



**CITY OF LA MARQUE
CITY COUNCIL
REGULAR AGENDA
of
July 8, 2024**

Notice is hereby given that the City Council of the City of La Marque, Texas will conduct a **Regular Meeting** on **JULY 08, 2024**, beginning at **6:00 PM** in the **Council Chambers** at **1109-B Bayou Road La Marque, Texas as well as via videoconference hosted through Zoom** (councilzoom.cityoflamarque.org). In accordance with Section 551.127(b) of the Texas Local Government Code the presiding officer and a quorum of the La Marque City Council intend to be and will be physically present at 1109-B Bayou Road, La Marque, Texas. This location will be open to the public and the meeting will be broadcast at this location, on Channel 16, and via YouTube (<https://www.youtube.com/watch?v=L6G8ypjyEDo>).

The Council will meet for the purpose of considering the following agenda:

1. CALL MEETING TO ORDER
2. ROLL CALL
3. INVOCATION AND PLEDGE OF ALLEGIANCE
4. PRESENTATIONS
 - 4.I. Proclamation - Morris Dagerath
 - 4.II. Proclamation - National Parks Month
5. CITIZENS PARTICIPATION
LIMITED TO THREE MINUTES PER PERSON

Comments from the public will be heard at this time. Any person with city-related business who has signed up may speak to Council (limited to three (3) minutes). If wishing to speak give the Mayor or presiding officer your full legal name and the item you wish to speak about. In compliance with Texas Open Meeting Act, the City may not deliberate on comments. Personal attacks will not be allowed, and personnel matters should be addressed to the City Manager during normal business hours. *Press *6 to mute or unmute if you are participating by telephone, press the unmute button if attending via zoom on a smartphone, tablet or computer, or stand if attending in person, and the mayor will call on you in turn.*

6. OLD BUSINESS

6.I. Ordinance No. O-2024-0010

Adopting the 2024 Water Conservation Plan for the City of La Marque, Texas

THIS IS THE FIRST READING

6.II. Proposed Resolution

Expressing support for the City of La Marque, Texas's application to the 2023 Active Transportation Infrastructure Investment Program

7. NEW BUSINESS

Items presented to the Council for discussion and possible action:

7.I. Proposed Ordinance

Establishing a Public Safety Building Committee; providing an effective date; and making other provisions

THIS IS THE FIRST READING

7.II. Proposed Ordinance

Establishing the Code of Ordinances Review Committee, providing for the committee's duties, term, membership, quorum, voting, meeting, and rules of procedure

THIS IS THE FIRST READING

7.III. Westwood Stormwater Improvement Project - Phase 2

Request for Proposal regarding the construction of the Westwood Stormwater Improvement - Phase 2 Project

7.IV. Focused Livable Centers Study Application

Authorizing an application to the Houston Galveston Area Council Focused Livable Centers Study

7.V. Omega Bay

Regarding potential Omega Bay improvements

8. CITY MANAGER REPORT

a submitted report to update Council and Community on the standard operations of the City, report can be acknowledged as whole or discussed at the pleasure of Council.

8.I. ICMA 2024 Economic Mobility and Opportunity Cohort

8.II. 2023 - 2024 Grant Applications

8.III. Audit Update

8.IV. Items for the Good of the Order

8.V. Code Update

9. REQUESTS AND ANNOUNCEMENTS

Requests by Mayor and Council Members of items to be placed on future City Council agendas and announcements on city events/community interests TEX. GOV'T CODE §551.415. (b), "items of community interest" include: (1) expressions of thanks, congratulations, or condolence; (2) information regarding holiday schedules; (3) an honorary or salutary recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in the status of a person's public office or public employment is not an honorary or salutary recognition for purposes of this subdivision; (4) a reminder about an upcoming event organized or sponsored by the governing body (5) information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality or county; and (6) announcements involving an imminent threat to the public health and safety of people in the municipality or county that has arisen after the posting of the agenda

10. EXECUTIVE SESSION

The City Council for the City of La Marque, Texas reserves the right to adjourn into executive session at any time during this meeting to discuss any of the matters listed above, as authorized by the Texas Government Code Section 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), and 551.087 (Economic Development)

10.I. Section 551.074 (Personnel Matter)

For the purpose of hearing a complaint or charge against an officer or employee, Councilmember Joseph Lowry

10.II. Section 551.074 (Personnel Matter)

Appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of employees: City Manager

11. ACTIONS TAKEN FROM EXECUTIVE SESSION

11.I. Section 551.074 (Personnel Matter)

For the purpose of hearing a complaint or charge against an officer or employee, Councilmember Joseph Lowry

11.II. Section 551.074 (Personnel Matter)

Appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of employees: City Manager

12. ADJOURNMENT

CERTIFICATION:

I hereby certify that the above notice of meeting was posted at 1109-B Bayou Road, La Marque, Texas on July 5, 2024 before 5:00pm.

Kierra K. Nance, TRMC
City Clerk

Office of the Mayor
for the City of La Marque

PROCLAMATION

WHEREAS, Morris Dagerath entered this life on May 7, 1935, in Coupland, Texas; and

WHEREAS, he graduated from Taylor High School, where he excelled in football and subsequently shared his love of sports with his children through coaching and leading the La Marque Little League as President throughout their childhoods; and

WHEREAS, he made the City of La Marque his home in the 1960s where he raised his children and made many friends over the years within the community which helped him to advocate for improving the beautification efforts within the area by getting involved with the Clean City Commission and improving several areas with his "green thumb" skills as an avid gardener; and

WHEREAS, he was a long time member of Highlands Baptist Church where he served as a deacon, sang in the choir, and taught Sunday school; and

WHEREAS, his love for the Lord and willingness to serve others was constantly shown through his devotion to service in the Royal Ambassadors and as a lifetime member of the Gideon's International Organization where he served for over 54 years; and

WHEREAS, his greatest attributes were his love for his family and friends to whom he would always put before himself and always greet with his signature smile; and

NOW, BE IT RESOLVED, the City of La Marque mourns with the family and friends of Morris Dagerath; and

NOW, THEREFORE, we the Mayor and City Council by virtue of our authority vested by the City of La Marque, Texas do hereby proclaim July 8th, 2024 as:

"MORRIS DAGERATH MEMORIAL DAY"

in the City of La Marque and do hereby extend our deepest sympathy to those who knew and loved her.

In testimony whereof, witness my hand and the Seal of the City of La Marque, this the 8TH day of July 2024.

Keith Bell, Mayor

Office of the City Council
for the City of La Marque

PROCLAMATION

WHEREAS, parks and recreation is an integral part of communities throughout this country, including The City of La Marque, promoting health and wellness, and improving the physical and mental health of people who live nearby; and

WHEREAS, programming and education activities through parks and recreation, such as out-of-school time programming, youth sports, and environmental education, are critical to childhood development; and

WHEREAS, parks and recreation increase a community's economic prosperity through increased property values, the attraction and retention of businesses, and crime reduction; and

WHEREAS, parks and recreation are fundamental to the environmental well-being of our community, providing adaptable infrastructure that makes our city resilient in the face of natural disasters and climate change, ensuring the ecological beauty of our community, while providing a place for children and adults to connect with nature and socialize outdoors; and

WHEREAS, the U.S. House of Representatives has designated July as Parks and Recreation Month; and

NOW, BE IT RESOLVED, The City of La Marque recognizes the benefits derived from parks and recreation resources; and

NOW, THEREFORE, we the Mayor and City Council by virtue of our authority vested by the City of La Marque, Texas do hereby proclaim the month of July as:

"PARKS AND RECREATION MONTH"

in the City of La Marque and do hereby urge everyone in the community to utilize the multitude of parks available within the city.

In testimony whereof, witness my hand and the Seal of the City of La Marque, this the 8th day of July 2024.

Keith Bell, Mayor

ORDINANCE NO. 0-2024-0010

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA MARQUE, TEXAS
ADOPTING THE 2024 WATER CONSERVATION PLAN FOR THE CITY OF LA MARQUE,
TEXAS.**

Whereas, the City of La Marque Texas desires to update its Water Conservation Plan.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA MARQUE,
TEXAS THAT:**

Section 1. The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council of the City of La Marque, Texas and made a part hereof for all purposes.

Section 2. Section 68-138 (a) is amended to read as follows:

(a) The City of La Marque, Texas, 2024 Water Conservation Plan attached hereto as Exhibit "A" is hereby adopted.

Section 3. It is hereby declared to be the intention of the City Council of the City of La Marque, Texas that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

Section 4. All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

Section 5. This ordinance is intended to be cumulative and shall not repeal any provision of a previous ordinance or City Code provision, except to the extent that a provision is inconsistent and cannot be reconciled with this ordinance.

Section 6. This Ordinance shall be effective immediately, after final passage by City Council, a public hearing in accordance with Section 2.19 of the City Charter, and publication of this ordinance or a caption that summarizes the purpose of this ordinance.

PASSED AND APPROVED by the City Council of the City of La Marque on
First Reading this _____ day of _____ 2024; and

PASSED, APPROVED AND ADOPTED by the City Council of the City of La Marque on Second
and Final Reading this _____ day of _____ 2024.

CITY OF LA MARQUE, TEXAS

Keith Bell, Mayor

ATTEST:

Kierra Nance, TRMC, City Clerk

APPROVED AS TO FORM:

Gus Knebel
Consulting City Attorney

2024 WATER CONSERVATION PLAN



CITY OF LA MARQUE, TEXAS
APRIL 2024

ADICO
CONSULTING ENGINEERS

TBPE FIRM NO. 16423
2114 EL DORADO BLVD., SUITE 400
FRIENDSWOOD, TX 77546
PH: 832-895-1093



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1.0 INTRODUCTION

The City of La Marque is an incorporated City approximately 38 miles southeast of downtown Houston. La Marque contains about thirteen and one-quarter square miles of property within central Galveston County. The City lies on the mainland portion of Galveston County and is bounded on the north and east by the City of Texas City, on the west by the City of Santa Fe, and on the south by the City of Hitchcock and an unincorporated section of Galveston County.

The City of La Marque is primarily a residential community with few commercial and industrial customers. The City has an efficient City Council, "Mayor/City manager — form of government." The City Manager is responsible to the Mayor and City Council.

La Marque's mission is to effectively manage the City's water supply, production and distribution system in order to meet water supply needs and to provide safe drinking water that meets or exceeds state and federal regulations; to review the design and construction of water facilities; to ensure the adequacy of the water system; to meet projected growth requirements; and to identify and meet consumer needs and expectations. The City plans and executes activities necessary to provide expected quality services to the citizens, so that the opportunity to enjoy a high quality of life is afforded to all.

The 2023 population estimate is 19,147 (based on information from the United States Census Bureau). The City has experienced steady growth over the past several years with new costumers being added, due to new developments.

The City of La Marque's ground water (well water) plants consists of a well and booster pumps at each location. The wells are primarily on standby and are used for emergencies and peak demands. Total capacity of the three water wells is 4.536 mgd.

The City is committed to maintaining and improving the City's Water Conservation Plan by expanding the existing plan, expanding the educational program and following the guidelines and information provided by the Texas Water Development Board (TWDB).



2.0 GOALS

La Marque's City's Water Conservation Plan objectives are to improve the efficiency of water use through practices and techniques that will reduce water consumption, reduce summertime usage, especially during dry weather, reduce water loss and increase water reuse.

It is also the goal of La Marque is to expand and improve the Water Conservation Plan to achieve a one percent reduction per year in total gallons per capita per day (gpcd) over the next five (5) and ten-year (10) periods. The one percent reduction per year is recommended by the Texas State Water Conservation Implementation Task Force. The water saving target goals (gpcd) are shown in Table No. 1b below.

La Marque has done well in terms of water conservation. The City's consumption of 152 gpcd in 2019, 160 gpcd in 2020, 154 gpcd in 2021, 161 gpcd in 2022, and 135 gpcd for 2023 demonstrates an average reduction of 2%, meeting the recommended one percent reduction.

The reduction in per capita consumption is a result of a combination of conservation efforts, including the City's accounting program, water system inspection program, the water meter program, system repairs and public education.

The five (5) and ten (10) - year gpcd target goals are shown in Table No. 1a below.

Table 1a
Water Consumption Goals Based on Gallons Per Capita Per Day (gpcd)

	Actual		Target Goals		
Year	2018	2023	2026	2028	2030
Total gpcd	161	131	116	105	100

The above calculations were made by dividing the water diverted or pumped for treatment for potable use by population served.

Table 1b
Water Consumption Goals for 5- and 10-Years (gpcd)

	Historic 5-yr Average	Baseline (2023)	5-yr Goal for year 2028	10-yr Goal for Year 2033
Total GPCD	152	131	105	82
Residential GPCD	123	120	96	75
Water Loss (GPCD)	84	59	26	4
Water Loss (Percentage)	55%	45%	25%	5%



2.1 Water Loss

Water loss is a primary concern of the City of La Marque and percent water losses and losses in gallons per capita per day (gpcd) for the last three (3) years (2021-2023) are shown in Table 2 below.

Table 2

Year	Population	Water Loss Est. (1000 gals)	% Loss	gpcd Loss
2021	18,821	615,800	58%	90
2022	19,147	655,518	58%	94
2023	19,799	425,750	45%	59

The goal/target of the City of La Marque is to reduce water loss by 4% per year over five- (5) and ten- (10) year periods.

The water loss projected goals/targets expressed in gallons per capita per day (gpcd) for five-(5) and ten- (10) year periods are reflected in Tables 3 & 4 below.

Table 3

Year	Population	Water Loss Est. (1000 gals)	gpcd Loss
2024	19,799	379,256	52
2025	20,354	334,740	45
2026	20,925	291,996	38
2027	21,512	250,968	32
2028	22,115	211,600	26

Table 4

Year	Population	Water Loss Est. (1000 gals)	gpcd Loss
2029	21,324	173,841	21
2030	21,788	137,638	16
2031	22,263	102,942	12
2032	22,747	69,702	8
2033	23,242	37,873	4



3.0 BEST MANAGEMENT PRACTICES

Water consumption in the City of La Marque is driven by a wide variety of domestic, commercial, industrial and institutional needs. Best Management Practices (BMPs), as recommended by the Texas Water Development Board (TWDB), have been developed and utilized by the City of La Marque to improve water use efficiency and for programs to assist and improve the City's water customers in the efficient use of water.

BMPs that are presently in effect and some that will be considered for implementation are described in the next paragraphs and in greater detail in following sections.

The System Water Audits and Water Loss BMP allows the City of La Marque's utility section to reliably track water use and provide the information needed to address unnecessary water and revenue losses. The Metering of all New Connections BMP has been established to create equity among customers, reduce water waste, and reduce flows to wastewater facilities. The City of La Marque presently has a Retrofit Program in place. The City is responsible for the inside inspection of all residential and commercial structures. The Water Conservation Pricing BMP is designed to discourage the wasting of water while assuring the fiscal obligations of the system are met. The prohibition of Wasting Water BMP is aimed at customers who continue to waste water despite Water Utility efforts to educate customers to reduce the wasting of water.

3.1 System Water Audit and Water Loss

To maximize the benefits of this BMP, the City uses the information from the water audit to revise meter testing and repair practices, reduce unauthorized water use, improve accounting for authorized but unbilled water and implement effective water loss management strategies. House Bill 3338 requires a retail public utility providing potable water to perform and file with the Texas Water Development Board (TWDB) every five years a water audit computing its most recent annual audit system water lost. The City of La Marque completes Annual Water Audits due to the high water loss we are experiencing

The City already tracks water loss by their leak detection program, leak repair, meter change out and water use by the City. All City facilities are presently being metered.

Leak detection consists of utilizing the City's leak detection crews to monitor older water mains and connections and to record all water leaks so water mains with excessive leaks can be replaced. The leak detection program encompasses continuous monitor of the distribution system, especially in areas of heavy traffic, constant monitoring of storage tank levels, daily visual inspection, monitoring distribution pressure and flows, monitoring for illegal connections, water theft and to educate and inform water customers to report any and all leaks promptly.

The City of La Marque has completed the Texas Water Development Board's Utility Profile form 1965-R and is included in the Water Conservation Plan. The City will utilize the information in the Utility Profile in the completion of their annual water audit.



In accordance with House Bill 3338, the City of La Marque will improve and refine their System Water Audit and Water Loss by utilizing information and assistance from the Texas Water Development Board (TWDB).

1. Monthly water pumpage records from the water well plants, purchased water volumes and monthly total water billing records will be compiled. Wastewater flow records from the wastewater treatment plant will be maintained on a daily basis.
2. Existing maintenance and repair records will be compiled and improved; this information may be used to track water loss from water leaks.
3. Comparisons of the pumpage and purchased water versus billed water will be made to identify potential water loss or accountability.
4. Potential ideas for water reuse will be evaluated: The City does not have a golf course, but the wastewater treatment plant uses the plant effluent to operate the chlorinators and for plant washdown.

The City will provide a more detailed overall picture of water losses by using existing records, by improving overall accountability.

To track this BMP, the City will collect, assemble and maintain the following:

1. Prepare an annual audit reflecting percentage water losses and actions implemented to address data and recommendations generated by the annual audit.
2. Leak Detection - Work orders will be maintained, reflecting all leak repairs as to location, number of leaks repaired size of line and estimated water loss. The City of La Marque can take advantage of the TWDB's leak detection equipment and water conservation expertise.
3. Number of customer service line leaks, line size, estimated water loss, and actions taken to repair these leaks.
4. Additional revenue generated by initiating this BMP.



3.2 Metering (BMP)

The City of La Marque has a meter replacement program in place and in addition to the meter section, the City also employs the services of an outside meter contractor each year, or more often if necessary. The water meter contractor checks and calibrates the meter on the surface water distribution line and the meters on each well at the ground water plants. Meter calibration insures that the city will receive the maximum savings on treated surface water received from the Gulf Coast Water Authority and water pumped from the wells.

Note: All metering and meter calibrations are within an accuracy of plus or minus 5%.

