



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

CITY COUNCIL:

MAYOR: Aaron Groff

MAYOR PRO-TEM: Kaye Kahlich

COUNCIL MEMBER: Kent Pool

COUNCIL MEMBER: Kevin White

COUNCIL MEMBER: Debra Cates

COUNCIL MEMBER: Lisa Martin

COUNCIL MEMBER: Joel
Patterson

COUNCIL MEMBER: John Kelly

STAFF:

CITY MANAGER: Jack Harper

CITY SECRETARY: Kimberly
Kopecky

CITY ATTORNEY: J. Grady Randle

SPECIAL CITY COUNCIL MEETING

April 20, 2021

NOTICE IS HEREBY GIVEN OF A SPECIAL CITY COUNCIL MEETING OF THE CITY OF FULSHEAR TO BE HELD ON **Tuesday, April 20, 2021 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, 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. PRESENTATION AND UPDATE BY RICH MULLER ON THE TEXAS HERITAGE PARKWAY**
- B. CONSIDERATION AND POSSIBLE ACTION TO APPROVE ORDINANCE NO. 2021-1342 REGARDING FY21 OPERATING AND CAPITAL BUDGET AMENDMENT "1"**
- C. DISCUSSION AND POSSIBLE ACTION REGARDING RESOLUTION NO. 2021-510: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS, ESTABLISHING THE 1093 RAILS TO TRAILS LOCAL GOVERNMENT CORPORATION; AND ACCEPTING, APPROVING, AND ADOPTING THE ARTICLES OF INCORPORATION AND THE BYLAWS OF THE 1093 RAILS TO TRAILS LOCAL GOVERNMENT CORPORATION**
- D. CONSIDERATION AND POSSIBLE ACTION TO APPROVE RESOLUTION NO. 2021-509 ADOPTING A 45 DAY SUSPENSION TO THE EFFECTIVE DATE OF THE CENTERPOINT GAS INTERIM RATE ADJUSTMENT**
- E. CONSIDER AND POSSIBLE ACTION TO APPROVE ORDINANCE NO. 2021-1339 TO ADOPT A WATER CONSERVATION PLAN**
- F. CONSIDERATION AND APPROVAL OF AWARD FOR CONSTRUCTION SERVICES FOR THE EXPANSION OF THE CITY OF FULSHEAR WASTEWATER TREATMENT PLANT**
- G. CONSIDERATION AND POSSIBLE ACTION TO APPROVE AN EQUIPMENT LEASE AGREEMENT FOR THE 0.2 MGD PREFABRICATED PLANT FOR THE EXPANSION OF THE CITY OF FULSHEAR WASTEWATER TREATMENT**

PLANT

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**
- **DEVELOPMENT AGREEMENT**

VI. 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 15, 2021 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.

KIMBERLY KOPECKY, CITY SECRETARY

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

AGENDA OF: 4/20/2021 **ITEMS:** IV.B.
DATE 4/12/2021 **DEPARTMENT:** Finance
SUBMITTED:

PREPARED BY: ERIN TUREAU **PRESENTER:** ERIN TUREAU
SUBJECT: CONSIDERATION AND POSSIBLE ACTION TO APPROVE ORDINANCE NO. 2021-1342 REGARDING FY21 OPERATING AND CAPITAL BUDGET AMENDMENT "1"

Expenditure Required: SEE ATTACHED AMENDMENT

Amount Budgeted: SEE ATTACHED AMENDMENT

Funding Account: SEE ATTACHED AMENDMENT

Additional Appropriation Required: N/A

Funding Account: N/A

EXECUTIVE SUMMARY

This item is a proposed amendment for FY21 for the General Fund and General Capital Projects Fund. This amendment is to adjust for the following:

General Fund (100):

- | | |
|---|--|
| 1. CARES Act Fund: To account for actual revenue received in FY21 for | FY21 Expenditures |
| 2. GLO Grant Revenue: To adjust for this revenue being budgeted in | Fund 300 |
| 3. 380 Agreements: Creation of Expense Line Item to account for these | expenditures |
| 4. Sales Tax Rebates: Creation of Expense Line Item to account for these | expenditures |
| 5. Capital Outlay - City Hall: Earnest money for city hall | |
| 6. Insurance - Real and Personal Property: Increase in premium due to | additional property purchased by the City |
| 7. Insurance - Auto Liability: Increase in premium due to increase in the | City's fleet |
| 8. Insurance - W/C Contribution: Increase in premium due to increase in | in City personnel |
| 9. COVID-19 Expenses: Account for actual purchases in FY21 using | CARES Act funding |
| 10. Xfer Out Capital Projects Fund (300): Land acquisition for future | project - Penn Ln. & Design Fee Costs for city |
| hall. | |

General Capital Projects Fund (300)

- | | |
|--|----------|
| 1. Xfer In - General Fund: Revenue for land acquisition for future project - | Penn Ln. |
| 2. Capital Outlay - Land Acquisition: Purchase of land for future project - | Penn Ln. |
| 3. City Hall: Design fee costs | |

RECOMMENDATION

Staff recommends Council adopt the Proposed FY21 Budget Amendment "1" as presented in Exhibit A.

ATTACHMENTS:

Description

FY21 Budget Amendment "1" Ordinance

Upload Date

4/12/2021

Type

Backup Material

ORDINANCE NO. 2021-1342

AN ORDINANCE AMENDING CITY OF FULSHEAR, TEXAS, ORDINANCE NO. 2021-1342, APPROVING AND ADOPTING THE CITY'S FISCAL YEAR 2020-2021

BUDGET, BY APPROVING "BUDGET AMENDMENT 1" TO THE "ORIGINAL OPERATING & CAPITAL BUDGET OF THE CITY BUDGET OF FULSHEAR, TEXAS, FOR THE FISCAL YEAR 2020-2021"; PROVIDING FOR SUPPLEMENTAL APPROPRIATION AND/OR TRANSFER OF CERTAIN FUNDS; PROVIDING FOR SEVERABILITY; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT.

WHEREAS, by Ordinance No. 2021-1342, the City Council of the City of Fulshear, Texas, adopted its Original Operating & Capital Budget for Fiscal Year 2020-2021; 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 2020-2021; 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 2020-2021 Budget.

SECTION 2.0

AMENDED: The "Original General and Other Budgets of the Fulshear, Texas, for the Fiscal Year 2020-2021," as adopted under Ordinance No. 2021-1342 is hereby amended for municipal purposes as shown on "Budget Amendment 1" to the "Original Operating & Capital Budget of the City of Fulshear, Texas, for the Fiscal Year 2020-2021" attached hereto. Said Budget Amendment 1 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. 2021-1342, 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 20th of April 2021.

Aaron Groff, Mayor

ATTEST:

Kimberly Kopecky, City Secretary

		Exhibit A Amendment "1" FY21 Budget				
		GL Account #	Adopted FY2021 Budget	Amendment	Amended FY2021 Budget	Explanation
GENERAL FUND #100						
Beginning Fund Balance			\$ 5,730,314		\$ 5,730,314	
Revenues			\$ 11,779,748		\$ 11,779,748	
Amendments						
	CARES Act Reimbursement	100-43103		\$ 476,616	\$ 476,616	Increase to actual amount received for FY21
	TXGLO Grant Funds - D20E	100-47102		\$ (415,000)	\$ (415,000)	Grant already budgeted in Fund 300
Total Revenues			\$ 11,779,748		\$ 11,841,364	
Expenditures			\$ 13,756,833		\$ 13,756,833	
Amendments						
	380 Grant Agreements	100-120-5480-00	\$ -	\$ 40,000	\$ 40,000	Creation of expense line item to account for these payments
	Grants - Sales Tax Rebates	100-120-5490-00	\$ -	\$ 335,000	\$ 335,000	Creation of expense line item to account for these payments
	Capital Outlay - City Hall	100-120-5600-00	\$ -	\$ 130,000	\$ 130,000	Earnest money for City Hall
	Insurance - Real & Personal Property	100-160-5421-00	\$ -	\$ 24,000	\$ 24,000	Increase in premiums due to an increase in the purchase of property by the City
	Insurance - Auto Liability	100-160-5421-02	\$ -	\$ 8,100	\$ 8,100	Increase in premium due to an increase in the City's fleet.
	Insurance - W/C Contribution	100-160-5421-03	\$ -	\$ 22,000	\$ 22,000	Increase in premium due to an increase in City personnel
	COVID-19	100-230-5500-01	\$ -	\$ 471,814	\$ 471,814	To account for actual purchases in FY21 using CARES Act Funding
	Xfer Out - Cap Proj Fd 300	100-900-5900-30		\$ 940,600	\$ 940,600	Land Acquisition for Future Project - Penn Ln. & Design Fee Costs for City Hall
Total Expenditures			\$ 13,756,833		\$ 15,728,347	
Revenues Over(Under) Expenses			\$ (1,977,085)		\$ (3,886,983)	
Ending Fund Balance			\$ 3,753,229		\$ 1,843,331	
Fund Balance as Percentage of Operating Expenditures			33%		15%	

		GL Account #	Adopted FY2021 Budget	Amendment	Amended FY2021 Budget	
General Capital Projects #300						
Beginning Fund Balance			\$ 479,868		\$ 479,868	
Revenues			\$ 3,685,500		\$ 3,685,500	
	Xfer In - General Fund	300-49510		\$ 940,600	\$ 940,600	Land Acquisition for Future Project - Penn Ln. & Design Fee Costs for City Hall
Total Revenue			\$ 3,685,500		\$ 4,626,100	
Expenditures			\$ 4,121,000		\$ 4,121,000	
Amendments						
	Capital Outlay - Land Acquisition	300-000-5600-08		\$ 440,600	\$ 440,600	Land Acquisition for Future Project - Penn Ln.
	City Hall - FPT21A	300-000-5860-07		\$ 500,000	\$ 500,000	Design Fee Costs for City Hall
Total Expenditures			\$ 4,121,000		\$ 5,061,600	
Revenues Over(Under) Expenses			\$ (435,500)		\$ (435,500)	
Ending Fund Balance			\$ 44,368		\$ 44,368	
Fund Balance as Percentage of Operating Expenditures			1%		1%	

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

AGENDA OF: 4/20/2021 **ITEMS:** IV.C.
DATE 4/12/2021 **DEPARTMENT:** Building Services
SUBMITTED:

PREPARED BY: ZACH GOODLANDER **PRESENTER:** ZACH GOODLANDER

SUBJECT: DISCUSSION AND POSSIBLE ACTION REGARDING RESOLUTION NO. 2021-510: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS, ESTABLISHING THE 1093 RAILS TO TRAILS LOCAL GOVERNMENT CORPORATION; AND ACCEPTING, APPROVING, AND ADOPTING THE ARTICLES OF INCORPORATION AND THE BYLAWS OF THE 1093 RAILS TO TRAILS LOCAL GOVERNMENT CORPORATION

Expenditure Required:

Amount Budgeted:

Funding Account:

Additional Appropriation Required:

Funding Account:

EXECUTIVE SUMMARY

This item is back before City Council as the last time the participating City's attempted to create the Local Government Corporation (LGC) the Texas Secretary of State rejected the creation. This 1093 Rails-to-Trails Local Government Corporation would be the uniting of efforts of the City's Fulshear, Simonton, Wallis, Weston Lakes and Eagle Lake in the creation of a trail along the former SA&AP Railroad right-of-way currently controlled by the Fort Bend County Toll Road Authority, who is also assisting. This right-of-way runs parallel from Fulshear west to Eagle Lake.

As it regards the previous effort to create the LGC, the law firm Olson & Olson, who with H-GAC (Houston-Galveston Area Council), is guiding the Rails-to-Trails effort made some minor errors that didn't meet the Secretary of State's criteria. Therefore, participating City's must re-adopt the Resolution and Articles of Incorporation, and Olson & Olson again prepare the documents for LGC incorporation with the State.

As discussed previously Mayor Aaron Groff, Mayor Pro-tem Kaye Kaylich, and Parks Liaison Kent Pool are the "incorporators" of the LGC from the City of Fulshear. Staff members Zach Goodlander (Director of Development Services) and Sharon Valiante (Director of Public Works) will sit as board members of the LGC, and help guide its efforts.

At this time there are no specific plans for what the regional trail system will look like, however the City of Fulshear in it's recently approved, and regionally awarded, Parks Master Plan, put forth a concept of it's own portion of the trail. More broadly, the interested City's have only been working with Olson & Olson, and H-GAC, in getting the LGC officially created. From approval here, and Secretary of State approval thereafter of the LGC, work can begin on moving the project forward. Given the popularity of the Fulshear to Eagle Lake area for hikers and cyclists this project is much anticipated and will tremendously enhance safe recreational opportunities along the FM 1093 corridor.

RECOMMENDATION

Staff recommends approval of the Resolution.

ATTACHMENTS:

Description	Upload Date	Type
Resolution - Bylaws of LGC	4/12/2021	Backup Material
Articles of Incorporation	4/12/2021	Backup Material

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS, ESTABLISHING THE 1093 RAILS TO TRAILS LOCAL GOVERNMENT CORPORATION; AND, ACCEPTING, APPROVING, AND ADOPTING THE ARTICLES OF INCORPORATION AND THE BYLAWS OF THE 1093 RAILS TO TRAILS LOCAL GOVERNMENT CORPORATION.

WHEREAS, the City Council (the “Council”) of the City of Fulshear (the “City”) has received an application by three (3) incorporators, each of whom is at least eighteen (18) years of age and a resident of the City; and

WHEREAS, the application requested the formation of the 1093 Rails to Trails Local Government Corporation (the “Corporation”) and included Articles of Incorporation and Bylaws for the Corporation, both of which are attached to this Resolution as “Exhibit A” and “Exhibit B”, respectively; and

WHEREAS, the Council desires to accept the application of the incorporators, approve the Articles of Incorporation and Bylaws of the Corporation, and to establish the Corporation; and

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

Section 1. **THAT** the facts and matter set forth in the preamble of this Resolution are hereby found to be true and correct, and incorporated herein for all purposes.

Section 2. **THAT** the Articles of Incorporation and Bylaws for the proposed 1093 Rails to Trails Local Government Corporation, both of which are attached and incorporated into this Resolution as “Exhibit A” and “Exhibit B”, respectively, are acceptable to the Council, and are hereby adopted.

Section 3. **THAT** in the event any clause, phrase, provision, sentence, or part of this Resolution or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Resolution as a whole or any part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

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

AARON GROFF, MAYOR

ATTEST:

Kimberly Kopecky, City Secretary

EXHIBIT A – ARTICLES OF INCORPORATION

EXHIBIT B – BYLAWS

1093 RAILS TO TRAILS LOCAL GOVERNMENT CORPORATION | BYLAWS

ARTICLE 1: STRUCTURE, PURPOSES, AND MEMBERS

1.1 Structure.

The 1093 Rails to Trails Local Government Corporation (the “Corporation”) is a public nonprofit corporation organized under the laws of the State of Texas for the purpose of aiding, assisting, and acting on behalf of governmental entities in Austin, Colorado, Fort Bend, and Wharton Counties in the performance of their governmental functions – namely, the design, planning, development, financing, operation, and maintenance of public recreation uses in the right-of-way of the Fort Bend County Toll Road Authority’s property, as depicted in the attached map marked as “Exhibit A” (the “Property”). It is understood by the Corporation that any use of the Property would be subservient to the Fort Bend County Toll Road Authority’s use of the Property.

1.2 Enabling Legislation.

The Corporation is formed pursuant to the provisions of Subchapter D, Chapter 431, Texas Transportation Code (the “Act”) as it now or may hereafter be amended, which authorizes the Corporation to assist and act on behalf of the governmental entities to accomplish any governmental purpose of the governmental entities and to engage in activities in the furtherance of the purposes for its creation, in the manner specified by Chapter 394 of the Texas Local Government Code, and in conformance with Chapter 22 of the Texas Business Organizations Code (the “TBOC”). The Corporation shall have and exercise all rights, powers, privileges, authority, and functions given by the general laws of the State of Texas to nonprofit corporations incorporated under the Act including, without limitation, the TBOC. The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to nonprofit corporations in Texas and which are necessary or useful to enable the Corporation to perform the purposes for which it is created, including the power to issue bonds, notes, or other obligations, and otherwise exercise its borrowing power to accomplish the purposes for which it was created. The Corporation is created as a local governmental corporation pursuant to the Act and shall be a governmental unit within the meaning of Chapter 101, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental, not proprietary, functions for purposes of the Texas Tort Claims Act, Section 101.001 et seq., Texas Civil Practice and Remedies Code.

1.3 Purposes.

The Board of Directors shall administer the Corporation for the purposes set forth in the Certificate of Formation.

1.4 Members.

The members of the Corporation are the governmental bodies that approve and execute an Interlocal Agreement pursuant to Chapter 791 of the Texas Government Code agreeing to participate as members of the Corporation.

1.5 Membership Fee.

The membership will be set by the Board of Directors.

ARTICLE 2: OFFICES

2.1 Principal Place of Business.

The principal place of business of the Corporation is located at 2727 Suite #600 Allen Parkway, Houston, Texas 77019. The Corporation may have such other offices as the Board of Directors may determine, or as the affairs of the Corporation may require, from time to time.

2.2 Registered Agent and Registered Office.

The Corporation shall have and continuously maintain in the State of Texas a registered office and a registered agent whose office is the Corporation's registered office, as required by the TBOC. The registered office may, but need not, be identical to the principal office of the Corporation in the State of Texas, and the address of the registered office may be changed from time to time by the Board of Directors in accordance with applicable law. The Corporation shall not maintain offices outside of the State of Texas.

ARTICLE 3: BOARD OF DIRECTORS

3.1 General Powers.

The property, business, and affairs of the Corporation shall be managed and controlled by the Board of Directors (the “Board”) and, subject to the restrictions imposed by law, the Certificate of Formation and these Bylaws, the Board shall exercise all of the powers of the Corporation.

3.2 Number, Appointment and Term.

The Board shall consist of at least nine (9) members and up to the number of Directors deemed necessary by the Board who shall be appointed by the governing bodies of the governmental entities that are members of the Corporation. The governing bodies of the governmental entities that are members of the Corporation shall also appoint an alternate Director to participate on the Board during the absence of a Director. Except as otherwise provided in this Section, each Director shall serve a term of three (3) years, which term may be renewed in successive three (3) year terms. The initial Directors shall serve terms expiring on December 31, 2024. Each renewal term, or the term of any new appointee to a Director’s position, will expire on the third (3rd) annual anniversary thereof. Each person serving as a Director shall hold office until the earlier to occur of: (i) his or her successor has been appointed; or, (ii) his or her death, resignation, or removal as hereinafter provided.

3.3 Removal.

Any Director or alternate may be removed from office, with or without cause, by action of the governing body that appointed the Director or alternate.

3.4 Vacancies.

Any vacancy occurring in the office of a Director, whether by death, resignation, removal, or otherwise, shall be filled by appointment by the governing body that appointed the Director. A Director appointed to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office.

3.5 Meetings of Directors.

The Directors may hold meetings, maintain an office, and keep the Corporation’s books and records at such place or places within the State of Texas as the Board of Directors may from time to time determine; provided, however, that in the absence of any such determination, such place shall be the Corporation’s principal office in the State of Texas. The Board shall meet in accordance with and file notice of each meeting of the Board as required under Chapter 551, Texas Government Code (the “Open Meetings Act”). The Corporation and the Board are subject to Chapter 552, Texas Government Code (the “Public Information Act”).

3.6 Organizational Meeting.

After approval of the Certificate of Formation by the governing bodies and filing of the Certificate of Formation with the Texas Secretary of State, the Board will hold an organizational meeting to adopt and approve the Bylaws, to elect officers, and to transact such other business as may be included in the meeting agenda. The organizational meeting shall serve as the first (1st) Annual Meeting of the Board.

3.7 Annual Meetings.

The annual meeting of the Board of Directors (the “Annual Meeting”) shall be held at such time and place as shall be designated from time to time by resolution of the Board for the purpose of: (i) electing officers for the ensuing year; and, (ii) transacting such other business as may be properly brought before such Annual Meeting.

3.8 Regular Meetings.

Regular meetings of the Board (“Regular Meetings”) shall be held at such times and places as shall be designated from time to time by the Chairperson or by resolution of the Board.

3.9 Special Meetings.

Special meetings of the Board (“Special Meetings”) may be called by or at the request of the Chairperson, or shall be called by the Secretary whenever requested in writing, individually, by at least a majority of the acting Directors.

3.10 Notice.

The Secretary shall give notice of the time and place of each Annual, Regular, and Special Meeting to each Director in person, by facsimile, electronic message, regular mail, or telephone at least three (3) business days before such meeting. Notice of such meeting shall also be given in the manner required under the Open Meetings Act.

3.11 Quorum.

A majority of the then-appointed Directors shall constitute a quorum for the consideration of any matters pertaining to the Corporation’s purposes. If at any meeting of the Board there is less than a quorum present, the meeting shall be cancelled, or if the meeting is already underway, shall immediately adjourn. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number is required by law, the Certificate of Formation, or these Bylaws.

3.12 Conduct of Business.

At meetings of the Board, matters pertaining to the Corporation’s purposes shall be considered. At all meetings of the Board of Directors, the Chairperson shall preside, and in the absence of the Chairperson, the Vice-Chairperson shall preside, and in the absence of the Vice-Chairperson, a chair shall be chosen by the Board from among the Directors present. The Secretary of the Corporation shall act as secretary of all meetings of the Board of Directors, but in the absence of the Secretary, the chair of the meeting may appoint any person to act as secretary of the meeting. The chair of any meeting of the Board of Directors shall determine the order of business and the procedure at the meeting, including, without limitation, the conduct of the discussion and the order of business.

3.13 Compensation of Directors, Expenses.

Persons serving as Directors shall not receive any salary or compensation for their services as Directors. A Director shall be entitled to reimbursement for reasonable expenses actually incurred in carrying out the duties of a Director.

3.14 Director’s Reliance of Consultant Information.

Directors shall discharge their duties in good faith, with ordinary care, and in a manner each Director reasonably believes to be in the Corporation’s best interests. In this context, “ordinary care” means the care that ordinarily prudent persons in similar positions would exercise under similar circumstances. A Director shall not be liable if, while acting in good faith and with ordinary care, the Director relies on information, reports, or statements, including financial statements and other financial data, concerning the Corporation or any matters pertaining to the Corporation’s purposes that were prepared or presented by: (i) one (1) or more officers or employees of the Corporation; or, (ii) legal counsel, public accountants, or other persons if such Director reasonably believes the information, reports, or statements are within that person’s professional or expert competence.

