements and yard piping drawings.
- Final geotechnical investigation report.
- Major facility plans and sections showing equipment and piping.
- Preliminary structural design.
- Process equipment specifications and data sheets.
- Valve list.
- Opinion of Probable Construction Cost update.
- Project schedule update.
- Project trend register update identifying changes to scope affecting cost or schedule.

**4.3.2 Detailed Design - Construction Documents Level 2**

- a. Level 2 design shall commence after Level 1 deliverables have been submitted to the City. Level 2 deliverables are as follows:

- Architectural roof plans.
- Sections and details showing major process and sub-process equipment.
- Structural foundation recommendations, framing plans and sections.
- Landscaping and site irrigation plans.
- Plumbing and fire protection system layouts and plans.
- Power and lighting plans.

- Electrical fixture schedules.
- Commodity specifications.
- HVAC system layouts and equipment schedules.
- Architectural schedules.
- Duct bank and roadway lighting arrangements.
- Plumbing schedules.
- Underground utility drawings.
- Erosion control plan.
- Opinion of Probable Construction Cost update.
- Project schedule update.
- Project trend register update identifying changes to scope affecting cost or schedule.

#### **4.3.3 Detailed Design - Construction Documents Level 3**

- a. Level 3 design shall commence after Level 2 deliverables have been submitted to the City. Level 3 deliverables are as follows:
  - Final review set of drawings.
  - Final review set of specifications and construction contract documents.
  - Opinion of Probable Construction Cost update.
  - Constructability review.
  - Project schedule update.
  - Project trend register update identifying changes to scope affecting cost or schedule.

#### **4.4 Equipment Preselection Packages**

If the City selects treatment technologies that must be pre-purchased prior to completion of plant design, Engineer will assist in equipment procurement. Equipment will be bid and a contract awarded by the City. Notice to Proceed to the equipment supplier will be given during the Level III design phase, and Engineer will perform submittal reviews to allow fabrication during that phase. The contract will be later assigned to the Construction Contractor for delivery, installation, start-up, and warranty.

- 4.4.1 Develop Equipment Procurement Solicitation Documents including equipment specifications, terms, and conditions. Review with City's operational and legal personnel and the funding agency in an Equipment Procurement Meeting.
- 4.4.2 Assist City and funding agency with extending invitations to bid equipment procurement solicitation.
- 4.4.3 Receive inquiries from equipment manufacturers during bidding period and

respond as required.

4.4.4 Review bids after receipt by City and develop a recommendation for award. Assist City in interpretation of procurement solicitation and in making contract award.

4.5 Project Management:

4.5.1 Conduct monthly project update meetings with the City, as necessary.

4.5.2 Provide project management activities to properly plan the work, sequence, manage, coordinate, schedule, and monitor the scope tasks and completion of the tasks.

4.5.3 Conduct internal team coordination meetings as required to accomplish the work.

4.5.4 Coordinate, prepare, and review monthly invoices for payment.

4.5.5 Maintain and update on a monthly basis, an action item log, a decision log, and project change log.

4.6 Deliverables:

4.6.1 Furnish 5 “hard” and 1 “electronic” review copies of the Final Design Phase documents and any other deliverables to the City. Revise the Final Design Phase documents and any other deliverables in response to City’s comments, as appropriate, and furnish to City 5 “hard” and 1 “electronic” copies of the revised Final Design Phase documents, revised Opinion of Probable Construction Cost, and any other deliverables.

The Schedule for Performance is established as follows:

**EAST WWTP – 1.0 MGD\***

Final Design Level 1: June 30, 2023.

Final Design Level 2: September 30, 2023.

Final Design Level 3: December 30, 2023.

*\* Assumes NTP for final design issued by January 1, 2023.*

**TASK 5 BIDDING OR NEGOTIATING (CONTRACTOR PROCUREMENT) PHASE**

5.1 For traditional bidding of projects after acceptance by City of the Bidding Documents and the most recent Opinion of Probable Construction Cost as determined in the Final Design Phase, Engineer shall:

- 5.1.1 Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
  - 5.1.2 Provide information or assistance needed by City in the course of any negotiations with prospective contractors.
  - 5.1.3 Consult with City and funding agency as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the Bidding Documents.
  - 5.1.4 Attend the Bid opening, prepare Bid tabulation sheets, and assist City in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
- 5.2 For alternative delivery methods: Title 10, Subtitle F, Chapter 2269 of the Texas Government Code establishes contracting and delivery procedures for construction projects. Upon notification to the Engineer by the City to proceed with procurement using an alternative delivery method under applicable State law, Engineer will:
- 5.2.1 Conduct a one-day workshop with the City to develop criteria to be used in the selecting of a Contractor using alternative delivery methods in accordance with State law. Support City at Council Meeting(s) for Council action necessary to use an alternative delivery method.
  - 5.2.2 Based on the results from the workshop, prepare documents as applicable to the alternative delivery method to be utilized.
  - 5.2.3 Engineer's Technical Director and Project Manager will serve on any Selection Committee established as a part of the alternative delivery method selection process as non-voting members. The other members of the Selection Committee will be appointed by the City Manager. As members of the Selection Committee, Engineer's personnel will:
    - a. Review submittals that are received by the City in response to the City's solicitation.
    - b. Provide the Selection Committee with an independent and experience-based assessment of each submittal, including the identification of items or issues which may impact a selection process.
    - c. Provide an independent opinion as to how the submittal represents the interests of the City and which respondents should be asked to interview with the City, if applicable.
    - d. Advise and assist the Selection Committee in the preparation of short-listed firm interview questions, if applicable.

- e. Provide an independent opinion of each short-listed firm's interview information, including project understanding, project approach, responses to questions, and each demonstrated aptitude and attitude toward assuring the interests of the City are met.

**5.3 Project Management:**

- 5.3.1 Conduct monthly project update meetings with the City, as necessary.
- 5.3.2 Provide project management activities to properly manage, coordinate, schedule, and monitor the scope tasks and completion of the tasks.
- 5.3.3 Conduct internal team coordination meetings as required to accomplish the work.
- 5.3.4 Coordinate, prepare, and review monthly invoices for payment.
- 5.3.5 Maintain and update on a monthly basis, an action item log, a decision log, and project change log.

**5.4 Deliverables:**

- 5.4.1 Pre-Bid Meeting: Electronic copy of the meeting minutes.
- 5.4.2 Bid Review Workshop: Electronic record of workshop materials, discussions and decisions.
- 5.4.3 Recommendation of Award: Draft and revised (if needed) recommendation of award for the proposed general contractor for the construction project.
- 5.4.4 Funding Agency Coordination: Development of indexed executed contract package per TWDB current award and contract review requirements, including all necessary disadvantaged business enterprise (DBE) procurement documentation.

The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.

**TASK 6 CONSTRUCTION PHASE**

Upon successful completion of the Bidding and Negotiating Phase, Engineer shall:

- 6.1 **General Administration of Construction Contract.** Consult with City and act as City's representative as provided in the General Conditions of the Construction Documents. The extent and limitations of the duties, responsibilities, and authority of Engineer as

assigned in the General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of City's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of City in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing.

- 6.1.1 ***Selecting Independent Testing Laboratory.*** Assist City in the selection of an independent testing laboratory to perform construction materials testing services.
- 6.1.2 ***Pre-Construction Conference.*** Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
- 6.1.3 ***Schedules.*** Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
- 6.1.4 ***Baselines and Benchmarks.*** As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
- 6.1.5 ***Disagreements between City and Contractor.*** Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by City or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to City or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
- 6.1.6 ***Applications for Payment.*** Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
  - a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to City, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility

to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).

- b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to City free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between City and Contractor that might affect the amount that should be paid.

6.1.7 ***Contractor's Completion Documents.*** Receive, review, and transmit to City maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment.

6.1.8 ***Substantial Completion.*** Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company of Contractor and on behalf of City, conduct an inspection to determine if the Work is substantially complete. If after considering any objections of City, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to City and Contractor.

6.1.9 ***Final Notice of Acceptability of the Work.*** Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the



recommendation for final payment, Engineer shall also provide a notice in written form that the Work is acceptable to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

**6.2 *Visits to Site and Observation of Construction.*** In connection with observations of Contractor's Work while it is in progress:

- a. **Make visits to the Site as necessary.** Engineer shall also visit the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep City informed of the progress of the Work.
  
- b. **The purpose of Engineer's visits to the Site will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for City a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.** Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety on the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

**6.2.2 *Inspections and Tests.*** Require such special inspections or tests of

Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.

**6.2.3 *Defective Work.*** Engineer will have the authority to reject Contractor's Work while it is in progress if, on the basis of Engineer's observations, Engineer believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. However, neither Engineer's authority to reject Work nor Engineer's decision to exercise or not exercise such authority shall give rise to a duty or responsibility of the Engineer to Contractors, Subcontractors, material and equipment suppliers, their agents or employees, or any other person(s) or entities performing any of the Work, including but not limited to any duty or responsibility for Contractors' or Subcontractors' safety precautions and programs incident to the Work.

**6.2.4 *Clarifications and Interpretations; Field Orders.*** Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Engineer may issue Field Orders authorizing minor variations in the Work from the requirements of the Contract Documents.

**6.2.5 *Change Orders and Work Change Directives.*** Recommend Change Orders and Work Change Directives to City, as appropriate, and prepare Change Orders and Work Change Directives as required.

**6.3 *Shop Drawings and Samples.*** Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

**6.3.1 *Substitutes and "or-equal."*** Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.

**6.4 Project Management:**

- 6.4.1 Conduct construction status meetings with the City, as necessary.**
- 6.4.2 Provide project management activities to properly manage, coordinate, schedule, and monitor the scope tasks and completion of the tasks.**
- 6.4.3 Conduct internal team coordination meetings as required to accomplish the work.**
- 6.4.4 Coordinate, prepare, and review monthly invoices for payment.**
- 6.4.5 Maintain and update on a monthly basis, an action item log, a decision log, and project change log.**

**6.5 Deliverables:**

- 6.5.1 Pre-Construction Conference (PCC): Electronic copy of the PCC meeting minutes.**
- 6.5.2 Construction Status Meetings: Electronic record of meeting materials, discussions and decisions.**
- 6.5.3 Recommendation of Substantial Completion: Draft and revised (if needed) recommendation of Substantial Completion for the construction project.**

***Duration of Construction Phase.*** The Construction Phase will commence with the execution of the first construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors.

***Limitation of Responsibilities.*** Engineer shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

**TASK 7 POST-CONSTRUCTION PHASE**

**Engineer, during the Post-Construction Phase, shall:**

- 7.1 Provide assistance in connection with the adjusting of Project equipment and systems.**
  - 7.1.1 Together with City, visit the Project to observe any apparent defects in the Work, assist City in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.**

- 7.1.2 In company with City or City's representative, provide an inspection of the Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.
- 7.2 Assist City in training City's staff to operate and maintain Project equipment and systems.
  - 7.2.1 Assist City in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.
- 7.3 Project Management:
  - 7.3.1 Provide project management activities to properly manage, coordinate, schedule, and monitor the scope tasks and completion of the tasks.
  - 7.3.2 Conduct internal team coordination meetings as required to accomplish the work.
  - 7.3.3 Coordinate, prepare, and review monthly invoices for payment.
  - 7.3.4 Maintain and update on a monthly basis, an action item log, a decision log, and project change log.
- 7.4 Deliverables:
  - 7.4.1 Punchlist Inspection: Electronic copy of the punchlist inspection report.
  - 7.4.2 Recommendation of Final Completion: Draft and revised (if needed) recommendation of Final Completion for the construction project.
  - 7.4.3 Funding Agency Closeout Documents: Development of project closeout documentation to meet TWDB requirements to obtain a Certificate of Acceptance from TWDB at project completion.

The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Construction Contract's correction period.

## **POTENTIAL SUBCONTRACTORS**

HVAC – Bryan Parks and Associates, Inc.

Structural – Brian G. Pierce Engineering, LLC or Rosenbaum Engineering, LLC

Electrical – Baird, Gilroy and Dixon, LLC

Geotechnical and Construction Materials Testing – Raba Kistner, Inc. or Terracon

## EXHIBIT B

### COMPENSATION FOR SERVICES

Compensation for the services described in this Scope of Services will be as follows:

1. Owner shall pay Engineer for services set forth in Exhibit A (Basic Services), Task 1 (Conceptual Planning and Project Management), and Task 2 (Preliminary Design Phase) at a Lump Sum Amount of \$387,000 based on the following distribution of compensation:
  - Task 1: \$ 134,000
  - Task 2: \$ 253,000
  - a. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated into the Lump Sum to account for labor, overhead, profit and direct expenses.
  - b. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the monthly billing period to the Lump Sum.
2. Owner shall pay Engineer for **amended** services set forth in Exhibit A, Task 3 (Special Services) on a time and materials basis not to exceed **\$1,023,000** as follows:
  - a. For labor on an hourly basis in accordance with the included Schedule of Charges. The hourly rate schedule will be adjusted each January 1<sup>st</sup> beginning January 1, 2023, to reflect cost of living adjustments, limited to a maximum increase of 5% per year.
  - b. Sub-consultants will be billed on the basis of cost times a factor of 1.1.
  - c. **Amended subtask budgets are itemized below to include tasks beyond the original authorized planning and preliminary design phases.** Engineer may alter the distribution of compensation between the identified Subtasks to be consistent with services actually rendered, but shall not exceed the amount of **\$1,023,000 (\$937,000 for Tasks 3.3, 3.4, 3.5, 3.6, 3.7 and 3.8)** for all Special Services provided under Task 3.

3.1	<i>Geotechnical Investigations:</i>	\$42,000.
3.2	<i>Discharge Permit Modification Applications:</i>	\$44,000.
3.3	<b>Coordination with Authorities Having Jurisdiction:</b>	<b>\$19,000.</b>
3.4	<b>Record Drawing Development:</b>	<b>\$47,000.</b>
3.5	<b>O&amp;M Manual / Plan of Operations Development:</b>	<b>\$27,000.</b>
3.6	<b>Resident Project Representation:</b>	<b>\$583,000.</b>
3.7	<b>Construction Materials Testing:</b>	<b>\$61,000.</b>
3.8	<b>Owner's Contingency:</b>	<b>\$200,000.</b>

EXHIBIT B

3. Owner shall pay Engineer for additional services set forth in Exhibit A (Basic Services), Task 4 (Final Design), Task 5 (Bidding Phase), Task 6 (Construction Phase), and Task 7 (Post-Construction Phase) at a Lump Sum Amount of \$1,041,000 based on the following distribution of compensation:

- Task 4 (Final Design): \$ 462,000.
- Task 5 (Bidding): \$ 51,000.
- Task 6 (Construction): \$ 397,000.
- Task 7 (Post-Construction): \$ 131,000.

- c. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated into the Lump Sum to account for labor, overhead, profit and direct expenses.
- d. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the monthly billing period to the Lump Sum.

EXHIBIT B

Enprotec / Hibbs & Todd, Inc.  
HOURLY CHARGES FOR PROFESSIONAL SERVICES (2022)

Charges include all salaries, salary expense, overhead, and profit.

Principal .....	\$ 230.00 per hour
Senior Project Manager .....	190.00 per hour
Project Manager .....	170.00 per hour
Senior Engineer / Geologist.....	150.00 per hour
Project Engineer / Geologist.....	135.00 per hour
Staff Engineer I / Geologist I.....	120.00 per hour
Staff Engineer II / Geologist II.....	105.00 per hour
RPLS I .....	155.00 per hour
Operations Specialist / Regulatory Compliance Specialist .....	150.00 per hour
Contract Operator (Certified Class A/B Operator .....	120.00 per hour
Contract Operator (Certified Class C/D Water Operator) .....	100.00 per hour
Engineering / Field Technician I.....	135.00 per hour
Engineering / Field Technician II.....	110.00 per hour
Engineering / Field Technician III.....	85.00 per hour
Survey Tech I.....	85.00 per hour
Survey Tech II.....	65.00 per hour
CAD I.....	130.00 per hour
CAD II.....	100.00 per hour
CAD III.....	65.00 per hour
Administrative.....	70.00 per hour
Survey Party .....	225.00 per hour - 3 man
.....	200.00 per hour - 2 man
.....	175.00 per hour - 1 man
<b>Expense Items</b>	
Consultants, Contractors & Supplies .....	Cost plus 10%
Travel (out of town only) .....	Current IRS rate per mile
Lodging and meals (out of town trips).....	Actual cost





Mr. B Fireworks - Fulshear

1093

**AGENDA MEMO  
BUSINESS OF THE CITY COUNCIL  
CITY OF FULSHEAR, TEXAS**

**AGENDA OF:** 2/21/2023

**ITEMS:** IV.D.

**DATE  
SUBMITTED:** 1/8/2023

**DEPARTMENT:** Public Works

**PREPARED BY:** Cliff Brouhard, City Engineer

**PRESENTER:** Cliff Brouhard, City Engineer

**SUBJECT:** CONSIDERATION AND POSSIBLE ACTION TO APPROVE A PROFESSIONAL SERVICES AGREEMENT 2023-014 FOR DESIGN SERVICES FOR THE FM 359 SANITARY SEWER (WW23A) AND WATER LINE (W23B) EXTENSIONS

**Expenditure Required:** \$117,300

**Amount Budgeted:** \$117,300

**Funding Account:** 501-000-5703-01 and 501-000-5803-00

**Additional Appropriation Required:**

**Funding Account:**

**EXECUTIVE SUMMARY**

To accommodate continued growth in the FM 359 area staff recommended extensions to the water and wastewater services along the FM 359 corridor. This project was included in the 2023 Capital Improvement Project list that was approved by Council as part of the 2023 budget. This project will consist of approximately 1600 feet of line extensions on the north side of FM 359 from existing water and wastewater crossing in the Del Webb area. This project will consist of full design.

Based on the extensive knowledge of utilities in the area City staff recommends LJA Engineering be authorized for engineering design services for the water and wastewater line extension projects along FM 359 (W23B and WW23A)

The professional service agreement and scope have been reviewed by Public Works/Engineering, Finance, and Legal. Staff recommend approval.

**RECOMMENDATION**

City Council approve Professional Service Agreement 2023-014 with LJA Engineering for the design of project W23B and WW23A in the amount of \$117,300.

**ATTACHMENTS:**

Description	Upload Date	Type
2023-014 Design Services PSA W23B; WW23A	2/16/2023	Cover Memo
Exhibit A Scope	2/15/2023	Exhibit
Exhibit B Rates	2/15/2023	Exhibit
W23B &WW23A Site	2/15/2023	Exhibit

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES**  
**2023-014**  
**DESIGN OF NORTHSIDE WATER AND WASTEWATER LINE EXTENSION**

THIS AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”) by and between the CITY OF FULSHEAR, TEXAS (the “City”), a Texas municipality, and LJA ENGINEERING, INC. (the “Professional Service Provider”). Collectively, the City and the Professional Service Provider may be referred to as the “Parties.”

WHEREAS, the City wishes to obtain **professional design services** relating to as described **in the attached and incorporated Exhibit A** (the “Project”), and the City wishes to retain the services of the Professional Service Provider in connection with that Project; and

WHEREAS, the Professional Service Provider is a company authorized to do business in Texas and is qualified to perform the professional design services the City wishes the Professional Service Provider to perform; and

WHEREAS, the Professional Service Provider desires to render such professional design services for the City upon the terms, covenants, and conditions provided herein.

