

# CITY OF FULSHEAR

*“FIND YOUR FUTURE IN FULSHEAR”*

30603 FM 1093 WEST/ 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:** Debra Cates

**COUNCIL MEMBER:** Kent Pool

**COUNCIL MEMBER:** John Kelly

**COUNCIL MEMBER:** Kaye Kahlich

**COUNCIL MEMBER:** Lisa Martin

**COUNCIL MEMBER:** Joel  
Patterson

**COUNCIL MEMBER:** Sarah B.  
Johnson

## STAFF:

**CITY MANAGER:** Jack Harper

**CITY SECRETARY:** Kimberly  
Kopecky

**CITY ATTORNEY:** J. Grady Randle

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## SPECIAL CITY COUNCIL MEETING

### AMENDED

**April 19, 2022**

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NOTICE IS HEREBY GIVEN OF A SPECIAL CITY COUNCIL MEETING OF THE CITY OF FULSHEAR TO BE HELD ON **Tuesday, April 19, 2022 AT 5:30 PM** IN IRENE STERN COMMUNITY CENTER, 6920 KATY FULSHEAR ROAD, FULSHEAR, TEXAS 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. PROCLAMATION FOR CHILD ABUSE PREVENTION MONTH**

**B. CONSIDERATION AND POSSIBLE ACTION TO APPROVE ORDINANCE NO. 2022-1369 REGARDING FY2022 OPERATING AND CAPITAL BUDGET AMENDMENT '2'**

**C. CONSIDERATION AND APPROVAL OF AN EMERGENCY PURCHASE TO REPAIR WATER PLANT NO. 3**

**D. CONSIDERATION AND POSSIBLE ACTION TO APPROVE PROFESSIONAL SERVICES AGREEMENT #2022-037 FOR GENERAL ENGINEERING AND INSPECTION SERVICES**

**E. CONSIDERATION AND POSSIBLE ACTION TO APPROVE A PROFESSIONAL SERVICES AGREEMENT 2022-012 FOR PRELIMINARY ENGINEERING DESIGN SERVICES FOR THE NEW 1.0 MGD EAST FULSHEAR WASTEWATER TREATMENT PLANT AT CROSS CREEK RANCH (WW22B)**

**F. CONSIDERATION AND POSSIBLE ACTION TO APPROVE A PROFESSIONAL SERVICES AGREEMENT 2022-012 FOR DESIGN SERVICES FOR A NEW 1.0 MG ELEVATED STORAGE TANK (W18H)**

**V. EXECUTIVE SESSION**

**A. EXECUTIVE SESSION - PURSUANT TO SECTION 551.071 OF THE TEXAS OPEN MEETINGS ACT (CHAPTER 551, GOVERNMENT CODE), CONSULT WITH THE ATTORNEY TO THE GOVERNING BODY ON A MATTER IN WHICH**

**THE DUTY OF THE ATTORNEY TO THE GOVERNING BODY UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH THE TEXAS OPEN MEETINGS ACT; PURSUANT TO SECTION 551.072 OF THE TEXAS OPEN MEETINGS ACT, DELIBERATE CONCERNING THE PURCHASE, EXCHANGE, LEASE, OR VALUE OF REAL PROPERTY**

- 2.210 acres of City owned property

**VI. ACTION FROM EXECUTIVE SESSION**

**VII. EXECUTIVE SESSION**

- A. EXECUTIVE SESSION – CLOSED SESSION IN ACCORDANCE WITH GOVERNMENT CODE SEC. 551.071. CONSULTATION WITH ATTORNEY; CLOSED MEETING. A GOVERNMENTAL BODY MAY NOT CONDUCT A PRIVATE CONSULTATION WITH ITS ATTORNEY EXCEPT: (1) WHEN THE GOVERNMENTAL BODY SEEKS THE ADVICE OF ITS ATTORNEY ABOUT: (A) PENDING OR CONTEMPLATED LITIGATION; OR (B) A SETTLEMENT OFFER; OR (2) ON A MATTER IN WHICH THE DUTY OF THE ATTORNEY TO THE GOVERNMENTAL BODY UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH CHAPTER 551, GOVERNMENT CODE.**

- GM Equity Group, LLC

**VIII. 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, KIMBERLY KOPECKY, 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 THURSDAY, APRIL 14, 2022 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.

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KIMBERLY KOPECKY, CITY SECRETARY



# PROCLAMATION

**WHEREAS**, the City of Fulshear, Texas applauds the Texian Exchange Club of Fulshear-Katy for its dedicated work in the prevention of child abuse in our community; and,

**WHEREAS**, the City of Fulshear, Texas commends the Texian Exchange Club of Fulshear-Katy for its tireless promotion of ongoing programs in our community, which are designed to help prevent child abuse; and,

**WHEREAS**, the City of Fulshear, Texas stands firmly on the side of prevention of any type of abuse and believes no child should endure verbal, emotional or physical abuse for any reason; and,

**WHEREAS**, The National Exchange Club adopted The Prevention of Child Abuse as its National Project in 1979 in response to a request by its National President who, as a physician, noticed an increase in abuse cases in his medical practice; since then, April has been designated as Child Abuse Prevention Month, and the City of Fulshear, Texas supports and encourages all of our residents and community leaders to wear blue each Monday in April in observance of Child Abuse Prevention Month.

**NOW, THEREFORE**, I, Aaron Groff, Mayor of the City of Fulshear, Texas, hereby proclaim the month of April to be **CHILD ABUSE PREVENTION MONTH** in the City of Fulshear in recognition of our commitment to healthy, happy children and to help eradicate child abuse in our community and to support the efforts of the Exchange Club of Fulshear-Katy and all others who observe this important cause in their mission to bring awareness of this tragic problem to the forefront and to help make our community a stronger and more loving city where children will be able to grow and thrive without fear or harm.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and caused to be affixed the seal of the City of Fulshear, Texas on this 19th day of April in the year 2022.