ARTICLE 4: OFFICERS

4.1 Officers.

The officers of the Corporation shall be a Chairperson, a Vice Chairperson, a Secretary, a Treasurer, and such other officers as may be elected in accordance with the provisions of the Certificate of Formation or these Bylaws. The Board of Directors may elect or appoint such other officers, including one (1) or more Assistant Secretaries and one (1) or more Assistant Treasurers, as it shall deem desirable; with such officers having the authority to perform the duties prescribed herein or prescribed, from time to time, by the Board of Directors. It is understood by the Corporation that any use of the Property would be subservient to the Fort Bend County Toll Road Authority's Use of the Property and subject to the Railbanking Regulations and any separate agreements between the Corporation and the Fort Bend County Toll Road Authority. The "Railbanking Regulations" are defined as follows: (i) "The Decision and Certificate of Interim Trail Use" dated November 7, 2000, and any subsequent amendments; (ii) STB Docket No. AB-33, issued under the National Trails System Act, 16 U.S.C. § 1247(d); (iii) applicable STB regulations; and, (iv) other applicable authority.

4.2 Election and Term of Office.

Each year at the Annual Meeting of the Board, or as soon thereafter as possible practicable, the Board of Directors shall elect officers. All officers shall hold office for a term of one (1) year, commencing upon his or her election at an annual meeting and expiring when an election of officers is held at the next Annual Meeting following the Annual Meeting at which he or she was elected, and may be reelected to such office any number of times. Notwithstanding the above, each officer shall continue to hold office until his or her successor shall have been duly elected or until his or her earlier, death, resignation, or removal.

4.3 Removal.

Any officer may be removed from an officer position by the Board of Directors, with or without cause, whenever in its judgment the best interests of the Corporation would be served thereby.

4.4 Vacancies.

A vacancy in any office because of death, resignation, disqualification, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

4.5 Chairperson.

The Chairperson shall: preside at all meetings of the Board of Directors, perform such other duties as are specified in these Bylaws; perform all general duties incident to the office of Chairperson; and, perform such other duties as may be prescribed by the Board of Directors from time to time.

4.6 Vice Chairperson.

The Vice Chairperson shall generally assist the Chairperson in the performance of the Chairperson's duties. The Vice Chairperson shall perform the duties of the Chairperson in the absence of the Chairperson or in the event of the Chairperson's inability or refusal to act, and when so acting shall have all the powers of and be subject to all the restrictions upon the Chairperson. The Vice Chairperson shall also perform such other duties as from time to time may be assigned to him or her by the Chairperson or Board of Directors.

4.7 Secretary.

The Secretary shall: (i) keep the minutes of all meetings of the Board of Directors in books provided for that purpose; (ii) attend to the giving and serving of all notices; (iii) have charge of the Corporation's books, records, documents, and instruments; and, (iv) perform all general duties incident to the office of

Secretary subject to the control of the Board of Directors. Except the books of account, financial records, and securities of which the Treasurer shall have custody and charge, the Secretary shall have custody and charge of all of the Corporation's books, and such other books and papers as the Board of Directors may direct, all of which shall be open at reasonable times to the inspection of any Director upon application at the Corporation's office during business hours.

4.8 Officer's Reliance of Consultant Information.

Officers shall discharge their duties in good faith, with ordinary care, and in a manner each officer reasonably believes to be in the Corporation's best interests. In this context, "ordinary care" means the care that ordinarily prudent persons in similar positions would exercise under similar circumstances. An officer shall not be liable if, while acting in good faith and with ordinary care, the officer relies on information, reports, or statements, including financial statements and other financial data, concerning the Corporation or any matters pertaining to the Corporation's purposes that were prepared or presented by: (i) one (1) or more officers or employees of the Corporation; or (ii) legal counsel, public accountants, or other persons if such officer reasonably believes the information, reports, or statements are within that person's professional or expert competence.

ARTICLE 5: COMMITTEES

5.1 Board Committees.

Pursuant to, and subject to the terms of, Sections 22.218 and 22.219 of the TBOC, the Board of Directors may from time to time create advisory committees that shall advise the Board of Directors on whatever topic the Board may determine in a resolution that creates the committee. The Board of Directors may appoint individuals who are not members of the Board of Directors to any committee.

5.2 Standing Committees.

The Board of Directors may have standing committees as determined from time to time by the Board. Such standing committees shall advise the Board of Directors on whatever topic the Board may determine in a resolution that creates the committee. A list and description of the current standing committees of the Board of Directors shall be maintained and provided to the Board.

5.3 Procedures; Meetings; Quorum.

Any committee created by the Board of Directors under these Bylaws, unless otherwise expressly provided herein or in the Board resolution creating such committee, shall: (i) have a chair designated by the Board of Directors; (ii) fix its own rules or procedures; (iii) meet at such times and at such place or places as may be provided by such rules or by resolution of such committee or resolution of the Board; (iv) keep regular minutes of its meetings and cause such minutes to be recorded in books kept for that purpose in the principal office of the Corporation; and, (v) report the same to the Board at its next succeeding meeting or at such other times as may be designated by the Board. At every meeting of any such committee, the presence of a majority of all the members thereof shall constitute a quorum, and the affirmative vote of a majority of the members present shall be necessary for the adoption by it of any recommendation, unless otherwise provided in the committee's rules or procedures, these Bylaws, or by the Board.

5.4 Term of Office.

Unless otherwise expressly provided herein, each member of a committee shall continue as such until: (i) his or her successor is appointed; (ii) unless the committee shall be sooner terminated; (iii) unless such member be removed from such committee; or, (iv) unless such member shall cease to qualify as a member thereof.

5.5 Removal.

Any member of a committee may be removed from the committee by the Board of Directors, with or without cause.

ARTICLE 6: CONTRACTS, CHECKS, AUDITS, DEPOSITS, AND RECORDS

6.1 Contracts and Procurement.

All bonds, notes, deed conveyances, franchises, assignments, mortgages, notes, contracts, and other instruments of any kind executed in the name of the Corporation must be signed by two (2) officers of the Corporation. The Corporation shall comply with all procurement laws applicable to a Texas Local Government Corporation.

6.2 Checks and Drafts.

All checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation shall be signed by the Treasurer and, if in an amount that exceeds five thousand Dollars (\$5,000.00), countersigned by the Chairperson or Vice Chairperson of the Corporation.

6.3 Deposits.

All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, depositories, or investment funds or companies as shall be designated from time to time by or in accordance with Board resolution.

6.4 Audits.

The Board shall cause to be maintained a proper and complete system of records and accounts of all transactions, business, and affairs of the Corporation. Within six (6) months after the end of each fiscal year, the Board shall cause the preparation of a financial statement for the Corporation, which shall be audited by an independent certified public accountant or firm of independent certified public accountants retained by the Board for such purpose. A copy of such audited financial statement shall be delivered to the Chief Financial Officer of each governmental body that is a member of the Corporation upon completion.

6.5 Books and Records.

The Corporation shall keep correct and complete books and records of accounts and shall also keep minutes of the proceedings of its Board. All books and records may be inspected by representatives of the member governmental bodies at any time.

6.6 Legal Counsel.

The Corporation shall engage legal counsel to advise it on all contracting, procurement, and other legal matters.

ARTICLE 7: INDEMNIFICATION

7.1 Right to Indemnification.

Subject to the limitations and conditions as provided in this Article 7 and the Certificate of Formation, each person who was or is made a party, is threatened to be made a party to, or is involved in any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative (hereinafter a “proceeding”), in any appeal in such a proceeding, or in any inquiry or investigation that could lead to such a proceeding, by reason of the fact that he or she, is or was a Director or officer of the Corporation, shall be indemnified by the Corporation to the fullest extent permitted by the TBOC, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent than such amendment permits the Corporation to provide broader indemnification rights that said law permitted the Corporation to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements, and reasonable expenses (including, without limitation, attorneys’ fees), actually incurred by such person in connection with such proceeding, and indemnification under this Article 7 shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder. The rights granted pursuant to this Article 7 shall be deemed contract rights, and no amendment, modification, or repeal of this Article 7 shall have the effect of limiting or denying any such rights with respect to action taken or proceedings arising prior to any such amendment, modification, or repeal. Notwithstanding the foregoing, the indemnity described above does not apply to a Director or officer’s gross negligence or any illegal act.

7.2 Advance Payment.

The right to indemnification conferred in this Article 7 shall include the right to be paid in advance or reimbursed by the Corporation for the reasonable expenses incurred by a person of the type entitled to be indemnified under Article 7.1 who was, is, or is threatened to be made a named defendant or respondent in a proceeding in advance of the final disposition of the proceeding and without any determination as to the person’s ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of a written affirmation by such Director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article 7 and verification satisfactory to the Board as to such person’s ability to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under this Article 7 or otherwise.

7.3 Appearance as a Witness.

Notwithstanding any other provision of this Article 7, the Corporation may pay or reimburse reasonable expenses actually incurred by a Director or officer in connection with his or her appearance or other participation in a legal proceeding involving the Corporation or its business at a time when he or she is not a named defendant or respondent in the proceeding.

7.4 Non-exclusivity of Rights.

The right to indemnification and the advancement and payment of expenses conferred in this Article 7 shall not be exclusive of any other right which a Director or officer may have or hereafter acquire under any law (common or statutory) or provision of the Certificate of Formation or these Bylaws.

7.5 Insurance.

The Corporation shall, at its expense, secure and maintain at all times Directors' and officers' liability insurance coverage. The Corporation may also purchase and maintain, at its expense, any additional insurance it deems necessary to protect itself and any person who is or was serving as a Director, officer, employee, or agent of the Corporation.

7.6 Notification.

Any indemnification, advance, or reimbursement of expenses to a Director or officer in accordance with this Article 7 shall be reported in writing to the members of the Board with or before the notice of the next regular meeting of the Board and, in any case, within the twelve (12) month period immediately following the date of the indemnification, advance, or reimbursement.

7.7 Savings Clause.

If this Article 7 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each Director, officer, or any other person indemnified pursuant to this Article 7 as to costs, charges, and expenses, attorneys' fees, judgments, fines, and in amounts paid in settlement with respect to any action, suit, or proceeding, whether civil, criminal, administrative, or investigative, to the full extent permitted by any applicable portion of this Article 7 that shall not have been invalidated, and to the fullest extent permitted by applicable law.

ARTICLE 8: MISCELLANEOUS PROVISIONS

8.1 Supremacy of Certificate of Formation.

These Bylaws are subject to and governed by the Certificate of Formation.

8.2 Fiscal Year.

The fiscal year of the Corporation shall begin on the first day of October and end on the last day of September in each year, or such other consecutive twelve (12) month period determined by the Corporation.

8.3 Seal.

The Corporation's seal, if any, shall be such as may be approved from time to time by the Board of Directors.

8.4 Notice and Waiver of Notice.

Whenever any notice is required to be given by mail under the provisions of these Bylaws, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed postpaid wrapper addressed to the person entitled hereto at such person's post office address, as such appears in the records of the Corporation, and such notice shall be deemed to have been given on the date of such mailing. If transmitted by facsimile or electronic message, such notice shall be deemed to be delivered upon successful transmission of the facsimile or electronic message. A member of the Board of Directors or a committee may waive notice of any meeting. The attendance or participation of a member of the Board of Directors or a committee at any meeting shall constitute a waiver of notice of such meeting unless such attendance or participation is for the purpose of objecting to the failure of notice. A waiver of notice in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

8.5 Resignations.

Any Director, officer or committee member may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the General Manager or Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

8.6 Gender.

References herein to the masculine gender shall also refer to the feminine in all appropriate cases, and vice versa.

8.7 Appropriations and Grants.

The Corporation shall have the power to request and accept any appropriation, grant, contribution, donation, or other form of aid from the federal government, the State of Texas, any political subdivision or municipality in the State, or from any other source, except as specifically limited by Article 8.8 herein or in the Certificate of Formation.

8.8 Actions Requiring Prior Governing Body's Approval.

The following actions must be pre-approved by resolution of each member's governing body before the Board may take any such action: (i) an amendment or restatement of the Bylaws or Certificate of Formation of the Corporation; (ii) the acquisition of land; (iii) any action or decision, including but not limited to applications for grants or other funding, requiring the approval or consent of any federal or state governmental agency or department; (iv) the issuance of bonds; (v) the issuance of notes or other evidence of indebtedness with a term greater than one (1) year; (vi) the construction of a toll road or any other

regional, State, or federally sponsored roadway infrastructure, but not including roadway infrastructure incidental to vehicular and pedestrian access to the Property which shall function as recreational vehicular and pedestrian access ways and not publicly dedicated right of ways; (vii) proposing or sponsoring legislation, or calling any election or voter referendum; and (viii) creating a subsidiary entity or any other entity.

ARTICLE 9: ADMINISTRATIVE STAFF

9.1 Administrative Staff.

The Corporation may hire and employ persons to assist the Corporation in the management of the property, business, and affairs of the Corporation however, the Board of Directors shall exercise all of the powers of the Corporation.

9.2 General Manager.

The General Manager shall be the chief executive officer and shall: (i) manage the business of the Corporation; (ii) take such actions as may be necessary to effectuate the policies and decisions of the Board; (iii) perform all general duties incident to the office of General Manager of a corporation; and, (iv) perform such other duties as may be prescribed by the Board of Directors from time to time. The General Manager may sign, along with a second signature to be provided by any other officer of the Corporation in conformance with Article 6.1 above, bonds, notes, deed conveyances, franchises, assignments, mortgages, notes, contracts, and other instruments of any kind in the name of the Corporation which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by these Bylaws, or by statute, to some other officer or agent of the Corporation. The General Manager's duties shall include, without limitation: (i) positively representing the Corporation to the governing bodies and the public; (ii) supervising employees of the Corporation; (iii) seeing that bills are paid in a timely manner; (iv) keeping expenses within budgeted levels; and, (v) working with the appropriate staff and officers of the Corporation to see that timely financial reports are made to the Directors.

9.3 Assistant General Manager.

An Assistant General Manager shall have such powers and duties as may be assigned to such officer by the Board of Directors including the performance of the duties of the General Manager, other than unusual or extraordinary duties or powers conferred by the Board of Directors upon the General Manager, upon the death, absence, or resignation of the General Manager or upon the General Manager's inability to perform the duties of such office. Any action taken by an Assistant General Manager in the performance of the duties of the General Manager shall be conclusive evidence of the absence or inability to act of the General Manager at the time such action was taken.

ARTICLE 10: AMENDMENTS TO BYLAWS

These Bylaws may be altered or amended in whole or in part, or repealed and new bylaws may be adopted, by a majority vote of the Directors present at any meeting where a quorum of Directors is present, if at least seven (7) days' written notice is given of an intention to alter, amend, or repeal these Bylaws or to adopt new Bylaws at such meeting, and such notice contains the proposed amendment(s). Any proposed alteration, change, amendment, repeal, or adoption of new bylaws approved by the Directors must be approved by the governing bodies of the members to be effective.

* * * * *

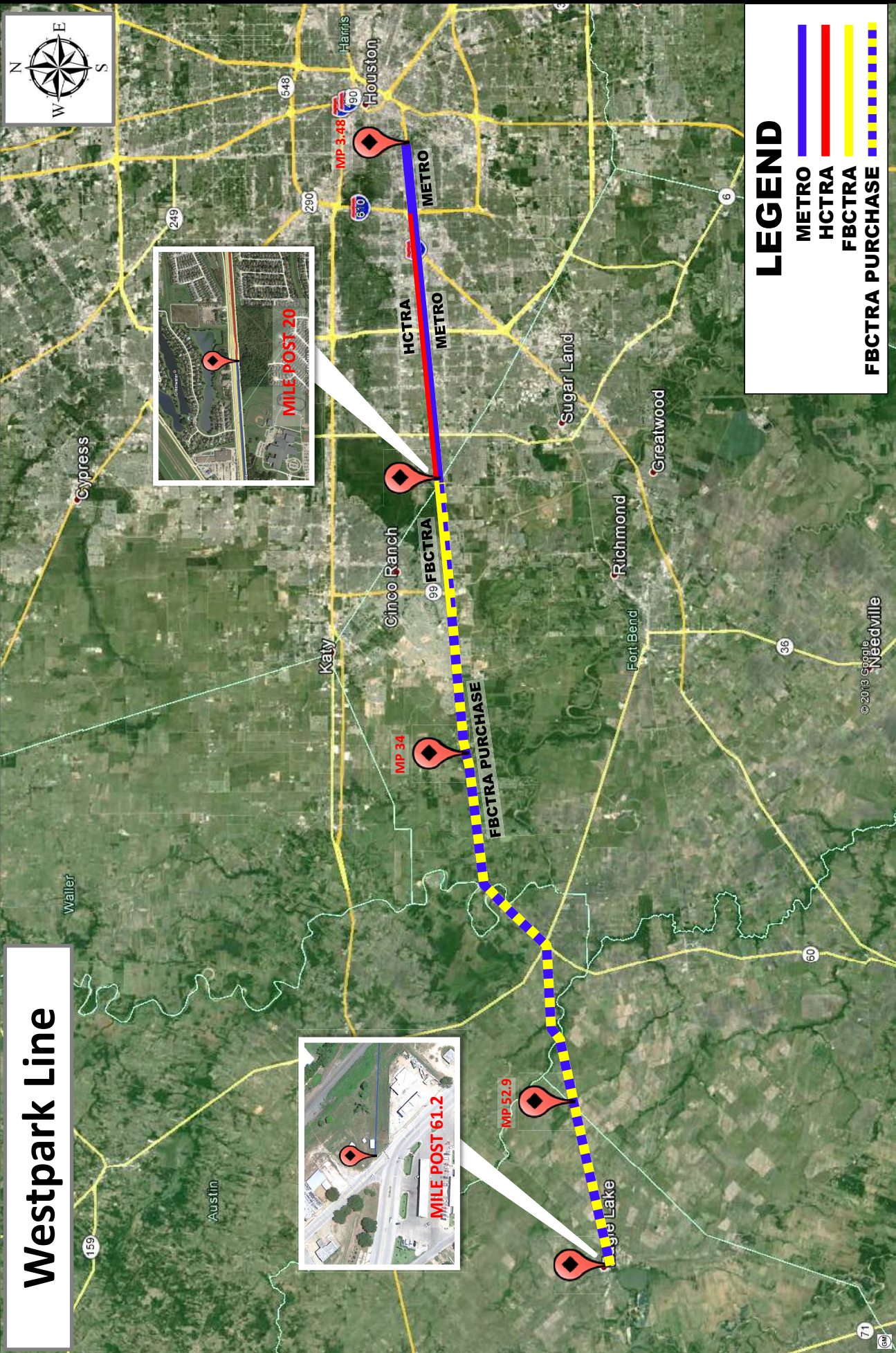
The undersigned, being the duly elected and qualified Secretary of the Corporation, does hereby certify that the foregoing Bylaws of the Corporation were duly adopted by the Board of Directors of the Corporation at a meeting held on _____, 20____, at which a quorum was present and voting throughout.

Secretary [Name, Signature]

Secretary [Name, Printed]

Exhibit A: Property Map

Westpark Line



LEGEND

- METRO (Solid blue line)
- HCTRA (Solid red line)
- FBCTRA (Dashed yellow line)
- FBCTRA PURCHASE (Dashed blue and yellow line)

1093 RAILS TO TRAILS LOCAL GOVERNMENT CORPORATION

WE, THE UNDERSIGNED NATURAL PERSONS, EACH OF WHOM IS AT LEAST EIGHTEEN (18) YEARS OF AGE OR MORE, AND A RESIDENT AND A QUALIFIED VOTER OF THE CITY OF FULSHEAR, TEXAS, AND A CITIZEN OF THE STATE OF TEXAS, ACTING AS INCORPORATORS OF A LOCAL GOVERNMENT CORPORATION UNDER THE PROVISIONS OF SUBCHAPTER D OF CHAPTER 431, TEXAS TRANSPORTATION CODE (THE "ACT"), DO HEREBY SUBMIT FOR ADOPTION THE FOLLOWING ARTICLES OF INCORPORATION (THE "ARTICLES") FOR THE 1093 RAILS TO TRAILS LOCAL GOVERNMENT CORPORATION (THE "CORPORATION"):

ARTICLES OF INCORPORATION

ARTICLE I: NAME

The name of the Corporation shall be:

1093 RAILS TO TRAILS LOCAL GOVERNMENT CORPORATION

ARTICLE II: TYPE OF CORPORATION

The Corporation is a public, nonprofit local government corporation.

ARTICLE III: DURATION

The period of duration of the Corporation shall be perpetual.

ARTICLE IV: PURPOSES

- A. The Corporation is organized for the specific purposes of aiding, assisting, and acting on behalf of governmental entities located in Austin, Colorado, Fort Bend, and Wharton Counties in the performance of their governmental functions; namely, the design, planning, development, financing, operation, and maintenance of public recreation and related uses in the right-of-way of the Fort Bend County Toll Road Authority (the "Authority"), with such right-of-way being depicted in the map attached as "Exhibit A" (the "Property"). The Corporation and the Authority intend to enter into a lease agreement whereby the Property shall be leased by the Authority to the Corporation for the use of the Corporation (the "Lease"). It is understood by the Corporation and the Authority that any use of the Property not specified in the Lease is subservient to the Authority's use of the Property.
- B. To the extent required by law, the Corporation is organized to carry out the applicable purposes of Chapter 394 of the Texas Local Government Code (the "Code").

ARTICLE V: MEMBERS & STOCK

The Corporation shall have no members and shall have no stock.

ARTICLE VI: ADDRESS

The street address of the initial registered office of the Corporation is **P.O. Box 38, Eagle Lake, Texas 77434**, and is located within the boundaries of the entity or entities that approved these Articles. The name of the Corporation's initial registered agent at the address of the initial registered office is **Melissa Landin**. The Corporation shall also require that a duplicate copy of any item sent to the initial registered agent be sent to: **Olson & Olson, LLP; Attn: Justin Pruitt; 2727 Allen Parkway, Wortham Tower, Suite #600, Houston, Texas 77019**.

ARTICLE VII: BOARD

A. All powers of the Corporation shall be vested in a board of directors (the “Board”) consisting initially of nine (9) persons (each, a “Director”), and to the extent required by law, a Director shall be a resident of the local government that approved these Articles, or, in the case where more than one local government approved these Articles, then the majority of the Directors shall be residents of the local governmental entity or entities that approved these Articles. Additional Directors may be added to the Board in accordance with the provisions of the Board’s Bylaws (the “Bylaws”), when such Bylaws are adopted by the Board. The initial Board shall be those Directors named herein, with each serving the term prescribed in the Bylaws. Subsequent Directors shall be appointed by position to the Board as prescribed in the Bylaws. Each subsequent Director shall serve for the term provided in the Bylaws. Any Director may be removed from the Board at any time, with or without cause, by the appropriate action of the governing body of the entity represented by such Director.