NOW, THEREFORE, for and in consideration of the services, payments, and other valuable consideration contained herein, the Parties agree to the following terms, covenants, and conditions:

**SECTION 1. Performance by Professional Service Provider.** At the City’s sole discretion, the City shall be entitled to engage the Professional Service Provider to perform professional design services, in accordance with the terms and conditions of this Agreement, as those professional design services relate to the Project. The Professional Service Provider agrees to perform such Services in accordance with the terms, covenants, and conditions of this Agreement.

The Professional Service Provider is being retained to provide professional design services as described in this Agreement to the City based on the Professional Service Provider’s demonstrated competence and requisite qualifications to perform the scope of work described herein. The Professional Service Provider has special knowledge, education, and skills that is of interest to the City. The City agrees to and hereby does retain the Professional Service Provider as an independent contractor, and the Professional Service Provider agrees to provide Services to the City, in accordance with the terms, conditions, and covenants provided in this Agreement.

**SECTION 2. Contract Documents.** The Services to be provided by the Professional Service Provider to the City shall be to furnish all materials and perform all work described in the attached and incorporated hereto as **Exhibit A**.

**SECTION 3. Scope of Services.** The Professional Service Provider will provide the **design services** described in the attached **Exhibit A** (collectively, “Services”) which is hereby attached and incorporated hereto by reference and made a part of this Agreement, subject to the terms and conditions in this Agreement. A written scope of work and estimated cost for the project are

included in Exhibit A. In the event of a conflict between any term or provision in this Agreement and any term or provision in Exhibit A, the term or provision in this Agreement shall control unless the conflicting term or provision in this Agreement is referenced, and expressly stated not to apply, in such Exhibit A.

Any mutually agreed upon changes to the terms, conditions, covenants, and provisions to this Agreement shall be set forth in an amendment to this Agreement. The Professional Service Provider will not implement any changes or any new services until an amended agreement has been duly executed by the City. The City shall not be liable for any amounts not included in Exhibit A.

All Services rendered under this Agreement will be performed by the Professional Service Provider with the professional skill and care ordinarily provided by competent professionals practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent professional practicing under the same or similar circumstances.

**SECTION 4. Payment for Services.** The City agrees to pay the Professional Service Provider for Services provided in accordance with the following terms, covenants, and conditions:

- a. **Contract Sum.** The City shall compensate the Professional Service Provider for the performance of the Services per the professional design proposal in Exhibit A and in accordance with the Standard Rate Schedule contained in the attached and incorporated Exhibit B. The total fees paid under this Agreement shall not exceed **\$117,300.00**
- b. **Invoices.** The Professional Service Provider shall invoice the City monthly for Services rendered based on the percentage of Services completed as of the date of the invoice. The City will pay for those Services, in full, within thirty (30) days of receipt of a properly completed invoice by electronic payment or check. Invoices should be submitted to:

**City of Fulshear**  
*Attn: Accounting*  
P.O. Box 279  
Fulshear, Texas 77441  
Telephone: (281) 346-1796  
Email: [accounting@fulsheartexas.gov](mailto:accounting@fulsheartexas.gov)

If the City reasonably disputes any invoice, the City shall timely pay the undisputed portion and promptly notify the Professional Service Provider in writing of the nature of the dispute as to the remainder, and the parties will use their best efforts to resolve the dispute expeditiously.

- c. **Budget.** The Parties understand and acknowledge that the funding of this Agreement is contained in the City's annual budget and is subject to the approval of the City's governing body in each fiscal year. The Parties further agree that should the City's

governing body fail to approve a budget that includes sufficient funds for the continuation of this Agreement, or should the City's governing body fail to certify funds for any reason, then and upon occurrence of such event, this Agreement shall automatically terminate as to the City, and the City shall then have no further obligation to the Professional Service Provider. When the funds budgeted or certified during any fiscal year by the City to discharge its obligations under this Agreement are expended, the Professional Service Provider's sole and exclusive remedy shall be to terminate this Agreement.

- d. **Eligible Costs.** Costs incurred prior to the Effective Date of this Agreement are not eligible for reimbursement. There shall be no obligation whatsoever for performance of this Agreement from the monies of the City other than from the monies designated for this Agreement. The City will only pay for services rendered and shall not pre-pay for work that has not been performed.

#### **SECTION 5. Time of Completion; Term; Termination.**

- a. **Time of Completion.** The Professional Service Provider shall begin work and the work shall be completed as stipulated in the written Scope of Work that is attached as **Exhibit A**.
- b. **Term.** This Agreement will commence on the Effective Date of the notice to proceed and shall remain in effect until completion of the Services, unless earlier terminated as provided herein.
- c. **Termination.** The City may terminate this Agreement at any time, with or without cause, upon thirty (30) days' prior written notice. Upon its receipt of termination of this Agreement, the Professional Service Provider shall follow any instructions of the City respecting work stoppage. The Professional Service Provider shall cooperate with City and City designees to provide for an orderly conclusion of the Services. The Professional Service provider shall use its best efforts to minimize the amount of any non-cancelable obligations and shall assign any contracts related thereto to the City, or the City's designee, at the City's request. If the City elects to continue any activities underlying a terminated Agreement after termination, the Professional Service Provider shall cooperate with the City to provide for an order transfer of the Professional Service Provider's responsibilities with respect to such Agreement to the City of the City's designee. Upon the effective date of any such termination, the Professional Service Provider shall submit a final invoice for payment, and the City shall pay such amounts as are due to the Professional Service Provider through the effective date of termination. The City shall only be liable for payment of services rendered before the effective date of termination. If this Agreement is terminated, certain reporting requirements identified in this Agreement shall survive termination of this Agreement.

#### **SECTION 6. Representation of Professional Service Provider; Obligations of Professional Service Provider.**

**a. *Representation and Warranties of Professional Service Provider.*** Professional Service Provider represents and warrants that:

1. As of the Effective Date of this Agreement, the Professional Service Provider is not a party to any oral or written contract or understanding with any third-party that is inconsistent with this Agreement or would affect the Professional Service Provider's performance under this Agreement or that will in any way limit or conflict with the Professional Service Provider's ability to fulfill the terms of this Agreement. The Professional Service Provider further represents that it will not enter into any such agreement during the Term of this Agreement;
2. The Professional Service Provider will provide to the City, with each deliverable to be provided under this Agreement, a written summary sheet listing any third-party software or other intellectual property contained within the deliverable. The Professional Service Provider shall not be required to provide the City with such third-party software or intellectual property in connection with its use of the deliverable and the terms, conditions, and status of the license of such software and intellectual property. The Professional Service Provider represents that all work product created under this Agreement shall be original work of the Professional Service Provider or in the public domain and shall not infringe any copyright, trademark, trade secret, patent, or other intellectual property right of any third party;
3. The Professional Service Provider and its employees and subcontractors have all of the necessary qualifications, licenses, permits, and registrations to perform the Services in accordance with the terms and conditions of this Agreement, and at all times during the Term, all such qualifications, licenses, permits, and registrations shall be current and in good standing; and
4. The Professional Service Provider shall, and shall cause its representatives to, comply with all municipal, state, and federal laws, rules, and regulations applicable to the performance of the Professional Service Provider's obligations under this Agreement.

**b. *Level of Care and Skill.*** Services provided by the Professional Service Provider under this Agreement shall be conducted in a manner consistent with the professional skill and care ordinarily provided by competent professionals practicing under the same or similar circumstances and professional license(s), if any, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent professional practicing under the same or similar circumstances. No other representation expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, or document, prepared by the Professional Service Provider.

- c. **Work on City Premises.** Professional Service Provider will require that its employees and agents will, whenever on City premises, comply with all reasonable instructions and directions issued by the City.
- d. **Consultation, Reports.** The Professional Service Provider agrees to make available the Professional Service Provider's representative, who shall be mutually agreed upon by the Professional Service Provider and the City, for periodic meetings to review the progress of all work under this Agreement. The Professional Service Provider also shall prepare and submit to the City, when requested, a written report setting forth the status of such work in a format to be mutually agreed upon by the Professional Service Provider and the City, as well as copies of all documents relating to the Services performed by the Professional Service Provider.
- e. **No Israel Boycott.** The Professional Service Provider hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, termination of business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- f. **Foreign Terrorist Organizations.** The Professional Service Provider represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- g. **Immigration.** Professional Service Provider represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.
- h. **Undocumented Workers.** Professional Service Provider certifies that Professional Service Provider does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Professional Service Provider is convicted of a violation under 8 U.S.C. § 1324a(f), Professional Service Provider shall repay the amount of the public subsidy provided under this Agreement, plus interest, at the rate of the prime rate plus six percent (6%) per annum, not later than the 120th day after the date the City notifies Professional Service Provider of the violation.
- i. **Nondiscrimination Against Firearm and Ammunition Industries.** Professional Service Provider verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the Term of this Agreement against a firearm entity or firearm trade association, as those terms are defined by Chapter 2274, Government Code, as enacted by S.B. 19, 87th Legislature, Regular Session.

- j. ***Anti-Boycott of Energy Companies.*** Professional Service Provider verifies that it does not boycott energy companies and will not boycott energy companies, as those terms are defined by Chapter 2274, Government Code, as enacted by S.B. 13, 87th Legislature, Regular Session, during the Term of this Agreement.
- k. ***Prohibited Access to Critical Infrastructure.*** Service Provider verifies that it does not contract with certain foreign-owned companies in connection with critical infrastructure and will not contract with certain foreign-owned companies in connection with critical infrastructure, as those terms are defined Chapter 113, Subtitle C, Title 5 of the Business & Commerce Code, as enacted by S.B. 2116, 87th Legislature, Regular Session, during the Term of this Agreement.

**SECTION 7. Obligations of City.** The City agrees to make available to the Professional Service Provider, upon reasonable notice, such information data, and documentation regarding its facilities and infrastructure as may reasonable be required by the Professional Service Provider to complete the Services.

**SECTION 8. Termination of Agreement.**

- a. ***Termination.*** The City, upon giving thirty (30) days' written notice to the Professional Service Provider, may terminate this Agreement for any reason, without cause, or simply for convenience. The Professional Service Provider, upon giving thirty (30) days' written notice to the City, may terminate this Agreement for cause.

Termination of this Agreement shall release each party from all obligations of this Agreement, except as specified in Section 6(b) of this Agreement.

- b. ***Obligations of Professional Service Provider Upon Termination.*** Upon termination of this Agreement, the Professional Service Provider shall promptly return to the City all information, files, documentation, media, related material, and any other material that is owned by the City, as well as any work product in progress.
- c. ***Obligations of City Upon Termination.*** Upon termination of this Agreement, the City's sole obligation shall be the payment of any valid, outstanding invoices and any work that has not yet been invoiced but was performed prior to the effective date of termination. The Professional Service Provider agrees to render a final invoice to the City for Services performed by the Professional Service Provider prior to termination of this Agreement within thirty (30) days after completion of the Services performed.

**SECTION 9. Indemnification and Insurance.**

- a. ***Indemnification of City.*** To the extent allowed by law, Professional Service Provider INDEMNIFIES and HOLDS HARMLESS the City, its officers, agents, and employees against all costs and expenses, including, without limitation, attorneys' fees and costs of investigation and defense, as well as legal liability, whether from suit, judgment, settlement or otherwise arising out of any or all claims for injury to persons or property, including but



not limited to injuries resulting in death, arising from, or caused by, or incident to any wrongful or negligent act of the Professional Service Provider, the Professional Service Provider's agents, invitees, servants, and employees upon the property of the City, or arising or resulting from any intentional tort or intellectual property infringement for which the Professional Service Provider is responsible, or for any failure to pay a subcontractor or supplier relating to the performance of Services under this Agreement. Any language to the contrary notwithstanding, the covenants and agreements contained in this paragraph survive the termination of this Agreement for whatever cause.

- b. *Commercial General Liability Insurance.*** Professional Service Provider must maintain comprehensive commercial general liability insurance, covering the City and the Professional Service Provider for liability for property damage, bodily injury, personal injury, and death. The insurance provided under this section must be in the amount of not less than \$1,000,000 per occurrence for property damage and not less than \$1,000,000 per occurrence for bodily injury, personal injury, or death. This insurance must protect against liability to any employees or servants of the Professional Service Provider and to any other person or persons whose property damage, personal injury, bodily injury, or death arises out of or in connection with the performance of Services under this Agreement and must include (i) coverage for premises and operations, (ii) coverage for products liability, and (iii) contractual liability coverage insuring the obligations of the Professional Service Provider under the terms of this Agreement. Such policy must name the City (and any successor or assign designated by the City) as an additional insured.
- c. *Umbrella Liability.*** Professional Service Provider must maintain umbrella liability insurance, covering the City and the Professional Service Provider for liability for property damage, bodily injury, personal injury and death. The insurance provided under this section must be in the amount of not less than \$1,000,000 per occurrence for property damage, including loss of use thereof, and not less than \$1,000,000 per occurrence for bodily injury, personal injury, or death. This insurance must protect against liability to any employees or servants of the Professional Service Provider and to any other person or persons whose property damage, personal injury, bodily injury, or death arises out of or in connection with the performance of Services under this Agreement and must include (i) coverage for premises and operations, (ii) coverage for products liability, and (iii) contractual liability coverage insuring the obligations of the Professional Service Provider under the terms of this Agreement. Such policy must name the City (and any successor or assign designated by the City) as an additional insured.
- d. *Professional Liability.*** Professional Service Provider must maintain professional liability insurance. The insurance provided under this section must be in the amount of not less than \$1,000,000 per claim and must have an annual aggregate of not less than \$1,000,000.
- e. *Workers Compensation and Employer's Liability.*** Professional Service Provider must maintain workers compensation insurance to protect against claims under Texas Workers Compensation laws as well as all Federal acts applicable to Professional Service Provider's operations on City property. The limit of liability for such coverage must at least meet applicable statutory requirements. Additionally, each policy must contain an endorsement

waiving all rights against the City and the City's respective agents and employees. Professional Service Provider must maintain employer's liability insurance in the minimum amount of \$1,000,000 per occurrence for personal injury, bodily injury, or death to any employee of the Professional Service Provider who may bring a claim outside the scope of the Texas Worker's Compensation laws or Federal acts applicable to the Professional Service Provider's operation on City property. Each policy must contain an endorsement waiving all rights of subrogation against the City and the City's respective agents and employees.

- f. ***Waiver of Subrogation.*** The Parties agree to waive any and all rights of recovery, claims, actions, or causes of action against the other, its agents, officers, and employees for any injury, death, loss, or damage that may occur to persons or to City property, or any personal property of such party on City property, by reason of fire, windstorm, earthquake, flood, or any other risks, or any other cause which is insured under the insurance policy or policies that either party is required to provide or maintain under this Agreement, to the extent and only to the extent of any proceeds actually received by the City or the Professional Service Provider, respectively, with respect thereto, regardless of the cause or origin, including negligence of either party hereto, its agents, officers, or employees, and each party covenants that no insurer will hold any right of subrogation against the other. If such waiver is not obtained, the party failing to do so indemnifies the other party for any claim by an insurance carrier arising out of subrogation.
  
- g. ***Insurance Requirements.*** The phrases "Required Policy" and "Required Policies" mean each policy of insurance required to be maintained by the Professional Service Provider under the terms of this Agreement. Each Required Policy must be written by a company satisfactory to the City but, in all events, a company with an A.M. Best Company financial rating of not less than A:XII (or a similar rating by a comparable service selected by the City should A.M. Best Company cease providing such ratings) and be licensed to do business in Texas or, if the aforesaid is not available, by a company qualified to do business as a non-admitted insurer in Texas under current Texas surplus lines requirements. All Required Policies may contain a deductible of not more than \$25,000. Such policies must be endorsed so as to require thirty (30) days' prior written notice to the City in the event of cancellation. Required Policies must contain cross-liability clauses, when applicable and available. The Professional Service Provider must deliver to the City a certificate of insurance for any Required Policy no later than the Effective Date of this Agreement. The required evidence of coverage must always be deposited with the City. If the Professional Service Provider fails to do so, such failure may be treated by the City as a default by the Professional Service Provider, and the City, in addition to any other remedy under this Agreement, may purchase and maintain such Required Policy, and the Professional Service Provider must immediately reimburse the City for any premiums paid or costs incurred by the City in providing such insurance. Failure of the Professional Service Provider to reimburse the City is a default by the Professional Service Provider under this Agreement.
  
- h. ***Indemnity for Noncompliance with Insurance Requirements.*** Professional Service Provider INDEMNIFIES and HOLDS HARMLESS the City from any loss the Professional Service Provider may suffer due to the Professional Service Provider's failure

to comply with all the above insurance requirements, including the requirement for obtaining waivers of subrogation, and due to any insurance coverage being invalidated because of the Professional Service Provider's failure to comply with the terms, conditions, and warranties of any Required Policy.

- i. ***No Indemnification by the City.*** The Professional Service Provider and the City expressly acknowledge that the City's authority to indemnify and hold harmless any third party is governed by Article XI, Section 7 of the Texas Constitution, and any provision that purports to require indemnification by the City is invalid. Nothing in this Agreement requires that the City incur debt, assess or collect funds, or create a sinking fund.

**SECTION 10. Injunctive Relief.** It is hereby understood and agreed that damages shall be an inadequate remedy in the event of a breach by the Professional Service Provider of this Agreement and that any such breach by the Professional Service Provider will cause the City great and irreparable injury and damage. Accordingly, Professional Service Provider agrees that the City shall be entitled, without waiving any additional rights or remedies otherwise available to the City at law, in equity, or by statute, to injunctive and other equitable relief without proof of actual damages in the event of a breach or intended or threatened breach by the Professional Service Provider.

**SECTION 11. Assignment and Subcontracting.**

- a. ***Consent Required.*** Professional Service Provider must not assign or subcontract the whole or any part of this Agreement without the City's prior written consent.
- b. ***Subcontracting.*** Any subcontract made by the Professional Service Provider with the consent of the City must incorporate, by reference, all the terms of this Agreement. Professional Service Provider will enter into written contracts with each of its subcontractors requiring such subcontractors to obtain and maintain appropriate and reasonable insurance coverage and requiring such subcontractors to comply with the term of this Agreement, which shall flow down, as is reasonable, required, and appropriate.

**SECTION 12. Other Provisions.**

- a. ***Force Majeure.*** In the event either party is rendered unable, wholly or in part, by force majeure to carry-out any of its obligations under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided, but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or similar civil disturbances, acts of the public enemy, orders of any kind of the government of the

United States of America or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and other incapacities of any party, whether similar or those enumerated or otherwise, which are not within the reasonable anticipation or control of the party claiming such inability, which such Party should not have avoided by the exercise of due diligence and care. If delays resulting from such causes increase the cost or time required by the Professional Service Provider to perform the Professional design services under this Agreement, the Professional Service Provider shall be entitled to a reasonable adjustment in schedule and, if applicable and upon written agreement of the Parties, compensation.