The City's Metering Program consists of the following:

1. The City's meter Technicians are responsible for inspecting all meters on a periodic basis.
2. Meters one inch or smaller are replaced every twenty (20) years or when it is determined they need to be replaced.
3. Meter technicians fill out work orders on meters that appear to have irregularities or broken or damaged.
4. The water accounting section flags water bills that appear to be too high or too low.
5. Construction meters are used to track water usage in the construction industry.
6. All City facilities are presently being metered.
7. Implementation of the State requirements in HB 2404, passed by the 77th State Legislature and implemented through the Texas Water Code 13.502, which requires all new townhouses and apartments be either directly metered by the utility or submetered by the owner.
8. An accounting of water savings and revenue gains through the implementation of the City's water meter repair and replacement procedures

The City will ensure that the meter program is maintained through the regular review of metered data and revision of metering policies to ensure that the maximum amount of water consumption is accounted for.

1. To track the effectiveness of the Metering BMP the City will provide the following:
2. Number and size of water meters replaced on an annual basis.
3. Number and size of water meter repaired annually.
4. Number of meters tested and results of each.
5. Estimate of water savings achieved through meter replacement program.



6. Number of work orders generated for meter testing or replacement.

Every year the City will estimate its annual water saving from the Meter BMP and from records generated by the water accounting section and meter replacement section. The City will look into the monitoring water accountability on a monthly basis and maintain a running 12-month average for water loss.

3.3 Water Conservation Pricing

This BMP is intended for all utilities wishing to send price signals to customers to encourage water conservation. Water conservation pricing discourages the inefficient use or waste of water. The goal of conservation pricing is to develop long run consumption patterns consistent with cost. The City will educate their customers on the type of rate structure that the utility uses and can be provided feedback through the water bill on their monthly water use.

The City has a water and sewer rate structure that includes a progressive scale for one thru four family Units and for increases in meter sizes up to six (6) inches, which provides for service and billing for water and wastewater service based on the actual metered water use. A copy of the latest water and sewer rates and related charges are attached as Appendix E. The rates include a consumption charge based on actual gallons metered so that increasing water consumption results in a larger bill for the customer.

The City increased water rates (effective) for fiscal year 2022-2023 and anticipated that conservation pricing would have the advantage of reducing customer use, who would see a larger percent increase in their water bill compared to the increase in water use. The rate structure is not presently shown on the customer's water bill, but the City will explore this option.

The increase in water rates has shown that conservation pricing has provided incentives to customers to reduce average and/or peak use.

The City will consider requiring new commercial and industrial customers to install separate irrigation meters, and the feasibility of retrofitting current commercial and industrial customers with irrigation meters.

The City will review the consumption patterns (including seasonal use) and its income and expense levels to determine if the conservation rates are effective and make appropriate, regular rate structure adjustments as needed.

To track this BMP, the City should maintain the following documentation:

1. A copy of the City's water and wastewater rates.
2. Customer numbers and water consumption by customer class at the beginning and end of the reporting period.



3. A copy of the education materials sent to residential, commercial and industrial customers for each calendar year, and provide water conservation literature and material to new customers when they apply for service.
4. A utility bill as stated above.
5. A utility bill reflecting water conservation information.

Elasticity studies have shown an average reduction in water use of 1 to 3 percent for every 10 percent increase in the average monthly water bill. In implementing a conservation pricing structure, consideration will be given to the factors that influence whether the new structure result in a reduction in water use. *The Water Price Elasticities for Single-Family Homes in Texas* study included several findings which suggest some water savings can be expected, as below:

1. Average price is better than marginal price in explaining the quantity of water demanded by customers
2. Customers do not understand the link between water use and sewer billing and therefore do not tend to factor sewer prices into their water use decisions.
3. The study found that for a 10 percent increase in price there was a 2 percent reduction in water use.

3.4 Prohibition on Wasting Water (not currently implemented)

This BMP should be considered by utilities that have customers who continue to waste water despite the efforts of the utility to educate customers to reduce the waste of water. Water Waste Prohibition measures are enforceable actions and measures that prohibit specific wasteful activities. Under this BMP, the City has enforcement powers to prohibit wasteful activities including:

1. Failure to fix outside faucet leaks.
2. Failure to repair service line leaks (customer's side).
3. Failure to repair personal water lines, faucets, water closets, and water heaters.
4. Allowing sprinklers and water hoses to run excessive by allowing water to run down the street and gutters and to run during rainy conditions.
5. Operate irrigation systems with missing heads and leaks.
6. Leaks and water loss from car washes and commercial laundry systems.

The BMP is implemented by the regular maintenance and operating personnel of the City and work orders are written on all leaks and repaired by work crews who are available on a twenty- four (24) hour basis.



To track this BMP the City will maintain the following documentation:

1. Copy of water waste prohibition ordinances enacted in the service area.
2. Copy of compliance or enforcement procedures implemented by the City.
3. Records of enforcement actions including public complaints of violations and utility response.
4. Records of all work orders
5. Record estimated water loss from each area.

Total water savings for this BMP can be estimated from each water-wasting measure eliminated through the actions taken under this BMP. There will be additional savings from the education of customers who may change some of their inefficient water usage practices. The City will explore other avenues and additional methods to improve this program.

3.5 Residential Toilet Replacement Program (not currently implemented)

This BMP is intended for a Municipal Water Utility that has at least twenty (20) percent of homes and apartment units in the service area constructed prior to 1995 and for which there has not been an active retrofit program to replace high flush volume toilets with 1.6 gallons per flush (gpf) toilets.

State and Federal requirements prohibit installation of new toilets using more than 1.6 gpf or more in single-family and multi-family residences. The implementation of this BMP will consist of the following:

1. A retrofit mandate for all new structures and existing structures undergoing substantial modification or additions. The buyer and seller certify that the plumbing fixtures meet the efficiency standards of the most recent plumbing code.
2. The City's water & wastewater section has its own inspection section and can expand on the retrofit program.
3. A retrofit requirement and/or ordinance triggered when ownership of the property changes. The City will require all plumbing fixtures in the single-family or multi-family unit, leased property and rental property to meet current plumbing standards when new structures and existing structures undergo substantial modification or additions.
4. The City as time permits could set up a system to inspect all single-family and multi-family units and ensure that all conform to the current plumbing codes.



The following proposed schedule will be implemented:

1. The Inspectors will prepare documentation on all inspections on all single-family residences and multi-family units that are rented, leased or if ownership of the property changes; the documentation will reflect the kind and number of units replaced, and installation completion date.
2. A plan will be developed to educate homeowners, apartment owners and managers, plumbers, and realtors about this program.
3. The City will strive to improve the implementation and expansion of the retrofit program.

To track this BMP, the City should gather the following:

1. The number of Ultra Low Flushing Toilet (ULFT) installations credited to the participant's replacement program, by year, including brand and model of toilets installed.
2. The average persons per household for single-family residences; the average person per household for multi-family units.
3. Description of ULFT replacement program.
4. Estimated water savings per ULFT replacement.

The City will continue to educate homeowners, multi-unit owners, managers, plumbers and realtors about this program and work toward developing a compliance program.

3.6 Public Information

A program for providing water conservation information to the public is an effective means of both promoting specific water conservation programs and practices and educating the public about the importance of using water efficiently.

Public information programs can result in both short and long-term water savings, though they may not be directly related to any equipment or operational change. Behavioral changes by customers will only occur if a reasonable yet compelling case can be presented with sufficient frequency to be recognized and absorbed by customers.

One of the goals is to educate customers of the overall picture of water resources in the community and how conservation is needed to meet the goals of managing and sustaining existing water supplies and to avoid or delay building new facilities. An equally important part of the program is to provide data and information on specific actions and measures the customers

should take to implement these community goals. When customers know the results of their actions have made a difference, they are encouraged to continue participation in conservation efforts.



There are a variety of tools that can be effectively used to communicate water conservation by means of public education. These include use of print, radio, television, billboards, board meetings, schools, direct distribution of materials and facility tours.

School Education will be addressed in the School Education Section.

The City of La Marque utilizes the following to inform the public the importance of water conservation and the value of water in sustaining and enhancing life:

1. Public at Large — The City holds regular meetings of the City council every month, which are open to the public; anyone is free to speak to the council, and the Council can inform the public about water conservation.
2. Water conservation information is available at the Public Works Department and at City Hall.
3. Printed Brochures — Texas Water Development Board Water Conservation literature and pamphlets will be part of the basis for information to the public, as well as preprinted brochures available from the Water Wise Council of Texas; there are many publications, brochures, videos, DVDs, etc. already available on water conservation that can be used as published or modified to meet the goals of the utility, such as: “Water IQ, Know Your Water”, the following brochures were developed by the Water Conservation Task Force: “Be Water Smart indoors”, “Be Water Wise Outdoors” and “Top Water Smart Tips In and Around the Home”. Other TWDB brochures are “Water Conserving Tips”, “Conserving Water Outdoors”, and “Conserving Water Indoors”. The Water Lily Press, Inc. (Located in Spring, Texas) has a wide variety of brochures and material on water conservation.

Brochures also available are published by the Texas Water Wise Council, a public/ private partnership that fosters awareness and implementation of sound water management. A few of the brochures that are available are: "Irrigation-Best Management Practices", "Lawn Maintenance-Best Practice" and “Landscape-Best Management Practice”.

4. The City will begin using inserts and messages with utility billing on a regular basis and can also publish water conservation messages in the local paper.
5. The City has Leak detection kits available along with other information available at City Hall.
6. Tours of the water utilities facilities are also available to the public.



The goal of the City, at a minimum, is to provide information to each customer at least annually, on each action that the utility would like the customer to take. To track the progress of this BMP, the City gathers the following data:

1. The number of brochures and information distributed to the public.
2. Number of dye kits distributed to the public.
3. Number of water bills with water conservation information included.
4. Number of public-school children who received information on water conservation.
5. Number of persons who toured the City's water and wastewater facilities.
6. The total population of the City for (2023) was 19,664 (per the City's logs).
7. Results of an annual or bi-annual customer survey.

Water savings due to public information efforts are difficult to quantify. Water savings for other public information programs that result in specific actions by customers such as changes in irrigation scheduling or reduction in water waste occurrences could also be quantified through surveys or analysis of water waste reporting.

3.7 School Education

Lessons learned by students about good water use habits are often shared with the whole family.

School education programs, which may not result in quantifiable water savings, will improve and enhance a utility's public image, increase customer good will, and increase the viability of its overall water conservation efforts. The message conveyed by students to their families based upon greater knowledge of water sources and conservation can result in behavioral changes resulting in both short and long-term water savings.

The water conservations kits that are available and could be furnished to students consists of: toilet leak detection tablets, showerhead and faucet aerators, water displacement bags and instructions on repairing toilet leaks and other common water leaks.

A study by the Harris Galveston Subsidence District found an average savings of 18 percent or 1,400 gallons per month in homes where parents of students had installed efficient showerheads and aerators on bathroom and kitchen sinks. The Harris-Galveston Subsidence District does not furnish water conservation material outside their jurisdiction.

The City will strive to improve their school education program by obtaining Water Conservation Education Literature from the Texas Water Development Board, such as their 6th grade curriculum called, "Raising Your Water IQ" as well as Water Conservation Lesson Plans.



The program will require utility staff oversight and outreach efforts to schools and students. The City will track this BMP by:

1. Number of students participating in the water conservation plan.
2. Number of water conservation kits furnished to the classrooms.
3. Number of presentations made during the year.
4. Grade level and data the program expanded.

A true cost-effectiveness analysis cannot be determined without a measure of water savings. The program conducted by the Harris Galveston Subsidence District found that 1,400 gallons per month was saved by installing water savings devices in the home.

3.8 Water Wise Landscape Design and Conservation Program

This BMP is intended for Utility customers who have high water use landscapes which consume more than twice as much water in the summer as in the winter. A Utility impacted by repeated drought may also consider this BMP as a means of reducing outdoor water demand overall in their service area as a step toward long-term change of water use patterns.

The City will realize a decrease in summertime water consumption, peak pumpage and overall use by the installation of water-wise landscapes at residential properties, City properties and subsequent education to ensure efficient irrigation of the new landscapes. Water-Wise landscaping involves not only plant selection, but continued attention to appropriate irrigation and landscape maintenance.

In addition, a public education and outreach program through water-wise brochures, local media, water bills, civic groups, garden clubs and nurseries will help create a program that will bring water-wise landscape design to residential and commercial customers.

The City will explore the feasibility of initiating a landscape program which would require the use of drought-tolerant and low-water use landscaping species on all new homes.

In the typical landscape, turf grass occupies the largest area and, when managed incorrectly, receives the largest amount of irrigation. Water savings can be achieved by installation of practical turf areas and irrigation of only the turf in high impact, highly visible areas of the landscape. Irrigated turf areas should be reduced or eliminated as part of the conservation program.

Water Wise Landscape programs follow the seven principles of Xeriscape from the Texas A&M Horticulture Department, which are: planning and design, soil analysis and improvement, appropriate plant selection, practical turf areas, efficient irrigation, use of mulches and appropriated maintenance.

The implementation of this BMP involves continual public education campaigns, including public-private partnerships with gardening clubs, landscape designers and nurseries.



The City will continue with on-going public outreach and educational campaign and the following information would be provided:

1. Landscape Improvement — Best Management Practices; a brochure developed by the Water Wise Council of Texas covers soil improvement, mulch, maintenance, mowing and efficient irrigation.
2. Water IQ — Be Water-Wise Outdoors; a brochure available from the Texas Water Development Board that details Water-Wise Steps to Follow, Water-Wise Landscape Watering, Water-Wise Landscape Maintenance, Water-Wise Irrigation Equipment and Design A Water-Wise Landscape.
3. Xeriscape — Landscape with Less Water; a brochure that details the seven principles of Xeriscaping.
4. Outreach — Continue implementation and outreach program to the public, nurseries, realtors and landscape companies.
5. Rain Sensors — The City will explore the requirement of rain sensors on all automated irrigation systems and the potential to save water.
6. Evapotranspiration Controllers (ET's) — the City will explore the feasibility of requiring ET controllers on all new and reconditioned irrigation systems.

To track this BMP, the City will gather the following documentation:

1. Number of brochures, conservation devices, posters or displays distributed to the public.
2. Number of dedicated irrigation meter accounts.
3. Estimated water savings based on customer billing records.
4. Customer water use records prior to and after conversion of the landscape; this data is best compared in years of similar rainfall and after the landscape has been installed a sufficient time to establish itself.
5. Number of rain sensors and ET-controllers on automatic sprinkler systems and customer records prior to and after installation of such devices; this data is best compared in years of similar rainfall and after the landscape has been installed a sufficient time to establish itself.

Water savings will be determined from analysis of actual customer-metered water use before and after landscape conversion and after installation of rain sensors or ET controllers.



3.9 Park Conservation

This BMP is intended for all Utilities which manage parks or serve customers with parks which consume water. The visible use of water often comes under scrutiny by the public and water utility staff because of large water demand to maintain a park and because of the perception that the water use may be excessive.

The City has two public parks, and six athletic fields that require water. The public parks and athletic fields are metered. The City of La Marque does not have any public swimming pools or public water fountains. Park irrigation conservation practices, as well as the careful use of water in operation and maintenance of park facilities, can effectively reduce water demands. Under this BMP the City will require the management of the Parks to comply with the water conservation programs on Prohibition of Wasting Water and Water-Wise Landscape Design.

Under the plan, the Park Supervisor will implement a watering regiment that uses only the amounts of water necessary to maintain the viability of turf and landscape material appropriate for the use of the park. Water should only be applied to areas that are essential to the use of the park.

Conservation of water for the Parks will be achieved through BMPs on Prohibition of Wasting Water, Water-Wise Landscape Design and System Water Audit and Loss Program.

As a minimum, compliance with this BMP will require the replacement of all manually controlled or quick couple irrigation systems with automatic irrigation systems and controllers.

Water wasting practices during ball field irrigation will be eliminated, including water running in gutters, irrigation heads or sprinkler spraying directly on paved surfaces, operation of automatic irrigation systems without a functioning rain shut-off device, operation of an irrigation system with missing or broken heads and irrigation during summer months should be restricted to special times.

To accomplish this BMP, the City will:

1. Ensure that the landscapes of all park properties are planted and irrigated in compliance with Water Wise Landscape Design requirements.
2. Offer training for park irrigation management and as part of this training should include workshops on pesticides, soil and nutrient management for optimal water use efficiency.
3. The water usage for the parks is metered and included in the system audit and loss program.
4. Construction of a Reclaim Water Facility at the WWTP to provide irrigation water for Mahan Park, located next to the WWTP, is under consideration.



To track the progress of this BMP, the City will gather the following documentation:

1. Metered water readings before and after any changes are implemented.
2. Changes to irrigation systems, retrofits, or upgrades, regular leak detections and maintenance policies, and estimated water savings from conservation practices.
3. Cost of repairs equipment upgrades, or new equipment installed.

Estimating total water savings for this BMP may be difficult; however, water savings can be estimated from each water-wasting measure eliminated through the actions taken under this BMP.

Swimming Pool Facilities:

The City of La Marque does not have any public swimming pools but when a public pool is added they will employ water conservation measures.

3.10 Reuse of Reclaimed Water

The direct use of reclaimed water is an effective method of reducing potable water usage. Reclaimed water is defined in the Texas Administrative Code (TAC) as “domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use, pursuant to the provisions of this chapter and other applicable rules and permits.” Direct use of reclaimed water is appropriated for a number of domestic, industrial and irrigation needs where the potential for human contact is limited.

Direct use of reclaimed water is regulated by the Texas Commission on Environmental Quality (TCEQ) and Safe Drinking Water Act Standards. Included in these rules are provisions that require permission from that agency before providing reclaimed water for beneficial use and design guidelines for reclaimed water systems.