B. The positions, names, and addresses of the nine (9) initial Directors are:

Name	Address
Bill Ragle	2727 Allen Parkway, Wortham Tower, Suite #600, Houston, Texas 77019
Linda Harnist	2727 Allen Parkway, Wortham Tower, Suite #600, Houston, Texas 77019
Belinda Halfin	2727 Allen Parkway, Wortham Tower, Suite #600, Houston, Texas 77019
James King	2727 Allen Parkway, Wortham Tower, Suite #600, Houston, Texas 77019
Chip Reed	2727 Allen Parkway, Wortham Tower, Suite #600, Houston, Texas 77019
Zach Goodlander	2727 Allen Parkway, Wortham Tower, Suite #600, Houston, Texas 77019
Sharon Valiante	2727 Allen Parkway, Wortham Tower, Suite #600, Houston, Texas 77019
Mary Parr	2727 Allen Parkway, Wortham Tower, Suite #600, Houston, Texas 77019
Melissa Landin	2727 Allen Parkway, Wortham Tower, Suite #600, Houston, Texas 77019

C. The initial Chairperson of the Board shall be **Melissa Landin**. The Board shall designate each subsequent Chairperson of the Board.

D. If any of the following persons is not serving as a member of the Board, he or she may serve as an ex-officio, non-voting member of the Board:

1. a City or County Attorney;
2. a City or County Finance Director;
3. a City Secretary; or,
4. any other person authorized to assist and act on behalf of the local government entity or entities that approved these Articles.

E. All other matters pertaining to the internal affairs of the Corporation shall be governed by the Bylaws, so long as such Bylaws are not inconsistent with these Articles and the laws of the State of Texas.

ARTICLE VIII: INCORPORATORS

The names and street addresses of the incorporators, each of whom is at least eighteen (18) years of age or more, and a resident and a qualified voter of **Fulshear, Texas**, are:

Aaron Groff	P.O. Box 279 Fulshear, Texas 77441
Kaye Kahlich	P.O. Box 279 Fulshear, Texas 77441
Kent Pool	P.O. Box 279 Fulshear, Texas 77441

ARTICLE IX: ADOPTING RESOLUTIONS

The resolution approving the form of these Articles was adopted by the **City Council** of the **City of Fulshear**, on _____, 2021.

ARTICLE X: ENABLING LEGISLATION

- A. The Corporation is formed pursuant to the provisions of the Act as it now exists or may hereafter be amended, which authorizes the Corporation to assist and act on behalf of the local government entity or entities that approved these Articles and to engage in activities in the furtherance of the purposes for its creation as provided herein. The Code directs the form of these Articles to the extent that the Code applies to the formation of a local government corporation. Notwithstanding the Act or the Code, Chapter 431.002(b) of the Texas Transportation Code provides that these Articles shall be liberally construed to give effect to the purposes of the Act. Where the form of these Articles may conflict with the Code, the requirements of both the Act and the Code shall be liberally construed to give effect to these Articles as they exist in their current form.
- B. The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Subdivision 2, Section 101.001, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental and not proprietary functions for purposes of the Texas Tort Claims Act, Section 101.001, et seq., Texas Civil Practice and Remedies Code. The Corporation shall have the power to acquire land in accordance with the Act as it now exists or may hereafter be amended.

ARTICLE XI: POWERS

- A. The Corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of Texas to non-profit corporations incorporated under the Act including, without limitation, Article 1396, Vernon's Texas Civil Statutes.
- B. The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to non-profit corporations in Texas and which are necessary or useful to enable the Corporation to perform the purposes for which it is created, including the power to issue bonds, notes, or other obligations, and otherwise exercise its borrowing power to accomplish the purposes for which it was created, provided that the Corporation shall not issue bonds without the Board's consent.

ARTICLE XII: MISCELLANEOUS

- A. The Corporation:
 - 1. shall not permit any part of the net earnings of the Corporation to inure to the benefit of any private individual, except that reasonable compensation may be paid for personal services rendered to or for the Corporation in effecting one or more of its purposes;

2. shall not devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise;
 3. shall not participate or intervene in any political campaign on behalf of any candidate for public office, including the publication or distribution of statements; and,
 4. shall not attempt to influence the outcome of any election for public office or to carry on, directly or indirectly, any voter registration drives.
- B.** The governing body or bodies of the entity or entities that approved these Articles shall, at all times, have an unrestricted right to receive any income earned by the Corporation, exclusive of amounts needed to cover reasonable expenditures and reasonable reserves for future activities. No part of the Corporation's income shall inure to the benefit of any private interests. Any income earned by the Corporation after payment of reasonable expenses, debt, and establishing a reserve shall accrue to the governing body or bodies of the entity or entities that approved these Articles.
- C.** If the Board determines by resolution that the purposes for which the Corporation was formed have been substantially met, and all bonds issued and all obligations incurred by the Corporation have been fully paid, then the Board shall execute a certificate of dissolution which states those facts and declares the Corporation dissolved in accordance with the requirements of the Act and the Code, or with applicable law then in existence. In the event of dissolution or liquidation of the Corporation, all assets will be turned over to the governing body or bodies of the entity or entities represented on the Board for deposit, as appropriate, in each entity's General Fund or in another fund as otherwise directed.

ARTICLE XIII: BOARD LIABILITY

- A.** No Director shall be liable to the Corporation for monetary damages for an act or omission in the Director's capacity as a Director, except for:
1. any breach of the Director's duty of loyalty to the Corporation;
 2. acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
 3. any transaction from which the Director received an improper benefit, whether or not the benefit resulted from an act taken within the scope of the Director's office; or,
 4. acts or omissions for which the liability of a Director is expressly provided by statute.
- B.** Any repeal or amendment of this Article by the Directors shall be prospective only, and shall not adversely affect any limitation on the personal liability of a Director existing at the time of such repeal or amendment.
- C.** In addition to the circumstances in which a Director is not personally liable as set forth in this Article, a Director shall not be liable to the fullest extent permitted by any amendment to any law hereafter enacted that further limits the liability of a Director.

ARTICLE XIV: NONPROFIT REGULATIONS

If the Corporation is a private foundation within the meaning of the Internal Revenue Code (the "IRC") Section 509(a), then the Corporation:

1. shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by IRC Section 4942;
2. shall not engage in any act of self-dealing as defined in IRC Section 4941(d);
3. shall not retain any excess business holdings as defined in IRC Section 4943(c);

4. shall not make any investments in such manner as to subject it to tax under IRC Section 4944; and,
5. shall not make any taxable expenditures as defined in IRC Section 4945(d).

ARTICLE XVI: AMENDMENTS

These Articles may be changed or amended by a majority vote of the Directors and by approval of such changes or amendments by resolution adopted by the governing body or bodies of the entity or entities that approved these Articles. Any such changes or amendments must be filed with the Office of the Texas Secretary of State to be effective.

ARTICLE XVII: NOT A POLITICAL SUBDIVISION

The Corporation is a constituted authority and a public or governmental instrumentality within the meaning of the regulations of the United States Treasury Department and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Section 103 IRC. Although the Corporation is authorized to act on behalf of one (1) or more governmental entities as provided in these Articles, the Corporation is not a political subdivision or political authority of the State of Texas within the meaning of the Constitution and laws of the State of Texas, including, without limitation, Article III, Section 52 of the Texas Constitution, and no agreement, bond, debt, or obligation of the Corporation shall be deemed to be the agreement, bond, debt, or obligation, or the lending of credit, or a grant of public money or thing of value, of or by the governing body or bodies of the entity or entities represented on the Board or associated with the Corporation or any other political subdivision or authority or agency of the State of Texas, or a pledge of the faith and credit of any of them. No action of the Corporation shall be an action of the governing body or bodies of the entity or entities that approved these Articles or their agents or employees, and neither these Articles nor any action by the Board shall create a joint enterprise between the Corporation and the governing body or bodies of the entity or entities that approved these Articles.

ARTICLE XVIII: EFFECTIVE DATE

These Articles shall become effective when fully executed and filed with the Office of the Texas Secretary of State. Each of the undersigned executes this instrument subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that he and she is authorized to execute this instrument.

SIGNATURES

**IN WITNESS WHEREOF, we, the Incorporators, hereby submit these Articles for approval
on this _____ day of _____, 2021.**

Incorporator #1 – Aaron Groff

Incorporator #2 – Kaye Kahlich

Incorporator #3 – Kent Pool

NOTARIZATION

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be **Incorporator #1** and the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 2021.

(NOTARY SEAL)

Notary Public in and for
The State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be **Incorporator #2** and the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 2021.

(NOTARY SEAL)

Notary Public in and for
The State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be **Incorporator #3** and the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

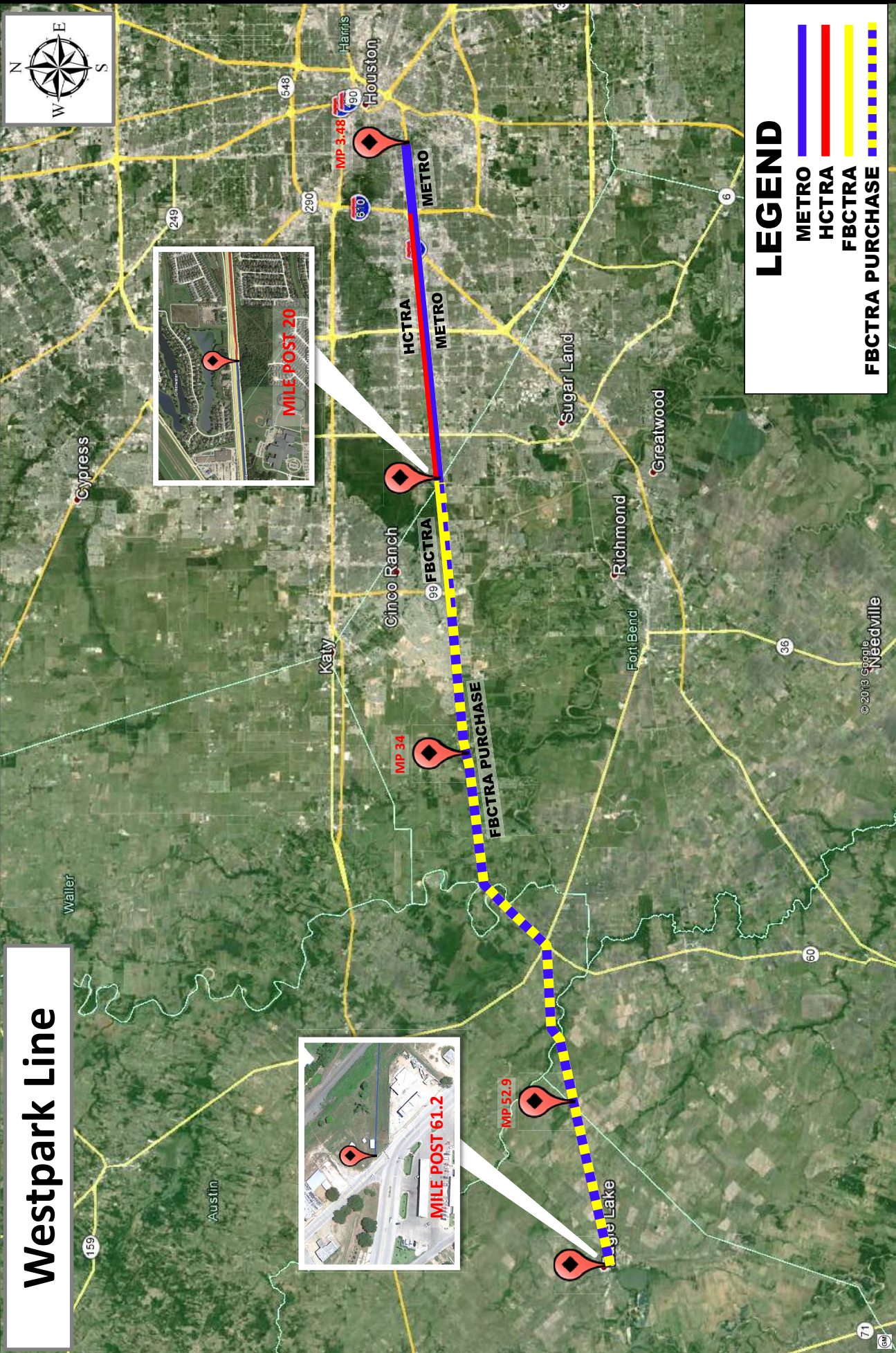
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 2021.

(NOTARY SEAL)

Notary Public in and for
The State of Texas

EXHIBIT A: MAP OF THE PROPERTY

Westpark Line



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

AGENDA OF: 4/20/2021 **ITEMS:** I.V.D.
DATE 3/24/2021 **DEPARTMENT:** Public Works
SUBMITTED:
PREPARED BY: Sharon Valiante, Director of Public Works **PRESENTER:** Sharon Valiante, Public Works Director
SUBJECT: CONSIDERATION AND POSSIBLE ACTION TO APPROVE RESOLUTION NO. 2021-509 ADOPTING A 45 DAY SUSPENSION TO THE EFFECTIVE DATE OF THE CENTERPOINT GAS INTERIM RATE ADJUSTMENT

Expenditure Required: NA

Amount Budgeted:

Funding Account:

Additional Appropriation Required:

Funding Account:

EXECUTIVE SUMMARY

CenterPoint Energy Resources Corp, better known as CenterPoint Energy Entex and CenterPoint Energy Texas Gas-Texas Coast Division (CenterPoint) made filings with the City and the Railroad commission of Texas in March 2021 proposing an interim rate adjustment (GRIP) to be effective May 3, 2021. The City of Fulshear, as a gas utility customer of CenterPoint, and under the GRIP statute cities may not challenge the Company's request. The only action a city may take is to suspend the effective date of the rate increase by 45 days.

For cities in the Texas Coast Division, the Company is seeking recovery of \$45,065,113 in invested capital. This compares to \$37,937,732 last year, \$46,935,293 in 2019 and \$31,889,184 in 2018. The current filing will increase rates to residential customers by \$.88 per month. This will increase the current residential customer charge from \$17.77 to \$18.65 per month. Last year the increase was \$.67 per month.

It is a best practice for the City to adopt a resolution for these reasons:

- (1) the 45 delay in implementation will save each residential gas customer about \$1.32,
- (2) the resolution demonstrates the City takes the GRIP seriously and supports trying to mitigate the financial impact, although slight, on residents and businesses

RECOMMENDATION

Approve Resolution 2021-509.

ATTACHMENTS:

Description	Upload Date	Type
-------------	-------------	------

RESOLUTION NO. 2021-509

A RESOLUTION BY THE CITY OF FULSHEAR, TEXAS SUSPENDING THE MAY 3, 2021 EFFECTIVE DATE OF THE PROPOSAL BY CENTERPOINT ENERGY RESOURCES CORP., D/B/A CENTERPOINT ENERGY ENTEX AND CENTERPOINT ENERGY TEXAS GAS – TEXAS COAST DIVISION TO IMPLEMENT INTERIM GRIP RATE ADJUSTMENTS FOR GAS UTILITY INVESTMENT IN 2020 AND REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.

WHEREAS, the City of Fulshear, Texas (“City”) is a gas utility customer of CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas–Texas Coast Division, (“CenterPoint” or “the Company”) and a regulatory authority with an interest in the rates and charges of CenterPoint; and

WHEREAS, CenterPoint made filings with the City and the Railroad Commission of Texas (“Railroad Commission”) in March 2021, proposing to implement interim rate adjustments (“GRIP Rate Increases”) pursuant to Texas Utilities Code § 104.301 on all customers served by CenterPoint, effective May 3, 2021; and

WHEREAS, it is incumbent upon the City, as a regulatory authority, to examine the GRIP Rate Increases to determine its compliance with the Texas Utilities Code.

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

1. The May 3, 2021, effective date of the GRIP Rate Increases proposed by CenterPoint is hereby suspended for the maximum period allowed by Texas Utilities Code § 104.301(a) to permit adequate time to review the proposed increases, analyze all necessary information, and take appropriate action related to the proposed increases.

2. A copy of this Resolution shall be sent to CenterPoint, care of Keith L. Wall, at 1111 Louisiana Street, CNP Tower 19th Floor, Houston, Texas 77002 and to Thomas Brocato,

legal counsel to the City, at Lloyd Gosselink, 816 Congress Ave., Suite 1900, Austin, Texas
78701.

Signed this _____ day of _____, 2021.

MAYOR

ATTEST:



March 4, 2021

CenterPoint Energy
1111 Louisiana Street
Houston, TX 77002-5231
P.O. Box 2628
Houston, TX 77252-2628

Mayor and City Council
City of Fulshear
Fulshear, Texas

Delivered by Certified Mail

Re: CenterPoint Energy 2021 Annual GRIP Adjustment for the Texas Coast Division

Dear Madam or Sir:

CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas (“CenterPoint” or the “Company”), files the tariffs and supporting documents, in electronic form, with the City of Fulshear (“City”) consistent with Section 7.7101 of the Railroad Commission of Texas (“Commission”) Gas Services Division Rules and Section 104.301 of the Texas Utilities Code to establish the annual gas reliability infrastructure program (“GRIP”) interim rate adjustment (“IRA”) for the Company’s Texas Coast Division, which includes the City. The proposed IRA will affect rates for natural gas service customers located in the City. Simultaneously with this filing, CenterPoint makes the same GRIP filing with the Commission for customers located in the City’s environs and cities of the Texas Coast Division that have ceded original jurisdiction to the Commission.

CenterPoint consistently supplies its customers in the Texas Coast Division with safe and dependable natural gas service by prudently investing in additions and upgrades to its delivery system. The Company will continue to prudently invest in its infrastructure in order to improve its natural gas service to its customers and to anticipate and meet their needs under all operating conditions. The GRIP program enables a gas utility such as CenterPoint to begin recovery of its incremental capital investment in the system, subject to a prudence review in its next rate case. This reduces regulatory lag and incentivized needed investment. Consistent with Section 104.301 of the Texas Utilities Code and Commission precedent, the City’s review of this GRIP filing is limited to a ministerial review to ensure compliance with the GRIP statute.

Pursuant to applicable law, the proposed IRA will become effective on May 3, 2021, unless the City suspends that date for a period of no longer than forty-five (45) days. The approved IRA will be applied to the monthly customer charge and will remain in effect until superseded by the earlier of (1) the effective date of the Company’s next annual GRIP adjustment for the Texas Coast Division; or (2) the issuance of a final order in a rate setting proceeding for the Texas Coast Division.

As detailed in the attached schedules and supporting material, the Company invested \$45,065,113 in its Texas Coast Division in calendar year 2020, and the applicable IRA is:

Rate Schedule	Current Customer Charge	Proposed 2021 Interim Rate Adjustment¹	Adjusted Charge	Increase Per Bill
R-2096-I-GRIP 2021; R-2096-U-GRIP 2021 Residential	\$17.77 per customer per month	\$0.88 per customer per month	\$18.65 per customer per month	\$0.88 per customer per month
GSS-2096-I-GRIP 2021; GSS-2096-U-GRIP 2021 General Service Small	\$21.48 per customer per month	\$1.36 per customer per month	\$22.84 per customer per month	\$1.36 per customer per month
GSLV-627-I-GRIP 2021; GSLV-627-U-GRIP 2021 General Service Large Volume	\$262.84 per customer per month	\$33.15 per customer per month	\$295.99 per customer per month	\$33.15 per customer per month

Along with and in support of the proposed IRA, CenterPoint includes the following:

- (a) An earnings monitoring report showing the Company’s earnings for the Texas Coast Division during the 2020 calendar year (under the “Earnings Monitoring Report” section of the enclosed filing).
- (b) An Interim Rate Adjustment Application containing accounting schedules and project reports for the GRIP Adjustment Period including a description of (i) the projects undertaken during the GRIP Adjustment Period (ii) the investment to provide utility service in the Texas Coast Division, which were both completed and placed in service during the GRIP Adjustment Period, (iii) the Company’s prior utility investments in the Texas Coast Division that were either retired or abandoned during the GRIP Adjustment Period, and (iv) the cost, need and customers benefited by those investments and retirements located in IRAs 12, 13, 14 and 15 which are voluminous and are being provided in electronic form only.
- (c) The Company’s calculations of the GRIP Adjustment amount to go into effect on the later of the Planned Effective Date or the end of any suspension period

¹ On December 22, 2017, the Tax Cuts and Jobs Act of 2017 (the “TCJA”) was signed into law. The TCJA reduced the federal corporate income tax rate from 35% to 21%. The Company has calculated the GRIP Adjustment using the 35% federal corporate income tax rate approved in GUD No. 10567. The Company has also calculated and is seeking approval of the GRIP Adjustment using the 21% federal corporate income tax rate under the Tax Cuts and Jobs Act of 2017. The Proposed 2021 Interim Rate Adjustment in the table above has been calculated using the reduced corporate income tax rate of 21%.

imposed (under the “Interim Rate Adjustment Application” section of the enclosed filing). The Company has calculated the GRIP Adjustment using the 35% federal corporate income tax rate approved in GUD No. 10567. The Company has also calculated and is seeking approval of the GRIP Adjustment using the 21% federal corporate income tax rate under the Tax Cuts and Jobs Act of 2017.

(d) Affidavits by Kristie Colvin, Brian K. Gower and Tal R. Centers, Jr. (under the “Affidavits” section of the enclosed filing).

- Ms. Colvin’s affidavit verifies (i) that the Texas Coast Division’s books and records are kept in accordance with the rules of the Commission and (ii) that the reports enclosed accurately reflect the Texas Coast Division’s books and records related to the information in those reports.
- Mr. Gower’s affidavit verifies the notice of the GRIP filing through customer bill inserts.
- Mr. Centers’ affidavit concerns the reimbursement of relocation expenses.

In addition, the source documentation and workpapers supporting the data and calculations contained in the foregoing reports is maintained in CenterPoint’s electronic databases which are available for review. To schedule an opportunity to review the electronic databases or any hard copy project files related to the new investment or retirements, please contact me at (713) 207-5946.

Notice of this proceeding will be provided to affected customers in the Texas Coast Division by bill insert or by separate mailing within 45 days after the date of this filing in accordance with the applicable law.

Please accept for filing the above-mentioned tariffs, filing package and enclosures. Instead of a binder with a hard copy of the filing, the Company has provided the equivalent in electronic form in the folder called Electronic Copy of Filing.

Although only the incorporated tariffs are applicable to the City, the Company has also included in its filing package both incorporated and unincorporated tariffs.

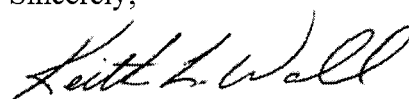
There have been no changes to the IRA forms since the Company’s last filing, other than adding a column on IRA-18 and IRA-19 to show ‘Allocated Original Cost’.

If the City takes any action regarding this filing, please send signed documents, such as, ordinances, resolutions and minutes to the following address:

Keith L. Wall
1111 Louisiana Street
CNP Tower 19th Floor
Houston, Texas 77002

Please do not hesitate to contact me with any questions you may have regarding this filing.

Sincerely,

A handwritten signature in black ink that reads "Keith L. Wall". The signature is written in a cursive style with a large, sweeping initial "K".