- b. ***Status as Independent Contractor.*** The City and the Professional Service Provider are contractors independent of one another and neither party's employees will be considered the employees of the other party for any purpose. This Agreement does not create a joint venture or partnership, and neither party has the authority to bind the other to any third party.
- c. ***Applicable Law and Forum.*** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without regard to the conflicts of laws principles thereof. Any action or suit related to this Agreement must be brought in the state or Federal courts sitting in Fort Bend County, Texas.
- d. ***Public Information Act.*** Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). Effective January 1, 2020, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Service Provider agrees that this Agreement can be terminated if the Service Provider knowingly or intentionally fails to comply with a requirement of that subchapter. To the extent, if any, that any provision of this Agreement is in conflict with Texas Government Code, Chapter 552, as amended (the "Texas Public Information Act"), such provision shall be void and have no force or effect.

In accordance with Section 2252.907 of the Texas Government Code, the Service Provider is required to make any information created or exchanged with the City pursuant to this Agreement, regardless of contrary provisions contained herein, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the City.

- e. ***Notices.*** All notices, demands, or requests from one party to another must be in writing and must be (i) personally delivered, (ii) sent by mail, certified or registered, postage prepaid, (iii) sent by facsimile transmission, or (iv) sent by overnight delivery, in any case to the address stated in this Section, or to such other address as the party may request in writing, and are deemed to have been given at the time of receipt or delivery.

IF TO CITY:

**City of Fulshear**  
*Attn: Purchasing Coordinator*  
P.O. Box 279  
Fulshear, Texas 77441  
Email: [cleal@fulsheartexas.gov](mailto:cleal@fulsheartexas.gov)

IF TO SERVICE PROVIDER:

LJA Engineering, Inc.  
*Attn: Jason M. Kelly, PE*  
3600 W Sam Houston Pkwy S, Suite 600  
Houston, TX 77042  
Email: [jkelly@lja.com](mailto:jkelly@lja.com)

- f. ***Ownership of Documents.*** The final sealed documents prepared by the Professional Service Provider shall be provided to the City, for the City's use, in the form of a license permitting the City's use and shall not be otherwise limited, so long as the City's use is in accordance with applicable legal requirements.
- g. ***Successors and Assigns.*** The City and the Professional Service Provider each bind itself and its partners, successors, executors, administrators, and assigns to the other party of the Agreement and to partners, successors, executors, administrators, and assigns of such other party in respect to all terms, covenants, and conditions of this Agreement. Neither the City nor the Professional Service Provider shall assign, sublet, or transfer its interest in this Agreement without written consent of the other party. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than the City and the Professional Service Provider.
- h. ***Waiver.*** No waiver by the City of any breach by the Professional Service Provider of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other provisions hereof. No such waiver shall be effective unless in writing and then only to the extent set forth in writing.
- i. ***Entire Agreement.*** This instrument, including attached exhibits, contains the entire Agreement between the City and the Professional Service Provider, apart from any letter proposals or proposals describing the scope of services, method of compensation, and any special contractual provision that, mutually agreed upon by the Parties, shall become part of this Agreement.
- j. ***Modifications.*** No modification of this Agreement shall be effective unless in writing and signed by both parties.
- k. ***Severability.*** If any provision of this Agreement is invalid or unenforceable under any statute or rule of law, the provision is to that extent to be deemed omitted, and the remaining provisions shall not be affected in any way.

1. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which, taken together, will be deemed one and the same document. A photocopy of facsimile reproduction of an original signature of a party on this Agreement binds that party to the terms, covenants, and conditions of this Agreement.

**IN WITNESS WHEREOF**, and in acknowledgment that the Parties hereto have read and understood each and every provision hereof, the Parties have executed this Agreement on the date first set forth above.

**CITY:**

**CITY OF FULSHEAR, TEXAS**

By: \_\_\_\_\_  
**JACK HARPER, *City Manager***

**PROFESSIONAL SERVICE PROVIDER:**

**LJA ENGINEERING, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# EXHIBIT A



3600 W Sam Houston Pkwy S, Suite 600, Houston, Texas 77042  
t 713.953.5200 LJA.com TBPE F-1386 TBPLS 10110501

December 14, 2022

**PROPOSAL**

Mr. Cliff Brouhard, PE, PTOE  
City Engineer  
City of Fulshear  
6611 W Cross Creek Bend Lane  
Fulshear, Texas 77441

Re: Proposal for Engineering Services Related to the  
Extension of Water Distribution Line and Sanitary Sewer Collection Line  
East Side of FM 359 for Waters Commercial Tracts  
Fulshear, Texas  
LJA Proposal No.: 22-15956

Dear Mr. Brouhard:

LJA Engineering Inc. (LJA) is pleased to present this proposal for your review and approval for engineering services for the design and construction of the Extension of Water Distribution Line and Sanitary Collection Line on the east side of FM 359 for the Waters Commercial Tracts . The project consists of extending water and sanitary sewer service along the frontage of the tracts totaling approximately 1600 linear feet from the existing City facilities extended across FM 359 at the Polo Ranch Development. We propose the following scope of work and scope of services in accordance with the attached Professional Services Agreement between LJA Engineering, Inc. and the City of Fulshear.

## **SCOPE OF SERVICES**

### **A. Surveying**

1. Topographic Survey: LJA will prepare a topographic survey adjacent to FM 359 for the 25-foot easement corridor. Work will include cross sections at 100-foot intervals including existing roadside ditch, above ground encumbrances, culverts.

### **B. Geotechnical**

1. LJA's sub-consultant, Tolunay-Wong Engineers, Inc., will perform 3 borings to a depth of 20 feet each at locations to be determined during the initial site visit. This engineering report will include recommendations on constructability considerations, trench backfilling, open excavation requirements, OSHA soil classification and trench excavation guidelines, bedding and backfill placement and compaction, dewatering requirements, suitability of excavated soils for use as fill and construction phase quality assurance/control.

**C. Engineering – Basic Design Services**

1. LJA will prepare detailed plans, technical specifications, and contract drawings for the project. LJA will submit 60%, 90% and 100% plans to the City.
2. Prepare detailed estimates of probable construction cost. Any opinion of construction costs prepared by LJA is supplied for the general guidance of the Client only. Since LJA has no control over competitive bidding or market conditions, LJA cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to Client.
3. Furnish to the Client all necessary copies of plans, specifications, notices to bidders, and proposal forms.
4. Use best efforts to assist the Client to obtain necessary approvals from the appropriate city, county, state, and federal agencies having jurisdiction over the project. In the event the plans and specifications are not approved by any agency because they do not conform to the agency's criteria which was in effect at the time the design started, LJA shall redesign the plans and specifications to conform to such criteria at no cost to the Client.

**D. Bid Phase Services**

1. Provide a bid proposal and technical specifications for the Contract Documents during the Bidding Phase.
2. Coordination with contractor and City during the bidding phase to answer questions that pertain to the contract documents.

**E. Meetings**

1. Attend up to four (4) coordination meetings with City Staff and other government agencies regarding the review and approval of the construction plans.

**F. Construction Phase Services**

1. Construction Phase Services will include attendance at the pre-construction meeting, pay estimate review, construction schedule review, coordination with contractor, owner and governmental agencies.
2. LJA will review samples, catalog data schedules, shop drawings, and Requests for Information (RFIs). This review does not relieve contractors of any responsibilities such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect workers and the public, or the necessity of constructing a complete and workable facility in accordance with the construction contract documents. LJA shall serve as Client's professional representative for the Services and may make recommendations to Client concerning actions relating to Client's contractors, but LJA specifically disclaims any authority to direct or supervise the means, methods, techniques, safety activities, personnel, compliance, sequences, or procedures of construction selected by Client's contractors.



**G. Engineering - Project Representation Services**

1. On-Site Resident Project Representation will include periodic site visits (typically 10-15 hours a week) to review the progress of contractor work. This is based on a calendar contract of 8 weeks. These visits will be performed on an as needed basis during certain phases of construction. The Resident Project Representative will make his best effort to be on-site during critical phases of work. It is agreed that LJA does not underwrite, guarantee, or ensure the work done by the contractor(s). Since it is the contractor's responsibility to perform the work in accordance with the Contract Documents, LJA is not responsible or liable for the contractor's failure to do so. Failure by any Resident Project Representative or other personnel engaged in on the site observation to discover defects or deficiencies in the work of the contractor(s) shall never relieve the contractor(s) for liability or subject LJA to any liability for any such defect or deficiencies.
2. Should the contractor exceed contract time, because of delays caused by the Client, contractor, or regulatory agencies, LJA shall bill the Client for the additional time spent on the job based on time and materials.

**H. Construction Materials Testing**

1. LJA's sub-consultant, Tolunay-Wong Engineers, Inc., will provide construction materials testing services for quality assurance of the proposed construction. The scope of services will include observation of proof-roll and subgrade, field density/moisture testing of backfill and fill, compressive strength tests, concrete monitoring and testing and related laboratory testing and sample pick-up services. This service will be provided on a time and materials basis and an estimated fee for the work is provided.

**COMPENSATION**

The compensation for the previously defined scope of work is based on the following fees:

**ENGINEERING SERVICES**

<b>Phase</b>	<b>Description</b>	<b>Fees</b>
201	Topography Survey (Time and Materials)	\$ 6,500
401	Basic Design Services	\$ 60,000
403	Bid Phase Services (Lump Sum)	\$ 6,000
404	Construction Phase Services (Lump Sum)	\$ 12,000
409	Project Representation Services (Time and Materials)	\$ 9,500
427	Meetings (Time and Materials)	\$ 2,500
428	Geotechnical Services	\$ 9,300
429	Construction Materials Testing (Time and Materials)	\$ 6,500
<b>ENGINEERING SERVICES SUBTOTAL</b>		<b>\$112,300</b>
<b>REIMBURSABLE EXPENSES (TIME &amp; MATERIALS – ESTIMATED)</b>		<b>\$ 5,000</b>
<b>GRAND TOTAL</b>		<b>\$117,300</b>

Mr. Cliff Brouhard  
December 14, 2022  
Page 4

Reimbursable expenses include, but are not limited to advertising, reproduction, deliveries, travel/mileage, GPS equipment, printing, plan review and permit fees, filing fees, recording fees, and long-distance phone charges. An estimated budget is shown above. There is no separate pay for reimbursable costs for environmental, geotechnical, subsurface utility engineering, appraisal, and surveying services.

**TERMS OF PAYMENT**

Payment for the above-mentioned services will be made monthly in accordance with the agreement between LJA Engineering, Inc. and City of League City. We will be able to start work on the project upon your written authorization. If this proposal is acceptable to you, please sign this proposal and return a copy to us.

Should you have any questions or need any additional information concerning this proposal, please feel free to give me a call at 713.358.8817.

Sincerely,

Jason M. Kelly, PE  
Senior Vice President

JMK/pn

**ACCEPTED BY:  
CITY OF FULSHEAR**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

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



## STANDARD RATE SCHEDULE

### Staff, Non-Principal Personnel Charges

Services performed by staff shall be billed on the basis of "labor cost" of each employee times a multiplier of 2.35.

Labor cost is defined as the Labor Cost paid to the Engineer's personnel plus payroll burden, currently 47% for social security contributions, federal and state unemployment taxes, retirement benefits, medical and insurance benefits, sick leave, vacation, and holiday pay applicable thereto.

Upon request of the Client, Engineer shall provide evidence of the then-current salaries paid to the Engineer's personnel for the purpose of verifying the accuracy of any invoices presented for payment by the Engineer to the Client.

Labor Cost Range:

	<u>Lowest</u>	<u>Highest</u>
Department Head (VP, Dept. Manager, Sr. PM)	\$50.00	\$120.00
Project Manager	\$40.00	\$90.00
Engineer (Grad. Eng., EIT, APM, Proj. Coord.)	\$30.00	\$80.00
Sr. Planner	\$45.00	\$90.00
Planner	\$25.00	\$70.00
Sr. Landscape Architect	\$35.00	\$70.00
Landscape Architect	\$25.00	\$60.00
Designer	\$20.00	\$65.00
Resident Project Representative	\$25.00	\$55.00
GIS Developer	\$30.00	\$70.00
GIS Analyst	\$20.00	\$45.00
Survey Technician	\$24.00	\$60.00
Project Surveyor	\$33.00	\$70.00
CADD Operator (CADD Technician)	\$15.00	\$55.00
Clerical (Construction Admin. Assistant)	\$15.00	\$50.00

### CADD System

CADD system will be billed at a rate of \$25.00/hour plus operator time.

### Principals

Principals will be billed at a rate of \$250.00/hour.

### Senior Consultants

Senior consultants will be billed at a rate of \$300.00/hour.

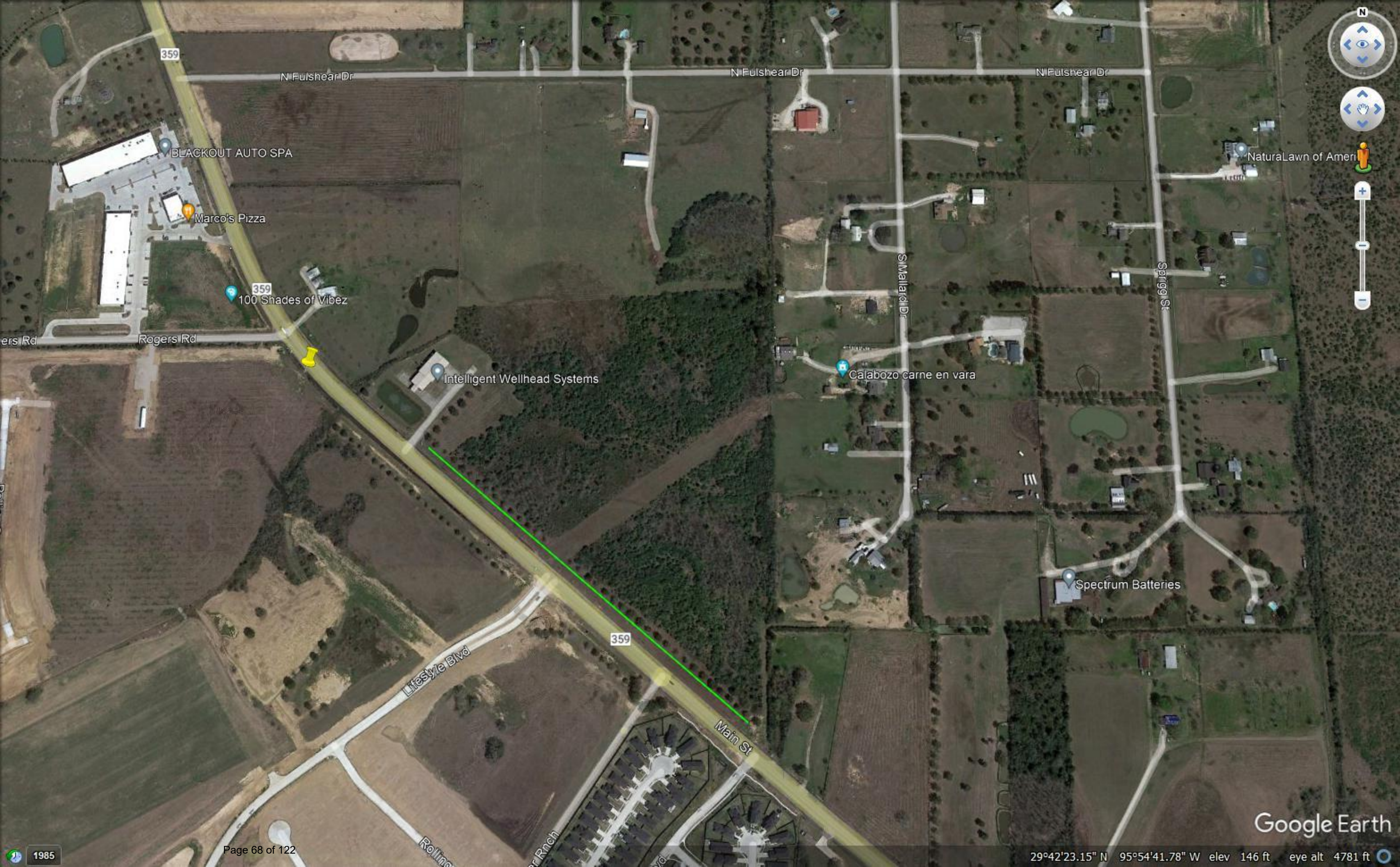
### Expert Witness

Expert witness and certificate (merit or lender) duties will be billed at a rate of \$500.00/hour.

### Surveying Services

Field party rate includes personnel/supervision, normal equipment and supplies. Client requested overtime shall be 1.5 times standard rate.

One-Man Survey Crew	\$125.00/Hour
Two-Man Survey Crew	\$155.00/Hour
Three-Man Survey Crew	\$185.00/Hour
Four-Man Survey Crew	\$225.00/Hour



359

N Fulshear Dr

N Fulshear Dr

N Fulshear Dr

BLACKOUT AUTO SPA

Marco's Pizza

359  
100 Shades of Vibez

ers Rd

Rogers Rd

Intelligent Wellhead Systems

Calabozo carne en vara

S Mallard Dr

Spring St

NaturaLawn of Ameri

Lifestyle Blvd

359

Main St

Spectrum Batteries

Rolling

er Rmch

vd

Google Earth

**AGENDA MEMO  
BUSINESS OF THE CITY COUNCIL  
CITY OF FULSHEAR, TEXAS**

**AGENDA OF:** 2/21/2023 **ITEMS:** IVE.

**DATE SUBMITTED:** 1/8/2023 **DEPARTMENT:** Public Works

**PREPARED BY:** Cliff Brouhard, City Engineer **PRESENTER:** Cliff Brouhard, City Engineer

**SUBJECT:** CONSIDERATION AND POSSIBLE ACTION TO APPROVE A PROFESSIONAL SERVICES AGREEMENT 2023-015 FOR DESIGN SERVICES FOR THE DOWNTOWN FULSHEAR WASTEWATER TREATMENT PLANT EXPANSION (WW22A)

**Expenditure Required:** \$320,000.00

**Amount Budgeted:** \$320,000.00

**Funding Account:** 501-000-5802-00

**Additional Appropriation Required:**

**Funding Account:**

**EXECUTIVE SUMMARY**

As part of the Water / Wastewater Master Plan the expansion of the Downtown Fulshear Wastewater Treatment Plan to 1.1 MGD was proposed (WW22A). The City recently completed the expansion of the plant from 0.5 MGD to 0.7 MGD and are now proposing design services for the expansion of the plant to its final capacity of 1.1 MGD.

Clay and Leyendecker Engineering completed the previous expansion project and City Staff recommends Clay and Leyendecker Engineering for design services of the final expansion phase of the Downtown Fulshear Wastewater Treatment Plant to 1.1 MGD. This project will consist of full design services at \$261,000 and construction phase services estimated at \$59,000 for a total services agreement at \$320,000.

The professional service agreement and scope have been reviewed by Public Works/Engineering, Finance, and Legal. Staff recommends approval.

**RECOMMENDATION**

City Council approve Professional Services Agreement 2023-015 with Clay and Leyendecker Engineering for project WW22A in the amount of \$320,000

**ATTACHMENTS:**

Description	Upload Date	Type
2023-015 Design Services WW22A	2/16/2023	Exhibit
Exhibit A Scope	2/15/2023	Exhibit
WW21B Downtown Site	2/15/2023	Backup Material

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES**  
**2023-015**  
**2023-015 DESIGN OF EXPANSION OF THE DOWNTOWN WASTEWATER TREATMENT PLANT**  
**WW22A**

THIS AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”) by and between the CITY OF FULSHEAR, TEXAS (the “City”), a Texas municipality, and CLAY & LEYENDECKER, INC. (the “Professional Service Provider”). Collectively, the City and the Professional Service Provider may be referred to as the “Parties.”