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Aaron Groff, Mayor  
City of Fulshear, Texas

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Kimberly Kopecky, City Secretary

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

**AGENDA OF:** 4/19/2022

**ITEMS:** IV.B.

**DATE  
SUBMITTED:** 4/7/2022

**DEPARTMENT:** Finance

**PREPARED BY:** ERIN TUREAU

**PRESENTER:** ERIN TUREAU

**SUBJECT:** CONSIDERATION AND POSSIBLE ACTION TO APPROVE ORDINANCE NO. 2022-1369 REGARDING FY2022 OPERATING AND CAPITAL BUDGET AMENDMENT '2'

**Expenditure Required:**

**Amount Budgeted:** SEE EXHIBIT A ATTACHED

**Funding Account:**

**Additional Appropriation Required:**

**Funding Account:**

**EXECUTIVE SUMMARY**

This item is for proposed Budget Amendment '2' in Ordinance No. 2022-1369. Exhibit A that is attached shows the funds and accounts along with an explanation that are recommended for this budget amendment.

**RECOMMENDATION**

Staff recommends City Council approve Ordinance No. 2022-1369 for Budget Amendment '2'.

**ATTACHMENTS:**

Description	Upload Date	Type
Ordinance No. 2022-1369 Budget Amendment '2'	4/7/2022	Backup Material
Exhibit A for Budget Amendment 2'	4/7/2022	Backup Material

**ORDINANCE NO. 2022-1369**

**AN ORDINANCE AMENDING CITY OF FULSHEAR, TEXAS, ORDINANCE NO. 2021-1354, APPROVING AND ADOPTING THE CITY'S FISCAL YEAR 2021-2022 BUDGET, AS AMENDED BY ORDINANCE NO. 2022-1366, BY APPROVING BUDGET AMENDMENT 2 TO THE ORIGINAL OPERATING & CAPITAL BUDGET OF THE CITY'S BUDGET OF FULSHEAR, TEXAS, FOR THE FISCAL YEAR 2021-2022; PROVIDING FOR SUPPLEMENTAL APPROPRIATION, TRANSFER OF CERTAIN FUNDS, OR BOTH; PROVIDING FOR SEVERABILITY; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT.**

**WHEREAS**, by Ordinance No. **2021-1354**, the City Council of the City of Fulshear, Texas, adopted its Original Operating & Capital Budget for Fiscal Year **2021-2022**; and

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

**WHEREAS**, the City Council desires to amend said Original Operating and Capital Budgets to reflect such supplemental appropriation and/or transfer in the fiscal year **2021-2022**; now, therefore,

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

**SECTION 1.0**

That the facts recited in the preamble are determined to be true and correct, and are made a part of this Ordinance, the purpose of which is to adopt an amendment to the City of Fulshear's **2021-2022** Budget.

**SECTION 2.0**

AMENDED: The "Original General and Other Budgets of the Fulshear, Texas, for the Fiscal Year 2021-2022," as adopted under Ordinance No. **2021-1354** AND Amended Fiscal Year 2021-2022 Budget Amendment "1" as adopted under Ordinance No. **2022-1369** is hereby amended for municipal purposes as shown on "Budget Amendment 2" to the "Original Operating & Capital Budget of the City of Fulshear, Texas, for the Fiscal Year **2021-2022**" attached hereto. Said Budget Amendment 2 shall be attached to and made a part of such Original Operating & Capital Budget by the City Secretary and shall be filed as required by state law, a true and correct copy of which is attached hereto as Exhibit "A" and made a part hereto for all purposes.

**SECTION 3.0 AUTHORIZED EXPENDITURE**

That the City be, and is hereby authorized, to expend those funds allocated under the budget ordinance, as amended herein and the fund balance at the end of the current fiscal year will be carried forward to the next budget to fund the allocations for the next fiscal year.

**SECTION 4.0 Non-Repealer**

That except as amended hereby, or as heretofore amended, the provisions of Ordinance No. **2021-1354** and Ordinance No. **2022-1366**, shall, remain in full force and effect.

**SECTION 5.0 Severability**

That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part decided to be invalid, illegal or unconstitutional; it being the intent of the City Council in adopting this Ordinance that no portion or provisions, or regulations contained herein shall become inoperative or fail by reason of any unconstitutionality of any other portion thereof, and all provisions of this ordinance are severable for that purpose.

**SECTION 6.0 Effective Date**

This ordinance shall take effect immediately from and after its passage as the law in such cases provides, and the City Secretary is directed to furnish a copy of this budget amendment to the County Clerk of Fort Bend County as required by Chapter 102 of the Texas Local Government Code.

**This Ordinance duly passed and adopted on the 19<sup>th</sup> of April 2022.**

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

ATTEST:

\_\_\_\_\_  
Kimberly Kopecky, City Secretary





Exhibit A						
Amendment "2" FY22 Budget						
	GL Account #	Adopted FY2022 Budget	Amendment	Amended FY2022 Budget	Explanation	
<b>GENERAL FUND #100</b>						
<b>Beginning Fund Balance</b>		\$ 7,495,548		\$ 7,495,548		
<b>Revenues</b>		\$ 17,003,964		\$ 17,003,964		
<b>Amendments</b>						
	Transfer In - 4/A EDC Fund 600 ASA Reimbursement		\$ 40,000	\$ 40,000	Increase for Xfer In from Fund 600 for increase for legal in Dept. 180	
	Transfer In - 4/B EDC Fund 700 ASA Reimbursement		\$ 40,000	\$ 40,000	Increase for Xfer In from Fund 700 for increase for legal in Dept. 180	
<b>Total Revenues</b>		\$ 17,003,964		\$ 17,083,964		
<b>Expenditures</b>		\$ 12,553,613		\$ 12,553,613		
<b>Amendments</b>						
	Prof Service Legal & Engineer	100-180-5411-14	\$ 80,000	\$ 80,000	Increase to cover additional legal expenses	
	Prof. Services - Infrastructure Inspection	100-510-5411-12	\$ 200,000	\$ 200,000	Increase for Clay and Lyndecker Contract to cover costs for inspections due to an increase in construction (residential)	
<b>Total Expenditures</b>		\$ 12,553,613		\$ 12,833,613		
<b>Revenues Over(Under) Expenses</b>		\$ 4,450,351		\$ 4,170,351		
<b>Transfers Out</b>		\$ 6,000,000		\$ 6,000,000		
<b>Ending Fund Balance</b>		\$ 5,945,899		\$ 5,745,899		
<b>Fund Balance as Percentage of Operating Expenditures</b>		47%		45%		
	GL Account #	Adopted FY2022 Budget	Amendment	Amended FY2022 Budget	Explanation	
<b>Fulshear Utility Fund #500</b>						
<b>Beginning Fund Balance</b>		\$ 3,418,835		\$ 3,418,835		
<b>Revenues</b>		\$ 10,846,000		\$ 10,846,000		
<b>Amendments</b>						
	Builder Backcharges	500-44310	\$ 67,000	\$ 67,000	Increase to match Builder Back Charge Expense (in/out)	
<b>Total Revenue</b>		\$ 10,846,000		\$ 10,913,000		
<b>Expenditures</b>		\$ 9,268,385		\$ 9,268,385		
<b>Amendments</b>						
	Sludge Hauling	500-100-5450-00	\$ 175,000	\$ 175,000	Increase in system maintenance repair - emergency repairs/aging infrastructure	
	Base - Contract W/S Operation	500-100-5510-01	\$ 280,000	\$ 280,000	Increase in contractual operations - Inframark	
	Admin Fees W/S Contract	500-100-5510-02	\$ 3,800	\$ 3,800	Increase in contractual operations - Inframark	
	Water System Maintenance	500-100-5510-04	\$ 295,000	\$ 295,000	Increase in system maintenance repair - emergency repairs/aging infrastructure	
	Lift Station Maintenance	500-100-5510-05	\$ 25,200	\$ 25,200	Increase in system maintenance repair - emergency repairs/aging infrastructure	
	Tapping Fees W/S Contract	500-100-5510-06	\$ 678,000	\$ 678,000	Increase in system maintenance repair - emergency repairs/aging infrastructure	
	Sewer System Maintenance	500-100-5510-07	\$ 435,000	\$ 435,000	Increase in system maintenance repair - emergency repairs/aging infrastructure	
	WWTP Maintenance	500-100-5511-00	\$ 175,000	\$ 175,000	Increase in system maintenance repair - emergency repairs/aging infrastructure	
	Builder Back Charges	500-100-5511-01	\$ 87,000	\$ 87,000	New Line Item to match Builder Back Charges Revenue (in/out)	
<b>Total Expenditures</b>		\$ 9,268,385		\$ 11,422,385		
<b>Revenues Over(Under) Expenses</b>		\$ 1,577,615		\$ (509,385)		
<b>Transfers Out</b>		\$ 2,421,018		\$ 2,421,018		
<b>Ending Fund Balance</b>		\$ 2,575,432		\$ 488,432		
<b>Fund Balance as Percentage of Operating Expenditures</b>		28%		4%		

		GL Account #	Adopted FY2022 Budget	Amendment	Amended FY2022 Budget	
<b>General Capital Projects #501</b>						
<b>Beginning Fund Balance</b>			\$ 2,426,061		\$ 2,426,061	
<b>Revenues</b>			\$ 16,781,000		\$ 16,781,000	
<b>Total Revenue</b>			\$ 16,781,000		\$ 16,781,000	
<b>Expenditures</b>			\$ 13,534,080		\$ 13,534,080	
<b>Amendments</b>						
	1.0 MGD East Fulshear WWTP at CCR Site-WW22B	501-000-5802-01		\$ 229,250	\$ 229,250	Increase to cover award for design and preliminary engineering services costs that were higher then previously estimated
	3.5 MGD Downtown WWTP Diversion Lift Station/18 Inch Force Main - WW22C	501-000-5802-03		\$ 38,670	\$ 38,670	Increase to cover award for design and preliminary engineering services costs that were higher then previously estimated
<b>Total Expenditures</b>			\$ 13,534,080		\$ 13,802,000	
<b>Revenues Over(Under) Expenses</b>			\$ 3,246,920		\$ 2,979,000	
<b>Ending Fund Balance</b>			\$ 5,672,981		\$ 5,405,061	
<b>Fund Balance as Percentage of Expenditures</b>			42%		40%	
<b>CCR Reserve #551</b>						
<b>Beginning Fund Balance</b>			\$ 3,817,535		\$ 3,817,535	
<b>Revenues</b>			\$ 15,000		\$ 15,000	
<b>Total Revenue</b>			\$ 15,000		\$ 15,000	
<b>Expenditures</b>			\$ 2,164,150		\$ 2,164,150	
<b>Amendments</b>						
	Emergency Equipment Purchases - WW22G	551-000-5801-07		\$ 20,000	\$ 20,000	Increase to cover repairs necessary to be in compliance with TCEQ
<b>Total Expenditures</b>			\$ 2,164,150		\$ 2,184,150	
<b>Revenues Over(Under) Expenses</b>			\$ (2,149,150)		\$ (2,169,150)	
<b>Ending Fund Balance</b>			\$ 1,668,385		\$ 1,648,385	
<b>Fund Balance as Percentage of Expenditures</b>			77%		76%	
<b>4/A Operating Fund #600</b>						
<b>Beginning Fund Balance</b>			\$ 2,555,044		\$ 2,555,044	
<b>Revenues</b>			\$ 1,256,654		\$ 1,256,654	
<b>Total Revenue</b>			\$ 1,256,654		\$ 1,256,654	
<b>Expenditures</b>			\$ 1,022,707		\$ 1,022,707	
<b>Amendments</b>						
	Xfer Out - ASA Reimbursement	600-900-5900-10		\$ 40,000	\$ 40,000	To fund the increase for legal expenses in department 180 of the general fund
<b>Total Expenditures</b>			\$ 1,022,707		\$ 1,062,707	
<b>Revenues Over(Under) Expenses</b>			\$ 233,947		\$ 193,947	
<b>Ending Fund Balance</b>			\$ 2,788,991		\$ 2,748,991	
<b>Fund Balance as Percentage of Expenditures</b>			273%		269%	