Implementation consists of the following:

1. The City is presently using the plant waste water effluent to operate the plant chlorination equipment, plant wash down and for plant irrigation.
2. The City does not have the industrial or commercial customer base to consider the expense of installing a separate water reuse water system; however, the City will explore the long-range possibilities of additional water reuse as the costs and demand for potable water continues to increase



Documentation:

1. The wastewater treatment plant is a 3.0 mgd complete mix, activated sludge treatment process. Treatment units include a lift station, bar screens, gravity thickener, two digester's, clarifier, belt press, chlorine contact chamber and a dechlorination chamber.
2. The waste water effluent is being used in the operation of the chlorination equipment and for plant wash down.
3. Number of gallons or acre-feet of previous potable water use replaced by reuse water since the implementation of the BMP.

Determination of Water Savings:

Water savings are estimated at up to 100 percent of total amount of potable water replaced by reclaimed water. Changes in operating parameters or water balance calculations which depend upon water quality parameters, such as the impact of total dissolved solids (TDS) in irrigation water require different quantities of reused water to be applied for same-end uses.

3.11 Coordination with Regional Water Planning Group

The service area of the City of La Marque is located within the Houston Region (H), and the City has provided a copy of this Plan to the Houston Region (H), Regional Water Planning Group, which is headed by Mr. Mark Evans, with the North Harris County Regional Water Authority. Mr. Evans may be contacted at (281) 440-3924.

APPENDIX A

UTILITY PROFILE

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

CONTACT INFORMATION

Name of Utility:	CITY OF LA MARQUE		
Public Water Supply Identification Number (PWS ID):	TX0840006		
Certificate of Convenience and Necessity (CCN) Number:	10131		
Surface Water Right ID Number:			
Wastewater ID Number:	20049		
Contact: First Name:	Rick	Last Name:	Sailler
Title:	Public Works Director		
Address:	4916 Texas Ave. Suite C	City:	La Marque State: TX
Zip Code:	77568	Zip+4:	
Email:	r.sailler@cityoflamarque.org		
Telephone Number:	4099389213	Date:	
Is this person the designated Conservation Coordinator?	☐ Yes ☒ No		

Coordinator: First Name:	N/A	Last Name:	N/A
Title:			
Address:		City:	
Zip Code:		Zip Code:	
Email:	N/A	Telephone Number:	000-000-0000

Regional Water Planning Group:	H
Groundwater Conservation District:	

Our records indicate that you:

- ☐ Received financial assistance of \$500,000 or more from TWDB
- ☒ Have 3,300 or more retail connections
- ☐ Have a surface water right with TCEQ

A. Population and Service Area Data

1. Current service area size in square miles: 15

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

2. Historical service area population for the previous five years, starting with the most current year.

Year	Historical Population Served By Retail Water Service	Historical Population Served By Wholesale Water Service	Historical Population Served By Wastewater Water Service
2023	19,799	0	19,799
2022	19,147		19,147
2021	18,821		18,821
2020	15,154	0	18,445
2019	19,842	0	17,319

3. Projected service area population for the following decades.

Year	Projected Population Served By Retail Water Service	Projected Population Served By Wholesale Water Service	Projected Population Served By Wastewater Water Service
2030	20,301	0	20,301
2040	22,331	0	22,331
2050	24,564	0	24,564
2060	27,020	0	27,020
2070	29,722	0	29,722

4. Described source(s)/method(s) for estimating current and projected populations.

Population from 2019 to 2023 are provided from Census estimates, Population from 2023 was estimated from available land and future development. Population for every decade is estimated at a static population growth, estimated from 2020, at 10% rate per 10 years

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

B. System Input

System input data for the previous five years.

$\text{Total System Input} = \text{Self-supplied} + \text{Imported} - \text{Exported}$

Year	Water Produced in Gallons	Purchased/Imported Water in Gallons	Exported Water in Gallons	Total System Input	Total GPCD
2023	1,484,702	947,678,357	0	949,163,059	131
2022		1,128,589,000		1,128,589,000	161
2021		1,057,850,000		1,057,850,000	154
2020	1,073	1,170,907,143	0	1,170,908,216	212
2019	547,959	1,075,133,673	0	1,075,681,632	149
Historic Average	677,911	1,076,031,635	0	1,076,438,381	161

C. Water Supply System

1. Designed daily capacity of system in gallons 6,900,000
2. Storage Capacity
 - 2a. Elevated storage in gallons: 1,200,000
 - 2b. Ground storage in gallons: 1,900,000

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

D. Projected Demands

1. The estimated water supply requirements for the next ten years using population trends, historical water use, economic growth, etc.

Year	Population	Water Demand (gallons)
2025	20,354	904,701,000
2026	20,925	884,835,000
2027	21,512	865,405,000
2028	22,115	846,402,000
2029	22,735	827,816,000
2030	23,373	809,638,000
2031	24,028	791,859,000
2032	24,702	774,471,000
2033	25,394	757,464,000
2034	26,106	740,831,000

2. Description of source data and how projected water demands were determined.

Projecting a 28% increase for the next decade based on historical population from U.S. Department of Commerce Census website. From 2013-2022 La Marque's population increased by 28%. Water demands were based on 2023 total system input with a 2.% increase for water demands annually and a reduction of 5% yearly on GCWA water purchase.

E. High Volume Customers

1. The annual water use for the five highest volume

RETAIL customers.

Customer	Water Use Category	Annual Water Use	Treated or Raw
Walmart Stores	Commercial	13,615,000	Treated
Horizon Meadow Apartments	Commercial	4,666,000	Treated
Bayou Pines	Commercial	4,445,000	Treated
TCISD High School	Commercial	3,826,000	Treated
Delany Cove Community Association	Commercial	3,183,000	Treated

2. The annual water use for the five highest volume

WHOLESALE customers.

Customer	Water Use Category	Annual Water Use	Treated or Raw
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UTILITY PROFILE FOR RETAIL WATER SUPPLIER

F. Utility Data Comment Section

Additional comments about utility data.

Section II: System Data

A. Retail Water Supplier Connections

1. List of active retail connections by major water use category.

Water Use Category Type	Total Retail Connections (Active + Inactive)	Percent of Total Connections
Residential - Single Family	7,962	93.43 %
Residential - Multi-Family	78	0.92 %
Industrial	0	0.00 %
Commercial	482	5.66 %
Institutional	0	0.00 %
Agricultural	0	0.00 %
Total	8,522	100.00 %

2. Net number of new retail connections by water use category for the previous five years.

	Net Number of New Retail Connections						
Year	Residential - Single Family	Residential - Multi-Family	Industrial	Commercial	Institutional	Agricultural	Total
2023	2						2
2022	184	27		15			226
2021	171						171
2020	277	3		120			400
2019	0	0		0			0

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

B. Accounting Data

The previous five years' gallons of RETAIL water provided in each major water use category.

Year	Residential - Single Family	Residential - Multi-Family	Industrial	Commercial	Institutional	Agricultural	Total
2023	343,221,000						343,221,000
2022	316,958,000						316,958,000
2021	274,070,000						274,070,000
2020	295,648,000						295,648,000
2019	359,368,000	1,830,000		6,186,000			367,384,000

C. Residential Water Use

The previous five years residential GPCD for single family and multi-family units.

Year	Total Residential GPCD
2023	120
2022	124
2021	123
2020	125
2019	122
Historic Average	123

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

D. Annual and Seasonal Water Use

1. The previous five years' gallons of treated water provided to RETAIL customers.

Month	Total Gallons of Treated Water				
	2023	2022	2021	2020	2019
January	98,307,000	77,819,000	85,748,000	614,210,000	82,407,000
February	86,402,000	64,721,000	95,625,000	106,954,000	70,285,000
March	78,212,000	81,120,000	89,420,000	81,569,000	81,339,000
April	62,650,000	88,953,000	88,012,000	86,926,000	83,740,000
May	57,806,000	96,301,000	90,359,000	91,251,000	91,804,000
June	63,611,000	94,619,000	87,091,000	93,292,000	87,903,000
July	71,343,000	107,178,000	97,904,000	92,897,000	95,321,000
August	73,305,000	112,855,000	102,220,000	110,012,000	104,738,000
September	103,170,000	91,259,000	95,263,000	96,774,000	99,648,000
October	83,209,000	104,268,000	80,815,000	98,155,000	54,029,000
November	81,400,000	93,629,000	76,571,000	77,987,000	43,296,000
December	86,368,000	115,867,000	68,822,000	80,478,000	68,067,000
Total	945,783,000	1,128,589,000	1,057,850,000	1,630,505,000	962,577,000

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

2. The previous five years' gallons of raw water provided to RETAIL customers.

Month	Total Gallons of Raw Water				
	2023	2022	2021	2020	2019
January	0	0	0	0	0
February	0	0	0	0	0
March	0	0	0	0	0
April	0	0	0	0	0
May	0	0	0	0	0
June	0	0	0	0	0
July	0	0	0	0	0
August	0	0	0	0	0
September	0	0	0	0	0
October	0	0	0	0	0
November	0	0	0	0	0
December	0	0	0	0	0
Total	0	0	0	0	0

3. Summary of seasonal and annual water use.

	Summer RETAIL (Treated + Raw)	Total RETAIL (Treated + Raw)
2023	208,259,000	945,783,000
2022	314,652,000	1,128,589,000
2021	287,215,000	1,057,850,000
2020	296,201,000	1,630,505,000
2019	287,962,000	962,577,000
Average in Gallons	278,857,800.00	1,145,060,800.00

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

E. Water Loss

Water Loss data for the previous five years.

Year	Total Water Loss in Gallons	Water Loss in GPCD	Water Loss as a Percentage
2023	428,011,430	59	55.00 %
2022	655,518,000	92	58.00 %
2021	615,800,000	90	58.00 %
2020	296,136,863	54	58.00 %
2019	601,795,612	83	45.00 %
Average	519,452,381	76	54.80 %

F. Peak Day Use

Average Daily Water Use and Peak Day Water Use for the previous five years.

Year	Average Daily Use (gal)	Peak Day Use (gal)	Ratio (peak/avg)
2023	2,591,186	2263684	0.8736
2022	3,092,024	3420130	1.1061
2021	2,898,219	3121902	1.0772
2020	4,467,136	3219576	0.7207
2019	2,637,197	3130021	1.1869

G. Summary of Historic Water Use

Water Use Category	Historic Average	Percent of Connections	Percent of Water Use
Residential - Single Family	317,853,000	93.43 %	99.50 %
Residential - Multi-Family	366,000	0.92 %	0.11 %
Industrial	0	0.00 %	0.00 %
Commercial	1,237,200	5.66 %	0.39 %
Institutional	0	0.00 %	0.00 %
Agricultural	0	0.00 %	0.00 %

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

H. System Data Comment Section

DRAFT

Section III: Wastewater System Data

A. Wastewater System Data

1. Design capacity of wastewater treatment plant(s) in gallons per day: 3,000,000

2. List of active wastewater connections by major water use category.

Water Use Category	Metered	Unmetered	Total Connections	Percent of Total Connections
Municipal			0	0.00 %
Industrial			0	0.00 %
Commercial			0	0.00 %
Institutional			0	0.00 %
Agricultural			0	0.00 %
Total			0	100.00 %

3. Percentage of water serviced by the wastewater system: 100.00 %

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

4. Number of gallons of wastewater that was treated by the utility for the previous five years.

Month	Total Gallons of Treated Water				
	2023	2022	2021	2020	2019
January					
February					
March					
April					
May					
June					
July					
August					
September					
October					
November					
December					
Total					

5. Could treated wastewater be substituted for potable water?

☐ Yes
 ☐ No

B. Reuse Data

1. Data by type of recycling and reuse activities implemented during the current reporting period.

Type of Reuse	Total Annual Volume (in gallons)
On-site Irrigation	
Plant wash down	
Chlorination/de-chlorination	
Industrial	
Landscape irrigation (park,golf courses)	
Agricultural	
Discharge to surface water	
Evaporation Pond	
Other	
Total	

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

C. Wastewater System Data Comment

Additional comments and files to support or explain wastewater system data listed below.

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APPENDIX B

DEFINITIONS OF UTILITY PROFILE TERMS



Appendix B Definitions of Utility Profile Terms

1. **Residential** sales should include water sold to residential (Single and Multi-Family) class customers only. **Industrial** sales should include water sold to manufacturing and other heavy industry. **Commercial** sales should include water sold to all retail businesses, offices, hospitals, etc. **Wholesale** sales should include water sold to another utility for a resale to the public for human consumption.
2. **Water Loss** is the difference between water a utility purchases or produces and the amount of water that it can account for in sales and other known uses for a given period. Water loss can result from:
 1. inaccurate or incomplete record keeping;
 2. meter error;
 3. unmetered uses such as firefighting, line flushing, and water for public buildings and water treatment plants;
 4. leaks; and
 5. water theft and unauthorized use.
3. The **peak-day to average-day** ratio is calculated by dividing the maximum daily pumpage (in million gallons per day) by the average daily pumpage. Average daily pumpage is the total pumpage for the year (as reported in Section II A1, p. 4) divided by 365 and expressed in million gallons per day.
4. **Total use in gallons per capita per day** is defined as total average daily amount of water diverted or pumped for "treatment for potable use by a public water supply system. The calculation is made by dividing the water diverted or pumped for treatment for potable use by population served then divide by 365. Indirect reuse volumes shall be credited against total diversion volumes for the purpose of calculation gallons per capita per day for targets and goals developed for the water conservation plan. Total water use is calculated by subtracting the wholesale sales from the total water diverted or treated (as reported in Section II A1).
5. **Seasonal water use** is the difference between base (winter) daily per capita use and summer daily per capita use. To calculate the base daily per capita use, average the monthly diversions for December, January, and February, and divide this average by 30. Then divide this figure by the population. To calculate the summer daily per capita use, use the months of June, July, and August.

APPENDIX C

DEFINITIONS OF COMMONLY USED TERMS



Appendix C

Definitions of Commonly Used Terms

Conservation — Those practices, techniques, mad 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.

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, commercial fish production, and the development of power by means other than hydroelectric but does not include agricultural use.

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 through a municipal distribution system.

Municipal per capita water use — The sum of water diverted into a water supply system for residential, commercial, and public and institutional uses divided by actual population served.

Municipal use — The use of potable water within or outside a municipality and its environs whether supplied by a person, privately owned utility, political subdivision, or other entity as well as the use of sewage effluent for certain purposes, including the use of treated water fur domestic purposes, fighting fires, sprinkling streets, flushing sewers and drains, watering parks and parkways, and recreational purposes, including public and private swimming pools, the use of potable water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands, and for the watering of lawns and family gardens.

Municipal use in gallons per capita per day — The total average daily amount of water diverted or pumped for treatment for potable use by a public water supply system. The calculation is made by dividing the water diverted or pumped for treatment for potable use by population served. Indirect reuse volumes shall be credited against total diversion volumes for the purpose of calculating gallons per capita per day for targets and goals.

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.

Public water supplier — An individual or entity that supplies water to the public for human consumption.

Regional water planning group — A group established by the Texas Water Development



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 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.

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.

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).

Water loss — The difference between water diverted or treated and water delivered (sold). Water loss can result from:

1. inaccurate or incomplete record keeping;
2. meter error;
3. unmetered uses such as fire fighting, line flushing, and water for public buildings and water treatment plants;
4. leaks; and
5. water theft and unauthorized use.

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.