WHEREAS, the City wishes to obtain **professional design services** relating to as described DESIGN SERVICES EXPANSION OF THE DOWNTOWN WASTEWATER TREATMENT PLANT WW22A **in the attached and incorporated Exhibit A** (the “Project”), and the City wishes to retain the services of the Professional Service Provider in connection with that Project; and

WHEREAS, the Professional Service Provider is a company authorized to do business in Texas and is qualified to perform the professional design services the City wishes the Professional Service Provider to perform; and

WHEREAS, the Professional Service Provider desires to render such professional design services for the City upon the terms, covenants, and conditions provided herein.

NOW, THEREFORE, for and in consideration of the services, payments, and other valuable consideration contained herein, the Parties agree to the following terms, covenants, and conditions:

**SECTION 1. Performance by Professional Service Provider.** At the City’s sole discretion, the City shall be entitled to engage the Professional Service Provider to perform professional design services, in accordance with the terms and conditions of this Agreement, as those professional design services relate to the Project. The Professional Service Provider agrees to perform such Services in accordance with the terms, covenants, and conditions of this Agreement.

The Professional Service Provider is being retained to provide professional design services as described in this Agreement to the City based on the Professional Service Provider’s demonstrated competence and requisite qualifications to perform the scope of work described herein. The Professional Service Provider has special knowledge, education, and skills that is of interest to the City. The City agrees to and hereby does retain the Professional Service Provider as an independent contractor, and the Professional Service Provider agrees to provide Services to the City, in accordance with the terms, conditions, and covenants provided in this Agreement.

**SECTION 2. Contract Documents.** The Services to be provided by the Professional Service Provider to the City shall be to furnish all materials and perform all work described in the attached and incorporated hereto as Exhibit A.

**SECTION 3. Scope of Services.** The Professional Service Provider will provide the **design services** described in the attached Exhibit A (collectively, “Services”) which is hereby attached

and incorporated hereto by reference and made a part of this Agreement, subject to the terms and conditions in this Agreement. A written scope of work and estimated cost for the project are included in Exhibit A. In the event of a conflict between any term or provision in this Agreement and any term or provision in Exhibit A, the term or provision in this Agreement shall control unless the conflicting term or provision in this Agreement is referenced, and expressly stated not to apply, in such Exhibit A.

Any mutually agreed upon changes to the terms, conditions, covenants, and provisions to this Agreement shall be set forth in an amendment to this Agreement. The Professional Service Provider will not implement any changes or any new services until an amended agreement has been duly executed by the City. The City shall not be liable for any amounts not included in Exhibit A.

All Services rendered under this Agreement will be performed by the Professional Service Provider with the professional skill and care ordinarily provided by competent professionals practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent professional practicing under the same or similar circumstances.

**SECTION 4. Payment for Services.** The City agrees to pay the Professional Service Provider for Services provided in accordance with the following terms, covenants, and conditions:

- a. **Contract Sum.** The City shall compensate the Professional Service Provider for the performance of the Services per the professional design proposal in Exhibit A and in accordance with the Standard Rate Schedule contained in the attached and incorporated Exhibit A. The total fees paid under this Agreement shall not exceed **\$320,000.00**
- b. **Invoices.** The Professional Service Provider shall invoice the City monthly for Services rendered based on the percentage of Services completed as of the date of the invoice. The City will pay for those Services, in full, within thirty (30) days of receipt of a properly completed invoice by electronic payment or check. Invoices should be submitted to:

**City of Fulshear**  
*Attn: Accounting*  
P.O. Box 279  
Fulshear, Texas 77441  
Telephone: (281) 346-1796  
Email: [accounting@fulsheartexas.gov](mailto:accounting@fulsheartexas.gov)

If the City reasonably disputes any invoice, the City shall timely pay the undisputed portion and promptly notify the Professional Service Provider in writing of the nature of the dispute as to the remainder, and the parties will use their best efforts to resolve the dispute expeditiously.

- c. **Budget.** The Parties understand and acknowledge that the funding of this Agreement is contained in the City's annual budget and is subject to the approval of the City's governing body in each fiscal year. The Parties further agree that should the City's governing body fail to approve a budget that includes sufficient funds for the continuation of this Agreement, or should the City's governing body fail to certify funds for any reason, then and upon occurrence of such event, this Agreement shall automatically terminate as to the City, and the City shall then have no further obligation to the Professional Service Provider. When the funds budgeted or certified during any fiscal year by the City to discharge its obligations under this Agreement are expended, the Professional Service Provider's sole and exclusive remedy shall be to terminate this Agreement.
- d. **Eligible Costs.** Costs incurred prior to the Effective Date of this Agreement are not eligible for reimbursement. There shall be no obligation whatsoever for performance of this Agreement from the monies of the City other than from the monies designated for this Agreement. The City will only pay for services rendered and shall not pre-pay for work that has not been performed.

#### **SECTION 5. Time of Completion; Term; Termination.**

- a. **Time of Completion.** The Professional Service Provider shall begin work and the work shall be completed as stipulated in the written Scope of Work that is attached as **Exhibit A**.
- b. **Term.** This Agreement will commence on the Effective Date of the notice to proceed and shall remain in effect until completion of the Services, unless earlier terminated as provided herein.
- c. **Termination.** The City may terminate this Agreement at any time, with or without cause, upon thirty (30) days' prior written notice. Upon its receipt of termination of this Agreement, the Professional Service Provider shall follow any instructions of the City respecting work stoppage. The Professional Service Provider shall cooperate with City and City designees to provide for an orderly conclusion of the Services. The Professional Service provider shall use its best efforts to minimize the amount of any non-cancelable obligations and shall assign any contracts related thereto to the City, or the City's designee, at the City's request. If the City elects to continue any activities underlying a terminated Agreement after termination, the Professional Service Provider shall cooperate with the City to provide for an order transfer of the Professional Service Provider's responsibilities with respect to such Agreement to the City of the City's designee. Upon the effective date of any such termination, the Professional Service Provider shall submit a final invoice for payment, and the City shall pay such amounts as are due to the Professional Service Provider through the effective date of termination. The City shall only be liable for payment of services rendered before the effective date of termination. If this Agreement is terminated, certain reporting requirements identified in this Agreement shall survive termination of this Agreement.



**SECTION 6. Representation of Professional Service Provider; Obligations of Professional Service Provider.**

a. ***Representation and Warranties of Professional Service Provider.*** Professional Service Provider represents and warrants that:

1. As of the Effective Date of this Agreement, the Professional Service Provider is not a party to any oral or written contract or understanding with any third-party that is inconsistent with this Agreement or would affect the Professional Service Provider's performance under this Agreement or that will in any way limit or conflict with the Professional Service Provider's ability to fulfill the terms of this Agreement. The Professional Service Provider further represents that it will not enter into any such agreement during the Term of this Agreement;
2. The Professional Service Provider will provide to the City, with each deliverable to be provided under this Agreement, a written summary sheet listing any third-party software or other intellectual property contained within the deliverable. The Professional Service Provider shall not be required to provide the City with such third-party software or intellectual property in connection with its use of the deliverable and the terms, conditions, and status of the license of such software and intellectual property. The Professional Service Provider represents that all work product created under this Agreement shall be original work of the Professional Service Provider or in the public domain and shall not infringe any copyright, trademark, trade secret, patent, or other intellectual property right of any third party;
3. The Professional Service Provider and its employees and subcontractors have all of the necessary qualifications, licenses, permits, and registrations to perform the Services in accordance with the terms and conditions of this Agreement, and at all times during the Term, all such qualifications, licenses, permits, and registrations shall be current and in good standing; and
4. The Professional Service Provider shall, and shall cause its representatives to, comply with all municipal, state, and federal laws, rules, and regulations applicable to the performance of the Professional Service Provider's obligations under this Agreement.

b. ***Level of Care and Skill.*** Services provided by the Professional Service Provider under this Agreement shall be conducted in a manner consistent with the professional skill and care ordinarily provided by competent professionals practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent professional practicing under the same or similar circumstances. No other representation expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, or document, prepared by the Professional Service Provider.

- c. **Work on City Premises.** Professional Service Provider will require that its employees and agents will, whenever on City premises, comply with all reasonable instructions and directions issued by the City.
- d. **Consultation, Reports.** The Professional Service Provider agrees to make available the Professional Service Provider's representative, who shall be mutually agreed upon by the Professional Service Provider and the City, for periodic meetings to review the progress of all work under this Agreement. The Professional Service Provider also shall prepare and submit to the City, when requested, a written report setting forth the status of such work in a format to be mutually agreed upon by the Professional Service Provider and the City, as well as copies of all documents relating to the Services performed by the Professional Service Provider.
- e. **No Israel Boycott.** The Professional Service Provider hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, termination of business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- f. **Foreign Terrorist Organizations.** The Professional Service Provider represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- g. **Immigration.** Professional Service Provider represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.
- h. **Undocumented Workers.** Professional Service Provider certifies that Professional Service Provider does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Professional Service Provider is convicted of a violation under 8 U.S.C. § 1324a(f), Professional Service Provider shall repay the amount of the public subsidy provided under this Agreement, plus interest, at the rate of the prime rate plus six percent (6%) per annum, not later than the 120th day after the date the City notifies Professional Service Provider of the violation.
- i. **Nondiscrimination Against Firearm and Ammunition Industries.** Professional Service Provider verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the Term of this Agreement against a firearm entity or firearm trade association, as those terms are defined by Chapter 2274, Government Code, as enacted by S.B. 19, 87th Legislature, Regular Session.

- j. ***Anti-Boycott of Energy Companies.*** Professional Service Provider verifies that it does not boycott energy companies and will not boycott energy companies, as those terms are defined by Chapter 2274, Government Code, as enacted by S.B. 13, 87th Legislature, Regular Session, during the Term of this Agreement.
- k. ***Prohibited Access to Critical Infrastructure.*** Service Provider verifies that it does not contract with certain foreign-owned companies in connection with critical infrastructure and will not contract with certain foreign-owned companies in connection with critical infrastructure, as those terms are defined Chapter 113, Subtitle C, Title 5 of the Business & Commerce Code, as enacted by S.B. 2116, 87th Legislature, Regular Session, during the Term of this Agreement.

**SECTION 7. Obligations of City.** The City agrees to make available to the Professional Service Provider, upon reasonable notice, such information data, and documentation regarding its facilities and infrastructure as may reasonable be required by the Professional Service Provider to complete the Services.

**SECTION 8. Termination of Agreement.**

- a. ***Termination.*** The City, upon giving thirty (30) days' written notice to the Professional Service Provider, may terminate this Agreement for any reason, without cause, or simply for convenience. The Professional Service Provider, upon giving thirty (30) days' written notice to the City, may terminate this Agreement for cause.

Termination of this Agreement shall release each party from all obligations of this Agreement, except as specified in Section 6(b) of this Agreement.

- b. ***Obligations of Professional Service Provider Upon Termination.*** Upon termination of this Agreement, the Professional Service Provider shall promptly return to the City all information, files, documentation, media, related material, and any other material that is owned by the City, as well as any work product in progress.
- c. ***Obligations of City Upon Termination.*** Upon termination of this Agreement, the City's sole obligation shall be the payment of any valid, outstanding invoices and any work that has not yet been invoiced but was performed prior to the effective date of termination. The Professional Service Provider agrees to render a final invoice to the City for Services performed by the Professional Service Provider prior to termination of this Agreement within thirty (30) days after completion of the Services performed.

**SECTION 9. Indemnification and Insurance.**

- a. ***Indemnification of City.*** To the extent allowed by law, Professional Service Provider INDEMNIFIES and HOLDS HARMLESS the City, its officers, agents, and employees against all costs and expenses, including, without limitation, attorneys' fees and costs of investigation and defense, as well as legal liability, whether from suit, judgment, settlement or otherwise arising out of any or all claims for injury to persons or property, including but

not limited to injuries resulting in death, arising from, or caused by, or incident to any wrongful or negligent act of the Professional Service Provider, the Professional Service Provider's agents, invitees, servants, and employees upon the property of the City, or arising or resulting from any intentional tort or intellectual property infringement for which the Professional Service Provider is responsible, or for any failure to pay a subcontractor or supplier relating to the performance of Services under this Agreement. Any language to the contrary notwithstanding, the covenants and agreements contained in this paragraph survive the termination of this Agreement for whatever cause.

- b. *Commercial General Liability Insurance.*** Professional Service Provider must maintain comprehensive commercial general liability insurance, covering the City and the Professional Service Provider for liability for property damage, bodily injury, personal injury, and death. The insurance provided under this section must be in the amount of not less than \$1,000,000 per occurrence for property damage and not less than \$1,000,000 per occurrence for bodily injury, personal injury, or death. This insurance must protect against liability to any employees or servants of the Professional Service Provider and to any other person or persons whose property damage, personal injury, bodily injury, or death arises out of or in connection with the performance of Services under this Agreement and must include (i) coverage for premises and operations, (ii) coverage for products liability, and (iii) contractual liability coverage insuring the obligations of the Professional Service Provider under the terms of this Agreement. Such policy must name the City (and any successor or assign designated by the City) as an additional insured.
- c. *Umbrella Liability.*** Professional Service Provider must maintain umbrella liability insurance, covering the City and the Professional Service Provider for liability for property damage, bodily injury, personal injury and death. The insurance provided under this section must be in the amount of not less than \$1,000,000 per occurrence for property damage, including loss of use thereof, and not less than \$1,000,000 per occurrence for bodily injury, personal injury, or death. This insurance must protect against liability to any employees or servants of the Professional Service Provider and to any other person or persons whose property damage, personal injury, bodily injury, or death arises out of or in connection with the performance of Services under this Agreement and must include (i) coverage for premises and operations, (ii) coverage for products liability, and (iii) contractual liability coverage insuring the obligations of the Professional Service Provider under the terms of this Agreement. Such policy must name the City (and any successor or assign designated by the City) as an additional insured.
- d. *Professional Liability.*** Professional Service Provider must maintain professional liability insurance. The insurance provided under this section must be in the amount of not less than \$1,000,000 per claim and must have an annual aggregate of not less than \$1,000,000.
- e. *Workers Compensation and Employer's Liability.*** Professional Service Provider must maintain workers compensation insurance to protect against claims under Texas Workers Compensation laws as well as all Federal acts applicable to Professional Service Provider's operations on City property. The limit of liability for such coverage must at least meet applicable statutory requirements. Additionally, each policy must contain an endorsement

waiving all rights against the City and the City's respective agents and employees. Professional Service Provider must maintain employer's liability insurance in the minimum amount of \$1,000,000 per occurrence for personal injury, bodily injury, or death to any employee of the Professional Service Provider who may bring a claim outside the scope of the Texas Worker's Compensation laws or Federal acts applicable to the Professional Service Provider's operation on City property. Each policy must contain an endorsement waiving all rights of subrogation against the City and the City's respective agents and employees.

- f. ***Waiver of Subrogation.*** The Parties agree to waive any and all rights of recovery, claims, actions, or causes of action against the other, its agents, officers, and employees for any injury, death, loss, or damage that may occur to persons or to City property, or any personal property of such party on City property, by reason of fire, windstorm, earthquake, flood, or any other risks, or any other cause which is insured under the insurance policy or policies that either party is required to provide or maintain under this Agreement, to the extent and only to the extent of any proceeds actually received by the City or the Professional Service Provider, respectively, with respect thereto, regardless of the cause or origin, including negligence of either party hereto, its agents, officers, or employees, and each party covenants that no insurer will hold any right of subrogation against the other. If such waiver is not obtained, the party failing to do so indemnifies the other party for any claim by an insurance carrier arising out of subrogation.
  
- g. ***Insurance Requirements.*** The phrases "Required Policy" and "Required Policies" mean each policy of insurance required to be maintained by the Professional Service Provider under the terms of this Agreement. Each Required Policy must be written by a company satisfactory to the City but, in all events, a company with an A.M. Best Company financial rating of not less than A:XII (or a similar rating by a comparable service selected by the City should A.M. Best Company cease providing such ratings) and be licensed to do business in Texas or, if the aforesaid is not available, by a company qualified to do business as a non-admitted insurer in Texas under current Texas surplus lines requirements. All Required Policies may contain a deductible of not more than \$25,000. Such policies must be endorsed so as to require thirty (30) days' prior written notice to the City in the event of cancellation. Required Policies must contain cross-liability clauses, when applicable and available. The Professional Service Provider must deliver to the City a certificate of insurance for any Required Policy no later than the Effective Date of this Agreement. The required evidence of coverage must always be deposited with the City. If the Professional Service Provider fails to do so, such failure may be treated by the City as a default by the Professional Service Provider, and the City, in addition to any other remedy under this Agreement, may purchase and maintain such Required Policy, and the Professional Service Provider must immediately reimburse the City for any premiums paid or costs incurred by the City in providing such insurance. Failure of the Professional Service Provider to reimburse the City is a default by the Professional Service Provider under this Agreement.
  
- h. ***Indemnity for Noncompliance with Insurance Requirements.*** Professional Service Provider INDEMNIFIES and HOLDS HARMLESS the City from any loss the Professional Service Provider may suffer due to the Professional Service Provider's failure

to comply with all the above insurance requirements, including the requirement for obtaining waivers of subrogation, and due to any insurance coverage being invalidated because of the Professional Service Provider's failure to comply with the terms, conditions, and warranties of any Required Policy.

- i. ***No Indemnification by the City.*** The Professional Service Provider and the City expressly acknowledge that the City's authority to indemnify and hold harmless any third party is governed by Article XI, Section 7 of the Texas Constitution, and any provision that purports to require indemnification by the City is invalid. Nothing in this Agreement requires that the City incur debt, assess or collect funds, or create a sinking fund.

**SECTION 10. Injunctive Relief.** It is hereby understood and agreed that damages shall be an inadequate remedy in the event of a breach by the Professional Service Provider of this Agreement and that any such breach by the Professional Service Provider will cause the City great and irreparable injury and damage. Accordingly, Professional Service Provider agrees that the City shall be entitled, without waiving any additional rights or remedies otherwise available to the City at law, in equity, or by statute, to injunctive and other equitable relief without proof of actual damages in the event of a breach or intended or threatened breach by the Professional Service Provider.

**SECTION 11. Assignment and Subcontracting.**

- a. ***Consent Required.*** Professional Service Provider must not assign or subcontract the whole or any part of this Agreement without the City's prior written consent.
- b. ***Subcontracting.*** Any subcontract made by the Professional Service Provider with the consent of the City must incorporate, by reference, all the terms of this Agreement. Professional Service Provider will enter into written contracts with each of its subcontractors requiring such subcontractors to obtain and maintain appropriate and reasonable insurance coverage and requiring such subcontractors to comply with the term of this Agreement, which shall flow down, as is reasonable, required, and appropriate.

**SECTION 12. Other Provisions.**

- a. ***Force Majeure.*** In the event either party is rendered unable, wholly or in part, by force majeure to carry-out any of its obligations under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided, but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or similar civil disturbances, acts of the public enemy, orders of any kind of the government of the

United States of America or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and other inability of any party, whether similar or those enumerated or otherwise, which are not within the reasonable anticipation or control of the party claiming such inability, which such Party should not have avoided by the exercise of due diligence and care. If delays resulting from such causes increase the cost or time required by the Professional Service Provider to perform the Professional design services under this Agreement, the Professional Service Provider shall be entitled to a reasonable adjustment in schedule and, if applicable and upon written agreement of the Parties, compensation.