Keith L. Wall
Director of Regulatory Affairs

Attachments

cc: Mr. Tal Centers
Mr. Sam Chang
Ms. Gracy Rodriguez

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

AGENDA OF: 4/20/2021 **ITEMS:** IVE.
DATE 4/11/2021 **DEPARTMENT:** Public Works
SUBMITTED:

PREPARED BY: Dan McGraw **PRESENTER:** Dan McGraw
SUBJECT: CONSIDER AND POSSIBLE ACTION TO APPROVE ORDINANCE NO. 2021-1339 TO ADOPT A WATER CONSERVATION PLAN

Expenditure Required: N/A

Amount Budgeted: N/A

Funding Account: N/A

Additional Appropriation Required:

Funding Account:

EXECUTIVE SUMMARY

The purpose of a Water Conservation Plan is to ensure water use efficiency in the City of Fulshear's water utility's operation and is required by our state agencies; Texas Commission on Environmental Quality, Texas Water Development Board and the North Fort Bend Water Association. The Water Conservation Plan is due by May 1, 2021.

The Water Conservation Plan is a strategy or combination of strategies for reducing the consumption of water, reducing the loss or waste of water, improving or maintaining the efficiency in the use of water, or increasing recycling and reuse of water.

City staff worked diligently with Freese and Nichols engineering to prepare the Water Conservation Report and Plan & Profile.

Attached is the Ordinance, Water Conservation Plan and the Plan and Profile for our 5 and 10 year target goals.

RECOMMENDATION

City staff recommends city council approve ordinance No. 2021-1339.

ATTACHMENTS:

Description	Upload Date	Type
Ordinance, Water Conservation Report and Utility Plan & Profile	4/11/2021	Cover Memo

ORDINANCE NO. 2021-1339

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS, ADOPTING A WATER CONSERVATION PLAN; PROVIDING FOR A PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL AND PROVIDING FOR AN EFFECTIVE DATE.

* * * * *

WHEREAS, under section 11.1271 of the Texas Water Code and Title 30 Tex. Admin. Code Chapter 288, the City of Fulshear, Texas (“City”), is required to adopt a water conservation plan and to review and update, as appropriate, the water conservation plan, at least every five years, based on new or updated information; and

WHEREAS, the City finds it appropriate to update its water conservation plan.

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

Section 1. That all of the facts recited in the preamble to this Ordinance are hereby found by the City Council to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

Section 2. The Water Conservation Plan attached hereto as **Exhibit A** is hereby adopted and is incorporated herein for all purposes.

Section 3. Penalty. Any person who violates or causes, allows, or permits another to violate any provision of this ordinance, rule, or police regulation of the city shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine or penalty not to exceed five hundred dollars (\$500.00), provided that if such rule, ordinance, or police regulation governs fire safety, zoning, or public health and sanitation, other than the dumping of refuse, the fine or penalty shall not exceed two thousand dollars (\$2,000.00), and further provided that if such rule, ordinance, or police regulation governs the dumping of refuse, the fine or penalty shall not exceed four thousand dollars (\$4,000.00). Each occurrence of any violation of this ordinance, rule, or police regulation shall constitute a separate offense. Each day on which any such violation of this ordinance, rule, or police regulation occurs shall constitute a separate offense.

Section 4. Severability. In the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstances

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

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

Section 6. **Effective date.** This Ordinance shall be and become effective immediately upon its adoption.

PASSED, APPROVED, and ADOPTED this, the _____ day of _____, 2021.

Aaron Groff, Mayor

ATTEST:

Kim Kopecky, City Secretary

EXHIBIT A



Fulshear Texas

Fort Bend County's Premier Address

**City of Fulshear, Texas
30603 FM 1093
Fulshear, TX 77471**

Water Conservation Plan

Developed to comply with the requirements of
The Texas Commission on Environmental Quality
and The Texas Water Development Board

PWS No. TX0790133

Adopted by Ordinance No. 2021-1339:

**Effective
April 20, 2021**



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APPENDICES

APPENDIX A List of References
APPENDIX B Texas Commission on Environmental Quality Rules for Municipal Water Conservation and Drought Contingency Plans
• Texas Administrative Code Title 30, Part 1, Chapter 288, Subchapter A, Rule §288.1 – Definitions (Page B-1)
• Texas Administrative Code Title 30, Part 1, Chapter 288, Subchapter A, Rule §288.2 – Water Conservation Plans for Municipal Uses by Public Water Suppliers (Page B-5)
APPENDIX C City of Fulshear Water Utility Profile Based on TCEQ Format
APPENDIX D Letters to Region H Water Planning Group and North Fort Bend Water Authority
APPENDIX E Ordinance Adopting *Water Conservation Plan*



1.0 INTRODUCTION

Water supply has always been a key issue throughout Texas and the region surrounding the City of Houston. In recent years, the increasing population and economic development of areas around the Greater Houston area have led to growing demands for sustainable water supplies that are independent of traditionally utilized groundwater resources. At the same time, local and less expensive sources of water supply are largely already developed. Additional supplies to meet future demands will be expensive and difficult to secure. Drought conditions in recent years have highlighted the importance of the efficient use of existing supplies to make them last as long as possible. Extending current supplies will delay the need for new supplies, minimize the environmental impacts associated with developing new supplies, and delay the high cost of additional water supply development.

Recognizing the need for efficient use of existing water supplies, the Texas Commission on Environmental Quality (TCEQ) has developed guidelines and requirements governing the development of Water Conservation Plans.¹ The TCEQ guidelines and requirements are included in Appendix B. The City of Fulshear (Fulshear) has developed this *Water Conservation Plan* (the Plan) in accordance with TCEQ guidelines and requirements. Since Fulshear is a participant in the North Fort Bend Water Authority (NFBWA) Groundwater Reduction Plan (GRP), the *2019 Water Conservation Plan*² for NFBWA was consulted during the development of this Plan to ensure consistency.

1.1 OBJECTIVES

The objectives of this *Water Conservation Plan* are as follows:

- To promote water conservation.
- To reduce water consumption from the levels that would prevail without conservation efforts.
- To determine and control water losses.
- To maintain an accurate record of water usage.
- To reduce the loss and waste of water.
- To improve efficiency in the use of water.
- To encourage efficient outdoor water use.
- To document the level of recycling and reuse in the water supply.
- To extend the life of current water supplies by reducing the rate of growth in demand.



1.2 LIST OF ABBREVIATIONS

Table 1-1 provides a list of abbreviations used throughout this Plan and its appendices.

Table 1-1: List of Abbreviations

Abbreviation	Actual
AMI	Advanced Metering Infrastructure
BMP	Best Management Practice
EST	Elevated Storage Tank
ETJ	Extra Territorial Jurisdiction
gal	Gallons
GPCD	Gallons per Capita per Day
gpm	Gallons per Minute
GRP	Groundwater Reduction Plan
GST	Ground Storage Tank
HOA	Homeowner's Association
MG	Million Gallons
MGD	Million Gallons per Day
MUD	Municipal Utility District
NFBWA	North Fort Bend Water Authority
RWPG	Regional Water Planning Group
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
TPDES	Texas Pollutant Discharge Elimination System
TWDB	Texas Water Development Board
WCAC	Water Conservation Advisory Council
WCP	Water Conservation Plan
W.I.S.E.	Water Irrigation System Evaluation
WLA	Water Loss Audit
WWTP	Wastewater Treatment Plant

1.3 DEFINITIONS

For the purpose of this Plan and its appendices, definitions for words and terms in Water Conservation Plans are contained in Title 30, Part 1, Chapter 288, Subchapter A, Rule 288.1 of the Texas Administrative Code (TAC), which is found in Appendix B.



2.0 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RULES

2.1 TCEQ RULES GOVERNING CONSERVATION PLANS

The TCEQ rules governing development of Water Conservation Plans for public water suppliers are contained in Title 30, Part 1, Chapter 288, Subchapter A, Rule 288.2 of the TAC, which is included in Appendix B. For the purpose of these rules, a Water Conservation Plan is defined as: *"A strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for increasing the recycling and reuse of water, and for preventing the pollution of water."* The elements in the TCEQ water conservation rules covered in this Plan are found below.

Minimum Conservation Plan Requirements

The minimum requirements in the Texas Administrative Code for Water Conservation Plans for Public Water Suppliers covered in this Plan are as follows:

TAC Rule	Description	Location in Plan
288.2(a)(1)(A)	Utility Profile	Section 3.0, Appendix C
288.2(a)(1)(B)	Record Management System	Section 5.2
288.2(a)(1)(C)	Specific, Quantified Goals	Section 4.0
288.2(a)(1)(D)	Accurate Metering	Section 5.1
288.2(a)(1)(E)	Universal Metering	Section 5.1
288.2(a)(1)(F)	Determination and Control of Water Loss	Section 5.3
288.2(a)(1)(G)	Public Education and Information Program	Section 6.1
288.2(a)(1)(H)	Non-Promotional Water Rate Structure	Section 6.2
288.2(a)(1)(I)	Reservoir System Operation Plan	Section 6.3
288.2(a)(1)(J)	Means of Implementation and Enforcement	Section 6.4
288.2(a)(1)(K)	Coordination with Regional Water Planning Groups	Section 6.5, Appendix D
288.2(c)	Review and Update of Plan	Section 8.0



Additional Conservation Requirements (Population over 5,000)

The Texas Administrative Code includes additional requirements for Water Conservation Plans for drinking water supplies serving a population over 5,000:

TAC Rule	Description	Location in Plan
288.2(a)(2)(A)	Leak Detection, Repair, and Water Loss Accounting	Section 5.4
288.2(a)(2)(B)	Requirement for Water Conservation Plans by Wholesale Customers	Section 7.5

Additional Conservation Strategies

The Texas Administrative Code lists additional conservation strategies, which may be adopted by suppliers, but are not required. Additional strategies adopted by Fulshear include the following:

TAC Rule	Description	Location in Plan
288.2(a)(3)(A)	Conservation-Oriented Water Rates	Section 6.2
288.2(a)(3)(B)	Ordinances, Plumbing Codes or Rules on Water-Conserving Fixtures	Section 7.2
288.2(a)(3)(F)	Considerations for Landscape Water Management Regulations	Section 7.3
288.2(a)(3)(H)	Other Water Conservation Practices, Methods, or Techniques Appropriate for Achieving Goals of Plan	Section 7.6

2.2 GUIDANCE AND METHODOLOGY FOR REPORTING ON WATER CONSERVATION AND WATER USE

In addition to TCEQ rules regarding water conservation, this Plan also incorporates elements of the *Guidance and Methodology for Reporting on Water Conservation and Water Use* developed by TWDB and TCEQ, in consultation with the Water Conservation Advisory Council (WCAC).³ The Guidance was developed in response to a charge by the 82nd Texas Legislature to develop water use and calculation methodology and guidance for preparation of water use reports and Water Conservation Plans in accordance with TCEQ rules. Fulshear has considered elements of the Guidance in preparation of this Plan.



3.0 DESCRIPTION OF SERVICE AREA AND UTILITY PROFILE

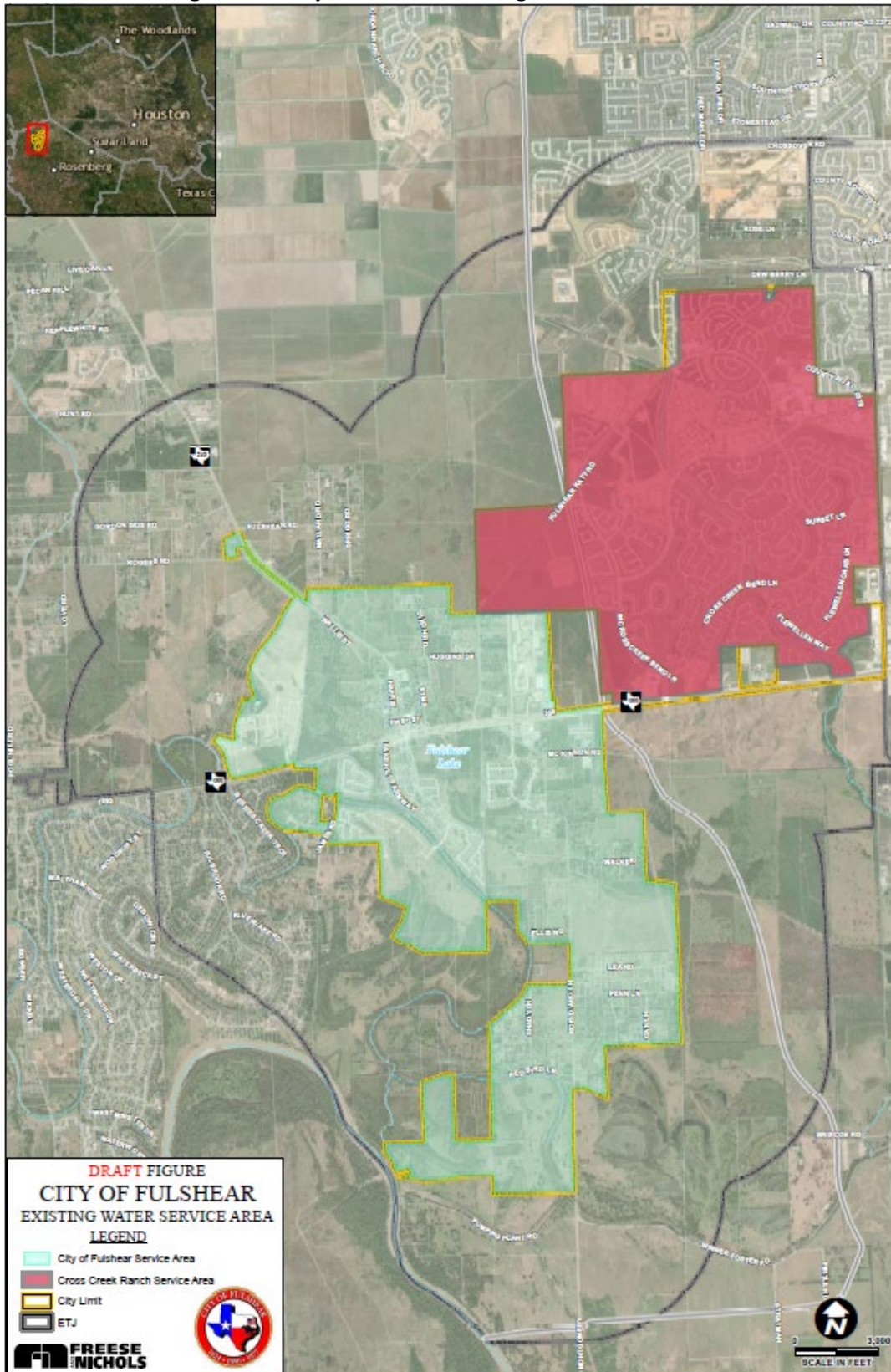
The City of Fulshear is a community located within Fort Bend County in southeast Texas. The City and nearby development Cross Creek Ranch, which is located within the City limits, provide retail water and wastewater service to approximately 20,601 people, according to 2020 estimates by the City. Over the next few decades, the residential population within the City of Fulshear are expected to grow considerably due to rapid development in the surrounding area. **Figure 3-1** illustrates the current City of Fulshear and Cross Creek Ranch service areas in relation to the City of Houston.

The City of Fulshear and Cross Creek Ranch water systems are physically and hydraulically separate, but both serve residents within the City limits and are under the same public water system (PWS No. TX0790133), as defined by the TCEQ. The City of Fulshear and Cross Creek Ranch water systems consist of seven groundwater supply wells, with a total firm well capacity of 9.1 million gallons per day (MGD), at four water plants. All four plants are located in Fort Bend County. Groundwater is pumped from these wells and is treated and stored in groundwater storage tanks (GST) and/or elevated storage tanks (EST), which produce the water pressure to distribute for residential and commercial use. The distribution systems between the City of Fulshear and Cross Creek Ranch systems include seven groundwater wells, six ground storage tanks, one elevated storage tank, four hydropneumatics tanks, four pump stations, and one standpipe at the four water plants. The total combined volume of the systems' storage facilities is 2.6 million gallons (MG) and total firm service pumping capacity is 26.35 MGD.

The City of Fulshear is a participant in the North Fort Bend Water Authority (NFBWA) Groundwater Reduction Plan (GRP). NFBWA, created in 2005 by the Texas Legislature, is tasked with providing long-term supply to comply with the GRP requirements of the Fort Bend Subsidence District (FBSD).⁴ Under the GRP requirements, NFBWA is required to convert 30 percent of water usage within its boundaries to an alternative water supply, such as surface water or reuse, by 2014 (completed), and 60 percent by the year 2025. As a participant in the NFBWA GRP, the City of Fulshear pays NFBWA pumping fees for the groundwater they produce within the NFBWA boundaries. At some point, NFBWA may decide to provide the City with surface water as a means of meeting the overall GRP.



Figure 3-1: City of Fulshear Existing Water Service Area





4.0 SPECIFICATION OF WATER CONSERVATION GOALS

TCEQ rules require the adoption of specific five-year and ten-year water conservation goals for a Water Conservation Plan. The goals for this *Water Conservation Plan* include the following:

- A five-year moving average total per capita water use and residential per capita water use below the specified amount in gallons per capita per day, as shown in **Table 4-1**.
- Implement and maintain a program of universal metering and meter replacement and repair, as discussed in **Section 5.1**.
- Maintain the level of water loss percentage in the system at the levels discussed in **Section 5.5**.
- Raise public awareness of water conservation and encourage responsible public behavior by a public education and information program as discussed in **Section 6.1**.
- Develop a system-specific strategy to conserve water during peak demands, thereby reducing the peak use.

A five-year average (2016-2020) represents a range that captures wet and dry years and should be used as the baseline for gallons per capita per day (GPCD) goal development. As of 2019, Fulshear's five-year average total per capita use was 139.7 GPCD. Fulshear has developed five-year and ten-year goals for 2026 and 2031, based on a 0.5 percent annual reduction in both Total GPCD and Residential GPCD. Five-year and ten-year water loss goals are to control the water loss not to exceed 10 percent annually. The current specific goals are outlined in **Table 4-1** and are illustrated against historic actuals in **Figure 4-1**. These goals should be measured against a five-year average per capita, although some (dry) years will see higher per capita usage than these five-year average goals. A series of dry years may lead to an average exceeding the goal.

To accomplish these goals, the City of Fulshear will utilize the programs and policies described in this Plan, which includes accurate metering devices, universal metering, meter testing and repair, periodic meter replacement, record management systems, control of water loss, public education, conservation-oriented water rates, and leak detection and repair.

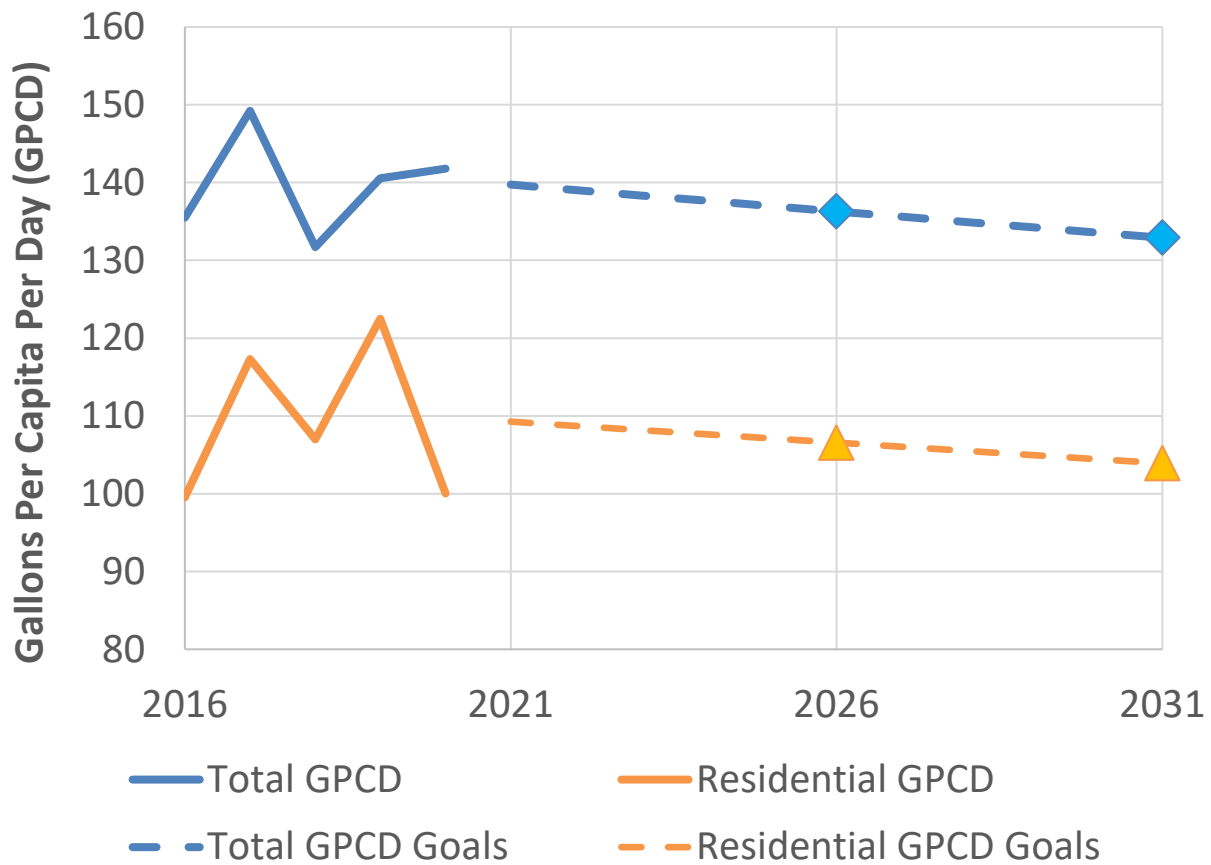


TABLE 4-1: WATER CONSERVATION PLAN FIVE- AND TEN-YEAR GOALS

Description	Units	2016-2020 Average	2026	2031
Total GPCD ^a	GPCD	139.7	136.3	132.9
Residential GPCD ^b	GPCD	109.3	106.6	103.9
Water Loss GPCD ^c	GPCD	10.0	< 13.6	< 13.3
Water Loss Percentage	%	7.4%	< 10%	< 10%

- a. Total GPCD = (Total Gallons in System ÷ Permanent Population) ÷ 365
- b. Residential GPCD = (Gallons Used for Residential Use ÷ Residential Population) ÷ 365
- c. Water Loss GPCD = (Total Water Loss ÷ Permanent Population) ÷ 365
- d. Water Loss Percentage = (Total Water Loss ÷ Total Gallons in System) X 100; or (Water Loss GPCD ÷ Total GPCD) X 100

FIGURE 4-1: HISTORIC TOTAL GPCD AND GOALS





5.0 METERING, WATER USE RECORDS, CONTROL OF WATER LOSSES, AND LEAK DETECTION AND REPAIR

One of the key elements in water conservation is careful tracking of water use and control of losses through illegal diversions and leaks. Careful metering of water deliveries and water use, detection and repair of leaks in the distribution system, and regular monitoring of water losses are important in controlling losses.