APPENDIX D

WATER SYSTEM MAP

N

0

1,250

2,500

Feet

Region

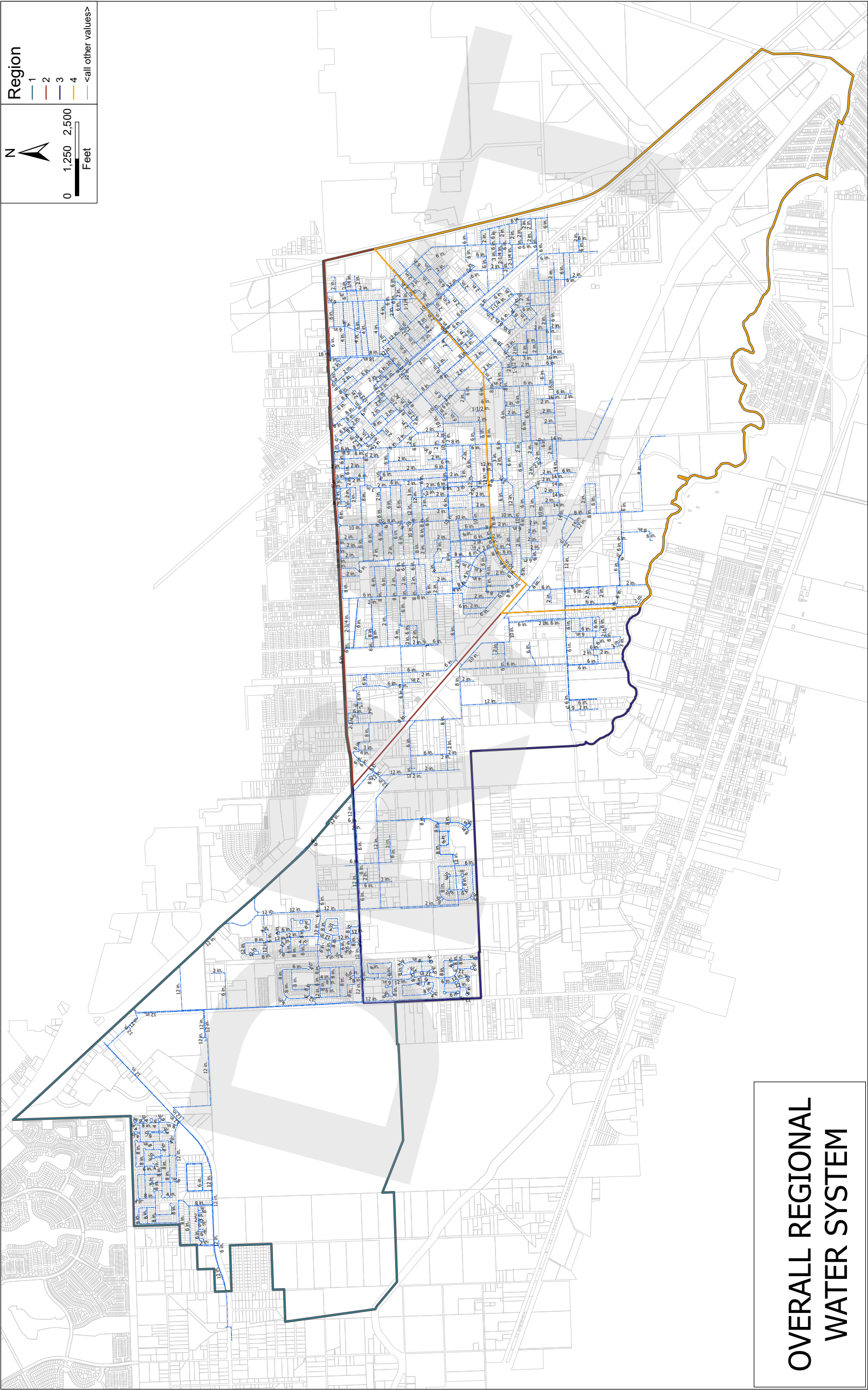
1

2

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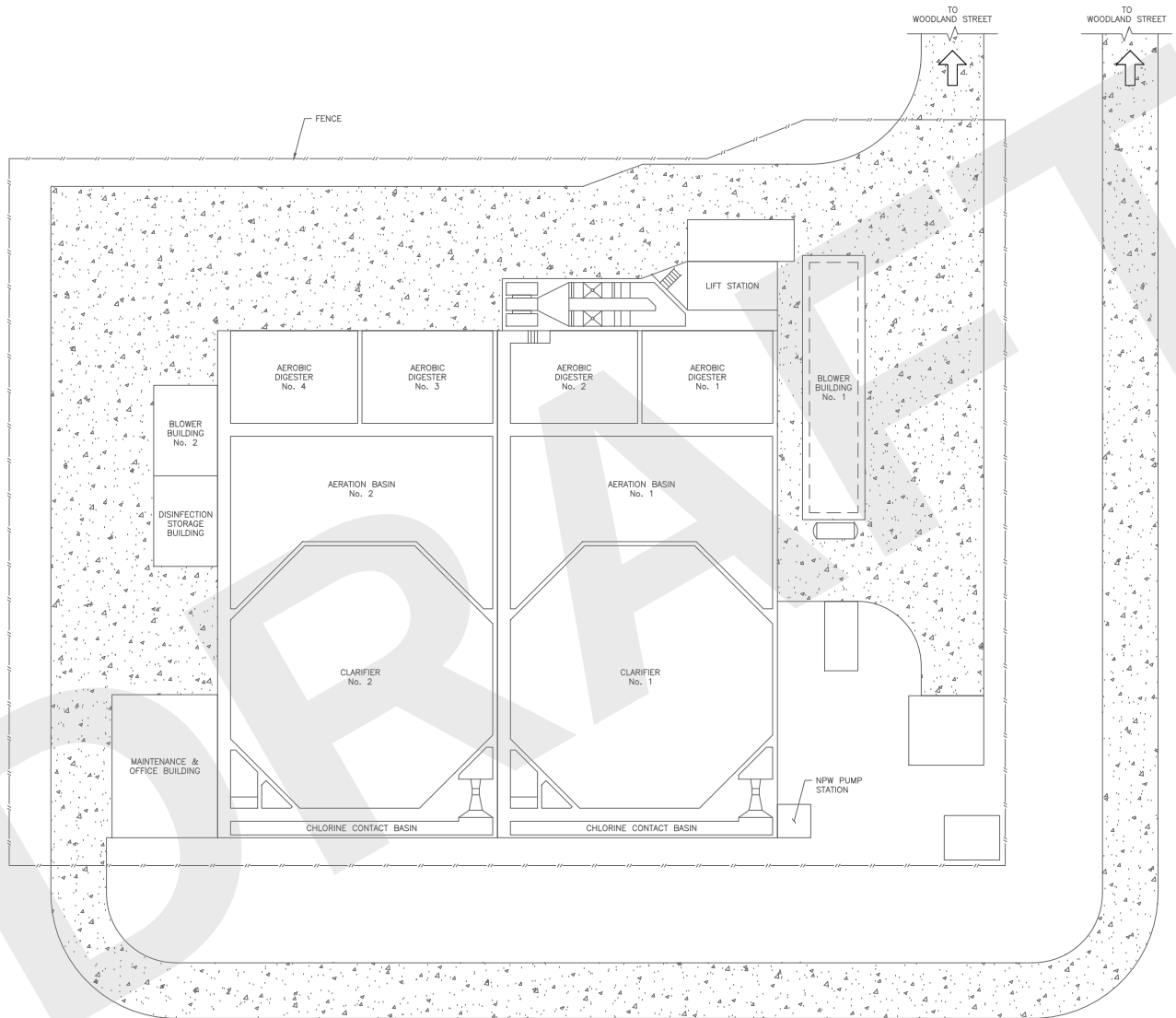
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OVERALL REGIONAL
WATER SYSTEM

APPENDIX E

SKETCH OF WASTEWATER PLANT



APPENDIX F

WATER RATES

ORDINANCE NO. O-2022-0018

AN ORDINANCE OF THE CITY OF LA MARQUE TEXAS AMENDING APPENDIX A, SCHEDULE OF FEES AND CHARGES OF THE CODE OF ORDINANCES, CITY OF LA MARQUE, TEXAS BY AMENDING PRESCRIBED WATER AND SEWER RATES.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA MARQUE TEXAS:

Section 1. That Appendix A, Schedule of Fees and Charges, Water and Sewer Rates, of the La Marque Code of Ordinances is hereby amended to read as follows:

APPENDIX A: SCHEDULE OF FEES AND CHARGES

Residential Water and Sewer Rates

INSIDE CITY LIMITS: The following rates shall apply to all residential customers of the city water and sewer system:

- (a) *Water Rates:* All residential customers, including single-family units, which shall include each mobile home whether located in a mobile home park or not and each unit of a duplex, triplex and apartments shall pay the following water rates per family unit:

For the first increment of water usage up to and including 1,000 gallons of water:

- (a) For residential and multi-family users \$12.50 plus \$1.64 per 1,000 gallons

For the increment of water usage from 1,001 gallons of water to 2,000 gallons:

- (b) For residential and multi-family users \$12.50 plus \$4.49 per 1,000 gallons plus

- (a) For the increment of water usage from 2,001 gallons of water to 5,000 gallons:

- (c) For residential and multi-family users \$12.50 plus \$5.32 per 1,000 gallons

For the increment of water usage from 5,001 gallons of water to 10,000 gallons:

- (a) For residential and multi-family users \$12.50 plus \$6.40 per 1,000 gallons

- (b) For the increment of water usage from 10,001 gallons of water and above:

- (d) For residential and multi-family users \$12.50 plus \$7.30 per 1,000 gallons

The minimum charge for each single-family and multi-family unit shall be \$12.50 per month which charge shall provide for and be applied to the payment of the bond, contract bond debt, and other fixed operating costs of the city sewer system. All

multiple unit customers such as apartments, mobile home parks, duplexes, etc., shall be charged the minimum charge of \$12.50 per month for each unit located in such apartment, mobile home park, or duplex so that by example if such apartment building contains ten apartments, the minimum monthly charge shall be \$125.00.

(b) *Sewer Rates*: All residential customers, including single-family units, which shall include each mobile home whether located in a mobile home park or not and each unit of a duplex, triplex and apartments shall pay the following sewer rates per family unit:

For the increment of sewer usage between 0 and 1,000 gallons:

(a) For residential and multi-family users \$21.23

For the increment of sewer usage between 1,001 gallons and above:

(b) For residential and multi-family users \$21.23 plus \$3.27 per 1000 gallons

Computation of the sewer rate charge shall be based upon consumption of metered water as read monthly by the city. Malfunctioning water meters that fails to register consumption average daily consumption as shown when metering operating properly.

OUTSIDE CITY LIMITS (RESIDENTIAL)

One and one-half times the charge applied inside the city limits for the same water usage.

Commercial Water and Sewer Rates

INSIDE CITY LIMITS

(a) *Water Rates*: The following rates shall apply to all commercial customers of the city water and sewer system:

For the first increment of water usage up to and including 1,000 gallons of water:

(e) For commercial users \$21.93 plus \$3.50 per 1,000 gallons

For the increment of water usage from 1,001 gallons of water to 2,000 gallons:

(f) For commercial users \$21.93 plus \$6.36 per 1,000 gallons plus

(b) For the increment of water usage from 2,001 gallons of water to 5,000 gallons:

(g) For commercial users \$21.93 plus \$8.31 per 1,000 gallons

For the increment of water usage from 5,001 gallons of water to 10,000 gallons:

(c) For commercial users \$21.93 plus \$10.74 per 1,000 gallons

(d) For the increment of water usage from 10,001 gallons of water and above:

(h) For commercial users \$21.93 plus \$14.90 per 1,000 gallons

The minimum charge commercial unit shall be \$21.93 per month which charge shall provide for and be applied to the payment of the bond, contract bond debt, and other fixed operating costs of the city sewer system.

(b) *Sewer Rates*: All commercial customers shall pay the following sewer rates per family unit:

For the increment of sewer usage between 0 and 1,000 gallons:

(a) For commercial users \$30.72;

For the increment of sewer usage between 1,001 gallons and 2,000 gallons:

(a) \$30.72 plus \$3.27 per 1000 gallons

Computation of the sewer rate charge shall be based upon consumption of metered water as read monthly by the city. Malfunctioning water meters that fails to register consumption average daily consumption as shown when metering operating properly.

OUTSIDE CITY LIMITS (COMMERCIAL)

One and one-half times the charge applied inside the city limits for the same water usage.

Section 2. This ordinance is intended to be cumulative and shall not repeal any provision of a previous ordinance or City Code provision, except to the extent that a provision is inconsistent and cannot be reconciled with this ordinance.

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

Section 4. Publication and Effective Date. This Ordinance shall be effective on the first utility billing date after final passage by City Council, a public hearing in accordance with Section 2.19 of the City Charter, and publication of this ordinance or a caption that summarizes the purpose of this ordinance.

PASSED AND APPROVED by the City Council of the City of La Marque on First Reading this 12th day of December, **2022**; and

PASSED, APPROVED AND ADOPTED by the City Council of the City of La Marque on Second and Final Reading this 23rd day of January, **2023**.

CITY OF LA MARQUE, TEXAS



Keith Bell, Mayor

ATTEST:



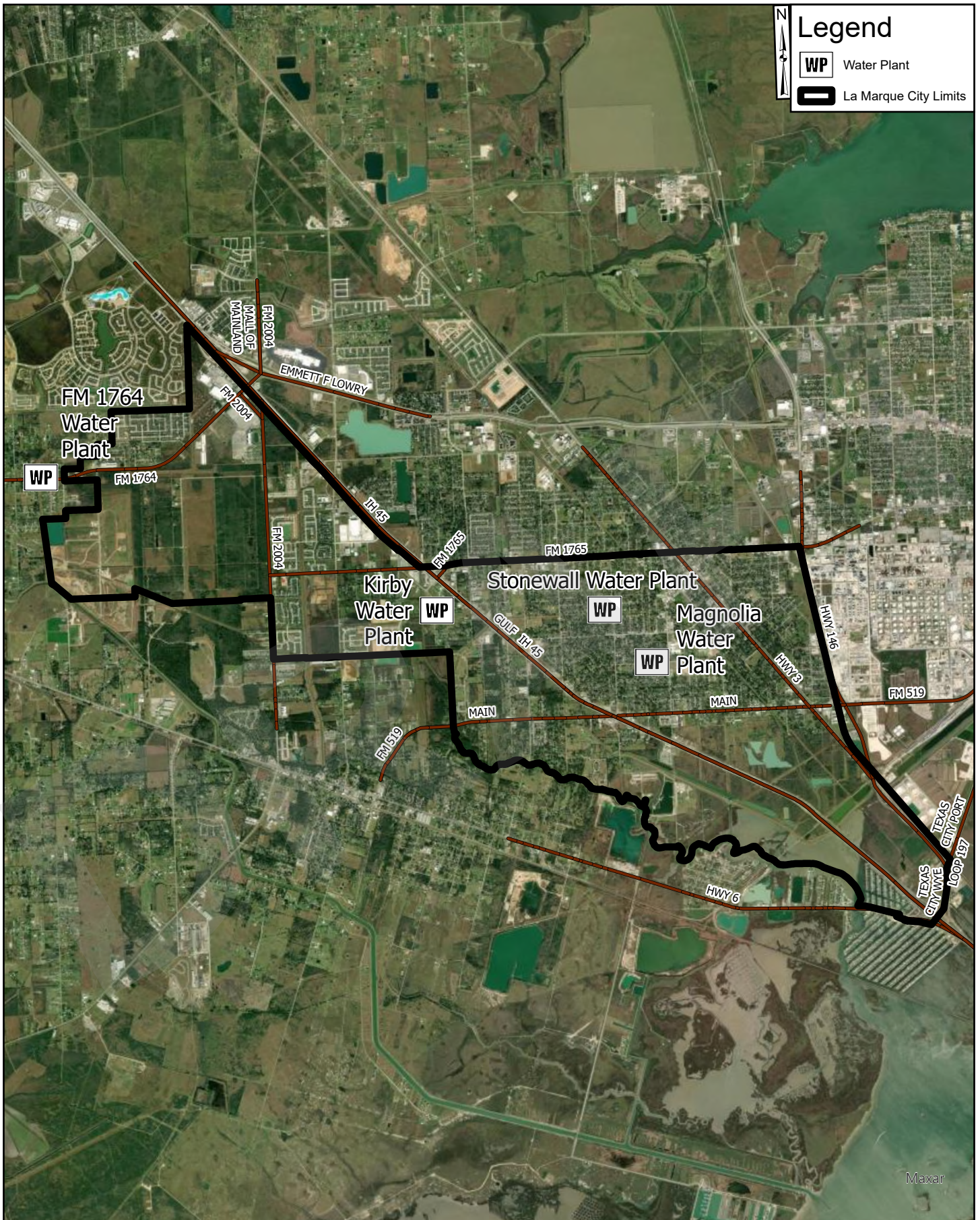
Kierra Nance, TRMC
City Clerk

APPROVED AS TO FORM:

Gus Knebel
Consulting City Attorney

APPENDIX G

MAP OF WATER PLANTS



N

WP

Water Plant

La Marque City Limits

APPENDIX H
ORDINANCE FOR ADOPTION OF
UPDATED WATER CONSERVATION PLAN

What/When to Submit

Submittals for Water Right Applications

An application for a new appropriation of State Water, an amendment to increase the appropriation of State Water, or an amendment to change the place or purpose of use, may require submittal of a WCP with your water rights application. The Water Right Application Forms will guide you as to whether a WCP is required for your particular application and will provide instructions on the requirements for your plan if one is required.

Five-Year WCP and WCIR Submittal

Under Texas Water Code Chapter 11 and Title 30 Texas Administrative Code Chapter 288, the following entities are required to develop, implement, and submit updated Water Conservation Plans and Water Conservation Implementation Reports to the TCEQ every five years:

Entity	Required plans and reports	Use	Form No.	Rules
Surface Water Rights holder w/ 1,000 acre-feet or more for municipal, industrial, and other non-irrigation uses	Submit WCP and WCIR to TCEQ Provide copy of WCP to TWDB	Municipal (for retail water suppliers)	10218, 20645	§288.2
		Municipal (for wholesale water suppliers)	20162, 20645	§288.5
		Industrial	20839, 20645	§288.3
		Mining	20840, 20645	§288.3
		Agriculture (non-irrigation)	10541, 20645	§288.4(a) (1)
		Other non-irrigation uses	Contact Staff	§288.6
Surface Water Right holder w/ 10,000 acre-feet or more for irrigation uses	Submit WCP and WCIR to TCEQ Provide copy of WCP to TWDB	Individual Irrigation	10238, 20645	§288.4(a) (2)
		System Providing Agricultural Water to More than One User	10244, 20645	§288.4(a) (3)



The current deadline to submit updated Water Conservation Plans and Water Conservation Implementation Reports to the TCEQ is May 1, 2024. The TCEQ recommends that these documents be submitted beginning January 1, 2024 via mail or email to the addresses provided below. Please include "Five Year Plan Submittal" in the subject line of your email or mailed letter.

Revised Water Conservation Plans

If a WCP is revised and adopted in between 5-year submittal deadlines, the updated WCP must be submitted to the TCEQ within 90 days of adoption. The revised plans must also include water conservation implementation reports.

Revised plans and implementation reports can be submitted via email or by mail to the TCEQ (contact information provided below). Please include "Revised WCP" in the subject line of your email or mailed letter.

TWDB Water Conservation Annual Report Submittal

Each entity that is required to submit an updated water conservation plan to the TCEQ or TWDB is also required to submit a water conservation annual report to TWDB by May 1st each year.

Information regarding the Water Conservation Annual Report submittal can be found on the **TWDB Conservation webpage** [↗](#).

What to Include

The TCEQ has developed guidance and model plans to help entities prepare plans and reports (below). Entities may use the model plans with their pertinent information included or submit their own plans and reports with all required information. Generally, if you follow the instructions/checklists on the forms provided, and consult the appropriate rules noted above, the requirements will be met.

Water Conservation Implementation Reports should be submitted on the forms provided below.