- b. ***Status as Independent Contractor.*** The City and the Professional Service Provider are contractors independent of one another and neither party's employees will be considered the employees of the other party for any purpose. This Agreement does not create a joint venture or partnership, and neither party has the authority to bind the other to any third party.
- c. ***Applicable Law and Forum.*** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without regard to the conflicts of laws principles thereof. Any action or suit related to this Agreement must be brought in the state or Federal courts sitting in Fort Bend County, Texas.
- d. ***Public Information Act.*** Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). Effective January 1, 2020, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Service Provider agrees that this Agreement can be terminated if the Service Provider knowingly or intentionally fails to comply with a requirement of that subchapter. To the extent, if any, that any provision of this Agreement is in conflict with Texas Government Code, Chapter 552, as amended (the "Texas Public Information Act"), such provision shall be void and have no force or effect.

In accordance with Section 2252.907 of the Texas Government Code, the Service Provider is required to make any information created or exchanged with the City pursuant to this Agreement, regardless of contrary provisions contained herein, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the City.

- e. ***Notices.*** All notices, demands, or requests from one party to another must be in writing and must be (i) personally delivered, (ii) sent by mail, certified or registered, postage prepaid, (iii) sent by facsimile transmission, or (iv) sent by overnight delivery, in any case to the address stated in this Section, or to such other address as the party may request in writing, and are deemed to have been given at the time of receipt or delivery.

IF TO CITY:

**City of Fulshear**  
*Attn: Purchasing Coordinator*  
P.O. Box 279  
Fulshear, Texas 77441  
Email: [cleal@fulsheartexas.gov](mailto:cleal@fulsheartexas.gov)

IF TO SERVICE PROVIDER:

CLAY & LEYENDECKER, INC.  
*Attn: Herman M Clay, Jr., PE*  
1350 Avenue D  
Katy, TX 77493  
Email: [candl12@aol.com](mailto:candl12@aol.com)

- f. **Ownership of Documents.** The final sealed documents prepared by the Professional Service Provider shall be provided to the City, for the City's use, in the form of a license permitting the City's use and shall not be otherwise limited, so long as the City's use is in accordance with applicable legal requirements.
- g. **Successors and Assigns.** The City and the Professional Service Provider each bind itself and its partners, successors, executors, administrators, and assigns to the other party of the Agreement and to partners, successors, executors, administrators, and assigns of such other party in respect to all terms, covenants, and conditions of this Agreement. Neither the City nor the Professional Service Provider shall assign, sublet, or transfer its interest in this Agreement without written consent of the other party. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than the City and the Professional Service Provider.
- h. **Waiver.** No waiver by the City of any breach by the Professional Service Provider of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other provisions hereof. No such waiver shall be effective unless in writing and then only to the extent set forth in writing.
- i. **Entire Agreement.** This instrument, including attached exhibits, contains the entire Agreement between the City and the Professional Service Provider, apart from any letter proposals or proposals describing the scope of services, method of compensation, and any special contractual provision that, mutually agreed upon by the Parties, shall become part of this Agreement.
- j. **Modifications.** No modification of this Agreement shall be effective unless in writing and signed by both parties.
- k. **Severability.** If any provision of this Agreement is invalid or unenforceable under any statute or rule of law, the provision is to that extent to be deemed omitted, and the remaining provisions shall not be affected in any way.



1. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which, taken together, will be deemed one and the same document. A photocopy of facsimile reproduction of an original signature of a party on this Agreement binds that party to the terms, covenants, and conditions of this Agreement.

**IN WITNESS WHEREOF**, and in acknowledgment that the Parties hereto have read and understood each and every provision hereof, the Parties have executed this Agreement on the date first set forth above.

**CITY:**

**CITY OF FULSHEAR, TEXAS**

By: \_\_\_\_\_  
**JACK HARPER, *City Manager***

**PROFESSIONAL SERVICE PROVIDER:**

**CLAY & LEYENDECKER, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SCOPE OF ENGINEERING  
SERVICES AND COMPENSATION

WASTEWATER TREATMENT PLANT NO. 1 (DOWNTOWN)  
EXPANSION TO 1.10 MGD CAPACITY  
PROPOSAL FOR ENGINEERING SERVICES

Clay & Leyendecker Inc. will perform design phase, bidding phase, and construction phase engineering services in accordance with this "Scope of Engineering Services and Compensation".

1. Construction Scope. We anticipate that the construction work will be divided into two separate contracts. One contractor will fabricate and install the shop-built treatment units and will provide certain related equipment. The other contractor will perform all the other onsite work required for the expansion.

We have identified the following principal items of work that will likely need to be addressed in the design and construction:

Fabrication Contract.

- Aeration-Digester Basins (4)
- Clarifiers (1 or 2)
- Expansion of Chlorine Contact Basin
- Dechlorination Basin
- Aeration Blowers (2)
- Two-way Influent Splitter Box

Onsite Contract.

- Foundations for basins
- Road relocation
- Cut and fill
- Retaining wall
- Grading and drainage
- Blower, electrical, and prefab building pads
- Elevated walkway to new basins
- Relocate prefab Chlorine Building (keeping 150-lb. cylinder system)
- Dechlorination prefab building and feed system (using 150-lb. cylinders)
- Upgrade existing influent lift station
- Clarifier pump station
- Piping
- Electrical and lighting
- Upgrade Standby Generation Capacity (if needed)

2. Basic Engineering Services.

A. Design Phase. The following is a brief narrative describing our general approach to the Design Phase of the engineering work.

- (1) Topographic Survey. We will make a topographic survey of the plant site, resulting in a contour map with elevation intervals of one-foot, or less in critical areas. We will also locate the City's property line along the south boundary of the site in anticipation of replacing or relocating the existing fence to that line or near it.
- (2) Design Calculations. Using design criteria published by TCEQ, supplemented by accepted engineering practice and our own experience, we will calculate the required capacity and size of the new components needed for the expanded system.
- (3) Site Plan. Based on the calculated size of the new components, the topography, and the available space, we will develop a site plan for the project.
- (4) Design Conference. Using the site plan as a guide, we would want to have a conference involving the City staff, the plant operators, and ourselves. The agenda should include a briefing on the progress to date, a critique and questions by the City staff and operators, and a discussion of any problems experienced at other existing plants that can be avoided in the expansion.
- (5) Detailed Drawings. The detailed drawings (plans) will illustrate the various components and show their geometry and dimensions.
- (6) Technical Specifications. The Technical Specifications will enlarge on the information in the detailed drawings and will provide in-depth requirements for the materials, workmanship, and construction practices. The specifications will be prepared at the same time that the detailed drawings are being developed.
- (7) City Approval. At this point we will submit the drawings and Technical Specifications to the City for review and approval.
- (8) Regulatory Approval. It appears that the Texas Commission on Environmental Quality (TCEQ) is the only authority whose approval will be required for the project, although a TxDOT permit could be necessary if extensive repairs to the outfall sewer pipe are found to be needed. In any case, we will submit an engineering report, along with the drawings and Technical Specifications, to TCEQ at the earliest possible time.

B. Bidding Phase. In this phase we will assist the City in moving the project to the award of the construction contracts.

(1) Assemble Bid Package. Using the approved drawings and specifications as its basis, we will assemble bid packages that include the bid forms, the City's standard documents, the Technical Specifications, and our General Conditions.

(2) Bidding and Award. We will assist the City in advertising and receipt of bids, after which we will evaluate the bids and recommend award of the construction contract.

(3) Preconstruction. We will attend the preconstruction meeting and issue a Notice to Proceed to the contractors.

C. Construction Phase: General Support. During construction we will continue to support the project by:

(1) Reviewing the Contractors' shop drawings and other submittals.

(2) Responding to RFIs.

(3) Evaluating requests for change orders and preparing Change Orders as set out in the Contract Documents.

(4) Attending monthly on-site meetings and observing the Contractors' progress.

(5) Reviewing the contractor's invoices and advising the City with respect to payments due.

(6) Attending Substantial Completion and Final site visits.

(7) Revising the construction plans based on the Contractors' as-built information and providing the revised plans to the City.

(8) Making recommendations on acceptance of the new facilities when appropriate.

3. Construction Phase Representative. In addition to the services set out above, and to the extent authorized by the City, we will provide a Construction Phase Representative whose principal duties are listed below:

A. Observe the Contractors' work on a day-to-day basis and report the results to the City and the Engineer.

B. Attend project-related meetings.

C. Review plans, Technical Specifications, and Contractor submittals in order to be familiar with the project goals, schedules, and requirements.

- D. Report work that appears to not meet the requirements of the plans and/or Technical Specifications or that could affect the performance of the treatment plant or its units.
- E. Observe soil and concrete testing and sampling and report irregularities.

It shall be understood that the Representative will be a person who is familiar with the construction practices that will be involved in the project, but the Representative need not have a college degree or hold any certification from the state or other organization.

4. Schedule. We believe that the following schedule is a practical estimate of the time required to complete the project:

	<u>Weeks Required</u>	<u>Cumulative Weeks</u>
Receive notice to begin engineering	--	--
Schedule Surveying	2	2
Topographic Survey	2	4
Design Calculations and Develop Site Plan	4	8
Prepare Detailed Plans and Specifications	6	14
City and TCEQ Review	4	18
Assemble Bid Package	3	21
Advertise and Receive Bids	4	25
Evaluate Bids and Recommend Award	2	27
Award process by City	3	41
Bonding and Contract Execution	2	32
Preconstruction and Issue Notice to Proceed	3	35
Shop Drawing Preparation and Review	6	39
Fabrication of Shop-Built Units and Simultaneous Site Work	26	67
Installation of Shop-Built Units	8	75
Connections, Final Site Work, and Substantial Completion	4	79
Punch List Work, Final Walk-through, and Startup	3	82

Conclusion: The estimated time period from notice to begin engineering until plant startup is 82 weeks, or nineteen months.

5. Compensation.

A. Basic Engineering Services. We propose to perform the Basic Engineering Services as described above for the following fixed fees:

Design Phase (70%) .....	\$182,700.00
Bidding Phase (10%).....	\$26,100.00
Construction Phase: General Support (20%) .....	<u>\$52,200.00</u>
Total Fixed Fee .....	\$261,000.00

B. Construction Phase Representation. If authorized by the City we will perform Construction Phase Representation for the hourly rates shown in the attached "Professional Rate Schedule". We will keep the City informed as to the cumulative hourly charges so that , going forward, the City can adjust the extent of our billable hours to suit its budget or other considerations.

Respectly submitted,



Herman M. Clay, Jr., P.E.  
Clay & Leyendecker, Inc.  
December 27, 2022

Professional Rate Schedule  
City of Fulshear, Texas

Wastewater Treatment Plant Expansion to 1.10 MGD

Licensed Professional Engineer .....	\$180.00 per hour.
Licensed Professional Land Surveyor .....	\$160.00 per hour.
Field Survey Crew .....	\$150.00 per hour.
Draftsman / Engineering Tech.....	\$80.00 per hour.
Construction Phase Representative .....	\$70.00 per hour.
Mileage Rate .....	\$0.55 per mile.
Clerical .....	\$50.00 per hour.



Wallis St

Wells St

1st St

1st St

Pier 36 Seafood & Oyster Bar - Fulshear

Saltgrass Steak House

Wilson St

Symms

Flag Garden

Martin Mortgage

Front St

359

Farm to Market 1093 R

1093

1093

359

The Goddard School

Fulshear Park and Ride

Fulshear Registration & Permit

Black Cemetery

Lake Hill Farm Way

Fulshear Tree

Fulshear Tree



**AGENDA MEMO  
BUSINESS OF THE CITY COUNCIL  
CITY OF FULSHEAR, TEXAS**

**AGENDA OF:** 2/21/2023

**ITEMS:** IV.F.

**DATE** 1/8/2023

**DEPARTMENT:** Public Works

**SUBMITTED:**

**PREPARED BY:** Cliff Brouhard, City Engineer

**PRESENTER:** Cliff Brouhard, City Engineer

**SUBJECT:** CONSIDERATION AND POSSIBLE ACTION TO APPROVE A PROFESSIONAL SERVICES AGREEMENT 2022-012 FOR ENGINEERING DESIGN SERVICES FOR THE NEW 4.0 MGD LIFT STATION AND 20 INCH FORCE MAIN (WW22C)

**Expenditure Required:** \$976,550.00

**Amount Budgeted:** \$976,550.00

**Funding Account:** 501-000-5802-03

**Additional Appropriation Required:**

**Funding Account:**

**EXECUTIVE SUMMARY**

As part of the Council approved water and wastewater master plan, The 4.0 MGD Diversion Lift Station and 20" Force Main were determined to be priority project. This diversion lift station will consist of a 4.0 MGD lift station located at the Downtown Fulshear wastewater treatment plant and a 20- inch force main to the Cross Creek Ranch wastewater treatment plant site and any other associated appurtenances. This project will consist of full design services.

City Staff issued a request for qualification from interested firms for WW22C and received 28 responses to the solicitation. After review of the firm qualifications, it was determined that Edminster, Hinshaw, Russ & Associates, Inc. (EHRA) would be the most qualified provider for this project. EHRA submitted a scope of services and a fee schedule for this design (attached). Legal has reviewed the attached contract for professional design services and Staff recommends approval.

**RECOMMENDATION**

City Council approve Professional Services Agreement 2022-012 with Edminster, Hinshaw, Russ & Associates, Inc. (EHRA) for project WW22C in the amount of \$976,550.

**ATTACHMENTS:**

Description	Upload Date	Type
2022-012 Design Services	2/15/2023	Exhibit
Exhibit A Scope	2/16/2023	Cover Memo
WW22C Site	2/15/2023	Cover Memo

**AGREEMENT FOR PROFESSIONAL ENGINEERING PROFESSIONAL DESIGN SERVICES**  
**RSO #2022-012**

THIS AGREEMENT FOR PROFESSIONAL ENGINEERING PROFESSIONAL DESIGN SERVICES (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”) by and between the CITY OF FULSHEAR, TEXAS (the “City”), a Texas municipality, and EDMINSTER, HINSHAW, RUSS & ASSOCIATES, INC. (the “Professional Service Provider”). Collectively, the City and the Professional Service Provider may be referred to as the “Parties.”

WHEREAS, the City wishes to obtain **professional design services** as described in the attached and incorporated Exhibit A (the “Project”), and the City wishes to retain the professional design services of the Professional Service Provider in connection with that Project; and

WHEREAS, the Professional Service Provider is a company authorized to do business in Texas and is qualified to perform the professional design services the City wishes the Professional Service Provider to perform; and

WHEREAS, the Professional Service Provider desires to render such professional design services for the City upon the terms, covenants, and conditions provided herein.

NOW, THEREFORE, for and in consideration of the professional design services, payments, and other valuable consideration contained herein, the Parties agree to the following terms, covenants, and conditions:

**SECTION 1. Performance by Professional Service Provider.** At the City’s sole discretion, the City shall be entitled to engage the Professional Service Provider to perform professional design services, in accordance with the terms and conditions of this Agreement, as those professional design services relate to the Project. The Professional Service Provider agrees to perform such Professional design services in accordance with the terms, covenants, and conditions of this Agreement.

The Professional Service Provider is being retained to provide professional design services as described in this Agreement to the City based on the Professional Service Provider’s demonstrated competence and requisite qualifications to perform the scope of work described herein. The Professional Service Provider has special knowledge, education, and skills that is of interest to the City. The City agrees to and hereby does retain the Professional Service Provider as an independent contractor, and the Professional Service Provider agrees to provide Professional design services to the City, in accordance with the terms, conditions, and covenants provided in this Agreement.

**SECTION 2. Contract Documents.** The Professional design services to be provided by the Professional Service Provider to the City shall be to furnish all materials and perform all work described in the attached and incorporated hereto as Exhibit A.

**SECTION 3. Scope of Professional design services.** The Professional Service Provider will provide the professional design services described in the attached Exhibit A (collectively, “Professional design services”) which is hereby attached and incorporated hereto by reference and made a part of this Agreement, subject to the terms and conditions in this Agreement. A written scope of work and estimated cost for the project are included in Exhibit A. In the event of a conflict between any term or provision in this Agreement and any term or provision in Exhibit A, the term or provision in this Agreement shall control unless the conflicting term or provision in this Agreement is referenced, and expressly stated not to apply, in such Exhibit A.

Any mutually agreed upon changes to the terms, conditions, covenants, and provisions to this Agreement shall be set forth in an amendment to this Agreement. The Professional Service Provider will not implement any changes or any new professional design services until an amended agreement has been duly executed by the City. The City shall not be liable for any amounts not included in Exhibit A.

**SECTION 4. Payment for Professional design services.** The City agrees to pay the Professional Service Provider for Professional design services provided in accordance with the following terms, covenants, and conditions:

- a. **Contract Sum.** The City shall compensate the Professional Service Provider for the performance of the Professional design services per the professional design proposal in Exhibit A and in accordance with the Standard Rate Schedule contained in the attached and incorporated Exhibit B. The total fees paid under this Agreement shall not exceed **\$976,550.00**.
- b. **Invoices.** The Professional Service Provider shall invoice the City monthly for Professional design services rendered based on the percentage of Professional design services completed as of the date of the invoice. The City will pay for those Professional design services, in full, within thirty (30) days of receipt of a properly completed invoice by electronic payment or check. Invoices should be submitted to:

**City of Fulshear**  
*Attn: Accounting*  
P.O. Box 279  
Fulshear, Texas 77441  
Telephone: (281) 346-1796  
Email: [accounting@fulsheartexas.gov](mailto:accounting@fulsheartexas.gov)

If the City reasonably disputes any invoice, the City shall timely pay the undisputed portion and promptly notify the Professional Service Provider in writing of the nature of the dispute as to the remainder, and the parties will use their best efforts to resolve the dispute expeditiously.

- c. **Budget.** The Parties understand and acknowledge that the funding of this Agreement is contained in the City’s annual budget and is subject to the approval of the City’s governing body in each fiscal year. The Parties further agree that should the City’s

governing body fail to approve a budget that includes sufficient funds for the continuation of this Agreement, or should the City's governing body fail to certify funds for any reason, then and upon occurrence of such event, this Agreement shall automatically terminate as to the City, and the City shall then have no further obligation to the Professional Service Provider. When the funds budgeted or certified during any fiscal year by the City to discharge its obligations under this Agreement are expended, the Professional Service Provider's sole and exclusive remedy shall be to terminate this Agreement.

- d. **Eligible Costs.** Costs incurred prior to the Effective Date of this Agreement are not eligible for reimbursement. There shall be no obligation whatsoever for performance of this Agreement from the monies of the City other than from the monies designated for this Agreement. The City will only pay for professional design services rendered and shall not pre-pay for work that has not been performed.