		GL Account #	Adopted FY2022 Budget	Amendment	Amended FY2022 Budget	
	<b>4/B Operating Fund #700</b>					
	<b>Beginning Fund Balance</b>		\$ 2,734,592		\$ 2,734,592	
	<b>Revenues</b>		\$ 1,257,154		\$ 1,257,154	
	<b>Total Revenue</b>		\$ 1,257,154		\$ 1,257,154	
	<b>Expenditures</b>		\$ 1,022,707		\$ 1,022,707	
	<b>Amendments</b>					
	Xfer Out - ASA Reimbursement	700-900-5900-10		\$ 40,000	\$ 40,000	To fund the increase for legal expenses in department 180 of the general fund
	<b>Total Expenditures</b>		\$ 1,022,707		\$ 1,062,707	
	<b>Revenues Over(Under) Expenses</b>		\$ 234,447		\$ 194,447	
	<b>Ending Fund Balance</b>		\$ 2,969,039		\$ 2,929,039	
	<b>Fund Balance as Percentage of Expenditures</b>		290%		286%	

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

**AGENDA OF:** 4/19/2022 **ITEMS:** IV.C.  
**DATE SUBMITTED:** 3/9/2022 **DEPARTMENT:** Public Works  
**PREPARED BY:** Sharon Valiante, Public Works **PRESENTER:** Sharon Valiante, Public Works  
Director Director  
**SUBJECT:** CONSIDERATION AND APPROVAL OF AN EMERGENCY PURCHASE TO REPAIR WATER PLANT NO. 3

**Expenditure Required:** \$243,460

**Amount Budgeted:** 0

**Funding Account:**

**Additional Appropriation Required:** \$243,460.31

**Funding Account:** CCR Reserve

**EXECUTIVE SUMMARY**

The Cross Creek Ranch Water Plant No. 3, Well # 4, began to experience a well a shaft wobbling problem in September of 2021. An analysis of the issue was needed to determine the issue. The site analysis, performed by Weisinger Incorporated, revealed the pump shaft and tension bearing exhibiting wear severe wear and rubbing. Weisinger recommended pulling the well pump and shipping it off for testing to be inspected for damages.

The assessment revealed the need to re-build the well pump and the related assemblies including pump columns, line shafts, bearings, repair the well pump motor and to clean, prime, paint the discharge head and appurtenances. This would mean city staff would need to take Water Plant 3 off-line for the repairs. The authorization to initiate an emergency repair was issued based on the need to address the situation for our water system in terms of demand and public health. (supplying water to the Cross Creek Ranch community at a safe PSI level)

The total costs, \$234,460.31 includes the pumping and equipment services (\$207,077.77) , the assessment costs (\$36,382.54).

Repairs have been completed and the final billing received and paid To provide for transparency and to meet the purchasing requirements, staff are presenting the expenditure for approval.

**RECOMMENDATION**

City Council approve the expenditure.

**ATTACHMENTS:**

Description	Upload Date	Type
R&B Invoice	4/8/2022	Backup Material



R + B Group, Inc.  
 1213 N. Durham Dr.  
 Houston, Texas 77008  
 713-862-5800

**INVOICE**

**BILL TO:**  
 Dan McGraw  
 Asst. Public Works Director  
 City of Fulsher  
 30603 FM 1093 West  
 PO Box 279  
 Fulshear, TX 77441

Emergency Repair to new Water  
 Plant No 3. needs to  
 coded against fund  
 551-000-5801-07

<b>DATE</b> 11/5/2021	<b>INVOICE #</b> 2021-443700
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<b>P. O. #</b>	<b>TERMS</b> DUE UPON RECEIPT
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QUANTITY	DESCRIPTION	RATE	AMOUNT
	PROJECT: Fort Bend County MUD 169 Water Plant No.3		
1 LOT	REPAIR OF WELL MOTOR AND PUMP BY WEISINGER WATER WELL SERVICES		
1EA	Cost to service and repair well pump motor Change Order Attached		36382.54
1EA	Cost to service and repair well pump Change Order Attached		207077.77
		<b>TOTAL:</b>	<b>\$243,460.31</b>

T. Michael Haralson

Thank you for your business - we appreciate it very much!