WCP Model Plans

Municipal Water Use by Public Water Supplier

- [W TCEQ-10218](#)

Wholesale Public Water Suppliers

- [W TCEQ-20162](#)

Industrial Use

- [W TCEQ-20839](#)

Mining Use



Best Management Practices for Municipal Water Providers

[The Complete Guide: BMPs for Municipal Water Providers](#)

- **Introduction to BMPs for Municipal Water Providers**

- [About BMPs for Municipal Water Providers](#)

- **Conservation Analysis and Planning**

- [Conservation Coordinator](#)
- [Cost Effective Analysis](#)
- [Water Survey for Single-Family and Multi-Family Customers](#)
- [Customer Characterization](#)

- **Financial**

- [Water Conservation Pricing](#)
- [Wholesale Agency Assistance Programs](#)

- **System Operations**

- [Metering of All New Connections and Retrofit of Existing Connections](#)
- [Utility Water Audit and Water Loss \(Updated 2020\)](#)

- **Landscaping**

- [Athletic Field Conservation](#)
- [Golf Course Conservation](#)
- [Landscape Irrigation Conservation and Incentives](#)
- [Park Conservation](#)
- [Residential Landscape Irrigation Evaluation](#)
- [Outdoor Watering Schedule](#)

- **Education & Public Awareness**

- [Public Information](#)
- [School Education](#)
- [Public Outreach & Education](#)
- [Partnerships with Nonprofit Organizations](#)

- **Rebate, Retrofit, and Incentive Programs**

- [Conservation Programs for ICI Accounts](#)
- [Residential Clothes Washer Incentive Program](#)
- [Residential Toilet Replacement Programs](#)
- [Showerhead, Aerator, and Toilet Flapper Retrofit](#)
- [Water Wise Landscape Design and Conversion Programs](#)
- [Custom Conservation Rebates](#)
- [Plumbing Assistance for Economically Disadvantaged Customers](#)

- **Conservation Technology**

- [New Construction Graywater](#)

- [Rainwater Harvesting and Condensate Reuse](#)
- [Water Reuse](#)

- **Regulatory & Enforcement**

- [Prohibition on Wasting Water](#)
- [Conservation Ordinance Planning and Development](#)
- [Enforcement of Irrigation Standards \(Adopted 2020\)](#)

1.0 Introduction

Water consumption by water utilities serving municipal water customers is driven by a wide variety of domestic, commercial, industrial and institutional needs. BMPs have been developed for utilities to both improve water use efficiency of their own operations and for programs to improve the efficiency of their customers.

It is important that water utilities focus on the efficiency of their supply operations while promoting water efficiency to their customers. A utility can reduce water loss through careful and regular monitoring of its water delivery systems through the System Water Audit and Water Loss BMP. In addition, the Water Conservation Pricing BMP can provide an effective method of encouraging water efficiency by the customer through feedback from the cost of the water to the user. The Prohibition on Water Wasting BMP can help send a message to users about the value of water as well as educate the general populace about simple steps to save water.

Despite the variety of water uses and numbers of water users, many patterns of water use, especially in domestic water use are common. As a result a number of conservation measures have been developed in municipal settings over the past several decades to reduce the total gallons consumed for daily activities without reducing the benefit of the water used. The Showerheads, Faucet Aerators and Toilet Flapper Retrofit BMP and the Residential Toilet Replacement Programs BMP focus on indoor water use. The Residential Clothes Washer Incentive Program BMP encourages the installation of water efficient clothes washers.

The School Education BMP affects water consumption through changes in behavior as students learn about water resources and the wise use of water. The Water Survey for Single-Family and Multi-Family Customers BMP educates customers about specific water saving opportunities as well as water wasting practices which may be present in their home or business.

Outdoor water uses driven by climatic differences, and water needs of different plants, and used for diverse purposes result in BMPs which are focused on good landscape management principles. The Landscape Irrigation Conservation and Incentives BMP focuses on water savings that can be obtained through efficient operation of automatic irrigation systems, while the Water Wise Landscape Design and Conversion Programs BMP focuses on landscape materials.

A utility can reduce water loss through careful and regular metering of water delivered to billed as well as unbilled water uses and through proper maintenance of meters as through the Metering of All New Connections and Retrofit of Existing Connections BMP. For agencies or utilities offering water to wholesale customers who in turn serve retail customers, the Wholesale Agency Assistance Programs BMP offers methods for promoting water conservation among the retail water utilities. In addition, the Conservation Coordinator BMP can provide an effective method of ensuring that the utility's conservation programs are well administered and

effective. The Reuse BMP outlines how utilities can make more efficient reuse of their existing supplies.

The Public Information BMP can affect water consumption through changes in behavior as customers learn about water resources, the wise use of water and the utility's conservation program. The Rainwater Harvesting/Condensate Reuse BMP focuses on water savings that can be obtained through capturing rainwater or the condensate from large cooling systems while the New Construction Graywater BMP focuses on reuse of water which has been used in washing clothes.

Commercial water uses also have a variety of practices and equipment that can benefit from efficiency measures. The Municipal BMPs also include those focused on good water use practices for Park Conservation and for Conservation Programs for Industrial, Commercial, and Institutional Accounts.

Best-management practices contained in the BMP Guide are voluntary efficiency measures that save a quantifiable amount of water, either directly or indirectly, and can be implemented within a specified timeframe. The BMPs are not exclusive of other meaningful conservation techniques that an entity might use in formulating a state-required water conservation plan. At the discretion of each user, BMPs may be implemented individually, in whole or in part, or be combined with other BMPs or other water conservation techniques to form a comprehensive water conservation program. The adoption of any BMP is entirely voluntary, although it is recognized that once adopted, certain BMPs may have some regulatory aspects to them (e.g. implementation of a local city ordinance).

RESOLUTION NO. R-2024-00[]

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LA MARQUE, TEXAS
EXPRESSING SUPPORT FOR THE CITY OF LA MARQUE, TEXAS'S APPLICATION TO THE
2023 ACTIVE TRANSPORTATION INFRASTRUCTURE INVESTMENT PROGRAM**

WHEREAS, the United States Department of Transportation issued a Notice of Funding Opportunity for communities to apply for funding assistance through the 2023 Active Transportation Infrastructure Investment Program.

WHEREAS, the City of La Marque, desires to apply to the 2023 Active Transportation Infrastructure Investment Program.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LA MARQUE, TEXAS, THAT:

1. The City of La Marque, Texas is willing to fund the local share of the applied for project if it is chosen for the 2023 Active Transportation Infrastructure Investment Program (including the preliminary engineering budget, if any, construction budget, the department's direct state cost for oversight, and the required local match, if any) and is willing to commit to the project's development, implementation, construction, maintenance, management, and financing. The City of La Marque, Texas is willing and able to enter into an agreement with the United States Department of Transportation by resolution or ordinance, should the applied for project be selected for funding.

PASSED AND APPROVED this ____ day of ____ 2024.

***** SIGNATURES ON NEXT PAGE *****

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CITY OF LA MARQUE, TEXAS

Keith Bell, Mayor

ATTEST:

Kierra Nance, TRMC, City Clerk



June 12, 2024

The Honorable Pete Buttigieg
Secretary of Transportation
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Buttigieg,

On behalf of the City of La Marque, I am writing to express our dedicated support for the project, “Connecting Rural Communities: Active Transportation Spine to Access Transit and Major Employers.” This initiative aims to enhance connectivity, safety, and accessibility for the residents of La Marque and the surrounding communities, including Texas City and Hitchcock.

The proposed project will develop shared-use paths, sidewalks, ADA ramps, and intersection improvements. These enhancements will make Delany Road and other key areas safer and more accessible for pedestrians, cyclists, and transit users. By providing reliable and ADA-accessible connections, this project will ensure that all individuals, regardless of mobility challenges, have safe and convenient access to transportation options.

The Active Transportation Spine will be a significant asset for our community. It will encourage more residents to engage in active transportation methods such as walking and cycling, promoting healthier lifestyles, and reducing traffic congestion. Additionally, the secure bike and pedestrian routes will provide safe access to nearby food and retail establishments, fostering economic growth and improving the quality of life for our residents.

The extensive landscaping and tree planting included in the project will enhance the aesthetic appeal of our neighborhoods, while contributing to community mobility and environmental sustainability. Overall, this project aligns with our goals of creating a more connected, healthy, and vibrant community.

If the City of La Marque qualifies for the Active Transportation Infrastructure Investment Program, we respectfully request consideration for 100% no-match funding for this project. However, if we are not eligible for full funding, the City of La Marque is willing to match 20% of the project costs for the portion within Delany Road. We are committed to supporting this vital project and look forward to the positive impact it will have on our community.

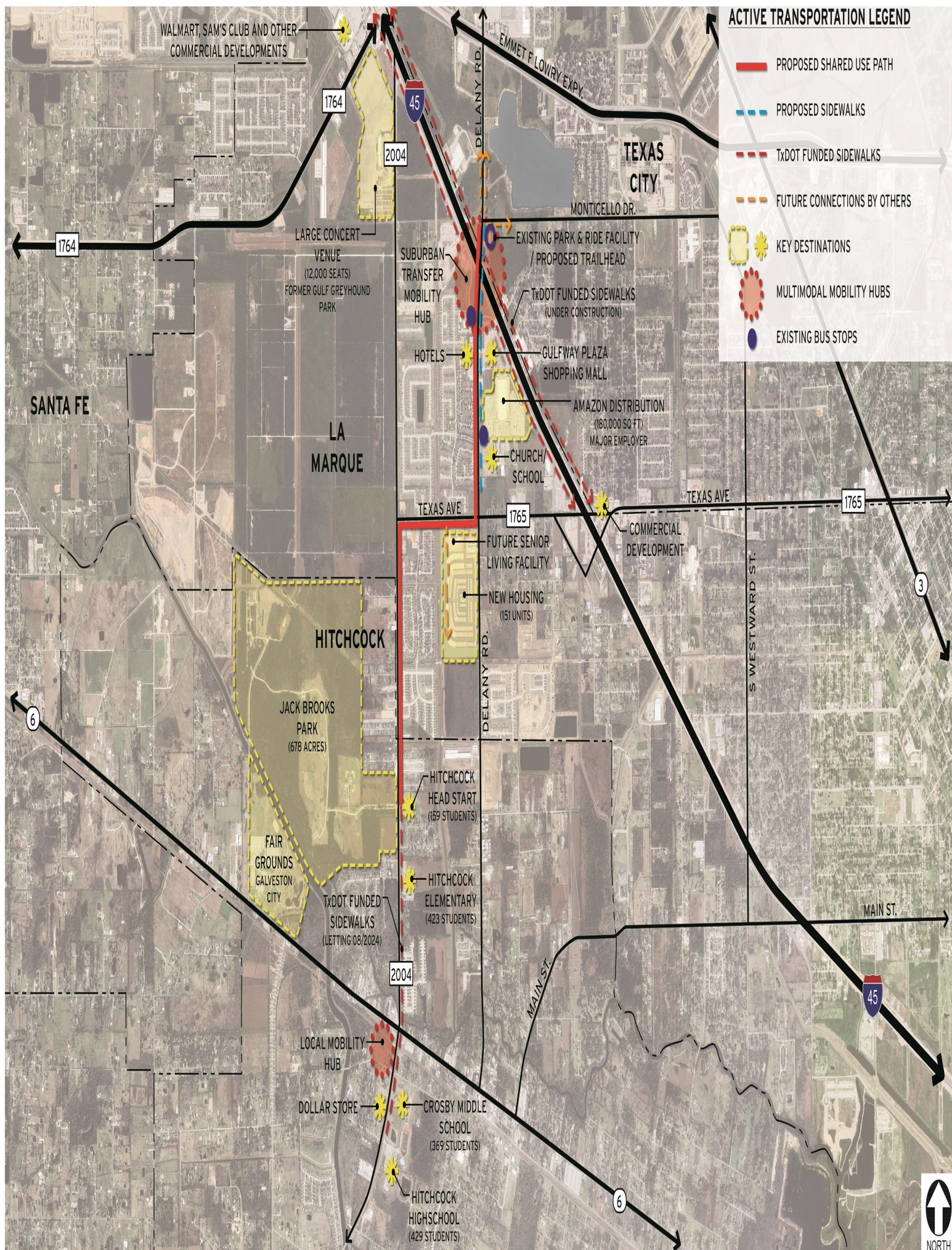
We believe that the enhanced connectivity and improved safety measures will foster economic growth, improve mobility, increase safe transportation routes, and provide the infrastructure for healthy, quality of life improvements for the residents of La Marque and surrounding areas.

Thank you for considering this important application. Should you have any questions or require further information, please do not hesitate to contact me at 409-938-9200.

Sincerely,

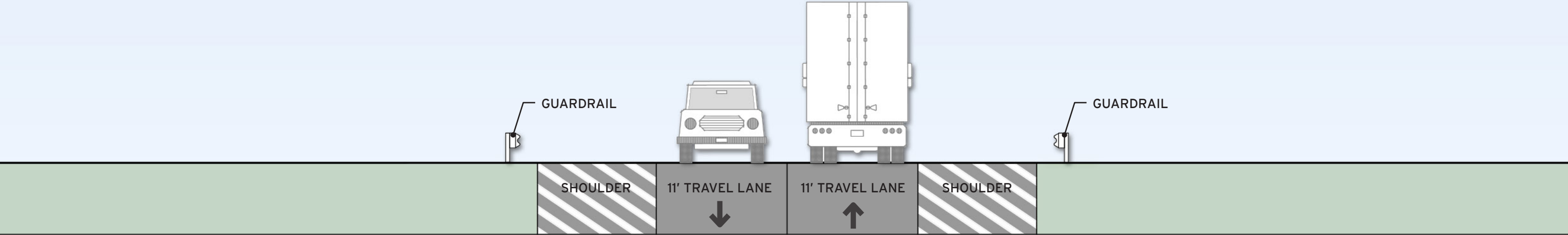
Honorable Keith Bell
Mayor
City of La Marque



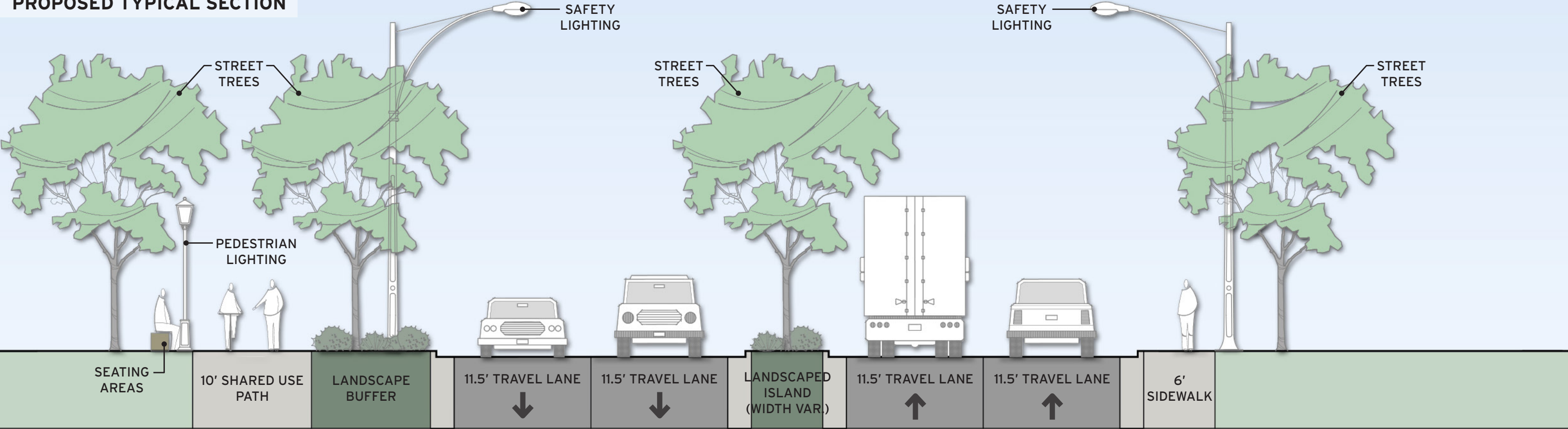


SOUTHEAST TRUCK PARKING SITE 04: CONNECTIVITY MASTER PLAN

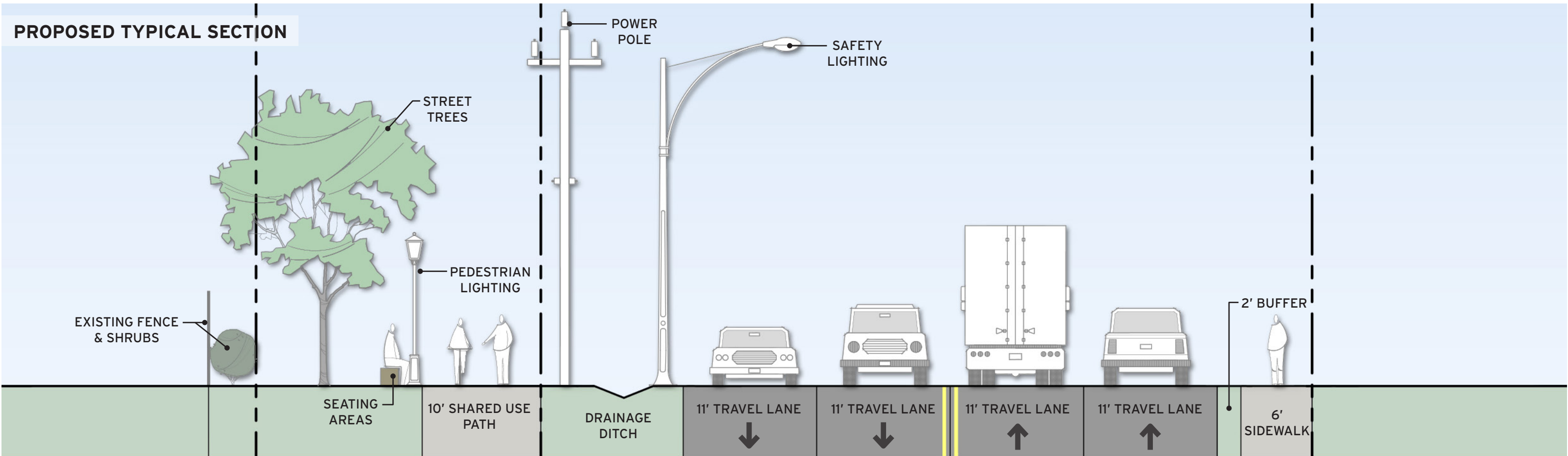
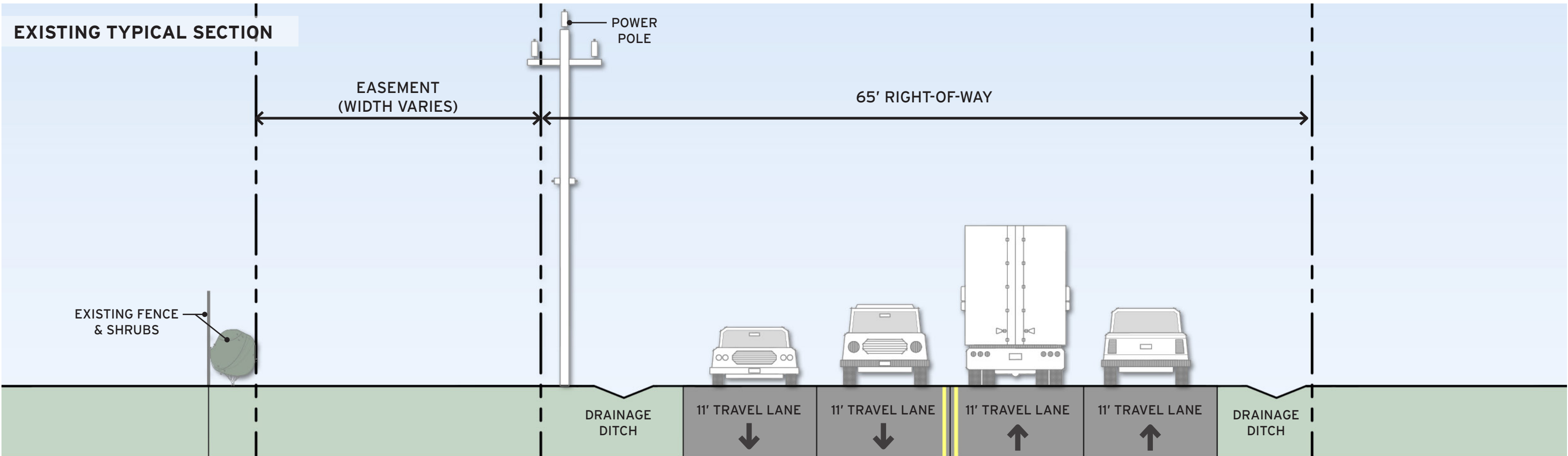
EXISTING TYPICAL SECTION