5.1 METERING OF CUSTOMER AND PUBLIC USES AND METER TESTING, REPAIR, AND REPLACEMENT

The City of Fulshear meters 100 percent of the connections to the distribution system, including municipal uses. Meter sizes range from $\frac{3}{4}$ " to 8". All meters are designed to provide accurate flows to within +/- 5 percent. Fulshear carefully estimates the water used by the fire department for fire suppression and hydrant flushing.

The City practices a meter change-out program whereby meters are changed out every 15 to 20 years. In 2019, the City replaced a total of 138 meters in their system. Additionally, larger meters are field tested and repaired for accuracy. Generally, the City does not use repaired meters in the system. The City's Water Plants have metering for treated water. The metering is accomplished through turbine meters. Certified calibration is performed annually.

The City of Fulshear also implemented a Neptune Advanced Metering Infrastructure (AMI) system with a Smart Customer Portal in June 2016. Since implementing its AMI system, Fulshear's capability to track water use and manage the operations of its water distribution system have already improved. A more detailed description of the AMI system and its benefits to the City can be found in **Section 7.3**.

5.2 RECORD MANAGEMENT SYSTEM

The City of Fulshear Public Works Department maintains records of water received from the groundwater plants/water pumped to the distribution system, water used for flushing and sewer line cleaning, and estimates of water losses due to water leaks, fire hydrant flushing, and firefighting and training. The City Administrative Services Department maintains records of water sold and water rates.

As required by Texas Administrative Code Title 30, Part 1, Chapter 288, Subchapter A, Rule 288.2 (a)(1)(B), Fulshear's record management system allows for the separation of water sales and uses into residential



and non-residential classes. The non-residential water use can be tracked by the use of codes into the required categories of commercial, public/institutional, and industrial use categories. Fulshear’s record management system allows water sales and uses to be tracked as separate categories and includes water sales to multi-family housing in the residential sales category. This information is included in the TCEQ required Water Conservation Implementation Report, as described in **Section 6.4. Table 5-1** shows the number of meters by customer size and type as of January 2020.

TABLE 5-1: METER SIZE AND TYPE DISTRIBUTION

Meter Type/Size	Residential	Commercial	Irrigation	Builder	TOTAL
5/8" & 3/4"	3,854	68	234	361	4,517
1"	402	51	23	38	514
1 1/2"	1	31	3	1	36
2"	0	55	24	1	80
3"	0	2	1	0	3
4"	0	4	0	0	4
6"	0	5	0	1	6
8"	0	8	0	0	8
10"	0	2	0	0	2
Total	4,257	226	285	402	5,170

5.3 DETERMINATION AND CONTROL OF WATER LOSS

Total water loss is the difference between the water pumped to the City of Fulshear and Cross Creek Ranch's systems and water sold through the meters. Authorized consumption includes billed metered uses, unbilled metered uses, and unbilled unmetered uses such as firefighting and releases for flushing of lines. Water losses include two categories:

- Apparent losses such as inaccuracies in customer meters. (Customer meters tend to run more slowly as they age and under-report actual use). Unauthorized consumption due to illegal connections and theft.
- Real Losses due to water main breaks and leaks in the water distribution system and unreported losses.



Measures to control water losses are part of the routine operations of the City. Maintenance crews and personnel are asked to look for and report evidence of leaks in the water distribution system. The City's leak detection and repair program is described in **Section 5.4** below. Meter readers are asked to watch for and report signs of illegal connections, so they can be addressed quickly. Water losses are included in the Utility Profile in Appendix C. As of 2020, the five-year average water loss is approximately 7.5 percent of the total water used in Fulshear. The goals for water loss are shown in **Table 5-2**.

TABLE 5-2: WATER LOSS 5- AND 10-YEAR GOALS

Description	Units	2015-2019 Average	2026	2031
Water Loss GPCD ^a	GPCD	10.0	< 13.6	< 13.3
Water Loss Percentage ^b	%	7.4%	< 10%	< 10%

a. Water Loss GPCD = (Total Water Loss ÷ Permanent Population) ÷ 365

b. Water Loss Percentage = (Total Water Loss ÷ Total Gallons in System) x 100; or (Water Loss GPCD ÷ Total GPCD) x 100

5.4 LEAK DETECTION AND REPAIR

The City of Fulshear has an active leak detection and repair program as part of the implementation of this Plan. Components of the active leak detection and repair program include:

- City crews and personnel are asked to continue looking for and reporting evidence of leaks in the water distribution system during their normal duties.
- The general public are also encouraged to report any leaks. Fulshear currently includes a message on customer water bills to notify them to report any water leaks 24/7. City staff is available to respond to water leaks during after-hours or on-call service.
- The Smart Meter Portal allows the City to identify customer leaks quickly and increase conservation.
- The Water Plants are monitored daily and system pressure is checked carefully. Any unusual pressure level may be indicative of sizeable leaks and reported to the maintenance section as soon as noted.
- All leaks are repaired the same day or as soon as practicable.



5.5 MONITORING OF EFFECTIVENESS AND EFFICIENCY

The City of Fulshear maintains monthly accounting of water delivery efficiencies, which includes a database of information regarding water sales and use, water losses, and leak detection and repair activities. At the end of each period, the Public Works Department calculates water usage and losses. These calculations are maintained and reviewed on an annual basis and can be used to determine the effectiveness of the programs described in this Plan.



6.0 OTHER REQUIRED CONSERVATION MEASURES

6.1 PUBLIC EDUCATION AND INFORMATION

The City will support public education and information programs regarding water conservation activities that support its goals, including:

- Education to the general public on the need for and practices of water conservation through means, such as public service accountments, public notice, web site, press releases, and mailings.
- Providing water conservation tips to customers through the City of Fulshear website and Annual Consumer Confidence Report.
- Partnering with local organizations, schools, and civic groups to make educational presentations on the importance of water conservation and ways to save water.
- Inserting water conservation information with utility bills. Currently, the City provides “Larry the Talking Sprinkler” Irrigation Tip Flyer to utility bills. Inserts could also include material developed by the City of Fulshear and material obtained from the TWDB, the TCEQ, and other sources.

6.2 WATER RATE STRUCTURE

The City of Fulshear applies a water rate structure that is intended to encourage water conservation and discourage excessive use and waste of water. The City has base rates determined by the size of the meter. The water and wastewater rate structure is broken down into residential rates, commercial rates, and irrigation user rates. Both residential and non-residential customers are charged a minimum base rate of \$5.50 per month for water and \$5.50 for wastewater, for a standard sized meter. The current City rates were effective as of October 2019 and are subject to change as the City continues to refine its rate structures to improve the impact on water conservation and manage the cost of service most effectively.

6.3 RESERVOIR SYSTEM OPERATION

Groundwater is currently the sole source of water produced by the City of Fulshear and Cross Creek Ranch. Thus, Fulshear does not have surface water supplies for which to implement a reservoir system operation plan.



6.4 IMPLEMENTATION AND ENFORCEMENT

The City of Fulshear completes the TCEQ required *Water Conservation Plan Implementation Report* by May 1 of each year. The report includes various water conservation strategies that have been implemented, including the date of implementation. Additionally, the report includes progress made on the five- and ten-year per capita water use goals from this Plan. The amount of water saved is also documented in this report.

Appendix E contains a copy of the ordinance adopted by the City Council regarding this *Water Conservation Plan*. The ordinance designates responsible officials to implement and enforce the *Water Conservation Plan*.

6.5 COORDINATION WITH REGIONAL WATER PLANNING GROUPS

The service area of the City of Fulshear is located within the Region H Regional Water Planning Area. The City of Fulshear is also a participant in the NFBWA GRP. Fulshear will provide a copy of this *Water Conservation Plan* to the Region H Water Planning Group and NFBWA. Appendix D includes copies of the letters sent to the Chair of the Region H Water Planning Group and the NFBWA Board of Directors President with copies of the Plan.



7.0 ADDITIONAL CONSERVATION EFFORTS

7.1 LARRY'S WATER CONSERVATION TOOLBOX PROGRAM

NFBWA offers an incentive-based water conservation program that gives participating municipal utility districts (MUDs), homeowners' associations (HOAs), and cities the opportunity implement water conservation strategies to reduce consumption and waste.⁵ The program, called "Larry's Water Conservation Toolbox" and featuring NFBWA's mascot, "Larry the Talking Sprinkler," offers a variety of water savings tools to help the public reduce water usage. As a participant in the NFBWA Groundwater Reduction Plan (GRP), the City of Fulshear is a participant in many of the conservation programs and initiatives offered through Larry's Water Conservation Toolbox, including:

- FREE Water Irrigation System Evaluation (WISE) – WISE Guys
- High Water User Notification
- Conservation Information
- Native and Adaptive Plant Outreach
- Efficient Appliance Giveaway (E.g., rain barrels)
- Smart Technology
- Effective Tiered Rates

NFBWA annually tracks the implementation of Larry's Water Conservation Toolbox initiatives by participating MUDs, HOAs, and cities through a points system. The City of Fulshear earned the most points of any participating entity for their involvement in the 2020 toolbox program and was recognized by NFBWA for their outstanding efforts.

In addition to the various programs offered through Larry's Water Conservation Toolbox, NFBWA offers a Mobile Teaching Lab as an educational resource for use by educators, MUDs, civic and community associations, and for special community events. This mobile lab is a valuable water conservation education resource that is used to promote a greater understanding of the value of water conservation, encourage students to become tomorrow's stewards, and provide lessons of the past to encourage more efficient water use in the future. The City of Fulshear has utilized the NFBWA Mobile Teaching Lab for various community events and public education opportunities.



NFBWA's Larry the Talking Sprinkler website (<https://talkingsprinkler.com/>) contains more information regarding the programs and initiatives offered through this toolbox, as well as educational resources regarding water conservation and free weekly watering advice.

7.2 WATER-CONSERVING PLUMBING FIXTURES

The City adopted the 2015 International Plumbing Code as published by the International Code Council with amendments in Chapter 8 of the City of Fulshear Code of Ordinances. A copy of this code is maintained by the City. The City routinely inspects new construction, remodeling, add-ons, etc., through building permits. All new construction is required to meet state and federal rules regarding water-conserving plumbing fixtures.

The Texas Health and Safety Code, Title 5, Subtitle B, Chapter 372 effective January 1, 2014, encourages water conservation through the requirement that all toilets sold, offered for sale, or distributed must be a dual flush toilet that may not exceed 1.28 gallons per flush on average or for one full flush. The projected demands for Fulshear that have been adopted for the *2021 Region H Water Plan*⁶ accounts for the new plumbing code requirement.

The City does not offer a program for the replacement or retrofit of water conserving plumbing fixtures in existing structures other than what would be required through the permitting process for re-models and building upgrades.

7.3 LANDSCAPE WATER MANAGEMENT

As a participant in the NFBWA Larry's Water Conservation Toolbox program, City of Fulshear water users can obtain a free water irrigation system evaluation. A licensed irrigator can provide a comprehensive evaluation of a user's system where they check water patterns and frequency settings on a controller. Water users can access these results online and use them to help learn how to use water more efficiently on yard and landscaped areas.

The City of Fulshear lawn irrigation ordinance (Section 40-318 – Compliance for lawn irrigation, Ord. No. 2020-1318) states that a permit issued by the building inspection department is required to install all lawn irrigation systems. In addition, installation requirements of all irrigation systems must comply with the current City plumbing code and/or guidelines for the appropriate device designated in the City code of ordinances.



7.4 ADVANCED METERING INFRASTRUCTURE

Water and wastewater utilities increasingly face challenges associated with population growth that cannot be offset by reduced per capita consumption, and aging infrastructure that will require significant investment. Advanced Metering Infrastructure (AMI) is one tool in the toolbox of a smart and effective utility which can serve to reduce per capita consumption and therefore delay the need for major capital expenses and rate adjustments, improve customer service, detect potential leaks, and streamline operational decision making and reduce operational costs. In 2016, the City of Fulshear implemented a Neptune AMI system with a Smart Customer Portal and has experienced a variety of conservation benefits.

Advanced Metering Infrastructure (AMI) is generally comprised of:

- Equipment that enables meters to be read remotely rather than physically,
- A communications network that delivers the meter data to a database, and
- Software systems to receive and store the data, providing staff the ability to view and analyze the data and bill customers for their usage.

AMI technology has been the standard at electric utilities for many years. Until recently, the limitation for water utilities has been the source of power. New battery technology with extended service life and smaller size is enabling water utilities to move forward with AMI programs and reap the benefits of leveraging granular water consumption data. Additional benefits of AMI include greater ability to:

- Respond faster to indications of leaks or main breaks,
- Operate with greater efficiency and transparency, and
- Add customer services that are delivered in digital platforms in addition to (or instead of) the existing paper and telephone platforms.

When used to its full capability, AMI has the potential to change the way customers and water utilities interact, how they see water consumption data, understand their water use and act on it.

While AMI is much more than a meter replacement program, most water utilities start by replacing their meters. The physical components are easier to understand and can help ease a utility into the change management process. Installation of AMI-ready meters began in Fulshear in 2016 and was completed within six months. The AMI system included all new meter connections and changed out all existing meters within the City's system.



The AMI system is capable of providing near-real-time hourly water data that can be used to identify leaks or other anomalies in water use. The City can use this data to compare the amount of water treated, pumped and delivered to the amount purchased, helping to pinpoint system defects or other sources of nonrevenue water loss that may occur in the City's distribution system. This gives Fulshear the capability of locating leaks in the distribution system or at a customer's location and repairing them much more quickly, thus reducing the amount of water losses. Smart metering systems also allow Fulshear to monitor water pressure in various sections of the distribution system and make pressure adjustments quickly. Analysis of trends in an account's water consumption may indicate a meter needs to be replaced. AMI water meters can also alert the system when they have been tampered with or when the battery fails, potentially reducing apparent water loss and unbilled consumption.

The data acquired through an AMI system supports water conservation by offering customers the ability to view hourly water usage online and engage with the City. The Smart Customer Portal, included with the Neptune AMI system, allows customers the ability to view their usage and ask questions via e-mail or phones. This helps to connect behaviors with the usage and the monthly bill. In addition, the City performs data logs and reviews with customers in the office or onsite when usage volumes or the AMI system is challenged. The AMI and data logs clearly show irrigation run times and volumes, and these reports are offered to the public to educate them on their usage. Ultimately, equipping customers with more readily accessible, granular data and enhancing online conservation programs is expected to decrease per capita demands.

Recently, the City has started the process of upgrading their AMI system from a Gateway/Antenna to Cellular. The City will be moving away from a mechanical meter and will instead implement an ultrasonic stainless-steel meter with a cellular endpoint. This upgrade to the system will make the customer portal even more user-friendly.

Overall, the City of Fulshear has realized and will continue to take advantage of the many benefits of AMI in a multitude of areas, including:

- Reducing apparent water loss,
- Reducing real water loss,
- Advancing water conservation,
- Improving operational efficiencies for meter reading and field investigations,
- Streamlining asset condition assessments,



- Improving the customers' experience,
- Leveraging the use of data, and
- Enhancing transparency.

7.5 REQUIREMENT FOR WATER CONSERVATION PLANS BY WHOLESALE CUSTOMERS

The City of Fulshear does not currently provide wholesale water to any customer. The requirement associated with wholesale water contracts as stated in Title 30, Part 1, Chapter 288, Subchapter A, Rule 288.2 of the Texas Administrative Code does not currently apply to Fulshear.

7.6 OTHER CONSERVATION MEASURES

The City recognizes that in order to accomplish the goals and objectives of this *Water Conservation Plan*, other conservation measures may be required that are not outlined in the body of this document. The City is aware of the Best Management Practices (BMP) guides for agricultural, commercial and institutional, industrial, municipal, and wholesale water conservation published by the TWDB and updated by TWDB, TCEQ, WCAC and interested stakeholders.⁷ As deemed necessary, the City will implement other measures either from these BMP guides or as otherwise seen fit to assure compliance with this Plan. **Section 8.0** contains information regarding potential future conservation BMPs that the City is interested in implementing to enhance their overall conservation program.



8.0 POTENTIAL FUTURE CONSERVATION PROGRAMS

8.1 LANDSCAPE AND IRRIGATION SYSTEM INCENTIVES

In an effort to expand its outdoor water use conservation programs, the City of Fulshear staff have identified outdoor water use reductions as one of the best opportunities to further reduce water consumption. In particular, the City is interested in implementing landscape and irrigation system incentives for their customers to facilitate more efficient water use.

Landscape Replacement

Expenditures and water savings vary across utilities that utilize landscape replacement programs. Southern Nevada Water Authority has had a program since 1999 that has paid out more than \$200 million in rebates, removing roughly 185 million square feet. Between 2009-2015, Los Angeles area agencies paid out more than \$42 million, removing 15 million square feet. Approximately 1.5% of all single-family households in Los Angeles are participating, saving ~66,000 gallons per participating household per year.

Irrigation System Incentives

Recent research has indicated a strong relationship between irrigation system capacity (total gallons per minute) and total water use. As irrigation system capacity increases, total water use tends to increase linearly. Based on this research, programs or incentives that reduce the capacity of the irrigation system should be effective in reducing outdoor water use. Potential incentives include:

- Irrigation nozzle replacement – converting traditional spray nozzles to MP Rotators which have a lower gallon per minute distribution rate.
- Irrigation zone retrofits – changing irrigation zones from spray nozzles to drip irrigation with associated changes in landscaping from turf to landscaped beds.
- Removing irrigation zones – capping and removing a zone from the irrigation system since that area has been converted and no longer requires irrigation.
- Pressure Reducing Valves – these can be utilized for area with high pressure that cause misting and irrigation nozzles to operate outside of the specified pressure.

The City of Fulshear is interested in evaluating these types of landscape and irrigation system incentives in the future.



8.2 ADVANCED COMMUNITY ENGAGEMENT

As the City of Fulshear embarks on expanding the portfolio of conservation initiatives, community support will be essential. City staff intends to engage as many stakeholders as early as possible to ensure success. Below is a list of potential new ways to stimulate this conversation, although the City intends to continue running its current outreach programs and consider other new engagement opportunities not specifically listed below.

Homebuilder/HOA Coordination

Due to the rapid growth in the Fulshear area, cultivating positive relationships with homebuilders and HOAs will be essential to potential City ordinance changes. Early collaboration with this industry will help craft regionally appropriate language, and foster buy-in within the regulated sector. Establishing these connections will not only break down silos but will also streamline the process of enforcing and refining the regulations.

Leverage Community Organizations

Utilities are increasingly recognizing that their Conservation staff cannot be in the community as often as needed. For this reason, the WCAC adopted the Partnerships with Nonprofit Organizations BMP, which recommends taking advantage of volunteer organizations with diverse memberships to bolster staff efforts. Contracts with various community organizations will help raise awareness within the community. These groups may be compensated for the amount of outreach they perform via “performance agreements” and are expected to deliver their results. They are paid a pre-approved amount that is modified according to event attendance. By activating knowledgeable members of the community, a utility can increase the number of customer interactions, reduce the unit cost of those interactions, and the partner organizations benefit from greater exposure with the community.

Collaborate with Affordability Partners

Working with other agencies to take advantage of their existing systems to connect with low-income residents can help magnify the number of customers enlisted. City staff can create avenues of communication with Council Members’ Offices, County officials, electric utility affordability programs, and others. Bolstering a strong affordability program will help minimize the impacts to customers from rate adjustments, and can also provide a conservation benefit as well. Some affordability programs, such as a



plumbing assistance program, will directly reduce water usage, while other affordability programs might be another avenue that City of Fulshear uses to distribute conservation messaging.

8.3 IRRIGATION DESIGN CRITERIA

Based on the City’s lawn irrigation ordinance (Section 40-318 – Compliance for lawn irrigation, Ord. No. 2020-1318) and the requirement that all new irrigation systems comply with state design and installation regulations (Texas Administrative Code Title 30, Chapter 344), the City of Fulshear reviews irrigation design during development. These reviews verify that the landscape design meets City and state standards. In the future, it is possible that the City may align their design criteria with best practices identified in **Section 8.3**. The City of Fulshear may evaluate these design standards in an effort to align them with water conservation program goals described in this Plan in the next five years.

During installation of irrigation systems permitted by the City, irrigators could provide the irrigation system’s owner, in writing, a recommended seasonal irrigation schedule and instructions on how to use the irrigation system and set the controller. Seasonal schedules will be approved by the City Public Works Director or irrigation system designee. The schedule will be affixed to the irrigation controller or on an adjacent wall.



9.0 ORDINANCE ADOPTION OF WATER CONSERVATION PLAN, PERIODIC REVIEW AND UPDATE OF PLAN

Opportunity for public comment on the Plan was provided at a City of Fulshear City Council meeting on April 20, 2021. Appendix E contains the ordinance adopting this Plan. Appendix C contains the adopted water utility profile for Fulshear.

TCEQ requires that Water Conservation Plans be reviewed and, if necessary, updated every five years to coincide with the regional water planning process. This *Water Conservation Plan* will be updated as required by TCEQ and, in addition, will be continually reassessed for opportunities to improve water efficiency and conservation based on new or updated information.

Appendix A
List of References



APPENDIX A

LIST OF REFERENCES

1. Title 30 of the Texas Administrative Code, Part 1, Chapter 288, Subchapter A, Rules 288.1 and 288.2, downloaded from
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=30&pt=1&ch=288](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=30&pt=1&ch=288), April 2021.
2. North Fort Bend Water Authority, "Water Conservation Plan", adopted by the North Fort Bend Water Authority Board of Directors, April 2019.
3. Texas Water Development Board, Texas Commission on Environmental Quality, Water Conservation Advisory Council. "Guidance and Methodology for Reporting on Water Conservation and Water Use", December 2012.
4. North Fort Bend Water Authority Website. Accessed from:
<https://www.nfbwa.com/>, April 2021.
5. Larry's Water Conservation Toolbox Website. Brought to you by the North Fort Bend Water Authority. Accessed from:
<https://talkingsprinkler.com/>, April 2021.
6. Freese and Nichols, 2021 Region H Water Plan Demand Projections, adopted by the Texas Water Development Board.
7. Texas Water Development Board, "Best Management Practices Guides". Revised 2020.

Appendix B
Texas Commission of Environmental Quality Rules



APPENDIX B

TEXAS COMMISSION OF ENVIRONMENTAL QUALITY RULES ON MUNICIPAL WATER CONSERVATION AND DROUGHT CONTINGENCY PLANS

<u>TITLE 30</u>	ENVIRONMENTAL QUALITY
<u>PART 1</u>	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
<u>CHAPTER 288</u>	WATER CONSERVATION PLANS, DROUGHT CONTINGENCY PLANS, GUIDELINES AND REQUIREMENTS
<u>SUBCHAPTER A</u>	WATER CONSERVATION PLANS
RULE §288.1.	Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Agricultural or Agriculture:** Any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or non-soil media by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) raising or keeping equine animals;

(E) wildlife management; and

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(2) **Agricultural use:** Any use or activity involving agriculture, including irrigation.

(3) **Best management practices:** Voluntary efficiency measures that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specific time frame.