252.022(a)(2)

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

**AGENDA OF:** 10/15/2019 **ITEMS:** IX.G.  
**DATE SUBMITTED:** 9/30/2019 **DEPARTMENT:** Public Works  
**PREPARED BY:** Sharon Valiante/Wes Vela **PRESENTER:** Sharon Valiante/Wes Vela  
**SUBJECT:** CONSENT AND POSSIBLE ACTION FOR APPROVAL OF EXPENDITURES FOR EMERGENCY REPAIR TO WATER PLANT NO.2 IN CROSS CREEK RANCH

**Expenditure Required:** \$132,292

**Amount Budgeted:** \$1,400,000

**Funding Account:** 501-5-000-5650-00

**Additional Appropriation Required:** NA

**Funding Account:** NA

**EXECUTIVE SUMMARY**

In June 2019, the City received a well performance test that indicated Water Plant #2 well in Cross Creek Ranch was in danger of a complete shut down if the City did not address an issue that indicated a pump failure would occur. City staff had an additional independent assessment done and received the same information. The City Manager declared the repair to be an emergency and authorized staff to move forward with the repair.

Staff engaged the services of Alsay, original well driller, to begin the process of repair. As the repair progressed, an estimate of the expenditures were developed. The expenditures came in well over \$50,000. Staff proceeded with the repairs and now have the final actual expenditures for the project; \$132,292.

Therefore, since the expenditures is greater than \$50,000, staff is asking for City Council approval for the expenditures made; \$132,292..

**RECOMMENDATION**

City Council approval for the expenditures to repair the Water Plant No. 2 well for \$132,292..

**ATTACHMENTS:**

Description	Upload Date	Type
<a href="#">Alsay Invoice #1</a>	10/7/2019	Backup Material
<a href="#">Alsay Invoice Number 2</a>	10/7/2019	Backup Material

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

**AGENDA OF:** 4/19/2022 **ITEMS:** IV.D.  
**DATE** 2/24/2022 **DEPARTMENT:** Public Works  
**SUBMITTED:**  
**PREPARED BY:** Sharon Valiante, Public Works **PRESENTER:** Sharon Valiante, Public Works  
Director Director

**SUBJECT:** CONSIDERATION AND POSSIBLE ACTION TO APPROVE PROFESSIONAL SERVICES AGREEMENT #2022-037 FOR GENERAL ENGINEERING AND INSPECTION SERVICES

**Expenditure Required:** \$450,000

**Amount Budgeted:** \$250,000

**Funding Account:** 100-510-5411-12

**Additional Appropriation Required:** \$200,000

**Funding Account:** 100-510-5411-12

**EXECUTIVE SUMMARY**

General Engineering Services (Services) for the City of Fulshear (City), including design, plan/plat reviews, surveying, and construction inspection are currently provided by Clay & Leyendecker, Inc.; an approval by City Council in November of 2018 with a renewal of these services thru November 2022. Each year the Services expenditures have been well within the estimated fiscal year approved budget. However, this fiscal year, the trend in the Inspection services provided is increasing exponentially each month. Staff believe this is attributable to the up-tick in the rate of growth in the various master planned developments.

To continue to provide for the inspection services with Clay & Leyendecker, staff are recommending an increase in the budget line item account, 100-510-5411-12 to a total of \$450,000, Inspection Services, originally approved in the fiscal year 2022 budget for \$250,000. The increase is \$200,000.

The Professional Services Agreement presented for consideration provides for the Services at the same rate schedule as previously approved, and includes a mileage reimbursement at \$0.50/mile.

Clay & Leyendecker has provided the City with Services for the past 22 years. Clay & Leyendecker is an approved General Engineering Services vendor with the City. Staff has reviewed the firm's ability to continue to provide the Services. Based on prior service history and historical knowledge of the firm's key staff regarding the City of Fulshear and the City's processes and procedures established, staff would like to continue to work with Clay and Leyendecker. The proposed scope of services have been discussed and are believed to be fair and equitable.

Staff and legal have reviewed the Professional Services Agreement and recommend approval with the ability to renew the agreement at the end of each fiscal year for an additional three year term.

**RECOMMENDATION**

City Council approve the Professional Services Agreement #2022-037.

**ATTACHMENTS:**

Description	Upload Date	Type
PSA 2022-037	4/8/2022	Exhibit



**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES**  
**#2022-037**  
**GENERAL ENGINEERING AND INSPECTION SERVICES**

THIS AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 (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 engineering services** relating to Primrose Park Phase 2 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 **engineering 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 of 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 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 **\$375,000.00**.
- 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 September 30<sup>th</sup>, 2022, with the option to renew up to 3 additional fiscal years, 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 through 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.

**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 Service Provider to perform the Services under this Agreement, the 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

IF TO SERVICE PROVIDER:

Clay & Leyendecker, Inc.  
Attn: Herman Clay, Jr., P.E.  
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.
- 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 of facsimile reproduction of an original signature of a party on this Agreement being 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: \_\_\_\_\_

February 18, 2022

Ms. Sharon Valiante, Public Works Director  
City of Fulshear  
P.O. Box 279  
Fulshear, TX 77441

Re: Engineering Contract  
Clay & Leyendecker, Inc.

Dear Sharon:

I have received and reviewed the Revised Engineering Contract between Clay & Leyendecker, Inc. and the City of Fulshear. Per this contract, Clay & Leyendecker, Inc. will provide the following Professional Services to the City:

- A) Licensed Professional Engineering Services to attend Staff Meetings, City Council Meetings, Planning Commission Meetings and Special Called Meetings.
- B) Review Plats for the Planning Commission and City Council approval.
- C) Small surveying jobs as required by the City Staff for short term projects.
- D) Drafting for updating maps and misc. small City projects.
- E) Review of Construction Plans submitted to the City for review.
- F) Construction inspection on subdivisions and other private developments.

Clay & Leyendecker, Inc. proposes to charge an hourly rate for the above referenced work. Any additional projects the City desires will be negotiated as they are needed. An Exhibit for the hourly rates that our firm offers is enclosed with this letter.