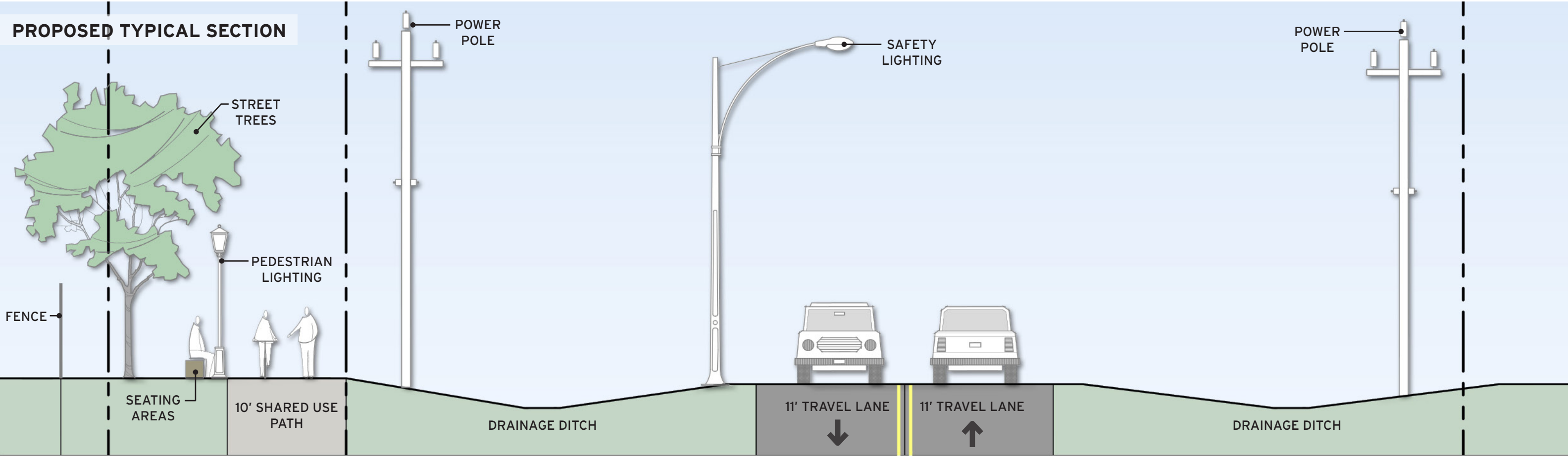
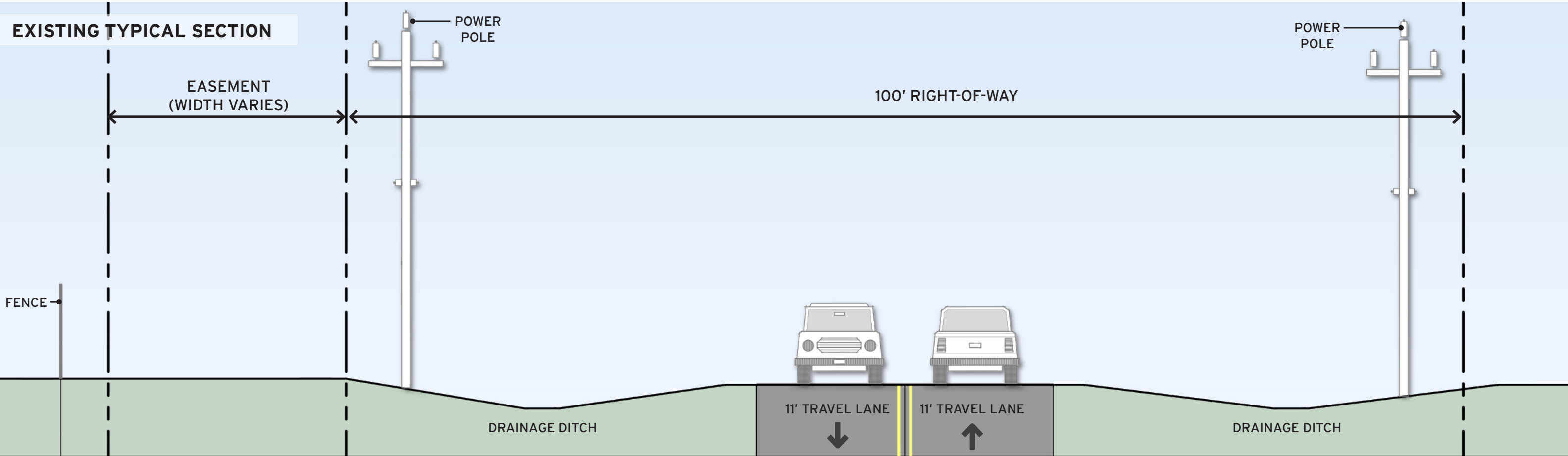
PROPOSED TYPICAL SECTION



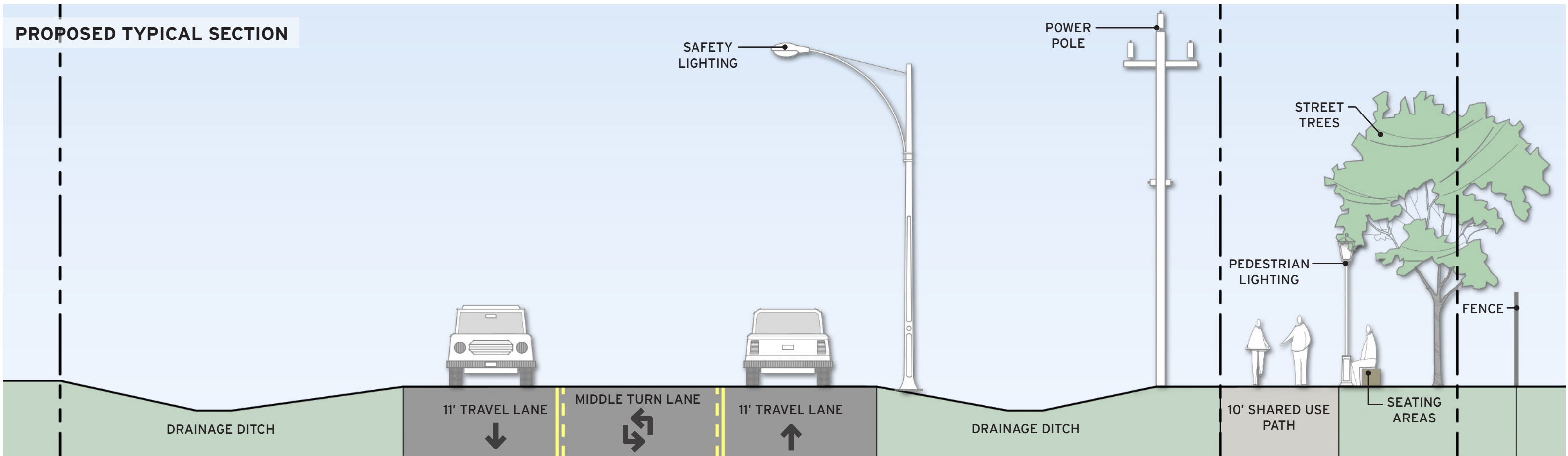
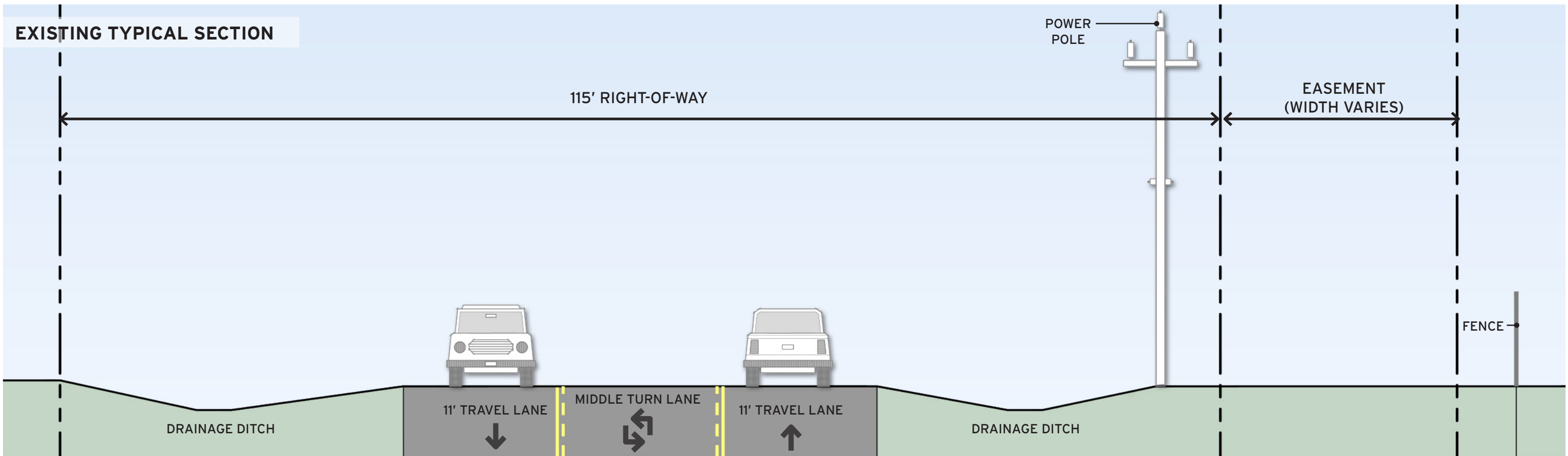
DELANY ROAD TYPICAL SECTIONS - TxDOT RIGHT-OF-WAY (LOOKING NORTH)



DELANY ROAD TYPICAL SECTIONS - LA MARQUE RIGHT-OF-WAY (LOOKING NORTH)



FM 1765 TYPICAL SECTIONS - TXDOT RIGHT-OF-WAY (LOOKING WEST)



FM 2004 TYPICAL SECTIONS - TXDOT RIGHT-OF-WAY (LOOKING NORTH)

PROJECT	GALVESTON SITE CONCEPT	
COUNTIES	GALVESTON COUNTY	
CSJ:		
FILE NAME:	La Marque ATIIIP Budget	
DESCRIPTION:	Grant - Active Transportation Spine	
LIMITS:	Delaney Rd from Monticello Dr to Fm 1765, FM 1765 from Delaney Rd to FM 2004, FM 2004 from FM 1765 to Highland Dr	
ESTIMATE BY:	TxDOT	
DATE:	06/24/2024	

BASE CONSTRUCTION ESTIMATE (2024)	\$ 14,999,492.71
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SUMMARY SHEET

MOBILITY HUB					
TRAIL HEAD					
CIVIL - TRAIL HEAD					
BID CODE	DESCRIPTION	UNITS	UNIT COST	EST. QUANTITY	TOTAL
100-6001	PREPARING ROW	AC	\$ 27,000.00	0.48	\$ 12,960.00
104-6001	REMOVING CONC (PAV)	SY	\$ 31.30	70	\$ 2,191.00
105-6014	REMOVING STAB BASE & ASPH PAV (7"-12")	SY	\$ 15.00	2500	\$ 37,500.00
132-6006	EMBANKMENT (FNL)(DENS CONT)(TY C)	CY	\$ 25.77	500	\$ 12,885.00
132-6035	EMBANK (FNL)(DC)(TY E)(CSBE)	CY	\$ 72.82	367	\$ 26,724.94
292-6017	ASPHALT STAB BASE (GR 4)(PG 64	TON	\$ 170.00	90	\$ 15,300.00
3076-6035	D-GR HMA TY-D PG64-22	TON	\$ 180.00	90	\$ 16,200.00
360-6006	CONC PVMT (CONT REINF - CRCP) (12")	SY	\$ 130.00	2100	\$ 273,000.00
SUBTOTAL CIVIL					\$ 396,760.94
LANDSCAPING					
162-6002	BLOCK SODDING	SY	\$ 7.00	100	\$ 700.00
166-6001	FERTILIZER	AC	\$ 1,360.81	0.02	\$ 27.22
192-6025	PLANT MATERIAL (45 GAL) (TREE)	EA	\$ 550.00	9	\$ 4950.00
SUBTOTAL LANDSCAPING					\$ 5,677.22
ILLUMINATION					
613-6004	HIGH MAST ASSEMBLY	EA	\$ 63,000.00	2	\$ 126,000.00
SUBTOTAL ILLUMINATION					\$ 126,000.00
STRUCTURAL					
SPECIAL	PEDESTRIAN SHELTER AND CANOPY	EA	\$ 80,000.00	1	\$ 80,000.00
SUBTOTAL STRUCTURAL					\$ 80,000.00
ADDITIONAL PARKING SUBTOTAL					\$ 608,438.16

SHARED USE PATH NETWORK					
CIVIL - SHARED USE PATH AND SIDEWALKS					
100-6001	PREPARING ROW	AC	\$ 27,000.00	6.94	\$ 187,380.00
110-6001	EXCAV (ROADWAY)	CY	\$ 25.00	840	\$ 21,000.00
132-6035	EMBANK (FNL)(DC)(TY E)(CSBE)	CY	\$ 65.00	840	\$ 54,600.00
360-6020	CONC PVMT (JOINTED - CPCD) (10")	SY	\$ 220.85	5040	\$ 1,113,084.00
531-6003	CONC SIDEWALKS (6")	SY	\$ 135.76	1000	\$ 135,760.00
531-7004	CURB RAMPS (TY 1) (6')	EA	\$ 3,500.00	9	\$ 31,500.00
531-7004	CURB RAMPS (TY 1) (10')	EA	\$ 3,700.00	13	\$ 48,100.00
SUBTOTAL CIVIL					\$ 1,591,424.00
LANDSCAPING					
162-6002	BLOCK SODDING	SY	\$ 7.00	27550	\$ 192,850.00
166-6001	FERTILIZER	AC	\$ 1,360.81	5.69	\$ 7,743.01
168-6001	VEGETATIVE WATERING	MG	\$ 333.90	0.68	\$ 227.05
192-6025	PLANT MATERIAL (30 GAL) (TREE)	EA	\$ 486.00	142	\$ 69,012.00

SUBTOTAL LANDSCAPING					\$ 269,832.06
ILLUMINATION					
610-6146	IN RD IL (TY SA) 30B-8 (250W EQ) LED	EA	\$ 4,031.16	35	\$ 141,090.60
613-6004	HIGH MAST ASSEMBLY FOR ITS	EA	\$ 63,000.00	1	\$ 63,000.00
SUBTOTAL ILLUMINATION					\$ 204,090.60
STRUCTURAL					
SPECIAL	AMENITY BUILDING WITH WITH RESTROOM	SF	\$ 250,000.00	1	\$ 250,000.00
SUBTOTAL STRUCTURAL					\$ 250,000.00
PAVEMENT MARKINGS					
6038-6013	MULTIPOLYMER PAV MRK (W)(24")(SLD)	LF	\$ 9.70	1730	\$ 16,781.00
SUBTOTAL PAVEMENT MARKINGS					\$ 16,781.00
MISCELLANEOUS					
644-6068	RELOCATE SM RD SN SUP&AM TY 10BWG	EA	\$ 706.11	25	\$ 17,652.75
SPECIAL	PED/BIKE COUNTERS	EA	\$ 69,000.00	2	\$ 138,000.00
SPECIAL	BIKE ROUTE SIGNAGE	LS	\$ 1,800.00	1	\$ 1,800.00
5032-6001	BIKE RACK (INSTALL)	EA	\$ 1,500.00	5	\$ 7,500.00
SPECIAL	RECREATIONAL AMENITIES (BENCHES, PICNIC TABLES)	LS	\$ 10,070.00	1	\$ 10,070.00
SUBTOTAL MISCELLANEOUS					\$ 175,022.75
SHARED USE PATH NETWORK SUBTOTAL					\$ 2,507,150.41