(4) **Conservation:** Those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(5) **Commercial use:** The use of water by a place of business, such as a hotel, restaurant, or office building. This does not include multi-family residences or agricultural, industrial, or institutional users.

(6) **Drought contingency plan:** A strategy or combination of strategies for temporary supply and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies. A drought contingency plan may be a separate document identified as such or may be contained within another water management document(s).

(7) **Industrial use:** The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, and the development of power by means other than hydroelectric, but does not include agricultural use.

(8) **Institutional use:** The use of water by an establishment dedicated to public service, such as a school, university, church, hospital, nursing home, prison, or government facility. All facilities dedicated to public service are considered institutional regardless of ownership.

(9) **Irrigation:** The agricultural use of water for the irrigation of crops, trees, and pastureland, including, but not limited to, golf courses and parks which do not receive water from a public water supplier.

(10) **Irrigation water use efficiency:** The percentage of that amount of irrigation water which is beneficially used by agriculture crops or other vegetation relative to the amount of water diverted from the source(s) of supply. Beneficial uses of water for irrigation purposes include, but are not limited to, evapotranspiration needs for vegetative maintenance and growth, salinity management, and leaching requirements associated with irrigation.

(11) **Mining use:** The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field re-pressuring.

(12) **Municipal use:** The use of potable water provided by a public water supplier as well as the use of sewage effluent for residential, commercial, industrial, agricultural, institutional, and wholesale uses.

(13) **Nursery grower:** A person engaged in the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, who grows more than 50%



of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, grow means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease, and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

(14) **Pollution:** The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(15) **Public water supplier:** An individual or entity that supplies water to the public for human consumption.

(16) **Regional water planning group:** A group established by the Texas Water Development Board to prepare a regional water plan under Texas Water Code, §16.053.

(17) **Residential gallons per capita per day:** The total gallons sold for residential use by a public water supplier divided by the residential population served and then divided by the number of days in the year.

(18) **Residential use:** The use of water that is billed to single and multi-family residences, which applies to indoor and outdoor uses.

(19) **Retail public water supplier:** An individual or entity that for compensation supplies water to the public for human consumption. The term does not include an individual or entity that supplies water to itself or its employees or tenants when that water is not resold to or used by others.

(20) **Reuse:** The authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before that water is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

(21) **Total use:** The volume of raw or potable water provided by a public water supplier to billed customer sectors or nonrevenue uses and the volume lost during conveyance, treatment, or transmission of that water.



(22) **Total gallons per capita per day (GPCD):** The total amount of water diverted and/or pumped for potable use divided by the total permanent population divided by the days of the year. Diversion volumes of reuse as defined in this chapter shall be credited against total diversion volumes for the purposes of calculating GPCD for targets and goals.

(23) **Water conservation coordinator:** The person designated by a retail public water supplier that is responsible for implementing a water conservation plan.

(24) **Water conservation plan:** A strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for increasing the recycling and reuse of water, and for preventing the pollution of water. A water conservation plan may be a separate document identified as such or may be contained within another water management document(s).

(25) **Wholesale public water supplier:** An individual or entity that for compensation supplies water to another for resale to the public for human consumption. The term does not include an individual or entity that supplies water to itself or its employees or tenants as an incident of that employee service or tenancy when that water is not resold to or used by others, or an individual or entity that conveys water to another individual or entity, but does not own the right to the water which is conveyed, whether or not for a delivery fee.

(26) **Wholesale use:** Water sold from one entity or public water supplier to other retail water purveyors for resale to individual customers.

Source Note: The provisions of this §288.1 adopted to be effective May 3, 1993, 18 TexReg 2558; amended to be effective February 21, 1999, 24 TexReg 949; amended to be effective April 27, 2000, 25 TexReg 3544; amended to be effective August 15, 2002, 27 TexReg 7146; amended to be effective October 7, 2004, 29 TexReg 9384; amended to be effective January 10, 2008, 33 TexReg 193; amended to be effective December 6, 2012, 37 TexReg 9515; amended to be effective August 16, 2018, 43 TexReg 5218.



TITLE 30 ENVIRONMENTAL QUALITY

PART 1 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 288 WATER CONSERVATION PLANS, DROUGHT CONTINGENCY PLANS, GUIDELINES AND REQUIREMENTS

SUBCHAPTER A WATER CONSERVATION PLANS

RULE §288.2 Water Conservation Plans for Municipal Uses by Public Water Suppliers

(a) A water conservation plan for municipal water use by public water suppliers must provide information in response to the following. If the plan does not provide information for each requirement, the public water supplier shall include in the plan an explanation of why the requirement is not applicable.

(1) Minimum requirements. All water conservation plans for municipal uses by public water suppliers must include the following elements:

(A) a utility profile in accordance with the Texas Water Use Methodology, including, but not limited to, information regarding population and customer data, water use data (including total gallons per capita per day (GPCD) and residential GPCD), water supply system data, and wastewater system data;

(B) a record management system which allows for the classification of water sales and uses into the most detailed level of water use data currently available to it, including, if possible, the sectors listed in clauses (i) - (vi) of this subparagraph. Any new billing system purchased by a public water supplier must be capable of reporting detailed water use data as described in clauses (i) - (vi) of this subparagraph:

- (i) residential;
 - (I) single family;
 - (II) multi-family;
- (ii) commercial;
- (iii) institutional;
- (iv) industrial;
- (v) agricultural; and,
- (vi) wholesale.



City of Fulshear

(C) specific, quantified five-year and ten-year targets for water savings to include goals for water loss programs and goals for municipal use in total GPCD and residential GPCD. The goals established by a public water supplier under this subparagraph are not enforceable;

(D) metering device(s), within an accuracy of plus or minus 5.0% in order to measure and account for the amount of water diverted from the source of supply;

(E) a program for universal metering of both customer and public uses of water, for meter testing and repair, and for periodic meter replacement;

(F) measures to determine and control water loss (for example, periodic visual inspections along distribution lines; annual or monthly audit of the water system to determine illegal connections; abandoned services; etc.);

(G) a program of continuing public education and information regarding water conservation;

(H) a water rate structure which is not "promotional," i.e., a rate structure which is cost-based and which does not encourage the excessive use of water;

(I) a reservoir systems operations plan, if applicable, providing for the coordinated operation of reservoirs owned by the applicant within a common watershed or river basin in order to optimize available water supplies; and

(J) a means of implementation and enforcement which shall be evidenced by:

(i) a copy of the ordinance, resolution, or tariff indicating official adoption of the water conservation plan by the water supplier; and

(ii) a description of the authority by which the water supplier will implement and enforce the conservation plan; and

(K) documentation of coordination with the regional water planning groups for the service area of the public water supplier in order to ensure consistency with the appropriate approved regional water plans.

(2) Additional content requirements. Water conservation plans for municipal uses by public drinking water suppliers serving a current population of 5,000 or more and/or a projected population of 5,000 or more within the next ten years subsequent to the effective date of the plan must include the following elements:



City of Fulshear

(A) a program of leak detection, repair, and water loss accounting for the water transmission, delivery, and distribution system;

(B) a requirement in every wholesale water supply contract entered into or renewed after official adoption of the plan (by either ordinance, resolution, or tariff), and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements in this chapter. If the customer intends to resell the water, the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with the provisions of this chapter.

(3) Additional conservation strategies. Any combination of the following strategies shall be selected by the water supplier, in addition to the minimum requirements in paragraphs (1) and (2) of this subsection, if they are necessary to achieve the stated water conservation goals of the plan. The commission may require that any of the following strategies be implemented by the water supplier if the commission determines that the strategy is necessary to achieve the goals of the water conservation plan:

(A) conservation-oriented water rates and water rate structures such as uniform or increasing block rate schedules, and/or seasonal rates, but not flat rate or decreasing block rates;

(B) adoption of ordinances, plumbing codes, and/or rules requiring water-conserving plumbing fixtures to be installed in new structures and existing structures undergoing substantial modification or addition;

(C) a program for the replacement or retrofit of water-conserving plumbing fixtures in existing structures;

(D) reuse and/or recycling of wastewater and/or graywater;

(E) a program for pressure control and/or reduction in the distribution system and/or for customer connections;

(F) a program and/or ordinance(s) for landscape water management;

(G) a method for monitoring the effectiveness and efficiency of the water conservation plan; and

(H) any other water conservation practice, method, or technique which the water supplier shows to be appropriate for achieving the stated goal or goals of the water conservation plan.



(b) A water conservation plan prepared in accordance with 31 TAC §363.15 (relating to Required Water Conservation Plan) of the Texas Water Development Board and substantially meeting the requirements of this section and other applicable commission rules may be submitted to meet application requirements in accordance with a memorandum of understanding between the commission and the Texas Water Development Board.

(c) A public water supplier for municipal use shall review and update its water conservation plan, as appropriate, based on an assessment of previous five-year and ten-year targets and any other new or updated information. The public water supplier for municipal use shall review and update the next revision of its water conservation plan every five years to coincide with the regional water planning group.

Source Note: The provisions of this §288.2 adopted to be effective May 3, 1993, 18 TexReg 2558; amended to be effective February 21, 1999, 24 TexReg 949; amended to be effective April 27, 2000, 25 TexReg 3544; amended to be effective October 7, 2004, 29 TexReg 9384; amended to be effective December 6, 2012, 37 TexReg 9515

Appendix C

City of Fulshear Water Utility Profile Based on TCEQ Format



Texas Commission on Environmental Quality

**UTILITY PROFILE AND WATER CONSERVATION PLAN
REQUIREMENTS FOR MUNICIPAL WATER USE
BY RETAIL PUBLIC WATER SUPPLIERS**

This form is provided to assist retail public water suppliers in water conservation plan development. If you need assistance in completing this form or in developing your plan, please contact the conservation staff of the Resources Protection Team in the Water Availability Division at (512)239-4691.

City of Fulshear - Utility Profile Based on TCEQ Format

Name: City of Fulshear
Address: 30603 FM 1093
Fulshear, TX 77441
Telephone Number: (281) 346-1796
Water Right No.(s): --
Regional Water Planning Group: Region H
Form Completed by: Adam Conner
Title: Freese and Nichols

Person responsible for implementing
conservation program: Daniel McGraw

Signature: _____ Date: 4/9/2021

NOTE: If the plan does not provide information for each requirement, include an explanation of why the requirement is not applicable.

UTILITY PROFILE

I. POPULATION AND CUSTOMER DATA

A. Population and Service Area Data

1. Attach a copy of your service-area map.
 See figure of service area in WCP
2. Service area size (square miles): 11.44
3. Current population of service area: 16,083
4. Current population served for:
 - a. water: 16,083
 - b. wastewater: 16,083

5. Population served by utility for the previous five years:

<u>Year</u>	<u>Population</u>
<u>2016</u>	<u>9,640</u>
<u>2017</u>	<u>10,202</u>
<u>2018</u>	<u>12,519</u>
<u>2019</u>	<u>13,969</u>
<u>2020</u>	<u>16,083</u>

6. Projected population for service area in the following decades:

<u>Year</u>	<u>Population</u>
<u>2030</u>	<u>24,554</u>
<u>2040</u>	<u>25,728</u>
<u>2050</u>	<u>25,728</u>
<u>2060</u>	<u>25,728</u>
<u>2070</u>	<u>25,728</u>

7. List source or method for the calculation of current and projected population size.
*Historical populations in 2016 and 2017 are based on the 2018 City of Fulshear Water and Wastewater Master Plan. The population in 2018 is based on estimates submitted by the City in the annual TWDB Water Use Surveys and Water Conservation Plan reports. The populations in 2019 and 2020 are based on the City's Economic Development Corporations (EDCs) annual demographic update reports (https://fulsheartexas.gov/community/demographic_reports.php). Projected populations are from the finalized 2021 Region H Water Plan, **which only takes into account Fulshear's current service area**.*

B. Customers Data

Senate Bill 181 requires that uniform consistent methodologies for calculating water use and conservation be developed and available to retail water providers and certain other water use sectors as a guide for preparation of water use reports, water conservation plans, and reports on water conservation efforts. A water system must provide the most detailed level of customer and water use data available to it, however, any new billing system purchased must be capable of reporting data for each of the sectors listed below. http://www.tceq.texas.gov/assets/public/permitting/watersupply/water_rights/sb181_guidance.pdf

1. Current number of active connections. Check whether multi-family service is counted as

Residential or Commercial?

Note: This represents retail connection count in 2020

<i>Treated Water Users</i>	<i>Metered</i>	<i>Non-Metered</i>	Totals
Residential - Single Family	6,241		6,241
Residential - Multi Family	390		390
Institutional	0		0
Commerical	215		215
Industrial	21		21
Agriculture	1,048		1,048
Reuse	0		0
Total Unmetered	0	0	0
TOTAL	7,915	0	7,915

2. List the number of new connections per year for most recent three years.

<i>Year</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>
<i>Treated Water Users</i>			
Residential - Single Family	929	1,247	821
Residential - Multi Family	0	390	0
Institutional	0	0	0
Commerical	31	-71	17
Industrial	0	18	3
Agriculture	100	282	666
Reuse	0	0	0
Total Unmetered	-1	0	0
TOTAL	1,059	1,866	1,507

3. List of annual water use for the five highest volume customers.

Note: This represents highest retail customers in 2019

<i>Customer</i>	<i>Use (1,000 gal/year)</i>	<i>Treated or Raw Water</i>
1. Katy Isd #16	16,652	Treated
2. Ccr 21, LLC /Parklane Fulshear	9,622	Treated
3. Katy Isd #9	8,057	Treated
4. Lamar Cisd (High School)	6,413	Treated
5. Lamar Cisd (Fireline/Irr)	5,568	Treated

II. WATER USE DATA FOR SERVICE AREA

A. Water Accounting Data

1. List the amount of water use for the previous five years (in 1,000 gallons.)
 Indicate whether this is diverted or treated water.

<u>Year</u> <u>Month</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
January	22,342	25,521	25,130	27,856	37,503
February	27,616	28,046	25,734	26,247	37,211
March	32,053	36,102	38,301	44,724	54,772
April	32,120	47,236	48,447	53,235	58,893
May	36,026	56,431	67,051	60,227	78,795
June	38,997	54,866	78,024	62,483	78,206
July	64,636	66,899	72,409	90,019	98,392
August	49,612	56,512	96,292	110,702	108,718
September	47,864	57,362	44,506	79,137	83,259
October	58,200	55,052	38,221	71,835	82,674
November	38,094	43,744	35,022	43,996	70,033
December	30,440	27,870	32,644	46,069	46,029
Totals	478,000	555,641	601,781	716,530	834,485

Describe how the above figures were determined (e.g, from a master meter located at the point of a diversion from the source, or located at a point where raw water enters the treatment plant, or from water sales).

Groundwater is self-supplied by the City of Fulshear and nearby development Cross Creek Ranch (located in City limits). The figures above were determined by groundwater well pumpage recorded by the City and Cross Creek Ranch.

2. Amount of water (in 1,000 gallons) delivered/sold as recorded by the following account types for the past five years.

<u>Year</u> <u>Account Types</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Residential	351,167	531,312	488,801	624,573	588,723
Single-Family	351,167	436,832	488,801	583,165	575,157
Multi-Family	0	0	0	41,408	13,566
Commercial	47,288	94,480	103,113	20,704	121,045
Industrial/Mining	0	0	0	3,549	4,792
Institutional	0	0	0	0	0
Agriculture	0	0	9,288	41,310	32,606
Other/Wholesale	0	0	0	0	0
TOTAL	398,455	531,312	601,202	690,136	747,166

3. List the previous records for water loss for the past five years (the difference between water diverted or treated and water delivered or sold).

<i>Year</i>	<i>Amount (gallons)</i>	<i>Percent</i>
2016	79,545,000	16.6%
2017	22,925,866	4.1%
2018	10,437,245	1.7%
2019	29,411,993	4.1%
2020	87,319,014	10.5%

B. Projected Water Demands

If applicable, attach or cite projected water supply demands from the applicable Regional Water Planning Group for the next ten years using information such as population trends, historical water use, and economic growth in the service area over the next ten years and any additional water supply requirements from such growth.

Year	Projected Demand (AF/Y)	Source of data
2021	1,947	<i>Interpolated</i>
2022	2,038	<i>Interpolated</i>
2023	2,129	<i>Interpolated</i>
2024	2,220	<i>Interpolated</i>
2025	2,311	<i>Interpolated</i>
2026	2,401	<i>Interpolated</i>
2027	2,492	<i>Interpolated</i>
2028	2,583	<i>Interpolated</i>
2029	2,674	<i>Interpolated</i>
2030	2,765	<i>Region H Water Plan</i>

Note: Projections are calculated from the 2021 Region H Plan as approved by TWDB, for the City of Fulshear Water User Group. **These projections only take into account Fulshear's current service area** . Projections include TWDB estimated reductions for plumbing fixtures.

III. WATER SUPPLY SYSTEM DATA

A. Water Supply Sources

List all current water supply sources and the amounts authorized (in acre feet) with each.

<i>Water Type</i>	<i>Source</i>	<i>Amount Authorized</i>
Surface Water	-	-
Groundwater	Gulf Coast Aquifer - Self Supplied	-
Contracts	-	-
Other	-	-
Total	-	-

Note: The City of Fulshear is a participant in the North Fort Bend Water Authority Groundwater Reduction Plan (GRP). Under the GRP requirements, NFBWA is required to convert 30 percent of water usage within its boundaries to an alternative water supply, such as surface water or reuse, by 2014 (completed), and 60 percent by the year 2025. As a participant in the NFBWA GRP, the City of Fulshear pays NFBWA pumping fees for the groundwater they produce within the NFBWA boundaries. At some point, NFBWA may decide to provide the City with surface water as a means of meeting the overall GRP.

B. Treatment and Distribution System

1. Design daily capacity of system: 9.1 MGD

Treatment Plant	Design Well Pumping Capacity (MGD)*	Firm Well Pumping Capacity (MGD)*
City of Fulshear Water Plant No. 1	3.7	0.5
Cross Creek Ranch WP #1	3.6	6.0
Cross Creek Ranch WP #2	2.4	
Cross Creek Ranch WP #3	2.6	
TOTAL	12.3	9.1

*Note: Design and firm pumping capacities represent the existing groundwater well capacities of all City of Fulshear water treatment plants.

2. Storage capacity: 2.6 MG

- a. Elevated 0.25 MG
- b. Ground 2.35 MG

3. If surface water, do you recycle filter backwash to the head of the plant?
 Yes No If yes, approximate amount (MGD):

IV. WASTEWATER SYSTEM DATA

A. Wastewater System Data (if applicable)

1. Design capacity of wastewater treatment plant(s) (MGD): 2.0 (Existing), 3.2 (Design)

2. Treated effluent is used for:
- on-site irrigation,
 - off-site irrigation,
 - plant wash-down, and or
 - chlorination/dechlorination.

If yes, approximate amount (in gallons per month):

Note: The utility does not meter treated effluent for plant wash-down and/or chlorination/dechlorination

3. Briefly describe the wastewater system(s) of the area serviced by the water utility. Describe how treated wastewater is disposed. Where applicable, identify treatment plant(s) with the TCEQ name and number, the operator, owner, and the receiving stream if wastewater is discharged.

Treatment Plant Name	TCEQ Number	Permitted Discharge (MGD)*	Operator	Owner	Receiving Stream
City of Fulshear WWTP	WQ0013314001	0.5/0.7	City of Fulshear	City of Fulshear	Unnamed tributary (locally referred to as Union Chapel Branch); thence to Bessies Creek
Cross Creek Ranch WWTP	WQ0014745001	1.5/2.5	City of Fulshear; Fort Bend County MUD No. 169	City of Fulshear; Fort Bend County MUD No. 169	To water quality basin; thence to an amenity lake; thence to Flewellen Creek

**Note: Permitted discharges listed represent the current and build-out facility design capacities (MGD).*

B. Wastewater Data for Service Area (if applicable)

1. Percent of water service area served by wastewater system: 100%

2. Monthly volume treated for previous five years (in 1,000 gallons):

<i>Year</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>
<i>Month</i>					
January	10,156	17,050	14,709	24,906	28,407
February	9,664	13,366	16,814	21,960	26,545
March	10,880	16,017	18,765	23,288	28,522
April	11,564	14,735	18,852	23,434	29,239
May	12,461	15,962	15,962	28,492	35,276
June	11,798	15,621	24,168	27,135	30,805
July	14,786	15,900	20,981	25,169	31,344
August	15,596	22,439	22,124	27,435	31,453
September	29,910	31,856	49,926	49,251	32,536
October	14,736	17,447	24,066	27,463	30,933
November	27,276	30,508	51,194	52,678	31,345
December	16,753	16,870	24,802	29,064	33,714
Totals	185,580	227,771	302,363	360,275	370,119

Appendix D

Letters to Region H Water Planning Group and North Fort Bend Water Authority

City of Fulshear



April 21, 2021

Mr. Mark Evans, Chair
Region H Water Planning Group
c/o North Harris County Regional Water Authority
3648 Cypress Creek Parkway, Suite 110
Houston, TX 77068

Dear Mr. Evans:

Enclosed please find a copy of the May 2021 *Water Conservation Plan* for the City of Fulshear. I am submitting a copy of this plan to the Region H Water Planning Group in accordance with the Texas Water Development Board and Texas Commission on Environmental Quality rules. The City Council of Fulshear adopted the Plan on April 20, 2021.

Sincerely,

Daniel McGraw
Assistant Public Works Director
City of Fulshear

City of Fulshear



April 21, 2021

Tiffany Moore
North Fort Bend Water Authority
BGE, Inc.
10777 Westhemier, Suite 400
Houston, TX 77042

Dear Ms. Moore:

Enclosed please find a copy of the May 2021 *Water Conservation Plan* for the City of Fulshear. I am submitting a copy of this plan to the North Fort Bend Water Authority in accordance with the Texas Water Development Board and Texas Commission on Environmental Quality rules. The City Council of Fulshear adopted the Plan on April 20, 2021.

Sincerely,

Daniel McGraw
Assistant Public Works Director
City of Fulshear

Appendix E
Ordinance Adopting Water Conservation Plan

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

AGENDA OF: 4/20/2021 **ITEMS:** IV.F.
DATE 4/11/2021 **DEPARTMENT:** Public Works
SUBMITTED:

PREPARED BY: Dan McGraw **PRESENTER:** Dan McGraw

SUBJECT: CONSIDERATION AND APPROVAL OF AWARD FOR CONSTRUCTION SERVICES FOR THE EXPANSION OF THE CITY OF FULSHEAR WASTEWATER TREATMENT PLANT

Expenditure Required: \$631,150

Amount Budgeted: 1,144,000

Funding Account: 501-000-5892-08

Additional Appropriation Required:

Funding Account:

EXECUTIVE SUMMARY

As part of the city's Water & Wastewater Master Plan, project WW21B consists of expanding the existing .5 MGD Downtown Wastewater Treatment Plant to its permitted capacity of .7 MGD as well as additional infrastructure for peak flow management. This project includes the installation of the wastewater prefabricated tanks and appurtenances (package plant).