#### **SECTION 5. Time of Completion; Term; Termination.**

- a. **Time of Completion.** The Professional Service Provider shall begin work and the work shall be completed as stipulated in the written Scope of Work that is attached as Exhibit A.
- b. **Term.** This Agreement will commence on the Effective Date of the notice to proceed and shall remain in effect until completion of the Professional design services, unless earlier terminated as provided herein.
- c. **Termination.** The City may terminate this Agreement at any time, with or without cause, upon thirty (30) days' prior written notice. Upon its receipt of termination of this Agreement, the Professional Service Provider shall follow any instructions of the City respecting work stoppage. The Professional Service Provider shall cooperate with City and City designees to provide for an orderly conclusion of the Professional design services. The Professional Service Provider shall use its best efforts to minimize the amount of any non-cancelable obligations and shall assign any contracts related thereto to the City, or the City's designee, at the City's request. If the City elects to continue any activities underlying a terminated Agreement after termination, the Professional Service Provider shall cooperate with the City to provide for an orderly transfer of the Professional Service Provider's responsibilities with respect to such Agreement to the City or the City's designee. Upon the effective date of any such termination, the Professional Service Provider shall submit a final invoice for payment, and the City shall pay such amounts as are due to the Professional Service Provider through the effective date of termination. The City shall only be liable for payment of professional design services rendered before the effective date of termination. If this Agreement is terminated, certain reporting requirements identified in this Agreement shall survive termination of this Agreement.

#### **SECTION 6. Representation of Professional Service Provider; Obligations of Professional Service Provider.**

a. **Representation and Warranties of Professional Service Provider.** Professional Service Provider represents and warrants that:

1. As of the Effective Date of this Agreement, the Professional Service Provider is not a party to any oral or written contract or understanding with any third-party that is inconsistent with this Agreement or would affect the Professional Service Provider's performance under this Agreement or that will in any way limit or conflict with the Professional Service Provider's ability to fulfill the terms of this Agreement. The Professional Service Provider further represents that it will not enter into any such agreement during the Term of this Agreement;
2. The Professional Service Provider will provide to the City, with each deliverable to be provided under this Agreement, a written summary sheet listing any third-party software or other intellectual property contained within the deliverable. The Professional Service Provider shall not be required to provide the City with such third-party software or intellectual property in connection with its use of the deliverable and the terms, conditions, and status of the license of such software and intellectual property. The Professional Service Provider represents that all work product created under this Agreement shall be original work of the Professional Service Provider or in the public domain and shall not infringe any copyright, trademark, trade secret, patent, or other intellectual property right of any third party;
3. The Professional Service Provider and its employees and subcontractors have all of the necessary qualifications, licenses, permits, and registrations to perform the Professional design services in accordance with the terms and conditions of this Agreement, and at all times during the Term, all such qualifications, licenses, permits, and registrations shall be current and in good standing; and
4. The Professional Service Provider shall, and shall cause its representatives to, comply with all municipal, state, and federal laws, rules, and regulations applicable to the performance of the Professional Service Provider's obligations under this Agreement.

b. **Level of Care and Skill.** Professional design services provided by the Professional Service Provider under this Agreement shall be conducted in a manner consistent with the professional skill and care ordinarily provided by competent professionals practicing under the same or similar circumstances and professional license(s), if any, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent professional practicing under the same or similar circumstances. No other representation expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, or document, prepared by the Professional Service Provider.

- c. **Work on City Premises.** Professional Service Provider will require that its employees and agents will, whenever on City premises, comply with all reasonable instructions and directions issued by the City.
- d. **Consultation, Reports.** The Professional Service Provider agrees to make available the Professional Service Provider's representative, who shall be mutually agreed upon by the Professional Service Provider and the City, for periodic meetings to review the progress of all work under this Agreement. The Professional Service Provider also shall prepare and submit to the City, when requested, a written report setting forth the status of such work in a format to be mutually agreed upon by the Professional Service Provider and the City, as well as copies of all documents relating to the Professional design services performed by the Professional Service Provider.
- e. **No Israel Boycott.** The Professional Service Provider hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, termination of business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- f. **Foreign Terrorist Organizations.** The Professional Service Provider represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- g. **Immigration.** Professional Service Provider represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.
- h. **Undocumented Workers.** Professional Service Provider certifies that Professional Service Provider does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Professional Service Provider is convicted of a violation under 8 U.S.C. § 1324a(f), Professional Service Provider shall repay the amount of the public subsidy provided under this Agreement, plus interest, at the rate of the prime rate plus six percent (6%) per annum, not later than the 120th day after the date the City notifies Professional Service Provider of the violation.
- i. **Nondiscrimination Against Firearm and Ammunition Industries.** Professional Service Provider verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the Term of this Agreement against a firearm entity or firearm trade association, as those terms are defined by Chapter 2274, Government Code, as enacted by S.B. 19, 87th Legislature, Regular Session.

- j. ***Anti-Boycott of Energy Companies.*** Professional Service Provider verifies that it does not boycott energy companies and will not boycott energy companies, as those terms are defined by Chapter 2274, Government Code, as enacted by S.B. 13, 87th Legislature, Regular Session, during the Term of this Agreement.
- k. ***Prohibited Access to Critical Infrastructure.*** Professional Service Provider verifies that it does not contract with certain foreign-owned companies in connection with critical infrastructure and will not contract with certain foreign-owned companies in connection with critical infrastructure, as those terms are defined Chapter 113, Subtitle C, Title 5 of the Business & Commerce Code, as enacted by S.B. 2116, 87th Legislature, Regular Session, during the Term of this Agreement.

**SECTION 7. Obligations of City.** The City agrees to make available to the Professional Service Provider, upon reasonable notice, such information, data, and documentation regarding its facilities and infrastructure as may reasonably be required by the Professional Service Provider to complete the Professional design services.

**SECTION 8. Termination of Agreement.**

- a. ***Termination.*** The City, upon giving thirty (30) days' written notice to the Professional Service Provider, may terminate this Agreement for any reason, without cause, or simply for convenience. The Professional Service Provider, upon giving thirty (30) days' written notice to the City, may terminate this Agreement for cause.

Termination of this Agreement shall release each party from all obligations of this Agreement, except as specified in Section 6(b) of this Agreement.

- b. ***Obligations of Professional Service Provider Upon Termination.*** Upon termination of this Agreement, the Professional Service Provider shall promptly return to the City all information, files, documentation, media, related material, and any other material that is owned by the City, as well as any work product in progress.
- c. ***Obligations of City Upon Termination.*** Upon termination of this Agreement, the City's sole obligation shall be the payment of any valid, outstanding invoices and any work that has not yet been invoiced but was performed prior to the effective date of termination. The Professional Service Provider agrees to render a final invoice to the City for Professional design services performed by the Professional Service Provider prior to termination of this Agreement within thirty (30) days after completion of the Professional design services performed.

**SECTION 9. Indemnification and Insurance.**

- a. ***Indemnification of City.*** To the extent allowed by law, Professional Service Provider INDEMNIFIES and HOLDS HARMLESS the City, its officers, agents, and employees against all costs and expenses, including, without limitation, attorneys' fees and costs of investigation and defense, as well as legal liability, whether from suit, judgment, settlement

or otherwise arising out of any or all claims for injury to persons or property, including but not limited to injuries resulting in death, arising from, or caused by, or incident to any wrongful or negligent act of the Professional Service Provider, the Professional Service Provider's agents, invitees, servants, and employees upon the property of the City, or arising or resulting from any intentional tort or intellectual property infringement for which the Professional Service Provider is responsible, or for any failure to pay a subcontractor or supplier relating to the performance of Professional design services under this Agreement. Any language to the contrary notwithstanding, the covenants and agreements contained in this paragraph survive the termination or expiration of this Agreement for whatever cause.

- b. *Commercial General Liability Insurance.*** Professional Service Provider must maintain comprehensive commercial general liability insurance, covering the City and the Professional Service Provider for liability for property damage, bodily injury, personal injury, and death. The insurance provided under this section must be in the amount of not less than \$1,000,000 per occurrence for property damage and not less than \$1,000,000 per occurrence for bodily injury, personal injury, or death. This insurance must protect against liability to any employees or servants of the Professional Service Provider and to any other person or persons whose property damage, personal injury, bodily injury, or death arises out of or in connection with the performance of Professional design services under this Agreement and must include (i) coverage for premises and operations, (ii) coverage for products liability, and (iii) contractual liability coverage insuring the obligations of the Professional Service Provider under the terms of this Agreement. Such policy must name the City (and any successor or assign designated by the City) as an additional insured.
- c. *Umbrella Liability.*** Professional Service Provider must maintain umbrella liability insurance, covering the City and the Professional Service Provider for liability for property damage, bodily injury, personal injury and death. The insurance provided under this section must be in the amount of not less than \$1,000,000 per occurrence for property damage, including loss of use thereof, and not less than \$1,000,000 per occurrence for bodily injury, personal injury, or death. This insurance must protect against liability to any employees or servants of the Professional Service Provider and to any other person or persons whose property damage, personal injury, bodily injury, or death arises out of or in connection with the performance of Professional design services under this Agreement and must include (i) coverage for premises and operations, (ii) coverage for products liability, and (iii) contractual liability coverage insuring the obligations of the Professional Service Provider under the terms of this Agreement. Such policy must name the City (and any successor or assign designated by the City) as an additional insured.
- d. *Professional Liability.*** Professional Service Provider must maintain professional liability insurance. The insurance provided under this section must be in the amount of not less than \$1,000,000 per claim and must have an annual aggregate of not less than \$1,000,000.
- e. *Workers Compensation and Employer's Liability.*** Professional Service Provider must maintain workers compensation insurance to protect against claims under Texas Workers Compensation laws as well as all Federal acts applicable to Professional Service Provider's



operations on City property. The limit of liability for such coverage must at least meet applicable statutory requirements. Additionally, each policy must contain an endorsement waiving all rights against the City and the City's respective agents and employees. Professional Service Provider must maintain employer's liability insurance in the minimum amount of \$1,000,000 per occurrence for personal injury, bodily injury, or death to any employee of the Professional Service Provider who may bring a claim outside the scope of the Texas Worker's Compensation laws or Federal acts applicable to the Professional Service Provider's operation on City property. Each policy must contain an endorsement waiving all rights of subrogation against the City and the City's respective agents and employees.

- f. ***Waiver of Subrogation.*** The Parties agree to waive any and all rights of recovery, claims, actions, or causes of action against the other, its agents, officers, and employees for any injury, death, loss, or damage that may occur to persons or to City property, or any personal property of such party on City property, by reason of fire, windstorm, earthquake, flood, or any other risks, or any other cause which is insured under the insurance policy or policies that either party is required to provide or maintain under this Agreement, to the extent and only to the extent of any proceeds actually received by the City or the Professional Service Provider, respectively, with respect thereto, regardless of the cause or origin, including negligence of either party hereto, its agents, officers, or employees, and each party covenants that no insurer will hold any right of subrogation against the other. If such waiver is not obtained, the party failing to do so indemnifies the other party for any claim by an insurance carrier arising out of subrogation.
- g. ***Insurance Requirements.*** The phrases "Required Policy" and "Required Policies" mean each policy of insurance required to be maintained by the Professional Service Provider under the terms of this Agreement. Each Required Policy must be written by a company satisfactory to the City but, in all events, a company with an A.M. Best Company financial rating of not less than A:XII (or a similar rating by a comparable service selected by the City should A.M. Best Company cease providing such ratings) and be licensed to do business in Texas or, if the aforesaid is not available, by a company qualified to do business as a non-admitted insurer in Texas under current Texas surplus lines requirements. All Required Policies may contain a deductible of not more than \$25,000. Such policies must be endorsed so as to require thirty (30) days' prior written notice to the City in the event of cancellation. Required Policies must contain cross-liability clauses, when applicable and available. The Professional Service Provider must deliver to the City a certificate of insurance for any Required Policy no later than the Effective Date of this Agreement. The required evidence of coverage must always be deposited with the City. If the Professional Service Provider fails to do so, such failure may be treated by the City as a default by the Professional Service Provider, and the City, in addition to any other remedy under this Agreement, may purchase and maintain such Required Policy, and the Professional Service Provider must immediately reimburse the City for any premiums paid or costs incurred by the City in providing such insurance. Failure of the Professional Service Provider to reimburse the City is a default by the Professional Service Provider under this Agreement.

- h. *Indemnity for Noncompliance with Insurance Requirements.*** Professional Service Provider INDEMNIFIES and HOLDS HARMLESS the City from any loss the Professional Service Provider may suffer due to the Professional Service Provider's failure to comply with all the above insurance requirements, including the requirement for obtaining waivers of subrogation, and due to any insurance coverage being invalidated because of the Professional Service Provider's failure to comply with the terms, conditions, and warranties of any Required Policy.
- i. *No Indemnification by the City.*** The Professional Service Provider and the City expressly acknowledge that the City's authority to indemnify and hold harmless any third party is governed by Article XI, Section 7 of the Texas Constitution, and any provision that purports to require indemnification by the City is invalid. Nothing in this Agreement requires that the City incur debt, assess or collect funds, or create a sinking fund.

**SECTION 10. Injunctive Relief.** It is hereby understood and agreed that damages shall be an inadequate remedy in the event of a breach by the Professional Service Provider of this Agreement and that any such breach by the Professional Service Provider will cause the City great and irreparable injury and damage. Accordingly, Professional Service Provider agrees that the City shall be entitled, without waiving any additional rights or remedies otherwise available to the City at law, in equity, or by statute, to injunctive and other equitable relief without proof of actual damages in the event of a breach or intended or threatened breach by the Professional Service Provider.

**SECTION 11. Assignment and Subcontracting.**

- a. *Consent Required.*** Professional Service Provider must not assign or subcontract the whole or any part of this Agreement without the City's prior written consent.
- b. *Subcontracting.*** Any subcontract made by the Professional Service Provider with the consent of the City must incorporate, by reference, all the terms of this Agreement. Professional Service Provider will enter into written contracts with each of its subcontractors requiring such subcontractors to obtain and maintain appropriate and reasonable insurance coverage and requiring such subcontractors to comply with the term of this Agreement, which shall flow down, as is reasonable, required, and appropriate.

**SECTION 12. Other Provisions.**

- a. *Force Majeure.*** In the event either party is rendered unable, wholly or in part, by force majeure to carry-out any of its obligations under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided, but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be

remedied with all reasonable diligence. The term “force majeure,” as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or similar civil disturbances, acts of the public enemy, orders of any kind of the government of the United States of America or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and other incapacities of any party, whether similar or those enumerated or otherwise, which are not within the reasonable anticipation or control of the party claiming such inability, which such Party should not have avoided by the exercise of due diligence and care. If delays resulting from such causes increase the cost or time required by the Professional Service Provider to perform the Professional design services under this Agreement, the Professional Service Provider shall be entitled to a reasonable adjustment in schedule and, if applicable and upon written agreement of the Parties, compensation.

- b. ***Status as Independent Contractor.*** The City and the Professional Service Provider are contractors independent of one another and neither party’s employees will be considered the employees of the other party for any purpose. This Agreement does not create a joint venture or partnership, and neither party has the authority to bind the other to any third party.
- c. ***Applicable Law and Forum.*** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without regard to the conflicts of laws principles thereof. Any action or suit related to this Agreement must be brought in the state or Federal courts sitting in Fort Bend County, Texas.
- d. ***Public Information Act.*** Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the “Public Information Act”). Effective January 1, 2020, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Professional Service Provider agrees that this Agreement can be terminated if the Professional Service Provider knowingly or intentionally fails to comply with a requirement of that subchapter. To the extent, if any, that any provision of this Agreement is in conflict with Texas Government Code, Chapter 552, as amended (the “Texas Public Information Act”), such provision shall be void and have no force or effect.

In accordance with Section 2252.907 of the Texas Government Code, the Professional Service Provider is required to make any information created or exchanged with the City pursuant to this Agreement, regardless of contrary provisions contained herein, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the City.

- e. ***Notices.*** All notices, demands, or requests from one party to another must be in writing and must be (i) personally delivered, (ii) sent by mail, certified or registered, postage prepaid, (iii) sent by facsimile transmission, or (iv) sent by overnight delivery, in any case to the

address stated in this Section, or to such other address as the party may request in writing, and are deemed to have been given at the time of receipt or delivery.

IF TO CITY:

**City of Fulshear**  
*Attn: Purchasing Coordinator*  
P.O. Box 279  
Fulshear, Texas 77441  
Email: cleal@fulsheartexas.gov

IF TO PROFESSIONAL SERVICE PROVIDER:

**EDMINSTER, HINSHAW, RUSS & ASSOCIATES, INC.**  
*Attn: Truman Edminster, PE*  
10011 Meadowglen Ln.  
Houston, TX 77042  
Email: tedminster@ehrainc.com

- f. **Ownership of Documents.** The final sealed documents prepared by the Professional Service Provider shall be provided to the City, for the City's use, in the form of a license permitting the City's use and shall not be otherwise limited, so long as the City's use is in accordance with applicable legal requirements.
- g. **Successors and Assigns.** The City and the Professional Service Provider each bind itself and its partners, successors, executors, administrators, and assigns to the other party of the Agreement and to partners, successors, executors, administrators, and assigns of such other party in respect to all terms, covenants, and conditions of this Agreement. Neither the City nor the Professional Service Provider shall assign, sublet, or transfer its interest in this Agreement without written consent of the other party. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than the City and the Professional Service Provider.
- h. **Waiver.** No waiver by the City of any breach by the Professional Service Provider of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other provisions hereof. No such waiver shall be effective unless in writing and then only to the extent set forth in writing.
- i. **Entire Agreement.** This instrument, including attached exhibits, contains the entire Agreement between the City and the Professional Service Provider, apart from any letter proposals or proposals describing the scope of professional design services, method of compensation, and any special contractual provision that, mutually agreed upon by the Parties, shall become part of this Agreement.

- j. **Modifications.** No modification of this Agreement shall be effective unless in writing and signed by both parties.
- k. **Severability.** If any provision of this Agreement is invalid or unenforceable under any statute or rule of law, the provision is to that extent to be deemed omitted, and the remaining provisions shall not be affected in any way.
- l. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which, taken together, will be deemed one and the same document. A photocopy or facsimile reproduction of an original signature of a party on this Agreement binds that party to the terms, covenants, and conditions of this Agreement.

**IN WITNESS WHEREOF**, and in acknowledgment that the Parties hereto have read and understood each and every provision hereof, after consultation with the legal counsel of their choosing, if desired, the Parties have executed this Agreement on the date first set forth above.

**CITY:**

**CITY OF FULSHEAR, TEXAS**

By: \_\_\_\_\_  
**JACK HARPER, *City Manager***

**PROFESSIONAL SERVICE PROVIDER:**

**EDMINSTER, HINSHAW, RUSS &  
ASSOCIATES, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



December 19, 2022

Cliff Brouhard, PE, PTOE  
City of Fulshear  
6611 W Cross Creek Bend Ln Fulshear, Texas 77441

Re: City of Fulshear  
Project WW22C - 4.0 MGD Downtown WWTP Diversion Lift Station  
and 20-inch Force Main (Phase I)  
EHRA Project No. 221-100-23

Dear Mr. Brouhard:

Edminster, Hinshaw, Russ & Associates, Inc. (EHRA) appreciates the opportunity to submit this proposal for engineering services associated with "Project WW22C 4.0 MGD Downtown WWTP Diversion Lift Station and 20-inch Force Main (Phase I)." The project is located within the City of Fulshear, Texas along FM 1093 from Main Street to the approximate location of Texas Heritage Parkway.

City of Fulshear (City) is planning to construct a lift station near the City's existing wastewater treatment plant (WWTP) to divert excess flows beyond the capacity of the WWTP to the East Fulshear Regional WWTP.