I would like to again take this opportunity to thank the City of Fulshear for allowing our firm to submit this proposal. If you have any questions or if you need additional information, please feel free to contract me.

Yours truly,



Herman Clay, Jr., P.E.  
TPELS No. 27588

HC/pe

EXHIBIT B

Exhibit "A"

Professional Fee Schedule  
City of Fulshear, Texas

Licensed Professional Engineer.....	\$180.00 hr.
Licensed Professional Land Surveyor.....	\$160.00 hr.
Field Survey Crew.....	\$150.00 hr.
Draftsman / Engineering Tech. ....	\$75.00 hr.
Construction Inspection.....	\$65.00 hr.
Mileage Rate.....	\$0.50 mi.
Clerical .....	\$45.00 hr.

*For clay d, P.E.*

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

**AGENDA OF:** 4/19/2022 **ITEMS:** IVE.  
**DATE SUBMITTED:** 4/7/2022 **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 2022-012 FOR PRELIMINARY ENGINEERING DESIGN SERVICES FOR THE NEW 1.0 MGD EAST FULSHEAR WASTEWATER TREATMENT PLANT AT CROSS CREEK RANCH (WW22B)

**Expenditure Required:** \$473,000

**Amount Budgeted:** \$473,000

**Funding Account:**

**Additional Appropriation Required:**

**Funding Account:**

**EXECUTIVE SUMMARY**

In September of 2021, Council approved an update to the City's water and wastewater master plan. The update to the water and wastewater master plan was in response to the rapid growth of the City. The update established needed water and wastewater projects and set priority. Project WW22B was listed as one of the proposed priority projects. Project WW22B will consist of the construction of a new 1.0 MGD wastewater treatment plant located at the existing Cross Creek Ranch WWTP. This phase of the project will consist of preliminary design services.

City Staff issued a request for qualification from interested firms for WW22B and received 28 responses to the solicitation. After review of the firm qualifications, it was determined that Enprotec / Hibbs & Todd, Inc. (EHT) would be the most qualified provider for this project. EHT 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 Enprotec / Hibbs & Todd, Inc. for project WW22B in the amount of \$473,000

**ATTACHMENTS:**

Description	Upload Date	Type
Professional Services Agreement	4/7/2022	Cover Memo

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

THIS AGREEMENT FOR PROFESSIONAL DESIGN SERVICES (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 (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 wishes to obtain **professional design services 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 of 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 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 \$473,000.00.**
- 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.**B** **udget.** 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 through 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.*** Purchase and Service Plan 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. 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 terms 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 Service Provider to perform the Services under this Agreement, the 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

IF TO SERVICE PROVIDER:

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

*Attn: Jordan S. Hibbs. PE*

402 Cedar Street

Abilene, Texas 79601

Email: jordan.Hhibbs@e-ht.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.
  
- 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 of facsimile reproduction of an original signature of a party on this Agreement beings 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:**

**ENPROTEC / HIBBS & TODD, INC.**

By: Jordan S. Hibbs, P.E.  
Name: *Jordan S. Hibbs*  
Title: Vice President

**EXHIBIT A**  
**SCOPE OF SERVICES**  
**FOR**  
**1.0 MGD EAST WASTEWATER TREATMENT PLANT AT CROSS CREEK RANCH**  
**February 2, 2022**

This 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: October 31, 2022.**



## 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.

## **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 services set forth in Exhibit A, Task 3 (Special Services) on a time and materials basis not to exceed \$86,000 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. Subtask budgets are itemized below. 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 \$86,000 for all Special Services provided under Task 3.
    - 3.1 Geotechnical Investigations: \$42,000.
    - 3.2 Discharge Permit Modification Applications: \$44,000.

**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

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

**AGENDA OF:** 4/19/2022                                       **ITEMS:** IV.F.  
**DATE SUBMITTED:** 4/8/2022                                       **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 2022-012 FOR DESIGN SERVICES FOR A NEW 1.0 MG ELEVATED STORAGE TANK (W18H)

**Expenditure Required:** \$475,700.00  
**Amount Budgeted:** \$475,700.00  
**Funding Account:**  
**Additional Appropriation Required:**  
**Funding Account:**

**EXECUTIVE SUMMARY**

In September of 2021, Council approved an update to the City's water and wastewater master plan. The update to the water and wastewater master plan was in response to the rapid growth of the City. The update established needed water and wastewater projects and set priority. Project W18H was listed as one of the proposed priority projects. Project W18H will consist of the construction of a new 1.0 MG elevated storage tank located at water plant no. 2 in the Pecan Ridge Subdivision.

City Staff issued a request for qualification from interested firms for W18H and received 28 responses to the solicitation. After review of the firm qualifications, it was determined that Bleyl Engineering would be the most qualified provider for this project. Bleyl Engineering submitted a scope of services and a fee schedule for this design (attached). Legal has reviewed the professional services contract and Staff recommends approval.

**RECOMMENDATION**

City Council approve Professional Services Agreement 2022-012 with Bleyl Engineering for project W18H in the amount of \$475,700.

**ATTACHMENTS:**

Description	Upload Date	Type
Professional Services Agreement	4/8/2022	Exhibit

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES**  
**#2022-012**  
**1.0 MG ELEVATED STORAGE TANK**

THIS AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 (the “Effective Date”), by and between the CITY OF FULSHEAR, TEXAS (the “City”), a Texas municipality, and BLEYL ENGINEERING (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 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 of 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 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 \$475,700.00.**
- 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 through 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.*** Purchase and Service Plan 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. 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 Service Provider to perform the Services under this Agreement, the 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:

Bleyl Engineering

*Attn: Travis T.K. Walker, PE*

100 Nugent St.

Conroe, TX 77301

Email: [TWalker@bleylengineering.com](mailto:TWalker@bleylengineering.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.
  