T&C Construction, LTD was the only bidder to provide the necessary construction services to construct the expansion and install the leased tanks for the sum of \$631,150.00. Clay and Leyendecker performed design and bid services and reviewed the submitted bids. City staff, including the Purchasing Manager reviewed the results and are recommending the contract be awarded to T&C Construction, LTD.

T&C specializes in the water and wastewater plant construction for over 35 years in the Houston area.

The construction of the expansion is an additional 0.2 MGD package section that will be manufactured by the AUC Group, LLC, the only bidder to provide the package plant.

The project time is 120 days for installation, with a 150 day lead time for manufacture of the package plant.

RECOMMENDATION

City staff recommends City Council to authorize the city manager to award the contract to T&C Construction, LTD for an amount of \$631,500 for the construction services.

ATTACHMENTS:

Description	Upload Date	Type
Bid For Construction Services	4/11/2021	Exhibit
Bid Tabulation	4/11/2021	Backup Material

PROPOSAL

OWNER: CITY OF FULSHEAR DATE: March 4,2021

Proposal of T & C Construction,Ltd, bidder,
a corporation organized and existing under the laws of the State of TEXAS, a
partnership consisting of T & C Holding LLC, Thomas N. Rumney, an individual trading as
Carolyn M. Rumney
T & C Construction,Ltd

Project: WASTEWATER TREATMENT PLANT EXPANSION:
0.500 MGD to 0.700MGD

To: City of Fulshear

The undersigned bidder hereby proposes perform and complete all the work required by the Contract Documents and binds himself on acceptance of this Bidder's Proposal to execute a contract and bonds according to the accompanying forms for performing and completing the said work within the time stated and maintaining the work as required by the Contract Documents for the following prices.

Bidder acknowledges receipt and incorporation into his bid of the following addenda:

No. _____

Date _____

The bidder, after award of the contract, shall be the same party as the "Contractor", as that term is used in the Contract Documents. All obligations of the bidder shall survive award of the Contract and execution of the Owner-Contract Agreement, and shall pass in full to the Contractor.

THIS CONTRACT IS SUBJECT TO ARBITRATION UNDER
THE TEXAS GENERAL ARBITRATION ACT

**WASTEWATER TREATMENT PLANT EXTENSION:
0.500 MGD TO 0.700 MGD
CITY OF FULSHEAR, TEXAS
JOB # 21-301**

**BID SCHEDULE
Date: FEBRUARY, 2021**

Item No.	Estimated Quantity	Description	Unit Price	Total Price
1)	1 L.S.	Coordinate, unload, erect, assemble, and install the Leased Property*, and furnish, construct and install all other components of the wastewater treatment plant expansion, complete and functioning for the lump sum of <u>Five Hundred Eighty</u> <u>Thousand</u> dollars and _____ cents.		\$ <u>580,000</u>
		<i>* The Leased property is listed in Appendix "A" of the blank "Equipment Lease Agreement" which is included for reference at the end of this "Specifications and Contract Documents" booklet. The Owner (the City or Lessee) will be leasing or purchasing the Leased Property directly from the manufacturer or vendor of said property, and the Owner will make payment(s) for the property directly to the manufacturer or vendor. Therefore, this bid does not include the cost of the Leased Property.</i>		
2)	100 L.F.	Additional or less 8-inch i.d., buried C-900 DR 18 PVC pipe, installed, with up to 4 feet of cover for the unit price of <u>Fifty</u> dollars and <u>Zero</u> cents per linear foot	\$ 50.00	\$ 5,000.00
3)	4000 lb.	Additional or less ductile iron fittings, installed, for the unit price of <u>Three</u> dollars and <u>Zero</u> cents per pound.	\$ 3.00	\$ 12,000.00
4)	5 c.y.	Additional or less reinforced concrete (150 lb. steel per c.y.) for slabs and foundations, in place, for the unit price of <u>Four Hundred</u> dollars and <u>Zero</u> cents per cubic yard.	\$ 400.00	\$ 2,000.00

**WASTEWATER TREATMENT PLANT EXTENSION:
0.500 MGD TO 0.700 MGD
CITY OF FULSHEAR, TEXAS
JOB # 21-301**

**BID SCHEDULE
Date: FEBRUARY, 2021**

Item No.	Estimated Quantity	Description	Unit Price	Total Price
5)	100 L.F.	Additional or less 1-inch PVC diameter buried electrical conduit with 3- #10 THW, installed for the unit price of <u>Twenty</u> dollars and <u>Zero</u> cents per linear foot.	\$ 20.00	\$ 2,000.00
6)	50 L.F.	Additional or less 2.5-inch diameter PVC buried electrical conduit with 3 - 350 MCM; 1- 4/0, installed, for the unit price of <u>Fifty</u> dollars and <u>Zero</u> cents per linear foot.	\$ 50.00	\$ 2,500.00
7)		Allowance for field and laboratory testing in the amount of THREE THOUSAND DOLLARS AND NO CENTS		\$ 3,000.00
8)		Contingency allowance for additional material or work (to be paid only if and in such amounts as authorized in advance by Owner) in the amount of TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS.		\$ 25,000.00
TOTAL BID FOR ITEMS NO. 1 THROUGH NO. 8 -----				\$ <u>631,500</u>

Note regarding "Additional or Less" Bid Items:

The Bidder shall include in Bid Item No. 1 the Bidder's total compensation for all the work required by the Plans, Technical Specifications, and other Contract Documents. The purpose of the "Additional or less" bid items is to establish pre-agreed unit prices for certain items of work in case the Owner, after construction has begun, decides to increase or decrease the quantity of those items from the quantity required by the Contract Documents

(Bidder's Proposal: Continued)

- a. Each bid item includes all the work required to furnish and install the material listed plus all related accessories and appurtenances unless specifically noted otherwise in the bid item; and
- b. The bid items, taken together, represent a complete bid such that all material and work necessary for a complete job are included in the sum of the bid items; and
- c. When alternate bid item(s) are proposed, each possible combination of alternate bid item(s) and other bid items represent a complete bid so that all material and work necessary for a complete job is included in each such combination.

The allowance, if any, for laboratory testing is \$ 3,000.00. See General Conditions "Testing Concrete and Soil Compaction".

Performance, Payment, and Maintenance Bonds on forms as provided in the Contract Documents will be submitted with the executed contract if this proposal is accepted.

Accompanying this proposal is a certified or cashier's check on a State or National Bank of the State of Texas or a Bidder's Bond in the amount of not less than five percent (5%) of the greatest total amount of this proposal payable without recourse to the order of the Owner; said check or bond to be returned to the bidder within sixty (60) days following receipt of bids, unless in case of the acceptance of the proposal he shall fail to execute a contract and file performance and payment bonds within ten (10) days of its acceptance, in which case the check or bond shall become the property of the Owner and shall be considered as payment for damages due to delay and other inconveniences suffered by Owner on account of failure of the bidder to execute contract. It is understood that the Owner reserves the right to reject any or all bids and to accept any combination of alternates considered advantageous.

The undersigned certifies that the bid prices contained in this proposal have been carefully checked and are submitted as correct and final, and that he has visited the construction site(s) and has carefully examined the Contract Documents, which are included by reference in this proposal.

The work to be performed under this Contract shall be commenced within thirty (30) days after award of Contract, and subject to authorized adjustments, final completion shall be achieved not later than 120 calendar days following receipt of the "Leased Property", as defined elsewhere in the Contract Documents.

The bidder agrees that time is the essence of this contract, and that for each day of delay beyond the completion dates stipulated above (after due allowance for such extensions of time as is provided for in the General Conditions of Agreement) the Owner may withhold, permanently, from the bidder's total compensation, the sum of \$ 200.00 per calendar day as stipulated damages for such delay.

**THIS CONTRACT IS SUBJECT TO ARBITRATION UNDER
THE TEXAS GENERAL ARBITRATION ACT**

STATEMENT OF MATERIALS AND OTHER CHARGES

Pursuant to the revised Texas State Tax Code, contract must be separated for materials to be exempt from the sales tax. The following information must be provided to qualify as a separated contract.

Materials incorporated into the project	\$ 300,000
All other charges	<u>\$ 331,500</u>
TOTAL	\$ 631,500

(Bidder's Proposal: Last Page)

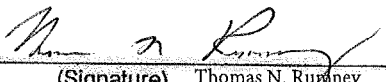
The method of construction layout staking shall be the Boundary Referenced Procedure as outlined in the General Conditions. (In the event that the above blank space is not filled in, the Boundary Referenced Procedures shall apply.)

Respectfully submitted,

Address: 5411 Killough
Houston, TX 77086
County: Harris
Phone: 281-445-1828
Fax: 281-445-3758
Contact Person: Thomas N. Rumney
Cell: 713-865-6831
Email: trumney@tc-con.com

Bidder*: T & C Construction, Ltd

By: Thomas N. Rumney
(Print or Type)


(Signature) Thomas N. Rumney

President of T & C Holding, LLC it's General Partner
(Title)

Bid date: March 4, 2021

(SEAL IF BIDDER IS A CORPORATION.)

*The party named as "bidder" in this Bidder's Proposal is the same party as "Contractor" in other sections of the Contract Documents.

THIS CONTRACT IS SUBJECT TO ARBITRATION UNDER
THE TEXAS GENERAL ARBITRATION ACT

City of Fulshear
 Bid Tabulation
 IFB
 2021-073
 WWTP Expansion
 Opened March 4, 2021 @ 2 PM

<u>Bidder</u>	<u>Install WWTP Items #1-8 Total Total Bid Amount</u>	<u>Equipment Lease Item #1 Lump Sum Total Bid Amount</u>	<u>Equipment Lease Item #2 60 Mo. Lease Price Per Month</u>	<u>City State</u>	<u>Contact</u>	<u>Email</u>	<u>Bid Bond</u>
T & C Construction	\$631,500.00	No Bid	No Bid	Houston, TX	Thomas N. Rumney	trumney@tc-con.com	yes
AUC Group	No Bid	No Bid	\$5,950.00	Houston, TX	Jim Rodgers	jrogers@aucgroup.net	yes

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

AGENDA OF: 4/20/2021 **ITEMS:** IV.G.
DATE 4/12/2021 **DEPARTMENT:** Public Works
SUBMITTED:
PREPARED BY: Sharon Valiante, Public Works **PRESENTER:** Dan McGraw, Asst Director of
Director Public Works Utilities

SUBJECT: CONSIDERATION AND POSSIBLE ACTION TO APPROVE AN EQUIPMENT LEASE AGREEMENT FOR THE 0.2 MGD PREFABRICATED PLANT FOR THE EXPANSION OF THE CITY OF FULSHEAR WASTEWATER TREATMENT PLANT

Expenditure Required: \$71,400/yr = \$357,000 total; FY 22 - FY26

Amount Budgeted: \$1.144,000 (\$631,500 for Contractor installation)

Funding Account: 501-000-5892-08

Additional Appropriation Required:

Funding Account:

EXECUTIVE SUMMARY

As part of the city's Water & Wastewater Master Plan, project WW21B consists of expanding the existing .5 MGD Downtown Wastewater Treatment Plant to its permitted capacity of .7 MGD as well as additional infrastructure for peak flow management. This project includes the installation of the wastewater prefabricated tanks and appurtenances,(package plant).that will be manufactured by the AUC Group, LLC, the only bidder to provide the package plant. The package plant was bid as to be furnished as a leased plant. The proposed lease is for \$5,950/month or \$71,400 per Fiscal Year (FY). The lease agreement over a five year period will cost \$357,000.00 The lease payments are projected to be funded from the utility operations budget for FY 22 - FY 26.

The lease agreement provides for options for consideration at the end of the five-year period; extension of the lease at a reduced cost per month or purchase at a set cost.

Review of the agreement and the bid for lease was performed by Clay and Leyendecker's office, City staff and legal. The recommendation is to opt for the 5-year lease, and to purchase the package plant at the end of the five year lease.

At this time, staff is requesting approval of the lease agreement and the expenditures related to the leasing of the package plant.

RECOMMENDATION

City Council approve the Equipment Lease - Wastewater Plant Expansion from 0.5 to a 0.7 MGD plant.

ATTACHMENTS:

Description	Upload Date	Type
Equipment Lease Proposal	4/12/2021	Backup Material
Lease Agreement	4/12/2021	Backup Material

EQUIPMENT LEASE PROPOSAL

LESSEE: CITY OF FULSHEAR DATE March 4, 2021

Proposal of AUC Group, LLC (LESSOR)

a corporation organized and existing under the laws of the State of Delaware, a partnership consisting of _____, an individual trading as _____

Project: **EQUIPMENT LEASE**
WASTEWATER TREATMENT PLANT EXPANSION:
0.500 MGD to 0.700 MGD
CITY OF FULSHEAR, TEXAS

To: CITY OF FULSHEAR, TEXAS (The City)

The undersigned bidder understands that this bid is for furnishing and leasing certain wastewater treatment basins and related items, collectively called the Leased Property, to the City of Fulshear for installation by a separate contractor under a separate agreement.

The undersigned Bidder has carefully examined the project Drawings, Technical Specifications and other Contract Documents, prepared by Clay & Leyendecker, Inc. Consulting Engineers and Surveyors; Katy, Texas, for the overall construction project, as well as the following blank Equipment Lease Agreement. The undersigned Bidder has visited the project site and is familiar with the situation.

The undersigned Bidder proposes to provide the Leased Property listed in the blank Equipment Lease Agreement according to the requirements of the project Drawings, Technical Specifications, and other Contract Documents cited above. The undersigned Bidder binds itself on acceptance of its bid to execute the lease agreement, provide such bonds and insurance as are set out elsewhere in this proposal, and deliver the Leased Property within the time stated herein for the prices set out in the Bid Schedule.

Bidder acknowledges receipt and incorporation into its bid of the following addenda:

No. _____
Date _____
Initials _____

(Lease Proposal: Continued)

Accompanying this proposal is a certified or cashier's check on a State or National Bank of the State of Texas or a Bidder's Bond in the amount of not less than five percent (5%) of the greatest total amount of this proposal payable without recourse to the order of the Owner, said check or bond to be returned to the bidder within sixty (60) days following receipt of bids, unless in case of the acceptance of the proposal he shall fail to execute a contract and file performance and payment bonds within ten (10) days of its acceptance, in which case the check or bond shall become the property of the Owner and shall be considered as payment for damages due to delay and other inconveniences suffered by Owner on account of failure of the bidder to execute contract. It is understood that the Owner reserves the right to reject any or all bids and to accept any combination of alternates considered advantageous.

The undersigned certifies that the bid prices contained in this proposal have been carefully checked and are submitted as correct and final, and that he has visited the construction site(s) and has carefully examined the Contract Documents, which are included by reference in this proposal.

The items to be delivered under this agreement shall be received by the City not later than * 150 calendar days following completed review by the City of submittals by the Bidder describing and showing in detail the particulars of the Leased Equipment and its relationship to other work that comprises the overall construction project.

* Bidder shall fill in this blank

The bidder agrees that time is the essence of this contract, and that for each day of delay beyond the completion dates stipulated above the City may withhold, permanently, from the bidder's total compensation, the sum of \$ 200.00 per calendar day as stipulated damages for such delay.

**EQUIPMENT LEASE - WASTEWATER TREATMENT PLANT
EXPANSION - FROM 0.500 MGD TO 0.700 MGD
CITY OF FULSHEAR, TEXAS**

**BID SCHEDULE
Date: March 4, 2021**

Item No.	Estimated Quantity	Description	Total Price
1)	1 L.S.	Furnish and deliver the Leased Property, including any modification of the existing inlet structure, for a single, front-end payment of <u>zero</u> dollars and <u>zero</u> cents	\$ 0.00
		(No lease would be involved, payment due 60 days after delivery.)	
2)	60 months	Furnish and deliver the Leased Property for <u>Five thousand nine hundred fifty</u> <u>dollars and</u> <u>zero</u> cents	\$ 5,950.00
		per month.	\$ 357,000.00
3)	12 months	Monthly price for extending the 60-month lease for twelve additional months: <u>Five thousand two hundred fifty</u> <u>dollars and</u> <u>zero</u> cents	\$ 5,250.00
		per month.	\$ 63,000.00
4)	1 L.S.	City may purchase the Leased Property at the end of the 60-month lease period for the lump sum of <u>Two hundred fifty-five thousand,</u> <u>five hundred eighty-seven</u> <u>dollars and</u> <u>Zero</u> cents	\$ 255,587.00
5)	1 L.S.	City may purchase the Leased Property at the end of the 72-month lease period for the lump sum of <u>Two hundred eleven thousand,</u> <u>four hundred thirty-seven</u> <u>dollars and</u> <u>zero</u> cents	\$ 211,437.00

(Lease Proposal: Last Page)

Respectfully submitted,

LESSOR:

Address: 1800 Augusta, Ste. 108 Bidder*: AUC Group, LLC
Houston, TX 77057 By: Jim Rodgers
County: Harris (Print or Type)
Phone: 713-983-3255
Fax: 713-983-3250
Contact Person: Jim Rodgers *Jim Rodgers*
Cell phone: 713-494-4304 (Signature)
Email: jrodgers@Aucgroup.net CFO/COO
(Title)

(SEAL IF BIDDER IS A CORPORATION.)

EQUIPMENT LEASE AGREEMENT
FOR
200,000 GPD
WASTEWATER TREATMENT PLANT EXPANSION
CITY OF FULSHEAR, TEXAS

March 4, 2021

EQUIPMENT LEASE AGREEMENT

This Equipment Lease Agreement ("Lease Agreement") made this 4 day of March, 2021, is between AUC Group, LLC with its principal place of business in Texas, the "Lessor", and the CITY OF FULSHEAR, TEXAS a political subdivision of the State of Texas, the "Lessee".

SECTION 1 - LEASE AGREEMENT

Subject to the terms and conditions hereinafter set forth, Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, certain basins, piping, and appurtenances (collectively referred to herein as the Leased Property) having a sewage treatment capacity of 200,000 gallons per day and constructed consistent with Chapter 217 of the current design criteria of the Texas Commission on Environmental Quality (TCEQ) for influent domestic sewage of 200 PPM BOD⁵, 200 PPM TSS and 30 PPM Ammonia Nitrogen. The Leased Property shall be constructed to produce an effluent concentration of 10 mg/l BOD⁵, 15 mg/l TSS, and 2 mg/l Ammonia Nitrogen, with a 2-hour peak flow rate of 3.50 times the average flow rate. The Leased Property shall in all respects be consistent with the Project Drawings and Technical Specifications set forth on Exhibit "B" attached hereto and incorporated hereinafter for all purposes. The Leased Property shall include, at a minimum, the items listed on Exhibit "A", attached hereto and incorporated herein for all purposes.

SECTION 2 - DELIVERY, INSTALLATION and OTHER SERVICES

The Leased Property shall be delivered by Lessor to Lessee at its job site. The Lessee shall retain the services of a separate contractor, herein referred to as the Contractor, to unload, assemble and install the Leased Property on the job site.

SECTION 3 - TERMS

Unless terminated by Lessor pursuant to the provisions of Section 13, this Lease Agreement shall remain in effect for sixty (60) months (the Initial Term), commencing on the first day of the month following delivery of the leased equipment as certified complete by an engineering consultant engaged by the Lessee (which certification shall not be unreasonably withheld). This Lease Agreement may be extended by the Lessee by giving ninety (90) day notice prior to lease expiration, and shall continue under the same terms and conditions at the monthly payment set out in Section 4 for successive ninety (90) day periods after the initial term until such time as the Lessee gives the Lessor ninety (90) days written notice of its intent to cancel and terminate this Lease Agreement.

SECTION 4 - RENTAL PAYMENTS

Lessee agrees to pay Lessor as rental for the use of the Leased Property \$ 5,950.00 per month for each of the sixty (60) months comprising the balance of the initial term. The monthly payments shall be \$ 5,250.00 per month for additional months beyond the Initial Term. Each of the monthly Lease Payments are due and payable to Lessor on the first (1st) day of each month, in advance, and shall be made at the office of the Lessor.

SECTION 5 - TITLE TO LEASED PROPERTY

The Leased Property shall at all times be and remain the sole and exclusive property of Lessor, and Lessee shall have no right of property therein, but only the right to use the Leased Property upon the terms and conditions herein contained. It is expressly agreed that the Leased Property shall be considered and remain personal property even though it may be attached or affixed to real estate. If the Leased Property is attached or affixed to real estate which is owned by any other person or entity other than Lessee or which is subject to a mortgage, Lessee shall obtain and deliver to Lessor a consent and waiver from the Landlord or Mortgagee, as the case may be, in a form acceptable to Lessor which shall

permit Lessor, in the event of default by the Lessee, to remove the Leased Property from said real estate at any time during the term of, or after the expiration of, this Lease Agreement. Lessor may display notice of its ownership of the Leased Property by affixing to each item of equipment an identifying stencil or plate or other indication of ownership and Lessee agrees that it will not remove, deface or obliterate any such notice. Letters on said notice shall not exceed one inch in height.

SECTION 6 - LESSOR'S WARRANTIES

The Lessor covenants and agrees as follows:

- a) The Lessor has, or will have by the date of installation of the equipment, clear and good title to the Leased Property, free and clear of all liens and encumbrances, excepting only the lien for current taxes not yet due and the lien or liens securing only the purchase money mortgage of the equipment or financing secured by this Lease Agreement.
- b) The Leased Property equals or exceeds the current TCEQ Design Criteria as specified in Section 1 and is in New (new or good) and serviceable condition.
- c) The Lessor shall undertake any reasonable action requested by Lessee to enforce any and all warranties or guarantees to which Lessor is entitled on the equipment, or assign such warranties or guarantees to Lessee.
- d) The Lessor will warranty the Leased Property for eighteen months from the date of shipment, or twelve months from date of start up, whichever occurs first, that the structure and all equipment be free from faults in materials and workmanship.

SECTION 7 - REMOVAL, INSPECTION, RETURN, AND OPTION TO PURCHASE

The Leased Property shall not be removed from the place of its initial installation without the prior written consent of Lessor. Lessee shall at all reasonable times and from time to time allow Lessor, by or through any of its officers, agents or attorneys, to examine and inspect the Leased Property. Upon the termination of this Lease Agreement Lessor shall, at its expense, remove the Leased Property from the site, and shall be given ninety (90) days from the time the Leased Property is no longer in service. The Lessee shall be responsible for dewatering the Leased Property and shall leave it to the Lessor in a clean condition. At the end of the 60-month or 72-month lease period the Lessee may elect, upon giving 90-day notice, to purchase the Leased Property on an "as-is, where-is" basis for the lump sum of \$ 255,587.00, due at the end of the 60-month lease period or \$ 211,437.00, due at the end of the 72-month lease period.