MEDIAN IMPROVEMENTS - DELANEY RD					
LANDSCAPING					
162-6002	BLOCK SODDING	SY	\$ 7.00	3710	\$ 25,970.00
166-6001	FERTILIZER	AC	\$ 1,360.81	0.77	\$ 1,047.82
168-6001	VEGETATIVE WATERING	MG	\$ 333.90	0.09	\$ 30.05
192-6025	PLANT MATERIAL (30 GAL) (TREE)	EA	\$ 486.00	29	\$ 14,094.00
SUBTOTAL LANDSCAPING					\$ 41,141.87
MEDIAN IMPROVEMENTS NETWORK SUBTOTAL					\$ 41,141.87
MOBILITY HUB SUBTOTAL					\$ 3,156,730.44
MOBILIZATION					
500-7001	MOBILIZATION	%	10%		\$ 315,673.04
SPECIAL	UTILITY	%	2%		\$ 63,134.61
SPECIAL	EROSION CONTROL	%	1%		\$ 31,567.30
SPECIAL	ENVIRONMENTAL & ENGINEERING	%	5%		\$ 157,836.52
SPECIAL	TRAFFIC CONTROL	%	2%		\$ 63,134.61
SUBTOTAL MOBILIZATION					\$ 631,346.09

ROADWAY IMPROVEMENTS					
DELANEY RD IMPROVEMENTS					
CIVIL					
100-6001	PREPARING ROW	AC	\$ 27,000.00	0.50	\$ 13,500.00
104-6017	REMOV CONC (DRIVEWAYS)	SY	\$ 31.30	641	\$ 20,063.30
104-6036	REMOVING CONC (SIDEWALK OR RAMP)	SY	\$ 30.00	350	\$ 10,500.00
104-6021	REMOV CONC (CURB)	LF	\$ 15.00	1000	\$ 15,000.00
110-6001	EXCAV (ROADWAY)	CY	\$ 25.00	670	\$ 16,750.00
132-6035	EMBANK (FNL)(DC)(TY E)(CSBE)	CY	\$ 72.82	777	\$ 56,581.14
360-6020	CONC PVMT (JOINTED - CPCD) (10")	SY	\$ 220.85	4022	\$ 888,258.70
530-6004	DRIVEWAYS (CONC)	SY	\$ 137.76	641	\$ 88,304.16
531-6003	CONC SIDEWALKS (6")	SY	\$ 135.76	1775	\$ 240,974.00
531-7004	CURB RAMPS (TY 1) (6')	EA	\$ 3,500.00	17	\$ 59,500.00
531-7005	CURB RAMPS (TY 1) (10')	EA	\$ 3,700.00	14	\$ 51,800.00
SUBTOTAL CIVIL					\$ 1,461,231.30
DRAINAGE					
400-6005	CEM STABIL BKFL	CY	\$ 215.00	23	\$ 4,945.00
402-6001	TRENCH EXCAVATION PROTECTION	LF	\$ 25.71	1100	\$ 28,281.00
464-6008	RC PIPE (CL III) (36 IN)	LF	\$ 219.89	1100	\$ 241,879.00
465-6168	INLET (COMPL)(TY A)	EA	\$ 4,973.18	2	\$ 9,946.36
465-6173	MANH (COMPL)(TY A)	EA	\$ 5,500.00	2	\$ 11,000.00
SUBTOTAL DRAINAGE					\$296,051.36

STRUCTURAL					
SPECIAL	INSTALL BUS PAD STRUCTURE	EA	\$ 17250.00	2	\$ 34,500.00
SUBTOTAL STRUCTURAL					\$ 34,500.00
LANDSCAPING					
162-6002	BLOCK SODDING	SY	\$ 7.00	4270	\$ 29,890.00
166-6001	FERTILIZER	AC	\$ 1,360.81	0.88	\$ 1,197.51
168-6001	VEGETATIVE WATERING	MG	\$ 333.90	0.11	\$ 36.73
192-6025	PLANT MATERIAL (30 GAL) (TREE)	EA	\$ 486.00	81	\$ 39,366.00
SUBTOTAL LANDSCAPING					\$ 70,490.24
ILLUMINATION					
610-6146	IN RD IL (TY SA) 30B-8 (250W EQ) LED	EA	\$ 4,031.16	18	\$ 72,560.88
6070-6004	LED LAMP UNIT (PED) (INSTALL)	EA	\$ 3,890.00	18	\$ 70,020.00
SUBTOTAL ILLUMINATION					\$ 142,580.88
PAVEMENT MARKINGS					
6038-6013	MULTIPOLYMER PAV MRK (W)(24")(SLD)	LF	\$ 9.70	400	\$ 3,880.00
SUBTOTAL PAVEMENT MARKINGS					\$ 3,880.00
MISCELLANEOUS					
SPECIAL	ATTAIN SHARED USE PATH EASEMENT	SF	\$ 6.00	54000	\$ 324,000.00
644-6068	RELOCATE SM RD SN SUP&AM TY 10BWG	EA	\$ 706.11	10	\$ 7,061.10
SPECIAL	BIKE ROUTE SIGNAGE	LS	\$ 1,800.00	1	\$ 1,800.00
644-6001	IN SM RD SN SUP&AM TY10BWG(1)SA(P)	EA	\$ 842.05	10	\$ 8,420.50
5032-6001	BIKE RACK (INSTALL)	EA	\$ 5,750.00	2	\$ 11,500.00
SPECIAL	RECREATIONAL AMENITIES (BENCHES, TRASH CANS)	LS	\$ 7,000.00	1	\$ 7,000.00
SUBTOTAL MISCELLANEOUS					\$ 359,781.60
DELANEY RD IMPROVEMENTS SUBTOTAL					\$ 2,368,515.38
MOBILIZATION					
500-7001	MOBILIZATION	%	10%		\$ 236,851.54
SPECIAL	UTILITY	%	2%		\$ 47,370.31
SPECIAL	EROSION CONTROL	%	1%		\$ 23,685.15
SPECIAL	ENVIRONMENTAL & ENGINEERING	%	5%		\$ 118,425.77
SPECIAL	TRAFFIC CONTROL	%	2%		\$ 47,370.31
SUBTOTAL MOBILIZATION					\$ 473,703.08
TEXAS AVE (FM 1765) IMPROVEMENTS					
CIVIL					
100-6001	PREPARING ROW	AC	\$ 27,000.00	0.50	\$ 13,500.00
104-6017	REMOV CONC (DRIVEWAYS)	SY	\$ 31.30	130	\$ 4,069.00
104-6036	REMOV CONC (CURB RAMP)	SY	\$ 30.00	340	\$ 10,200.00
104-6021	REMOV CONC (CURB)	LF	\$ 15.00	666	\$ 9,990.00
110-6001	EXCAV (ROADWAY)	CY	\$ 25.00	541	\$ 13,525.00
132-6035	EMBANK (FNL)(DC)(TY E)(CSBE)	CY	\$ 72.82	562	\$ 40,924.84
360-6020	CONC PVMT (JOINTED - CPCD)(10')	SY	\$ 220.85	3244	\$ 716,437.40
530-6004	DRIVEWAYS (CONC)	SY	\$ 137.76	130	\$ 17,908.80
531-7005	CURB RAMPS (TY 1) (10')	EA	\$ 3,500.00	9	\$ 31,500.00
SPECIAL	TRAFFIC SIGNAL ASSEMBLY	EA	\$ 250,000.00	1	\$ 250,000.00
SUBTOTAL CIVIL					\$ 1,108,055.04
DRAINAGE					
400-7005	CEM STABIL BKFL	CY	\$ 215.00	490	\$ 105,350.00
402-7001	TRENCH EXCAVATION PROTECTION	LF	\$ 25.71	700	\$ 17,997.00
464-7008	RC PIPE (CL III) (36 IN)	LF	\$ 219.89	700	\$ 153,923.00
465-7167	INLET (COMPL)(TY A)	EA	\$ 4,973.18	2	\$ 9,946.36
465-7173	MANH (COMPL)(TY A)	EA	\$ 5,500.00	2	\$ 11,000.00
SUBTOTAL DRAINAGE					\$298,216.36
STRUCTURAL					
423-6001	RETAINING WALL (MSE)	SF	\$ 113.72	2100	\$ 238,812.00
4196-6002	PREFAB PED STL TRUSS BRG SPAN (130 FT)	EA	\$ 275,000.00	1	\$ 275,000.00
SUBTOTAL STRUCTURAL					\$ 513,812.00
LANDSCAPING					
162-7002	BLOCK SODDING	SY	\$ 7.00	2300	\$ 16,100.00

166-7001	FERTILIZER	AC	\$ 1,360.81	0.48	\$ 653.19
168-7001	VEGETATIVE WATERING	TGL	\$ 333.90	0.06	\$ 20.03
192-7040	PLANT MATERIAL (30 GAL) (TREE)	EA	\$ 486.00	71	\$ 34,506.00
SUBTOTAL LANDSCAPING					\$ 51,279.22
ILLUMINATION					
610-6146	IN RD IL (TY SA) 30B-8 (250W EQ) LED	EA	\$ 4,031.16	35	\$ 141,090.60
6070-6004	LED LAMP UNIT (PED) (INSTALL)	EA	\$ 3,890.00	35	\$ 136,150.00
SUBTOTAL ILLUMINATION					\$ 277,240.60
PAVEMENT MARKINGS					
6038-6013	MULTIPOLYMER PAV MRK (W)(24")(SLD)	LF	\$ 9.70	400	\$ 3,880.00
SUBTOTAL PAVEMENT MARKINGS					\$ 3,880.00
MISCELLANEOUS					
SPECIAL	ATTAIN SHARED USE PATH EASEMENT	SF	\$ 6.00	46500	\$ 279,000.00
644-6068	RELOCATE SM RD SN SUP&AM TY 10BWG	EA	\$ 706.11	10	\$ 7,061.10
SPECIAL	BIKE ROUTE SIGNAGE	LS	\$ 1,800.00	1	\$ 1,800.00
644-7001	IN SM RD SN SUP&AM TY10BWG(1)SA(P)	EA	\$ 842.05	10	\$ 8,420.50
5032-6001	BIKE RACK (INSTALL)	EA	\$ 1,500.00	2	\$ 3,000.00
SUBTOTAL MISCELLANEOUS					\$ 299,281.60
TEXAS AVE (FM 1765) IMPROVEMENTS SUBTOTAL					\$ 2,551,764.82
MOBILIZATION					
500-7001	MOBILIZATION	%	10%		\$ 255,176.48
SPECIAL	UTILITY	%	2%		\$ 51,035.30
SPECIAL	EROSION CONTROL	%	1%		\$ 25,517.65
SPECIAL	ENVIRONMENTAL & ENGINEERING	%	5%		\$ 127,588.24
SPECIAL	TRAFFIC CONTROL	%	2%		\$ 51,035.30
SUBTOTAL MOBILIZATION					\$ 510,352.96
FM 2004 IMPROVEMENTS					
CIVIL					
100-7001	PREPARING ROW	AC	\$ 27,000.00	0.50	\$ 13,500.00
104-7011	REMOV CONC (DRIVEWAYS)	SY	\$ 31.22	200	\$ 6,244.00
104-7016	REMOV CONC (CURB)	LF	\$ 15.00	666	\$ 9,990.00
110-7001	EXCAV (ROADWAY)	CY	\$ 25.00	704	\$ 17,600.00
132-7036	EMBANK (FNL)(DC)(TY E)(CSBE)	CY	\$ 72.82	737	\$ 53,668.34
360-7094	CONC PVMT (JOINTED - CPCD)(10')	SY	\$ 220.85	4222	\$ 932,428.70
530-7004	DRIVEWAYS (CONC)	SY	\$ 137.76	200	\$ 27,552.00
531-7005	CURB RAMPS (TY 1) (10')	EA	\$ 3,500.00	17	\$ 59,500.00
SUBTOTAL CIVIL					\$ 1,120,483.04
DRAINAGE					
400-7005	CEM STABIL BKFL	CY	\$ 215.00	1670	\$ 359,050.00
402-7001	TRENCH EXCAVATION PROTECTION	LF	\$ 25.71	2400	\$ 61,704.00
464-7008	RC PIPE (CL III) (36 IN)	LF	\$ 219.89	2400	\$ 527,736.00
465-7167	INLET (COMPL)(TY A)	EA	\$ 4,973.18	4	\$ 19,892.72
465-7173	MANH (COMPL)(TY A)	EA	\$ 5,500.00	4	\$ 22,000.00
SUBTOTAL DRAINAGE					\$990,382.72
STRUCTURAL					
423-7001	RETAINING WALL (MSE)	SF	\$ 113.72	2100	\$ 238,812.00
4196-6004	PREFAB PED STL TRUSS BRG SPAN (40 FT)	EA	\$ 161,000.00	1	\$ 161,000.00
SUBTOTAL STRUCTURAL					\$ 399,812.00
LANDSCAPING					
162-7002	BLOCK SODDING	SY	\$ 7.00	3930	\$ 27,510.00
166-7001	FERTILIZER	AC	\$ 1,360.81	0.81	\$ 1,102.26
168-7001	VEGETATIVE WATERING	TGL	\$ 333.90	0.10	\$ 33.39
192-7040	PLANT MATERIAL (30 GAL) (TREE)	EA	\$ 486.00	118	\$ 57,348.00
SUBTOTAL LANDSCAPING					\$ 85,993.65
ILLUMINATION					
610-7003	RELOCATE RD IL ASM (CTB MOUNT)	EA	\$ 4,500.00	2	\$ 9,000.00
610-7056	IN RD IL (TY SA) 30B-8 (250W EQ) LED	EA	\$ 4,031.16	45	\$ 181,402.20
6070-6004	LED LAMP UNIT (PED) (INSTALL)	EA	\$ 3,890.00	47	\$ 182,830.00

SUBTOTAL ILLUMINATION					\$ 373,232.20
PAVEMENT MARKINGS					
6038-6013	MULTIPOLYMER PAV MRK (W)(24")(SLD)	LF	\$ 9.70	300	\$ 2,910.00
SUBTOTAL PAVEMENT MARKINGS					\$ 2,910.00
MISCELLANEOUS					
SPECIAL	ATTAIN SHARED USE PATH EASEMENT	SF	\$ 6.00	48000	\$ 288,000.00
560-6025	RELOCATING EXISTING MAILBOX	EA	\$ 470.00	2	\$ 940.00
644-6068	RELOCATE SM RD SN SUP&AM TY 10BWG	EA	\$ 640.00	8	\$ 5,120.00
SPECIAL	BIKE ROUTE SIGNAGE	LS	\$ 1,800.00	1	\$ 1,800.00
644-7001	IN SM RD SN SUP&AM TY10BWG(1)SA(P)	EA	\$ 820.00	10	\$ 8,200.00
682-6018	PED SIG SEC (LED)(COUNTDOWN)	EA	\$ 1001.13	2	\$ 2,002.26
687-6001	PED POLE ASSEMBLY	EA	\$ 3,215.98	2	\$ 6,431.96
5032-6001	BIKE RACK (INSTALL)	EA	\$ 1,500.00	2	\$ 3,000.00
SUBTOTAL MISCELLANEOUS					\$ 315,494.22
FM 2004 IMPROVEMENTS SUBTOTAL					\$ 3,288,307.83
MOBILIZATION					
500-7001	MOBILIZATION	%	10%		\$ 328,830.78
SPECIAL	UTILITY	%	2%		\$ 65,766.16
SPECIAL	EROSION CONTROL	%	1%		\$ 32,883.08
SPECIAL	ENVIRONMENTAL & ENGINEERING	%	5%		\$ 164,415.39
SPECIAL	TRAFFIC CONTROL	%	2%		\$ 65,766.16
SUBTOTAL MOBILIZATION					\$ 657,661.57
BASE CONSTRUCTION COST ESTIMATE TOTAL					\$ 13,638,382.17
CONTINGENCY - 10%					
Premium Charged for Accelerated / Special Projects or		10%			\$ 1,361,110.54

BASE CONSTRUCTION COST ESTIMATE (2024)	\$ 14,999,492.71
BASE CONSTRUCTION COST ESTIMATE (2025) - ASSUME 3% INFLATION	\$ 15,449,477.49
BASE CONSTRUCTION COST ESTIMATE (2026) - ASSUME 3% INFLATION	\$ 15,912,961.81
BASE CONSTRUCTION COST ESTIMATE (2027) - ASSUME 3% INFLATION	\$ 16,390,350.67

	80%	20%
	ATIIP	Match
TxDOT	\$ 9,498,896.68	\$ 2,374,724.17
La Marque	\$ 2,500,697.49	\$ 625,174.37
Total	\$ 11,999,594.17	\$ 2,999,898.54

In This Section



Active Transportation Infrastructure Investment Program (ATIIP)

General Grant Program Information

The [Active Transportation Infrastructure Investment Program](#) (ATIIP) is a new competitive grant program created by the Bipartisan Infrastructure Law to construct projects to provide safe and connected active transportation facilities in active transportation networks or active transportation spines.

ATIIP projects will help improve the safety, efficiency, and reliability of active transportation networks and communities; improve connectivity between active transportation modes and public transportation; enhance the resiliency of on- and off-road active transportation infrastructure; help protect the environment; and improve quality of life in disadvantaged communities through the delivery of connected active transportation networks and expanded mobility opportunities.