- 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 of facsimile reproduction of an original signature of a party on this Agreement beings 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:**

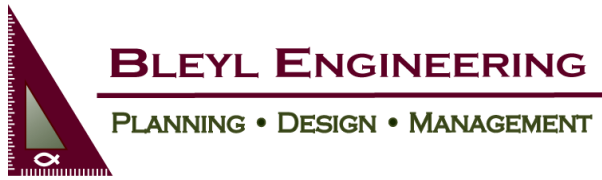
**CITY OF FULSHEAR, TEXAS**

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

**PROFESSIONAL SERVICE PROVIDER:**

**BLEYL ENGINEERING**

By:  \_\_\_\_\_  
Name: Travis T. K. Walker  
Title: Public Works Department Manager



100 Nugent Street  
 Conroe, TX 77301  
 (936) 441-7833

March 11, 2022

Mr. Cliff Brouhard, PE, PTOE  
 City Engineer  
 City of Fulshear  
 29255 FM 1093  
 Fulshear, Texas 77441

Re: Professional Engineering Services Proposal for  
**1.0 Million Gallon Elevated Water Storage Tank at Pecan Ridge, rev.3**  
 City of Fulshear CIP Project No. W18H

Dear Mr. Brouhard,

In response to the City of Fulshear's qualification-based selection of **Bleyl Engineering**, we are pleased to present our proposal for Professional Services in connection with preliminary design, final design, construction administration, and field project representation services for the proposed 1.0 Million Gallon Elevated Water Storage Tank, the EST, in the Pecan Ridge Development. Bleyl has reviewed the draft PSA and has no objections to the PSA as presented. Certificates of Insurance and a W-9 for Bleyl Engineering are attached for your use.

#### **Project Understanding:**

The EST is needed by the City of Fulshear ("City") to serve the growth in the City while maintaining TCEQ storage capacities and fire flow requirements. The EST is proposed in the Pecan Ridge development, north of FM 1093, and west of FM 359. The EST will be adjacent to a future water plant to be designed by Freese & Nichols and will connect to the water system via a 12-inch waterline by others. The EST is proposed as a composite elevated storage tank. All site work outside the foundation of the tank is assumed by Others. Coordination with Freese & Nichols will be required for verification of site plan, utility connection locations, site security fencing, sub-consultant coordination for geotechnical recommendations, surveying, and other miscellaneous items.

The project includes the design for a fully operational composite EST.

Based on our understanding of your project, we have prepared the following scope of services and fee proposal for your consideration.

#### **Scope & Proposed Fee:**

The scope of work shall be in accordance with the pending Professional Services Agreement between the City and **Bleyl Engineering** for the referenced project. A summary of our services and compensation are enclosed as **Attachment "A"**. Compensation and invoicing will be in accordance with the referenced Professional Services Agreement. A more detailed scope of services is as follows.

**Scope of Services:**

The scope will include project management, preliminary design, final design, project bidding, construction administration, and field project representation. Baird Gilroy & Dixon will act as a sub-consultant to Bleyl and will be used for required electrical design improvements to the EST. Coordination with Freese & Nichols will be critical for site layout, and utility connections. Four plan submissions will be provided to the City, 30%, 60%, 90%, and final bid set plans. These will be provided in hard copy (3 copies) and PDF. Updated cost estimates will be provided with each submittal. A preliminary design report will be provided with the 30% submission. Project specifications will be provided starting with the 60% submission. Final plans will be provided to associated review agencies as required.

Plan review meetings will be attended after each submission to the City. Comments and questions from the City will be addressed with the ensuing submittal. Upon final approval of plans by the City, Bleyl will assist in advertising and bidding of the project. Bleyl recommends bidding projects with CivCastUSA.com, including online bid submission, if the City is accepting of online bidding. Other bidding options are feasible and can be coordinated with the City as bidding approaches. Bleyl will assist with responding to questions regarding the bid set of the EST construction drawings and specifications.

Construction administration will consist of a review of submitted bids, bid tabulation, recommendation of award, contract preparation, pre-construction meeting, review and processing of contractor pay requests, responses to requests for information, and other miscellaneous construction-related items. Project status updates will be provided through regular field project representative reports, as well as monthly summaries with Contractor Pay Requests. The Field Project Representation is based on a 60-week construction schedule, with three visits per week.

It is Bleyl's understanding that Freese & Nichols will coordinate with their respective surveying and geotechnical sub-consultants for the required information for Bleyl to complete the site plan and EST design.

**Design Schedule:**

Bleyl is authorized to begin the design with the signing of the PSA with the City. Upon authorization by the City, Bleyl will begin design and coordination with Freese & Nichols for preliminary site plans. A proposed design schedule, to mirror Freese & Nichols design schedule, is as follows:

- 30% Deliverable: 90 days after authorization to begin
- 60% Deliverable: 80 days after 30% review meeting/comments with City
- 90% Deliverable: 60 days after 60% review meeting/comments with City
- Final Deliverable: 40 days after 90% review meeting/comments with City

**Proposed Compensation & Fee Schedule:**

Fees are compensated based on 12.5% of the estimated construction cost. These fees include Engineering Design of the EST, Construction Administration, and Field Project Representation. The preliminary construction costs are estimated to be **\$3,805,000, including a 15% contingency**, as shown in **Attachment "B"**.

**Special Considerations:**

**Bleyl Engineering** further proposes the following additional considerations:

1. The proposal is subject to the Professional Services Agreement between The City of Fulshear and **Bleyl Engineering**.
2. It is our understanding that the following services if needed, are to be provided by a 3<sup>rd</sup> party; therefore, they are not included in this proposal: Environmental Assessments/permitting, construction materials testing, NOI/SWPPP, TWDB coordination.
3. Construction staking shall be provided in the construction contract and billed directly to the contractor.