SECTION 8 - OPERATION, MAINTENANCE AND REPAIR

Lessee shall comply with and conform to all municipal, state and federal laws relating to the operation of the Leased Property. Lessee shall maintain the Leased Property in good condition and running order at all times during the term of this Lease Agreement, but shall not be responsible for normal wear and tear or depreciation. During the term of the lease, all additions, attachments, accessories and repair parts placed in or on the Leased Property shall be purchased by Lessee from Lessor and shall become a part of the Leased Property and shall be the property of the Lessor. Lessor's price for said additions, etc. shall be competitive with prices available through other sources. Lessor shall have no responsibility for the maintenance of the Leased Property after it is delivered to and accepted by Lessee and before it is reclaimed by Lessor as herein provided.

SECTION 9 - RISK OF LOSS AND INSURANCE

All risk of loss or damage to the Leased Property shall be borne by Lessee. Lessee shall have and maintain insurance at all times with respect to the Leased Property against risks of fire (including so-called extended coverage), theft and such other risks and in such

amounts as Lessor may reasonably require, such insurance to be payable to Lessor. Lessee shall deliver to Lessor the policies or evidence of insurance satisfactory to Lessor.

SECTION 10 - DAMAGE, DESTRUCTION OR THEFT

Notwithstanding damage to the Leased Property, the Lease Payments shall continue to be paid by Lessee. Lessee shall have the responsibility for the repair of the damaged Leased Property, and Lessee shall repair or cause such Leased Property to be repaired promptly after the damage. In every such instance, Lessor will reimburse Lessee for the cost of repair to the extent of the insurance proceeds actually received by Lessor because of such damage. In the event the Leased Property is destroyed, stolen or damaged beyond repair, Lessee shall forthwith pay to Lessor the market value of the Leased Property immediately prior to such destruction, theft or damage less (a) the salvage value, if any, of the Leased Property and (b) the insurance proceeds actually received by Lessor because of such destruction, theft or damage.

SECTION 11 - ASSIGNMENT AND SUBLEASE BY LESSEE

Lessee may not assign this Lease Agreement or sublease the Leased Property without the prior written consent of Lessor, which consent shall not be unreasonably withheld; provided, however, nothing in this Lease Agreement shall prevent Lessee from sharing the capacities and / or costs of the facilities leased hereby with another utility, and all prior or future agreements entered into by Lessee and any such utility district(s) shall be valid and permissible.

SECTION 12 - ASSIGNMENT BY LESSOR: RIGHTS OF ASSIGNEE

The Lessor shall have the right to sell or assign this Lease Agreement including its right, title and interest to the equipment and the Lease Payments reserved herein, subject to the reasonable approval of Lessee. In the event of any such assignment by the Lessor, the assignee shall thereupon acquire all of the rights, obligations, and remedies possessed

by or available to the Lessor. Upon receiving proper notice of any such assignment and after Lessee approves same, the Lessee shall thereafter make Lease Payments as therein directed.

SECTION 13 - EVENTS OF DEFAULT

The following events shall be deemed to be events of default by the Lessee under this Lease Agreement:

- a) The Lessee shall fail to pay any Lease Payments during Initial Term and such failure shall continue for a period of thirty (30) days after receipt of written notice from Lessor.
- b) The Lessee fails to comply with any other term, provision or covenant of this Lease Agreement and does not cure such failure within thirty (30) days after written notice thereof by the Lessor to the Lessee.

Upon the occurrence of any such events of default, the Lessor shall have the right to retake and retain the Leased Property should the Lessee fail to make payment of the outstanding balance within ten (10) business days of written notice of such default delivered to Lessee by certified mail. If there is a purchase money mortgage or other financial instrument secured by the Leased Property, Lessor agrees to obtain a mortgagee's subordination, pursuant to the terms of which the mortgagee, in the event of foreclosure, will honor the terms and conditions of this Agreement as successor to Lessor. As successor to Lessor, the Lessee will have the same rights, obligations, and defenses against the mortgagee that it holds against Lessor. In connection therewith, mortgagee shall honor and give Lessee credit for all payments made to Lessor under this Agreement, including all Lease Payments.

In the event the Lessor receives any notice of default under its purchase money mortgage or another item which might become a lien on the Leased Property, Lessor shall promptly provide Lessee with a copy thereof. Additionally, Lessor agrees to furnish Lessee, on demand, satisfactory evidence of payment of each installment due on the purchase money

mortgage and of any other items which might become a lien on the -Leased Property. For the purpose of this Lease Agreement, satisfactory evidence of payment shall be deemed to be a copy of the check sent to the proper party. Lessor warrants to Lessee that it shall make all such payments timely and **LESSOR AGREES TO INDEMNIFY AND DEFEND LESSEE AGAINST ANY AND ALL LIENS, CLAIMS, RIGHTS, AND/OR SUITS BROUGHT AGAINST LESSEE OR IN ANY WAY PERTAINING TO THE LEASED PROPERTY (INCLUDING WITHOUT LIMITATION, REASONABLE LEGAL FEES AND COURT COSTS)**. If Lessor fails to make such payments, together with any interest or penalty, required to be paid in connection herewith, the Lessee shall have the right to make such payments which may be deducted by the Lessee from any Lease Payments thereafter becoming due hereunder.

SECTION 14 – PAYMENTS AND NOTICES

Except as otherwise provided herein, each provision of this Lease Agreement or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivery of any notice or the making of any payment by the Lessor to the Lessee or with reference to the sending, mailing or delivery of any notice or the making of any payment by Lessee to the Lessor shall be deemed to be complied with, when and if the following steps are taken:

- a) All lease and other payments required to be made by the Lessee to the Lessor hereunder shall be payable to Lessor at the address below set forth, or at such other address as Lessor may specify from time to time by written notice delivered in accordance herewith.
- b) Any notice or document required or permitted to be delivered thereunder, except for the notice of payment required pursuant to Paragraph 15 hereof, shall be deemed to be delivered upon actual receipt of the parties hereto at the respective addresses set out opposite their names below, or

at such other address as they have theretofore specified by written notice delivered in accordance herewith.

LESSEE	<u>City of Fulshear</u>	LESSOR	<u>AUC Group, LLC</u>
	<u>30603 F.M. 1093</u>		<u>1800 Augusta, Ste. 108</u>
	<u>Fulshear, Tx 77441</u>		<u>Houston, TX 77057</u>
	_____		_____

SECTION 15- INTERPRETATION

Words of any gender used in this Lease Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context otherwise requires.

SECTION 16 – BINDING EFFECT

The terms, provisions, covenants and conditions contained in this Lease Agreement shall apply to, insure to the benefit of, and be binding upon the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns except as otherwise expressly provided.

SECTION 17 – ENTIRE AGREEMENT AND AMENDMENTS

This instrument contains the entire agreement between the parties. This Lease Agreement may not be amended, altered or changes except by an instrument in writing signed by both parties hereto.

SECTION 18 - TAXES / BENEFICIAL OWNERSHIP

Any taxes imposed or levied by any taxing authority on the Leased Property shall be the responsibility of the Lessee. While this Agreement is in effect the Lessee shall be considered the beneficial Owner of the Leased Property.

EXECUTED this 4 day of March, 2021.

Lessor:

AUC Group, LLC

Jim Rodgers
Signature

Jim Rodgers
Print Name

Lessee:

CITY OF FULSHEAR

Signature

Title

Print Name

EXHIBIT "A"

LEASED PROPERTY

The Leased Property includes the following basins, piping, appurtenances, and related pieces as shown on the Project Drawings and Technical Specifications listed in Appendix "B":

- (1) Aeration basins (2 each)
- (2) Aerobic digester basins (2 each).
- (3) Air distribution system with drops and diffusers.
- (4) Above-ground pipe, valves and fittings
- (5) Steel walkways, stairs and bridges
- (6) Air lift pumps and related piping.
- (7) Digester decants.
- (8) Lamps and conduits attached to basins and clarifiers.
- (9) Centrifugal blower and appurtenances (one each).
- (10) Any modifications to the Inlet Structure needed for routing the influent piping to the two new aeration basins.

EXHIBIT "B"

The Project Drawings show the work to be done by the installing Contractor as well as the Leased Property. The Project Drawings consist of sheets, including a cover sheet, titled "Wastewater Treatment Expansion: 0.500 MGD to 0.700 MGD; City of Fulshear, Texas", and were prepared by Clay & Leyendecker, Inc., Consulting Engineers and Surveyors, Katy, Texas.

The Technical Specifications refer to the Technical Specifications Section of the booklet titled:

"Specifications and Contract Documents for :
Wastewater Treatment Plant Expansion: 0.500 MGD to 0.700 MGD
City of Fulshear, Texas"
2021

The booklet was prepared by Clay & Leyendecker, Inc., and includes information and requirements for the Leased Equipment as well as other equipment and other work and obligations to be undertaken by the Contractor.

EQUIPMENT LEASE AGREEMENT

IFB 2021-073

This Equipment Lease Agreement ("Lease Agreement") made this _____ day of _____, 2021, is between _____ AUC Group, LLC _____ with its principal place of business in _____ Houston, Texas _____, the "Lessor", and the CITY OF FULSHEAR, TEXAS a political subdivision of the State of Texas, the "Lessee".

SECTION 1 - LEASE AGREEMENT

Subject to the terms and conditions hereinafter set forth, Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, certain basins, piping, and appurtenances (collectively referred to herein as the Leased Property) having a sewage treatment capacity of 200,000 gallons per day and constructed consistent with Chapter 217 of the current design criteria of the Texas Commission on Environmental Quality (TCEQ) for influent domestic sewage of 200 PPM BOD⁵, 200 PPM TSS and 30 PPM Ammonia Nitrogen. The Leased Property shall be constructed to produce an effluent concentration of 10 mg/l BOD⁵, 15 mg/l TSS, and 2 mg/l Ammonia Nitrogen, with a 2-hour peak flow rate of 3.50 times the average flow rate. The Leased Property shall in all respects be consistent with the Project Drawings and Technical Specifications set forth on Exhibit "B" attached hereto and incorporated hereinafter for all purposes. The Leased Property shall include, at a minimum, the items listed on Exhibit "A", attached hereto and incorporated herein for all purposes.

SECTION 2 - DELIVERY, INSTALLATION and OTHER SERVICES

The Leased Property shall be delivered by Lessor to Lessee at its job site. The Lessee shall retain the services of a separate contractor, herein referred to as the Contractor, to unload, assemble and install the Leased Property on the job site.

SECTION 3 - TERMS

Unless terminated by Lessor pursuant to the provisions of Section 13, this Lease Agreement shall remain in effect for sixty (60) months (the Initial Term), commencing on the first day of the month following delivery of the leased equipment as certified complete by an engineering consultant engaged by the Lessee (which certification shall not be unreasonably withheld). This Lease Agreement may be extended by the Lessee by giving ninety (90) day notice prior to lease expiration, and shall continue under the same terms and conditions at the monthly payment set out in Section 4 for successive ninety (90) day periods after the initial term until such time as the Lessee gives the Lessor ninety (90) days written notice of its intent to cancel and terminate this Lease Agreement.

SECTION 4 - RENTAL PAYMENTS

Lessee agrees to pay Lessor as rental for the use of the Leased Property \$ 5,950.00 per month for each of the sixty (60) months comprising the balance of the initial term. The monthly payments shall be \$ 5,250.00 per month for additional months beyond the Initial Term. Each of the monthly Lease Payments are due and payable to Lessor on the first (1st) day of each month, in advance, and shall be made at the office of the Lessor.

SECTION 5 - TITLE TO LEASED PROPERTY

The Leased Property shall at all times be and remain the sole and exclusive property of Lessor, and Lessee shall have no right of property therein, but only the right to use the Leased Property upon the terms and conditions herein contained. It is expressly agreed that the Leased Property shall be considered and remain personal property even though it may be attached or affixed to real estate. If the Leased Property is attached or affixed to real estate which is owned by any other person or entity other than Lessee or which is subject to a mortgage, Lessee shall obtain and deliver to Lessor a consent and waiver from the Landlord or Mortgagee, as the case may be, in a form acceptable to Lessor which shall

permit Lessor, in the event of default by the Lessee, to remove the Leased Property from said real estate at any time during the term of, or after the expiration of, this Lease Agreement. Lessor may display notice of its ownership of the Leased Property by affixing to each item of equipment an identifying stencil or plate or other indication of ownership and Lessee agrees that it will not remove, deface or obliterate any such notice. Letters on said notice shall not exceed one inch in height.

SECTION 6 - LESSOR'S WARRANTIES

The Lessor covenants and agrees as follows:

- a) The Lessor has, or will have by the date of installation of the equipment, clear and good title to the Leased Property, free and clear of all liens and encumbrances, excepting only the lien for current taxes not yet due and the lien or liens securing only the purchase money mortgage of the equipment or financing secured by this Lease Agreement.
- b) The Leased Property equals or exceeds the current TCEQ Design Criteria as specified in Section 1 and is in New (new or good) and serviceable condition.
- c) The Lessor shall undertake any reasonable action requested by Lessee to enforce any and all warranties or guarantees to which Lessor is entitled on the equipment, or assign such warranties or guarantees to Lessee.
- d) The Lessor will warranty the Leased Property for eighteen months from the date of shipment, or twelve months from date of start up, whichever occurs first, that the structure and all equipment be free from faults in materials and workmanship.

SECTION 7 - REMOVAL, INSPECTION, RETURN, AND OPTION TO PURCHASE

The Leased Property shall not be removed from the place of its initial installation without the prior written consent of Lessor. Lessee shall at all reasonable times and from time to time allow Lessor, by or through any of its officers, agents or attorneys, to examine and inspect the Leased Property. Upon the termination of this Lease Agreement Lessor shall, at its expense, remove the Leased Property from the site, and shall be given ninety (90) days from the time the Leased Property is no longer in service. The Lessee shall be responsible for dewatering the Leased Property and shall leave it to the Lessor in a clean condition. At the end of the 60-month or 72-month lease period the Lessee may elect, upon giving 90-day notice, to purchase the Leased Property on an "as-is, where-is" basis for the lump sum of \$ 255,587.00, due at the end of the 60-month lease period or \$ 211,437.00, due at the end of the 72-month lease period.

SECTION 8 - OPERATION, MAINTENANCE AND REPAIR

Lessee shall comply with and conform to all municipal, state and federal laws relating to the operation of the Leased Property. Lessee shall maintain the Leased Property in good condition and running order at all times during the term of this Lease Agreement, but shall not be responsible for normal wear and tear or depreciation. During the term of the lease, all additions, attachments, accessories and repair parts placed in or on the Leased Property shall be purchased by Lessee from Lessor and shall become a part of the Leased Property and shall be the property of the Lessor. Lessor's price for said additions, etc. shall be competitive with prices available through other sources. Lessor shall have no responsibility for the maintenance of the Leased Property after it is delivered to and accepted by Lessee and before it is reclaimed by Lessor as herein provided.

SECTION 9 - RISK OF LOSS AND INSURANCE

All risk of loss or damage to the Leased Property shall be borne by Lessee. Lessee shall have and maintain insurance at all times with respect to the Leased Property against risks of fire (including so-called extended coverage), theft and such other risks and in such

amounts as Lessor may reasonably require, such insurance to be payable to Lessor. Lessee shall deliver to Lessor the policies or evidence of insurance satisfactory to Lessor.

SECTION 10 - DAMAGE, DESTRUCTION OR THEFT

Notwithstanding damage to the Leased Property, the Lease Payments shall continue to be paid by Lessee. Lessee shall have the responsibility for the repair of the damaged Leased Property, and Lessee shall repair or cause such Leased Property to be repaired promptly after the damage. In every such instance, Lessor will reimburse Lessee for the cost of repair to the extent of the insurance proceeds actually received by Lessor because of such damage. In the event the Leased Property is destroyed, stolen or damaged beyond repair, Lessee shall forthwith pay to Lessor the market value of the Leased Property immediately prior to such destruction, theft or damage less (a) the salvage value, if any, of the Leased Property and (b) the insurance proceeds actually received by Lessor because of such destruction, theft or damage.

SECTION 11 - ASSIGNMENT AND SUBLEASE BY LESSEE

Lessee may not assign this Lease Agreement or sublease the Leased Property without the prior written consent of Lessor, which consent shall not be unreasonably withheld; provided, however, nothing in this Lease Agreement shall prevent Lessee from sharing the capacities and / or costs of the facilities leased hereby with another utility, and all prior or future agreements entered into by Lessee and any such utility district(s) shall be valid and permissible.

SECTION 12 - ASSIGNMENT BY LESSOR: RIGHTS OF ASSIGNEE

The Lessor shall have the right to sell or assign this Lease Agreement including its right, title and interest to the equipment and the Lease Payments reserved herein, subject to the reasonable approval of Lessee. In the event of any such assignment by the Lessor, the assignee shall thereupon acquire all of the rights, obligations, and remedies possessed

by or available to the Lessor. Upon receiving proper notice of any such assignment and after Lessee approves same, the Lessee shall thereafter make Lease Payments as therein directed.

SECTION 13 - EVENTS OF DEFAULT

The following events shall be deemed to be events of default by the Lessee under this Lease Agreement:

- a) The Lessee shall fail to pay any Lease Payments during Initial Term and such failure shall continue for a period of thirty (30) days after receipt of written notice from Lessor.
- b) The Lessee fails to comply with any other term, provision or covenant of this Lease Agreement and does not cure such failure within thirty (30) days after written notice thereof by the Lessor to the Lessee.

Upon the occurrence of any such events of default, the Lessor shall have the right to retake and retain the Leased Property should the Lessee fail to make payment of the outstanding balance within ten (10) business days of written notice of such default delivered to Lessee by certified mail. If there is a purchase money mortgage or other financial instrument secured by the Leased Property, Lessor agrees to obtain a mortgagee's subordination, pursuant to the terms of which the mortgagee, in the event of foreclosure, will honor the terms and conditions of this Agreement as successor to Lessor. As successor to Lessor, the Lessee will have the same rights, obligations, and defenses against the mortgagee that it holds against Lessor. In connection therewith, mortgagee shall honor and give Lessee credit for all payments made to Lessor under this Agreement, including all Lease Payments.

In the event the Lessor receives any notice of default under its purchase money mortgage or another item which might become a lien on the Leased Property, Lessor shall promptly provide Lessee with a copy thereof. Additionally, Lessor agrees to furnish Lessee, on demand, satisfactory evidence of payment of each installment due on the purchase money

mortgage and of any other items which might become a lien on the -Leased Property. For the purpose of this Lease Agreement, satisfactory evidence of payment shall be deemed to be a copy of the check sent to the proper party. Lessor warrants to Lessee that it shall make all such payments timely and **LESSOR AGREES TO INDEMNIFY AND DEFEND LESSEE AGAINST ANY AND ALL LIENS, CLAIMS, RIGHTS, AND/OR SUITS BROUGHT AGAINST LESSEE OR IN ANY WAY PERTAINING TO THE LEASED PROPERTY (INCLUDING WITHOUT LIMITATION, REASONABLE LEGAL FEES AND COURT COSTS)**. If Lessor fails to make such payments, together with any interest or penalty, required to be paid in connection herewith, the Lessee shall have the right to make such payments which may be deducted by the Lessee from any Lease Payments thereafter becoming due hereunder.

SECTION 14 – PAYMENTS AND NOTICES

Except as otherwise provided herein, each provision of this Lease Agreement or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivery of any notice or the making of any payment by the Lessor to the Lessee or with reference to the sending, mailing or delivery of any notice or the making of any payment by Lessee to the Lessor shall be deemed to be complied with, when and if the following steps are taken:

- a) All lease and other payments required to be made by the Lessee to the Lessor hereunder shall be payable to Lessor at the address below set forth, or at such other address as Lessor may specify from time to time by written notice delivered in accordance herewith.
- b) Any notice or document required or permitted to be delivered thereunder, except for the notice of payment required pursuant to Paragraph 15 hereof, shall be deemed to be delivered upon actual receipt of the parties hereto at the respective addressed set out opposite their names below, or

at such other address as they have theretofore specified by written notice delivered in accordance herewith.

LESSEE	<u>City of Fulshear</u>	LESSOR	<u>AUC Group, LLC</u>
	<u>29255</u>		<u>1800 Augusta, Ste. 108</u>
	<u>20608 F.M. 1093 Bldg 12A</u>		
	<u>Fulshear, Tx 77441</u>		<u>Houston, TX 77057</u>
	<u>Attn: Purchasing Office</u>		<u>Attn: Jim Rodgers</u>
	<u>281-346-8812</u>		<u>713-494-4304</u>
	<u>cobrender@fulsheartexas.gov</u>		<u>jrodgers@aucgroup.net</u>

SECTION 15- INTERPRETATION

Words of any gender used in this Lease Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context otherwise requires.

SECTION 16 – BINDING EFFECT

The terms, provisions, covenants and conditions contained in this Lease Agreement shall apply to, insure to the benefit of, and be binding upon the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns except as otherwise expressly provided.

SECTION 17 – ENTIRE AGREEMENT AND AMENDMENTS

This instrument contains the entire agreement between the parties. This Lease Agreement may not be amended, altered or changes except by an instrument in writing signed by both parties hereto.

SECTION 18 - TAXES / BENEFICIAL OWNERSHIP

Any taxes imposed or levied by any taxing authority on the Leased Property shall be the responsibility of the Lessee. While this Agreement is in effect the Lessee shall be considered the beneficial Owner of the Leased Property.

EXECUTED this _____ day of _____, 2021.

Lessor:

AUC Group, LLC

Jim Rodgers

Signature

Jim Rodgers

Print Name

Lessee:

CITY OF FULSHEAR

Signature

Title

Print Name

EXHIBIT "A"

LEASED PROPERTY

The Leased Property includes the following basins, piping, appurtenances, and related pieces as shown on the Project Drawings and Technical Specifications listed in Appendix "B":

- (1) Aeration basins (2 each)
- (2) Aerobic digester basins (2 each).
- (3) Air distribution system with drops and diffusers.
- (4) Above-ground pipe, valves and fittings
- (5) Steel walkways, stairs and bridges
- (6) Air lift pumps and related piping.
- (7) Digester decants.
- (8) Lamps and conduits attached to basins and clarifiers.
- (9) Centrifugal blower and appurtenances (one each).
- (10) Any modifications to the Inlet Structure needed for routing the influent piping to the two new aeration basins.

EXHIBIT "B"

The Project Drawings show the work to be done by the installing Contractor as well as the Leased Property. The Project Drawings consist of sheets, including a cover sheet, titled "Wastewater Treatment Expansion: 0.500 MGD to 0.700 MGD; City of Fulshear, Texas", and were prepared by Clay & Leyendecker, Inc., Consulting Engineers and Surveyors, Katy, Texas.

The Technical Specifications refer to the Technical Specifications Section of the booklet titled:

"Specifications and Contract Documents for :
Wastewater Treatment Plant Expansion: 0.500 MGD to 0.700 MGD
City of Fulshear, Texas"
2021

The bookle was prepared by Clay & Leyendecker, Inc., and includes information and requirements for the Leased Equipment as well as other equipment and other work and obligations to be undertaken by the Contractor.