The project design for the lift station and force main will consist of a wet well, submersible pumps, riser pipes from each pump, check, plug and air release valves, discharge header pipe, PVC pipe, an intruder resistant fence, site lighting, emergency back-up generator, odor controls, level controls, control panel and various electrical components needed to make the lift station operational.

EHRA will provide Basic Services which includes engineering design, construction plans, technical specifications, construction cost estimates, bid phase services and limited construction phase services at a fixed fee of \$424,100.00. EHRA will also provide Additional Services at a fixed fee of \$482,450.00 that includes surveying services, geotechnical services, environmental services, subsurface utility engineering and SCADA. Please see the attached Estimated Manhour projection for more details.

Mr. Cliff Brouhard, PE, PTOE

December 19, 2022

Page 2

Should you have any questions or need additional information, please feel free to contact me at (713) 784-4500.

Sincerely,



Paul Anderson, P.E.

Associate | Practice Area Leader

PA/sf

Attachments:    Estimated Manhour Projection  
                          Scope of Services  
                          Schedule of Hourly Rates (2022PW-ODCM+10)



**Project Title: City of Fulshear Project WW22C - 4.0 MGD Downtown City of Fulshear WWTP Diversion Lift Station and 20-inch Force Main (Phase I)**

Task	Description / Task	Estimated Manhours							Total Fee
		Practice Area Leader	Project Manager	Project Engineer	Senior Designer	Designer CAD Tech II	Clerical		
	Hourly Rates Based on Rate Schedule in Contract	\$ 275.00	\$ 215.00	\$ 160.00	\$ 155.00	\$ 145.00	\$ 95.00		
<b>A. BASIC SERVICES</b>									
	<b>Project Management</b>								
	1. Project Schedule & Budget	2	12	16			2		\$ 5,880.00
	2. Progress Reports & Invoices		10	24			20		\$ 7,890.00
	3. Quality Assurance & Quality Control	4	20	32	40		12		\$ 17,860.00
	4. Coordination with City & Private Utilities		14	32					\$ 8,130.00
	5. Coordination with Subconsultants	4	16	16					\$ 7,100.00
	6. Site Visits		8	8					\$ 3,000.00
	<b>Total Hours</b>	10	80	128	40	0	34		
	<b>Total Project Management Cost</b>	\$ 2,750.00	\$ 17,200.00	\$ 20,480.00	\$ 6,200.00	\$ -	\$ 3,230.00		<b>\$ 49,860.00</b>
	<b>Final Design</b>								
	1. Force Main Route/Alignment		16	60	80	160			\$ 48,640.00
	2. Force Main Air Release Combo Valves		2	4	10	20			\$ 5,520.00
	3. Lift Station & Force Main Hydraulic Model/Analysis		8	40	40	60			\$ 23,020.00
	4. Lift Station Site Plan (Fencing, Driveway, Pavement, Drainage)		6	30	40	60			\$ 20,990.00
	5. Lift Station Wet Well/Pump Sizing/Pump Selection		6	24	40				\$ 11,330.00
	6. Lift Station Layout (Pumps, Piping, Valves, Wetwell, Bypass)		4	16	24	40			\$ 12,940.00
	7. Lift Station Structural Design		24	80	100	120			\$ 50,860.00
	8. Lift Station Electrical Design		16	28	48	68			\$ 25,220.00
	7. Lift Station Utilities (Water, San Swr, Manhole)		6	48	60	80			\$ 29,870.00
	8. Traffic Control Plan		4	24	48	60			\$ 20,840.00
	9. SWPPP		4	8	12	24	2		\$ 7,670.00





Project Title: City of Fulshear Project WW22C - 4.0 MGD Downtown City of Fulshear WWTP Diversion Lift Station and 20-inch Force Main (Phase I)									
Task	Description / Task	Estimated Manhours							
		Practice Area Leader	Project Manager	Project Engineer	Senior Designer	Designer CAD Tech II	Clerical	Total Fee	
	Hourly Rates Based on Rate Schedule in Contract	\$ 275.00	\$ 215.00	\$ 160.00	\$ 155.00	\$ 145.00	\$ 95.00		
	10. Utility Coordination (CenterPoint, AT&T)		4	30	8	12	2	\$ 8,830.00	
	11. Approvals/Permitting (County, City, TxDOT...)		8	16	28	32	2	\$ 13,450.00	
	12. TCEQ Design Report & Submittal		4	40			8	\$ 8,020.00	
	13. Bid Documents (Plans, Specifications, & Estimates)		24	60	20	40	8	\$ 24,420.00	
	Total Hours	0	136	508	558	776	22		
	Total Final Design Cost	\$ -	\$ 29,240.00	\$ 81,280.00	\$ 86,490.00	\$ 112,520.00	\$ 2,090.00	\$ 311,620.00	
	<b>Bid Phase Services</b>								
	1. Advertisement Assistance			2			4	\$ 700.00	
	2. Attend Pre-Bid Meeting		3	3			4	\$ 1,505.00	
	3. Prepare Addenda		2	6	6	12	2	\$ 4,250.00	
	4. Bid Tabulation & Award Recommendation		1	2			2	\$ 725.00	
	Total Hours	0	6	13	6	12	12		
	Total Bid Phase Cost	\$ -	\$ 1,290.00	\$ 2,080.00	\$ 930.00	\$ 1,740.00	\$ 1,140.00	\$ 7,180.00	
	<b>Limited Construction Phase Services</b>								
	1. Preconstruction Meeting		3	3			4	\$ 1,505.00	
	2. Monthly Progress Meeting & Reports (12)		30	30			12	\$ 12,390.00	
	3. Review Submittals, RFIs, Change Orders		6	30	40		8	\$ 13,050.00	
	4. Site Visit (12) & Observation Report (12)		34	34			12	\$ 13,890.00	
	5. Review Pay Estimates (12)			12			48	\$ 6,480.00	
	6. Substantial & Final Inspection		10	10				\$ 3,750.00	
	7. Prepare Record Drawings		1	4	4	20		\$ 4,375.00	
	Total Hours	0	84	123	44	20	84		



Project Title: City of Fulshear Project WW22C - 4.0 MGD Downtown City of Fulshear WWTP Diversion Lift Station and 20-inch Force Main (Phase I)									
Task	Description / Task	Estimated Manhours							Total Fee
		Practice Area Leader	Project Manager	Project Engineer	Senior Designer	Designer CAD Tech II	Clerical		
	Hourly Rates Based on Rate Schedule in Contract	\$ 275.00	\$ 215.00	\$ 160.00	\$ 155.00	\$ 145.00	\$ 95.00		
	Total CPS Cost	\$ -	\$ 18,060.00	\$ 19,680.00	\$ 6,820.00	\$ 2,900.00	\$ 7,980.00		\$ 55,440.00
	<b>TOTAL BASIC SERVICES COST</b>								<b>\$ 424,100.00</b>
	<b>B. ADDITIONAL SERVICES</b>								
	1. Topographic Survey								\$ 67,650.00
	2. Construction Survey Control Points								\$ 20,000.00
	3. Metes and Bounds Description for Easement Acquisition From 26 Parcels If required (estimated at \$8,000/parcel)								\$ 208,000.00
	4. Geotechnical								\$ 32,800.00
	5. Environmental Phase I								\$ 5,950.00
	6. Subsurface Utility Engineering (Level B)								\$ 15,000.00
	7. Subsurface Utility Engineering (Level D & C)								\$ 17,150.00
	7. Subsurface Utility Engineering (Level A Test Holes)								\$ 23,500.00
	8. Lift Station SCADA System								\$ 25,000.00
	9. Project Site Observation if Requested (Estimated at 10hr/wk for 52 wk @ \$120/hr, \$62,400)								\$ 62,400.00
	9. Reimbursable Expenses: Permits, Mileage, Reproduction								\$ 5,000.00
	<b>TOTAL ADDITIONAL SERVICES COST</b>								<b>\$ 482,450.00</b>
	<b>C. OWNER'S CONTINGENCY</b>								<b>\$ 70,000.00</b>

**PROJECT WW22C - 4.0 MGD DOWNTOWN WWTP DIVERSION LIFT STATION  
AND 20-INCH FORCE MAIN (PHASE I)**

**SCOPE OF SERVICES**

PROJECT UNDERSTANDING

The City of Fulshear (City) intends to construct a new wastewater diversion lift station near the existing Downtown WWTP along with the associated force main to the proposed new City WWTP. The proposed lift station will include a wet well, pumps capable of pumping 4.0 million gallons per day (MGD), riser and header piping, electrical power and controls, backup generator and provisions for future expansion to 8.0 MGD. The force main will be equipped with air/vacuum release valves, air release valves, check valves, plug valves, restrained joints, and all necessary appurtenances.

EHRA will perform final design for the lift station and force main under this Scope of Work including tasks performed by subconsultants.

ASSUMPTIONS:

- City will provide pertinent maps, drawings, studies, etc. of City maintained utilities and facilities.
- City will provide water usage and sanitary flow data.
- City will provide design criteria, specifications, and standard details to include in design drawings.
- Backup power will be provided via an on-site diesel generator.
- Wet well and wet well piping will be coated to resist corrosion.
- Force main to be installed within the existing north FM 1093 right-of-way.

**BASIC SERVICES:** EHRA will provide the following professional services associated with the development of the Project.

A. DESIGN PHASE SERVICES: EHRA will provide professional services in this phase as follows:

- a. Project Management
  - i. Attend kick-off meeting to confirm scope, schedule, and budget; identify any special conditions that may impact design and/or construction; discuss administrative requirements with City; identify a suitable location for the lift station; discuss force main route; and establish design criteria.
  - ii. Coordinate site visit with City, EHRA and subconsultants as needed to complete final design.
  - iii. Coordinate communications with City, EHRA, subconsultants and private third parties.
  - iv. Manage internal design team and subconsultant resources as well as perform Quality Control reviews on all deliverables.
  - v. Provide regular progress reports as requested by the City.
  - vi. Draft invoices monthly.
  - vii. Attend regular progress meetings with City.
  - viii. Provide project schedule.



b. Design

- i. Develop a site layout for review by City.
- ii. Develop force main routing.
- iii. Determine bore locations and depth.
- iv. Perform hydraulic analysis.
- v. Finalize pump and force main sizing.
- vi. Consult pump manufactures on available equipment and evaluate selections. Make recommendations to City for consideration in specifications.
- vii. Finalize electrical and controls design.
- viii. Finalize structural design.
- ix. Finalize traffic control plan.
- x. Finalize storm water pollution prevention plan.
- xi. Perform utility coordination (i.e., CenterPoint, AT&T, etc.).
- xii. Provide a preliminary construction cost estimate.
- xiii. Prepare 60%, 90% and 100% Design Plans to include:
  1. Cover Sheet
  2. General Notes
  3. Project Location Overview
  4. Service Area Map
  5. Lift Station Site Plan
  6. Lift Station Grading Plan
  7. Plan & Profile View of Force Main
  8. Plan View of Existing WWTP Site
  9. Plan View of Proposed WWTP Site
  10. Lift Station Piping & Structural Plan
  11. Lift Station Details
  12. Pump Schedule
  13. Structural Details
  14. Electrical Legends, Schedule, and Notes
  15. Electrical one-line diagram
  16. Electrical Details
  17. Control Details
  18. SWPPP
  19. Traffic Control Plan
  20. Standard City of Fulshear Details
- xiv. Provide Technical Specifications
- xv. Obtain TCEQ Construction Approval

B. BID PHASE SERVICES: EHRA will provide professional services in this phase as follows:

a. Bidding

- i. EHRA will prepare one (1) construction bid package. Bid package will include, but is not limited to, an invitation to bid, bid forms, bond forms, contract forms, special conditions and general conditions of contract, construction plans, geotechnical report, environmental report, and technical specifications.

- ii. EHRA will coordinate a pre-bid meeting between the City Staff, EHRA and interested Contractors.
  - iii. When requested by and authorized by City, as appropriate, Engineer will advertise and/or publicly solicit, receive, and tabulate bids for construction of the lift station and force main to serve the Project.
  - iv. EHRA will also make a recommendation for award to City, as appropriate, for the construction of the lift station and force main.
- C. **CONSTRUCTION PHASE SERVICES:** EHRA will provide professional construction phase services in this phase as follows:
- a. Construction Phase Services
    - i. EHRA will coordinate a pre-construction meeting between the Contractor, City Staff, EHRA and pertinent EHRA subconsultants.
    - ii. EHRA will coordinate construction activities with the Contractor, including reviewing and processing monthly pay applications, reviewing and processing shop drawings and equipment submittals, preparing change orders (if any), and coordinating inspections with governmental agencies and City.
    - iii. Upon completion, EHRA will issue a Certificate of Completion.

**ADDITIONAL SERVICES:** EHRA will provide the following professional services, which are not included in Basic Services, associated with the development of the Project.

- a. Topographic Survey
  - i. Perform field surveying to recover and tie boundary corners for the existing right-of-way line and the side streets along the north side of FM 1093 sufficient to establish the current ROW and adjacent property lines for the project limits.
  - ii. Notify DIGTESS and request underground utility companies mark the locations of private utility lines within the project limits.
  - iii. Research public and private utilities to obtain record documents or plans for existing facilities.
  - iv. Coordinate with private pipeline companies to meet and obtain information regarding the locations and depths for petroleum pipelines that might cross the project limits.
  - v. Perform field surveying to set “permanent” iron rod control monuments throughout the project limits at the beginning, the end, and at approximate 500-foot intervals sufficient for conventional total station data collection surveying.
  - vi. Perform field surveying to locate existing features (natural and man-made).
  - vii. Coordinate with geotechnical consultants to determine the locations and ground surface elevations for soil boring locations throughout the limits of the project.
  - viii. Process all field survey data and record utility data and prepare an existing condition topographic survey base map for the project limits.
  - ix. Research the Federal Emergency Management Agency for current elevations and locations of the flood plain lines affecting the project limits.



b. Environmental Services

- i. Perform site visit to document potential hazardous material handling, storage, and disposal practices. In addition, the visit will document areas with potential soil or water contamination, possible sources of PCBs, underground and/or above storage tanks, possible risks of contamination from activities at the site and adjacent properties.
- ii. Review lease, title, and lien records.
- iii. Review readily available historical records, including aerial photos and topographic maps.
- iv. Review readily available local regulatory agency files.
- v. Perform a preliminary vapor encroachment screening.
- vi. Perform Environmental Phase I of areas potentially impacted by project.

c. Geotechnical Services

- i. Review readily available published and in-house geotechnical literature of the lift station site and general area.
- ii. Perform a reconnaissance of the project site and mark out proposed boring locations. Contact 811 prior to arriving on-site.
- iii. Drill 18 exploratory borings.
  1. One (1) for the lift Station at 60' depth.
  2. Twelve (12) for trenchless force main at 25' depth.
  3. Five (5) for open cut force main at 15' depth.
- iv. Collect soil samples using split spoon and/or thin-wall tube sampling techniques.
- v. Perform laboratory testing for moisture content, No. 200 Wash, Atterberg Limits, and strength.
- vi. Prepare geotechnical report which will consist of:
  1. Description of work scope, laboratory, and field procedures
  2. Maps and boring plan.
  3. Boring logs and laboratory results.
  4. Description of subsurface soil and groundwater conditions.
  5. Excavation characteristics of on-site soils.
  6. Earthwork considerations, including OSHA soil classifications.
  7. Dewatering recommendations.
  8. Geotechnical guidelines for both open-cut and trenchless construction.
  9. Backfill and bedding recommendations.
  10. Thrust restraint recommendations.
  11. Lift station design recommendations, including allowable bearing pressures, side shear resistance, and lateral earth pressures.
- vii. Assumptions are:
  1. Boring locations are accessible, and access will be granted.
  2. Clearing is not required to access bore location.
  3. No roadway borings.
  4. Bore holes can be backfilled with soil cuttings.
  5. Piezometers will not be required.
  6. No environmental permits will be required to perform work.



7. Will not be held responsible for damage to utilities not marked.
- d. Subsurface Utility Engineering (SUE)
    - i. SUE Quality Level D
      1. Site Visit
      2. Research to determine utility owner
      3. Request utility records from utility owners
      4. Create Utility base map
    - ii. SUE Quality Level C
      1. Correlate Level D information with visible surface features obtained from topographic survey provided by EHRA.
      2. Does not include abandoned or sold utilities with no record or apparent surface features.
    - iii. Utility Conflict Table and Utility Contact List
  - e. Project Site Observation
    - i. EHRA will provide the services of a Project Site Representative for on-site observation of construction activities for a period not to exceed ten (10) hours per week for the duration corresponding to the term of the construction contract. Additional time that may be required for observation of construction activities, to meet the needs of the City, will be provided as Additional Services.
  - f. Post-Construction Topographic Survey and Project Record Drawings (Certification of Field Quantities)
    - i. The determination of final as-built quantities of work performed by the Contractor, including all field survey work associated with the post-construction topographic survey and all office work associated with the preparation of the project record drawings, as required by governmental agencies and City, will be a part of the construction contract documents and is not a part of this Agreement.

**OWNER'S CONTINGENCY:** Owner's contingency is included to allow for use of changes in scope at the direction of the City. Budget will not be utilized without documented authorization from the City's Public Works Director.

**TIME OF COMPLETION:** EHRA is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services in accordance with the following schedule:

- 60% design plans deliverable within 150 days after NTP.
- 90% design plans deliverable within 30 days following receipt of 60% comments from City.
- 100% design plans deliverable within 30 days following receipt of 90% comments from City.
- Commence procurement phase within 30 days following plan approval of all applicable review agencies.
- Commence project construction within 30 days of contract award.

**RESPONSIBILITY OF CITY:** City shall perform the following tasks in a timely fashion as to not delay services to be provided by EHRA:



- a. Designate in writing a person to act as City's representative with respect to services to be rendered per this Agreement. Such person shall have contract authority to provide instructions, receive information, interpret, and define City's policies and decisions with respect to EHRA services for the Project.
- b. Provide all criteria and full information as to the City's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, budget limitations; and furnish all copies of all design and construction standards the City requires to be included in the plans and specifications.
- c. Arrange for access to City owned facilities and utilities.