We appreciate the opportunity to present this proposal. If you agree with the terms, please sign and return. Should you have any questions, or require additional information, please do not hesitate to contact me via email, [twalker@bleylengineering.com](mailto:twalker@bleylengineering.com), or via phone, (936) 441-7833.

Sincerely,



Travis T. K. Walker, PE  
Department Manager  
Public Works

**Attachment A**  
**Scope of Services**  
**City of Fulshear - Elevated Storage Tank at Pecan Ridge**  
**Project Address or Legal Description**  
**Project Address or Legal Description2**  
**January 5, 2022**

**City of Fulshear**  
 30603 FM 1093  
 Fulshear, Texas 77441

**Attn: Cliff Brouhard, PE PTOE**  
[cbrouhard@fulsheartexas.gov](mailto:cbrouhard@fulsheartexas.gov)  
 281 346 1796

<b>EOC = \$3,805,000</b>		<b>Phase</b>	<b>Compensation Method</b>	<b>FEE</b>
<b>DESCRIPTION</b>	<b>PHASE</b>	<b>Lump sum based on</b>	<b>\$</b>	<b>475,700.00</b>
		<b>12.5% of EOC</b>		
A. Preliminary Design Services	101		\$	65,000
B. Final Design Services	201		\$	225,000
C. Project Bidding and Contract Procurement	301		\$	10,000
D. Construction Administration	302		\$	75,000
E. Field Project Representation	401		\$	90,000
F. General Consultation & Coordination	901		\$	9,000
			<b>Total: \$</b>	<b>474,000</b>

**Reimbursible Expenses**

1. Reimbursible Fees	902	Cost + 10%	\$	1,700.00
		<b>Phase Sub-Total:</b>	<b>\$</b>	<b>1,700.00</b>

**Total Fee: \$ 475,700.00**

Notes

- Client is responsible for complying with all storm water pollution prevention requirements. Bleyl Engineering recommends consulting a storm water management specialist prior to construction. If the project disturbs over 1 acre of land, a storm water pollution prevention plan shall be prepared, implemented, and maintained by the Client's contractor, which shall be competent in storm water pollution prevention.
- Tax will be added to the above fees when required by law.
- These fees are presented in the understanding that the Client, if a public entity, has selected Bleyl Engineering for the Project based on qualifications in accordance with state law and is not soliciting competitive proposals on professional services.
- Client to provide: Site plan, boundary survey, topographic survey, current title report and deeds/easements listed in title report.
- Scope of work excludes offsite utilities or drainage, pump/lift station design, drainage studies, floodplain evaluations/revisions, structural/MEP/geotechnical engineering, materials testing, or surveying.
- All permits shall be obtained by Owner or Owner's Representative.
- Jurisdictional review fees (of drawings) shall be paid by Client or reimbursed at Cost + 10%.
- Client will be notified of all changes in scope of work and/or changes in estimated fees.
- Client or their representative shall be responsible for Fire Code submittals and approval.

CM: [Mike Kelly]  
 PM: [Travis Walker]

Form 1295 Required

CLIENT Initials: {{ \$int3 }}

ENGINEER Initials: {{ \$int1 }}





**ATTACHMENT B - ENGINEER'S PRELIMINARY OPINION OF COST  
1.0 MGal Elevated Water Storage Tank at Pecan Ridge  
1/4/22**

<b>BASE BID</b>					
<b>NO.</b>	<b>DESCRIPTION OF WORK</b>	<b>UNIT</b>	<b>QTY.</b>	<b>UNIT COST</b>	<b>COST</b>
1.	Mobilization, performance and payment bonds (5% max)	LS	1	\$ 158,000.00	\$ 158,000.00
2.	1.0 Million Gallon Composite Elevated Storage Tank	LS	1	\$ 3,100,000.00	\$ 3,100,000.00
3.	Misc. Electrical Improvements	LS	1	\$ 50,000.00	\$ 50,000.00

<b>TOTAL PROJECT COSTS</b>	
SUBTOTAL	\$3,308,000.00
CONTINGENCY (15%)	\$496,200.00
<b>Construction Subtotal:</b>	<b>\$3,805,000.00</b>
<b>Eng. &amp; Surv. (12.5%)</b>	<b>\$475,700.00</b>
<b>Estimated Project Total:</b>	<b>\$4,280,700.00</b>

**NOTES:**

- 1 Estimate is preliminary and provided without the benefit of a detailed survey or studies, and not based on actual design.
- 2 This estimate represents my best judgment as a design professional familiar with the construction industry. Bleyl Engineering has no control over the cost of labor, materials, or equipment; over the Contractor's methods of determining bid prices; or over competitive bidding or market conditions. Therefore, we cannot and do not guarantee that bids will not vary from this cost estimate.
- 3 This estimate is assuming Freese & Nichols provides yard piping connections, storm sewer for drainage, necessary earth work, site security fencing, paving, and other miscellaneous items outside of the foundation of the EST.
- 4 This project will be in conjunction with the adjacent Water Plant to be designed by Freese & Nichols. Coordination between both design firms will be required to ensure nothing is being designed twice, or
- 5 It is our understanding that some of the project may be funded via TWDB funding. Coordination with the TWDB is not included in the fee above.
- 6 Engineering fee includes Construction Field Representation

<p>This Document is Released for the Purpose of:  <b>General Planning</b>  Under the Authority of:  Engineer: <b>Travis T.K. Walker, P.E.</b>  License No.: <b>129751</b>  It is Preliminary in Nature and not to be Used for  Feasibility of Land Purchases, Bond Applications,  Loans or Grants.</p>
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