**DESIGNATED REPRESENTATIVE:**

City's Designated Representative:

- Cliff Brouhard, P.E.
- City of Fulshear
- 6611 W Cross Creek Bend Lane
- Fulshear, Texas 77441
- Telephone No.: 281-346-1796 Ext. 422
- Email: [cbrouhard@fulsheartexas.gov](mailto:cbrouhard@fulsheartexas.gov)

EHRA's Designated Representative:

- Paul Anderson, P.E.
- EHRA
- 10011 Meadowglen Lane
- Houston, Texas 77042
- Telephone No.: 713-337-7410
- Email: [panderson@ehrainc.com](mailto:panderson@ehrainc.com)



**EXHIBIT "A"**  
**EHRA ENGINEERING**  
**PUBLIC WORKS**  
**2022 SCHEDULE OF HOURLY RATES**

**Engineering, Design and Production**

Engineer I	\$ 120
Engineer II	135
Engineer III	150
Project Engineer	160
Senior Project Engineer	175
Assistant Project Manager	195
Project Manager	215
Senior Project Manager I	235
Senior Project Manager II	255
Practice Area Leader - Engineering	275
Principal	325
CAD Technician I	120
CAD Technician II	125
CAD Technician III	130
CAD Technician IV	135
Design CAD Technician I	140
Design CAD Technician II	145
Senior Design CAD Technician	155
Project Coordinator	150
Assistant Design and Production Manager	170
Design and Production Manager	205
GIS Technician I	100
GIS Technician II	115
GIS Technician III	125
GIS Specialist	175
GIS Manager	180

**Surveying**

Survey Rod Person	\$ 55
Survey Instrument Person	80
Survey Party Chief	110
Survey Field Supervisor	145
Survey 1 Person GPS/Robotic Crew	155
CAD Operator	120
Survey CAD Technician	115
Senior Survey CAD Technician	145
Survey Project Manager/RPLS	210
Senior Survey Project Manager/RPLS	240
Practice Area Leader - Surveying	275

**Construction Phase Services**

Construction Inspector I	\$ 110
Construction Inspector II	120
Construction Inspector III	140
Contract Administrator	110
Contract Administration Manager	115
Assistant Construction Project Manager	165
Construction Project Manager	180
Senior Construction Project Manager	205
Practice Area Leader - Construction Phase Services	275

**Planning and Visioning**

Land Planner I	\$ 115
Land Planner II	130
Land Planner III	145
Land Planner IV	160
Planning Project Manager	180
Senior Planning Project Manager	200
Platting Coordinator	120
Senior Platting Coordinator	140
Platting Manager	180
Practice Area Leader - Planning and Visioning	275

**Landscape Architecture**

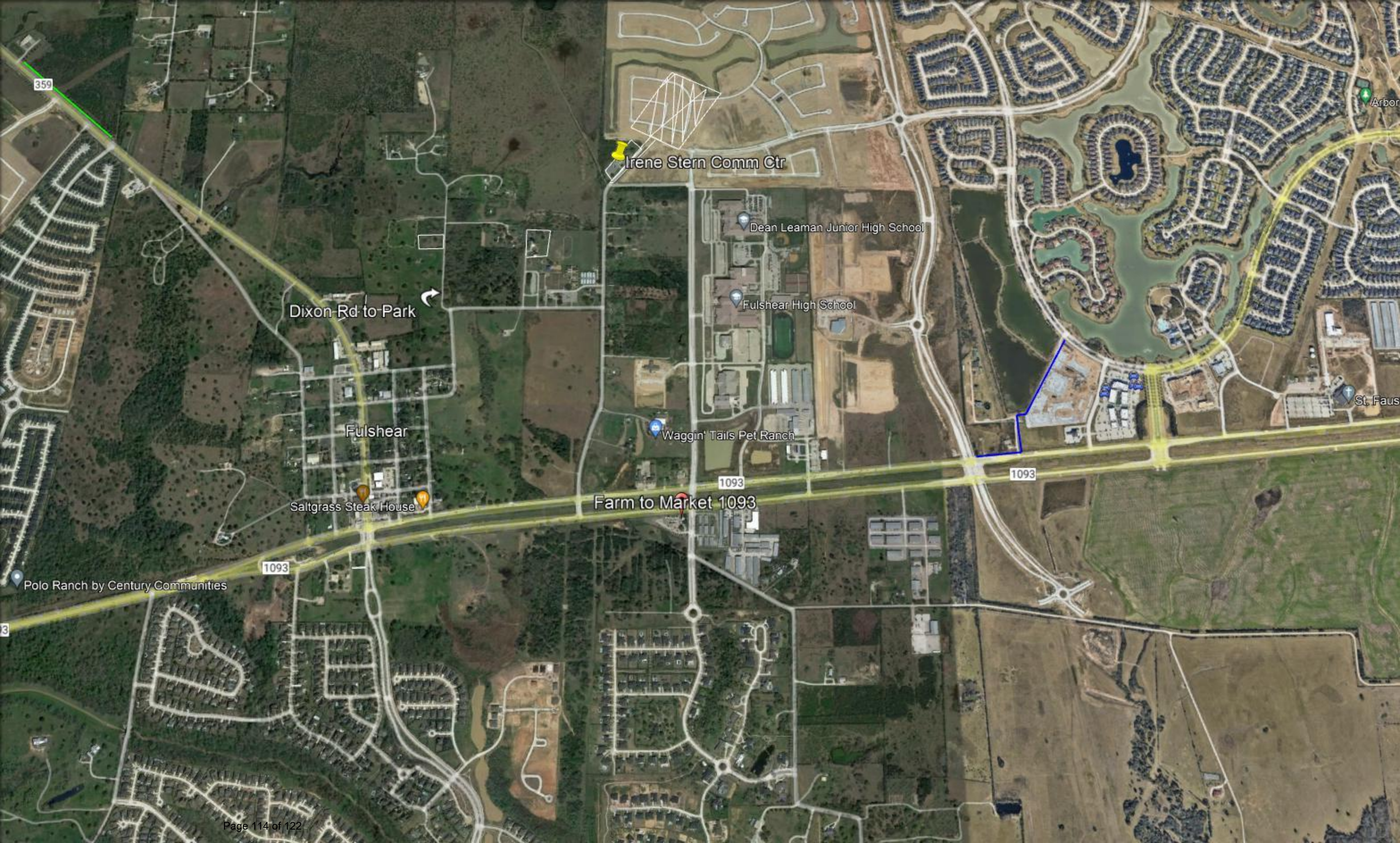
Project Landscape Designer	\$ 145
Registered Landscape Architect	185
Practice Area Leader - Landscape Architecture	275

**General**

Accounting Administrator	\$ 130
Bond Issue Supervisor	150
Administrative Assistant	105
Clerical	95

**Other Direct Costs**

Mileage	Cost+10%
Delivery	Cost+10%
Reprographics	Cost+10%
Sub-Consultant Fees	Cost+10%
Advertising	Cost+10%
Plan Review Fees, Governmental Fees	Cost+10%



359

Irene Stern Comm Ctr

Dean Leaman Junior High School

Fulshear High School

Waggin' Tails Pet Ranch

Farm to Market 1093

Dixon Rd to Park

Fulshear

Saltgrass Steak House

1093

1093

1093

Polo Ranch by Century Communities

**AGENDA MEMO  
BUSINESS OF THE CITY COUNCIL  
CITY OF FULSHEAR, TEXAS**

**AGENDA OF:** 2/21/2023

**ITEMS:** IV.G.

**DATE  
SUBMITTED:** 11/7/2022

**DEPARTMENT:** Building Services

**PREPARED BY:** ZACH GOODLANDER

**PRESENTER:** ZACH GOODLANDER

**SUBJECT:** CONSIDERATION AND POSSIBLE ACTION TO APPROVE ORDINANCE NO. 2023-1411, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS, UPDATING AND CODIFYING A SCHEDULE OF FEES

**Expenditure Required:**

**Amount Budgeted:**

**Funding Account:**

**Additional Appropriation Required:**

**Funding Account:**

**EXECUTIVE SUMMARY**

This ordinance will codify all or nearly all of the City's fees together into a common document. All of the permit/development fees remain the same as they have been for the past several years. However, Staff does propose the addition of fees for grading and civil plan reviews.

With the City bringing Environmental Health onboard there's also the need for the proposed Health permit fees.

Lastly, tap and water system repair fees are included.

**RECOMMENDATION**

Staff recommends approval of the ordinance.

**ATTACHMENTS:**

Description	Upload Date	Type
Ordinance No. 2023-1411	2/16/2023	Backup Material
Exhibit A - Fee Schedule	2/16/2023	Backup Material

ORDINANCE NO. 2023-1411

**AN ORDINANCE OF THE CITY OF FULSHEAR, TEXAS, ADOPTING A CONSOLIDATED SCHEDULE OF FEES; PROVIDING FOR A PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL AND PROVIDING FOR AN EFFECTIVE DATE.**

\* \* \* \* \*

**WHEREAS**, to make the administration of the City’s services and regulations more orderly and efficient, the City Council desires to adopt a consolidated schedule of fees, setting out certain fines, fees, levies, assessments, and other charges (collectively, “fees”); and

**WHEREAS**, the City Council finds and determines that the fees set forth in the schedule of fees are reasonably related to the actual cost of administering the services and regulations to which they apply;

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

**Section 1.** The City Council of the City of Fulshear, Texas, hereby adopts the Schedule of Fees attached hereto as Exhibit A and incorporated herein by this reference, which shall apply to the corresponding services or regulations referenced therein and as provided for by the Fulshear Code or other applicable law. Unless otherwise provided by the Fulshear Code or other applicable law, all fees shall be due and payable at the time the corresponding service or regulation is applied for or rendered, whichever is earlier.

**Section 2.** Any reference made in the Fulshear Code or in any ordinance or resolution of the City of Fulshear to the “schedule of fees,” “fee schedule,” or any other separate instrument for the purpose of determining the amount of applicable fees shall mean the Schedule of Fees attached hereto, unless the context requires otherwise.

**Section 3.** Any and all fees established or set forth by other law and not in conflict herewith shall not be affected hereby.

**Section 4.** **Penalty.** Any person who violates or causes, allows, or permits another to violate any provision of this ordinance, rule, or police regulation of the city shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine or penalty not to exceed five hundred dollars (\$500.00), provided that if such rule, ordinance, or police regulation governs fire safety, zoning, or public health and sanitation, other than the dumping of refuse, the fine or penalty shall not exceed two thousand dollars (\$2,000.00), and further provided that if such rule, ordinance, or police regulation governs the dumping of refuse, the fine or penalty shall not exceed four thousand dollars (\$4,000.00). Each occurrence of any violation of this ordinance, rule, or police regulation shall constitute a separate offense. Each day on which any such violation of this

ordinance, rule, or police regulation occurs shall constitute a separate offense.

**Section 5.**      **Severability.** In the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Fulshear, Texas declares that it would have passed each and every part of the same notwithstanding the omission of any part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

**Section 6.**      **Repeal.** All other ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

**Section 7.**      **Effective date.** This Ordinance shall be effective and in full force when published as required by law.

**PASSED, APPROVED, and ADOPTED** this, the 21st day of February, 2023.

\_\_\_\_\_  
Aaron Groff, Mayor

**ATTEST:**

\_\_\_\_\_  
Mariela Rodriguez, City Secretary



# City of Fulshear Schedule of Fees

## **PLATTING**

Preliminary Plat	\$500.00 + \$3.50 Per Lot + \$12.50 Per Acre
Final Plat	\$500.00 + \$5.00 Per Lot + \$25.00 Per Acre
Replat	\$500.00 + \$5.00 Per Lot + \$25.00 Per Acre
Amending or Minor Plat	\$200.00
Plat Vacation	\$500.00
Each Additional Plat Review	\$100.00

## **SUBDIVISION INFRASTRUCTURE**

Plan Review	\$950.00
Each Additional Plan Review	\$100.00

## **GRADING**

2 Acres or Less	\$100.00
2.1 Acres-10 Acres	\$250.00
More Than 10 Acres	\$500.00

## **NEW RESIDENTIAL BUILDING**

\* Plan Review Fee is 1/2 of the calculated permit fee

<4,000 Sq. Ft.	\$0.42/S.F. + 1/2 Plan Review Fee + \$35 Application Fee + \$600 Inspection Fee
=>4,000 Sq. Ft.	\$0.50/S.F. + 1/2 Plan Review Fee + \$35 Application Fee + \$600 Inspection Fee

## **RESIDENTIAL PERMIT FEES**

Small Accessory Building/Barn/Carport

Additions

Remodel

Patio/Pergola/Porch

## **REQUIRED FEE**

\$0.11 per sq. ft. + 1/2 Plan Review Fee + \$35 Application Fee + \$120 inspection fee

\$0.42/S.F.+ 1/2 Plan Review Fee + \$35.00 Application Fee+ \$600.00 Inspection Fee

\$0.50/S.F.+ 1/2 Plan Review Fee + \$35.00 Application Fee+ \$600.00 Inspection Fee

\$0.35/S.F. + 1/2 Plan Review Fee + \$35.00 Application Fee+ \$600.00 Inspection Fee

\$0.21/S.F. + 1/2 Plan Review Fee + \$35.00 Application Fee+ \$180.00 Inspection Fee

Patio/Pergola/Porch w/Outdoor Kitchen	\$0.42/S.F. + 1/2 Plan Review Fee + \$35.00 Application Fee+ \$300.00 Inspection Fee	
Swimming Pool	\$950.00	Includes plan review and inspection fees
Hot Tub/Spa	\$250.00	Includes plan review and inspection fees
Generator	\$250.00	Includes Inspection Fees
Solar Panels	\$250.00	Includes Inspection Fees

<b><u>MULTI-FAMILY</u></b>		
Each Building	\$0.25/S.F. + 1/2 Plan Review Fee + \$35.00 Application Fee + \$420.00 Inspection fee	
Accessory Building ( Carport, Detached Garage, Gazebos, Trash Enclosures, etc. )	\$0.11/S.F. + 1/2 Plan Review Fee + \$35.00 Application Fee + \$60.00 Inspection fee	
<i>Trades</i>		
Plumbing, HVAC, Irrigation	\$300.00 Each Trade Per Building	

<b><u>COMMERCIAL BUILDING</u></b>		
<i>* Plan Review Fee is 1/2 of the calculated permit fee. Due at time of Submittal</i>		
<i>* Estimated Valuation includes Site Work</i>		
<i>* Add \$35 Administrative Fee</i>		
Valuation of Project		
\$50,000.00 or Less	\$700.00 + \$5.75 per thousand over \$1,000.00 or Fraction thereof	
\$50,001.00 to \$100,000.00	\$800.00 + \$4.75 per \$1,000.00 or Fraction Thereof over \$50,001	
\$100,001.00 to \$500,000.00	\$1,000 + \$3.50 per \$1,000.00 or Fraction Thereof Over \$100,001	
\$500,001.00 to \$1,000,000.00	\$3,500.00 + \$3.00 Per \$1,000.00 or Fraction Thereof Over \$500,001.00	
\$1,000,001.00 or More	\$4,064.00+ \$3.00 Per \$1,000.00 or Fraction Thereof Over \$1,000,001.00	

<b><u>CONSTRUCTION &amp; SALES TRAILER</u></b>		
Construction Trailer	\$300.00	
Sales Trailer	\$300.00	
<i>Trades</i>		

Plumbing & HVAC	\$95.00 Each
-----------------	--------------

**CERTIFICATE OF OCCUPANCY**

New Commerical Building or Built Out	Fee Included in Permit Fee
New Tenant	\$60.00

**SIGN**

Permitted Signage	\$75.00 Each
Signage With The Sign Area Exceeding 72 S.F.	\$150.00 Each

**TRADE PERMITS**

Electrical	No Fee Residential & Commercial
HVAC	\$95.00 Residential; \$300.00 Commercial
Plumbing	\$95.00 Residential; \$300.00 Commercial
Lawn Irrigation	\$95.00 Residential; \$300.00 Commercial
Re-Inspection Fee	\$60.00 Each

**ALARM SYSTEM**

Residential	\$50.00: First Year \$25.00: Renewal
Commerical	\$100.00: First Year \$100.00: Renewal
<i>False Alarms</i>	
Residential	No Fee:0-3rd Response \$25.00: 4th-5th Response \$50.00: 6th-7th Response \$100.00: 8th+ Response
Commercial	No Fee:0-3rd Response \$50.00: 4th-5th Response \$75.00: 6th-7th Response \$75.00: 8th+ Response

**ENVIRONMENTAL HEALTH**

*Based on Number of Employees, Application Fee \$125.00, Plan Review Fee \$500.00*

1-4 Employees	\$225.00
5-9 Employees	\$475.00
10-25 Employees	\$725.00
26-50 Employees	\$950.00
51-100 Employees	\$1,250.00
101 or More Employees	\$1,500.00
Non-Profit Food Establishment	\$120.00



Mobile Food Establishment Medallion	\$420.00
Retail Frozen Dessert Manufacturing	\$250.00
Frozen Dessert Excess Sample	\$125.00
Food Establishment Permit Special Processing	\$125.00
Food Establishment Pre-Opening Inspection	\$180.00
Food Establishment Construction Re-Inspection	\$125.00
Food Establishment Operations Re-Inspection	41% of Fee for Existing Permit
Replacement of Permit or Medallion	\$25.00
<b>Temporary Food Permit</b>	
Temporary Food Establishment Permit TYPE 1	\$40.00 + \$25.00 Per Day of Operation
Temporary Food Establishment Permit TYPE 2	\$510.00
Temporary Vendor	\$25.00
Expedited Temporary Food Permit	\$30.00

<b><u>CONTRACTOR REGISTRATION</u></b>	
Registration of Contractors:	\$200.00 Annually
General Residential & Commercial, Irrigation, Sign & Pool	
Electrical, Plumbing & Mechanical	No Fee

<b><u>FLATWORK</u></b>	
Sidewalks, Driveways, etc.	\$95.00 Residential; \$300.00 Commercial
Culvert	\$95.00 Residential; \$300.00 Commercial

<b><u>PERMIT VIOLATIONS &amp; RE-INSPECTION FEE</u></b>	
Work Without Permit	\$350.00
Re-Inspection	\$60.00
Tamper Fee	\$150.00

<b><u>DEMOLITION &amp; MOVING</u></b>	
Demolition Fee- Building or Structure	\$135.00 Per Building
Moving Fee- Building or Structure	\$100.00 Per Building

<b><u>SOLICITATION</u></b>	
	\$85.00 Per Person

<b><u>ZONING</u></b>	
Residential Zoning Variance	\$150.00
Commercial Zoning Variance	\$300.00
Zoning Change	\$600.00 + \$15.00 Per Acre

<b><u>TABC LICENSES AND PERMITS</u></b>
---

Fee	One-half (1/2) of the applicable state fee
-----	--

<b><u>IRENE STERN COMMUNITY CENTER</u></b>	
Full Day Rental (16 Hours)	\$650.00 Regular;\$375.00 Non-Profit/Resident
Half Day Rental (8 Hours)	\$400.00 Regular;\$250.00 Non-Profit/Resident
Damage Deposit ( Refundable)	\$150.00
Setup/Tear Down	\$150.00 Regular;\$75.00 Non-Profit/Resident
Prior Day Set up (Min. 2 Hours)	\$85.00/ Hr Regular; \$47.50/ Hr Non-Profit/Resident

<b><u>SPECIAL EVENT</u></b>	
Additional City Service Fee May be Assessed	\$100.00

<b><u>CREDIT ACCESS BUSINESS APPLICATION</u></b>	
Application/Registration Fee	\$35.00

<b><u>OIL AND GAS DRILLING</u></b>	
	\$500.00

<b><u>SOUND AMPLIFICATION (NOISE)</u></b>	
	\$50.00

<b><u>TAP</u></b>		
Size	Description	
3/4"	250 PSI Poly Blue	\$2,100.00
1"	250 PSI Poly Blue	\$2,200.00
1.5"	250 PSI Poly Blue	\$3,100.00
2"	250 PSI Poly Blue	\$3,400.00
3"	Larger to be quoted	
<b><u>WATER SYSTEM MAINTENANCE REPLACEMENT</u></b>		
Size	Description	
3/4"	Meter	\$200.00
1"	Meter	\$300.00
1.5"	Meter	\$650.00
2"	Meter	\$950.00
	Meter Box w/lid 1500	\$75.00
	Meter Box w/lid 1700	\$125.00
	Smart Point	\$200.00
	Pigtail Wire	\$50.00