Opportunity Status:

Open

Posted Date:

03/19/2024

Close Date:

06/17/2024

Eligible Applicants:

State Governments; Local Governments; Federally Recognized Tribes and Affiliated Groups; Planning and Project Organizations; U.S. Territories

Eligible Activities:

Planning; Construction

Transportation Type:

Bike/Ped; Roadway

Most Recent Annual Program Funding Amount:

\$44,550,000

Annual Award Amount:

\$100,000 - \$15,000,000

Cost Sharing or Matching Requirement:

Yes

Match Waiver:

No

Rural Set-Aside:

No

Tribal Set-Aside:

No

Grant Opportunity ID:

693JJ324NF00012

Grant Opportunity Link:

[Grants.gov Opportunity: Active Transportation Infrastructure Investment Program](#)

Links to Additional Information:

[FHWA Active Transportation Infrastructure Investment Program \(ATIIP\).](#)

[Press Release: Biden-Harris Administration Announces Nearly \\$45 Million in Available Funds to Improve Bicyclist and Pedestrian Connectivity and Safety.](#)

Agency:

USDOT / Federal Highway Administration (FHWA)

Eligibility Information

Eligible Applicants

Eligible applicants for ATIIP include the following:

- A local or regional governmental organization, including a metropolitan planning organization or regional planning organization or council
- A multicounty special district
- A State
- A multistate group of governments
- An Indian Tribe

Eligible Uses

As part of the program, FHWA will award competitive grants to help communities plan, design, and construct safe and connected active transportation networks such as sidewalks, bikeways, and trails that connect destinations such as schools, workplaces, residences, businesses, recreation areas, and medical facilities within a community or metropolitan region.

Grants will also be provided for projects used for trails, pedestrian facilities, bikeways, and other routes that serve as backbones to connect two or more communities, metropolitan regions, or states.

ATIIP also provides an opportunity for eligible organizations to enhance their overall transportation network by integrating active transportation facilities with transit services, where available, to improve access to public transportation.

Funding Information

This Notice of Funding Opportunity will result in the distribution of up to \$44,550,000 for two different categories of grants:

1. Planning and Design Grants
2. Construction Grants

FHWA will award **Planning and Design grants** for eligible applicants to develop plans for active transportation networks and active transportation spines. Projects seeking Planning and Design grants must have planning and design costs of **at least \$100,000** to be eligible.

FHWA will award **Construction grants** to eligible applicants to construct projects to provide safe and connected active transportation facilities in an active transportation network or active transportation spine. Projects seeking Construction grants must have total costs of **at least \$15 million** to be eligible.

The Federal share of the cost of an eligible project carried out using an ATIIP grant shall not exceed **80 percent** of the total project cost. However, for eligible projects serving communities with a **poverty rate of over 40 percent** based on the majority of census tracts served by the eligible project, the Federal share may increase up to **100 percent** of the total project cost.

Contact Information

Kenan Hall
Agreement Specialist
202-366-1533
ATIIP@dot.gov

Disclaimer:

The Dashboard provides users with a high-level overview of relevant Federal discretionary grant programs. The information in the Dashboard is maintained as a secondary resource and may not be updated with the most recent changes to each program's primary guidance materials. Accordingly, please refer to the Federal grant-making agency for the most comprehensive and up-to-date information on a grant opportunity in the Dashboard.

Last updated Date: Thursday, March 28, 2024



U.S. DEPARTMENT OF TRANSPORTATION
1200 New Jersey Avenue, SE
Washington, DC 20590
855-368-4200

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U.S. DEPARTMENT OF TRANSPORTATION
Federal Highway Administration

Notice of Funding Opportunity for Fiscal Year 2023 Active Transportation Infrastructure Investment Program

AGENCY: U.S. Department of Transportation (DOT), Federal Highway Administration (FHWA).

ACTION: Notice of Funding Opportunity

SUMMARY:

The purpose of this Notice of Funding Opportunity (NOFO) is to solicit applications for Fiscal Year (FY) 2023 Active Transportation Infrastructure Investment Program (ATIIP) grants and will result in the distribution of up to \$44,550,000. The actual amount available to be awarded under this NOFO will be subject to the availability of funds.

Funds made available for FY 2023 for ATIIP are to be awarded on a competitive basis to construct eligible projects to provide safe and connected active transportation facilities in an active transportation network or active transportation spine. *See* Section 11529(a) of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117-58). This NOFO describes the application requirements, selection and evaluation criteria, applicable program and Federal requirements, and available technical assistance during the grant solicitation period.

DATES:

Applications must be submitted electronically through grants.gov no later than 11:59 p.m., Eastern Standard Time, on Monday, June 17, 2024 (the “application deadline”). Applicants are encouraged to submit applications in advance of the application deadline; however, applications will not be evaluated, and awards will not be made, until after the application deadline.

FHWA plans to conduct outreach regarding ATIIP in the form of a virtual meeting on Tuesday, April 9, 2024, at 11:00 a.m. Eastern Standard Time. To join the Webinar, and to get teleconference line information for the audio portion of the Webinar, follow the instructions posted on https://www.fhwa.dot.gov/environment/bicycle_pedestrian/atiip/. The Webinar will be recorded and posted on FHWA’s Website at https://www.fhwa.dot.gov/environment/bicycle_pedestrian/atiip/. A Telephone Device for the Deaf (TDD) is available for individuals who are deaf or hard of hearing at (202) 366-3993.

There will be an additional virtual meeting for Tribal nations on Wednesday, April 10, 2024, at 9:00 a.m. Eastern Standard Time. To join the Webinar, and to get teleconference line information for the audio portion of the Webinar, follow the instructions posted on https://www.fhwa.dot.gov/environment/bicycle_pedestrian/atiip/. The Webinar will be recorded and posted on FHWA’s Website at

https://www.fhwa.dot.gov/environment/bicycle_pedestrian/atiip/. A Telephone Device for the Deaf (TDD) is available for individuals who are deaf or hard of hearing at (202) 366-3993.

ADDRESSES:

Applications must be submitted electronically through grants.gov. Refer to Catalog of Federal Domestic Assistance Number: 20.205.

FOR FURTHER INFORMATION CONTACT:

Kenan Hall
Agreement Specialist
Office of Acquisition and Grants Management
Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE.
Washington, DC 20590
Email: ATIIP@dot.gov (preferred)
Phone: 202-366-1533

Alternate:

Hector Santamaria
Agreement Officer/Team Leader
Office of Acquisition and Grants Management
Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE.
Washington, DC 20590
Email: ATIIP@dot.gov (preferred)
Phone: 202-493-2402

Office hours are from 7:30 a.m. to 4:00 p.m., Eastern Standard Time, Monday through Friday, except Federal holidays.

FHWA will not review applications in advance, but FHWA staff are available for general questions about ATIIP and this NOFO. FHWA will not provide technical assistance for specific applications, including providing guidance on how to address any information that should be included in an application. However, FHWA will respond to, and publicly post, questions received about this NOFO; the deadline to submit technical questions and requests for clarification is Friday, May 3, 2024. FHWA intends to post answers to questions and requests for clarification at https://www.fhwa.dot.gov/environment/bicycle_pedestrian/atiip/ and on FHWA's BIL Guidance Website at [Bipartisan Infrastructure Law – Guidance | Federal Highway Administration \(dot.gov\)](#). To ensure applicants receive accurate information about eligibility or the program, each applicant is encouraged to contact FHWA directly, rather than through intermediaries or third parties, with questions.

SUPPLEMENTARY INFORMATION:

Each section of this NOFO contains information and instructions relevant to the application process for ATIIP grants. The applicant should read this NOFO in its entirety so that they have the information they need to submit eligible and competitive applications.

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This NOFO contains collection of information requirements subject to the Paperwork Reduction Act. The use of Standard Forms (SF) 424, 424A, 424B, 424C, 424D, and SF-LLL has been approved by the Office of Management and Budget (OMB) under 2105-0520. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failures to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

FHWA uses www.grants.gov for receipt of all applications. Applicants must register and use the system to submit applications electronically. Applicants are encouraged to register in advance of the submission deadline and to register to receive notifications of updates/amendments to this NOFO. Approval of user registrations for the site may take multiple weeks. It is the Applicant's responsibility to monitor the grants.gov site for any updates/amendments to this NOFO.

A. Program Description

1. Overview

Section 11529 of BIL established ATIIP to provide discretionary grants to eligible entities to plan, design, and construct eligible projects that provide safe and connected active transportation infrastructure in an active transportation network or active transportation spine (BIL § 11529(a)).

Active transportation networks are facilities built for active transportation, including sidewalks, bikeways, and pedestrian and bicycle trails, that connect between destinations within a community or metropolitan region (BIL § 11529(l)(2)). An active transportation network can include a sidewalk network, bike lane network, or shared use path network within a community and must connect between destinations within a community or metropolitan region, such as by connecting neighborhoods and residences to high-demand destinations like schools, workplaces, commercial centers, recreation areas, medical centers, or other community areas.

Active transportation spines are facilities built for active transportation, including sidewalks, bikeways, and pedestrians and bicycle trails, that connect between communities, metropolitan regions, or States (BIL § 11529(l)(3)). An active transportation spine can include a rail trail or rail-with-trail, walking path, or bike route and must connect between two or more communities, metropolitan regions, or States. An active transportation spine can be considered a backbone or primary active transportation route through a particular area or region.

Active transportation means mobility options that are powered primarily by human energy (BIL § 11529(l)(1)). These include bicycling and walking and may include, depending on whether the activity is powered primarily by human energy, scooting, skating, or using wheelchairs and other mobility devices. While active transportation does not include electric micromobility options that are not powered primarily by human energy (e.g., e-scooters or certain e-bikes), active transportation spines and networks may accommodate some electric micromobility options and power wheelchairs.

This NOFO will result in the distribution of up to \$44,550,000¹ for two different categories of grants: (1) Planning and Design Grants and (2) Construction Grants. For more information about the eligible activities that can be funded with each type of grant, see Section C of this NOFO.

The ATIIP projects will help improve the safety, efficiency, and reliability of active transportation networks and communities; improve connectivity between active transportation modes and public transportation; enhance the resiliency of on- and off-road active transportation infrastructure and help protect the environment; and improve quality of life in disadvantaged communities through the delivery of connected active transportation networks and expanded mobility opportunities.

¹ Section 11529(j) authorizes to be appropriated \$200,000,000 for each of FYs 2022 through 2026. The Consolidated Appropriations Act, 2023 (Pub. L. 117-328) first appropriated \$45,000,000 for ATIIP. Pursuant to Section 11529(d)(3), which allows FHWA to set aside not more than \$2,000,000 of appropriated ATIIP funds to cover the costs of administration, research, technical assistance, communications, and training activities under ATIIP, FHWA set aside \$450,000, leaving \$44,550,000 available for grants.

The ATIIP grants will allow communities to identify, prioritize, and implement improvements to the largest barriers to **safe, accessible, and equitable pedestrian and bicycle network** connectivity through the development of infrastructure that will provide substantial additional opportunities for walking and bicycling. Eligible organizations will be able to create plans or implement *active transportation networks* that connect destinations within or between communities or create plans or implement an *active transportation spine* connecting two or more communities, metropolitan regions, or States. The ATIIP also provides an opportunity for eligible organizations to enhance their overall transportation network by integrating active transportation facilities with transit services, where available, to improve access to public transportation.

2. Administration Priorities and Departmental Strategic Plan Goals

The DOT seeks to fund projects that advance the Departmental priorities of safety, equity, climate and sustainability, and workforce development, job quality, and wealth creation as described in the [DOT Strategic Plan, Research, Development and Technology Strategic Plan](#), and in executive orders.²

DOT seeks to fund projects under this NOFO that, in combination with the merit selection criteria, advance the following:

i. Safety

DOT is committed to advancing safe, efficient transportation, including in ATIIP.

The National Roadway Safety Strategy (NRSS), issued January 27, 2022, commits DOT to respond to the current crisis in roadway fatalities by “taking substantial, comprehensive action to significantly reduce serious and fatal injuries on the Nation’s roadways,” in pursuit of the goal of achieving zero roadway deaths through a Safe System Approach (SSA).³ The SSA considers five elements of a safe transportation system – safe road users, safe vehicles, safe speeds, safe roads, and post-crash care – in an integrated and holistic manner to address roadway safety challenges.⁴ The outcomes anticipated from the projects funded by ATIIP should align with the NRSS.

Applicants should respond to this Administration priority when discussing Merit Criteria 3, 5, and 6, as appropriate. More information on these Merit Criteria can be found in Section E of this NOFO.

ii. Climate Change and Sustainability

DOT seeks to fund projects under ATIIP that reduce greenhouse gas (GHG) emissions in the transportation sector, incorporate evidence-based climate resilience measures and features, reduce lifecycle GHG emissions from project materials, avoid adverse environmental impacts to air or water quality, wetlands, and endangered species, and address the disproportionate negative

² Executive Order (E.O.) 14008, Tackling the Climate Crisis at Home and Abroad (86 FR 7619), E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009), E.O. 14025, Worker Organizing and Empowerment (86 FR 22829), and E.O. 14052, Implementation of the Infrastructure Investment and Jobs Act (86 FR 64335).

³ <https://www.transportation.gov/NRSS>

⁴ <https://www.transportation.gov/NRSS/SafeSystem>

environmental impacts of transportation on disadvantaged communities, consistent with E.O. 14008, “Tackling the Climate Crisis at Home and Abroad (86 FR 7619).”⁵

Applicants should respond to this Administration priority when discussing Merit Criteria 1 and 6, as appropriate. More information on these Merit Criteria can be found in Section E of this NOFO.

iii. Equity

DOT seeks to award projects under ATIIP that will create proportional impacts to all populations in a project area, significantly decrease transportation related disparities from all populations in a project area, and **increase equitable access to project benefits**, consistent with E.O. 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009).”

Applicants should respond to this Administration priority when discussing Merit Criteria 2, 5, and 6, as appropriate. More information on these Merit Criteria can be found in Section E of this NOFO.

iv. Workforce Development, Job Quality, and Wealth Creation

DOT intends to use ATIIP to support the creation of good-paying jobs with the free and fair choice to join a union and the incorporation of strong labor standards and training and placement programs, especially registered apprenticeships, in project planning stages, consistent with E.O. 14025, “Worker Organizing and Empowerment (86 FR 22829),” and E.O. 14052, “Implementation of the Infrastructure Investment and Jobs Act (86 FR 64335).” DOT also intends to use ATIIP to support wealth creation, consistent with the [Department’s Equity Action Plan](#) through the inclusion of local inclusive economic development and entrepreneurship such as the use of Disadvantaged Business Enterprises (DBE), Minority-owned Businesses, Women-owned Businesses, or 8(a) firms.

Applicants should respond to this Administration priority when discussing Merit Criterion 6. More information on this Merit Criterion can be found in Section E of this NOFO.

Section F.3 describes progress and performance reporting requirements for selected projects, including the relationship between that reporting and the program’s selection criteria, and the Administration’s Priorities and Departmental Strategic Plan Goals as appropriate.

3. Additional Information

The ATIIP is described in the Federal Assistance Listings under the assistance listing program title “Highway Planning and Construction” and assistance listing number 20.205.

FHWA is committed to considering project funding decisions holistically among the various discretionary grant programs available in BIL. FHWA also recognizes that applicants may be seeking funding from multiple discretionary grant programs and opportunities. An applicant

⁵ See U.S. Department of Transportation Strategic Framework FY 2022–2026 (December 2021) at <https://www.transportation.gov/administrations/office-policy/fy2022-2026-strategic-framework>

may seek the same award amounts from multiple DOT discretionary opportunities or seek a combination of funding from multiple DOT opportunities.

The applicant should identify any other DOT programs and opportunities they intend to apply for (or use if the Federal funding is already available to the applicant), and what award amounts they will be seeking, in the appropriate sections of this NOFO, including Section D.1.ii.

Applicants may review the FHWA [Bicycle and Pedestrian Planning, Program, and Project Development Guidance](#) which provides background information and guidance on Federal legislation and policies, and reference materials related to bicycle, pedestrian, and shared micromobility programs and projects, including power wheelchairs.

B. Federal Award Information

1. Award Amount Available

For FY 2023, up to \$44,550,000 is available for ATIIP Discretionary Grant Program awards under this NOFO. Of the \$44,550,000:

- FHWA may award up to **\$41,550,000** in Construction grants.⁶ Of that \$41,550,000, at least 30 percent (\$12,465,000) will be set aside for projects that construct active transportation networks (BIL § 11529(d)(1)(A)), and at least 30 percent (\$12,465,000) will be set aside for projects that construct active transportation spines (BIL § 11529(d)(1)(B)).⁷
- FHWA may award up to **\$19,620,000** in Planning and Design grants.⁸ At least \$3,000,000 will be set aside for Planning and Design grants (BIL § 11529(d)(2)).
- FHWA will award at least \$3,000,000 in Planning and Design grants, at least \$12,465,000 in Construction grants for active transportation networks, and at least \$12,465,000 in Construction grants for active transportation spines. FHWA reserves the right to award the remaining \$16,620,000 in remaining funding on any type of grant.

Any award under this NOFO will be subject to the availability of funding.

⁶ The Consolidated Appropriations Act, 2023 (Pub. L. 117-328) appropriated \$45,000,000 for ATIIP. BIL § 11529(d)(2) requires at least \$3,000,000 to be set-aside for Planning and Design grants, and FHWA set aside \$450,000 to cover the costs of administration under BIL § 11529(d)(3). Therefore, up to \$41,550,000 is available under this NOFO for Construction grants.

⁷ Pursuant to Section 11529(d)(1), subject to Section 11529(d)(2) and (3), at least 30 percent of ATIIP funds must be obligated for projects that construct active transportation networks and at least 30 percent must be obligated for projects that construct active transportation spines. Of the \$41,550,000 available for Construction grants, FHWA will provide at least \$12,465,000 for projects that construct active transportation networks and at least \$12,465,000 for projects that construct active transportation spines.

⁸ Pursuant to Section 11529(d)(2), FHWA must award at least \$3,000,000 in Planning and Design Grants. Of the \$41,550,000 available for Construction grants, after the 30 percent set-aside for active transportation networks and the 30 percent set-aside for active transportation spines, FHWA may provide the remaining \$16,620,000 for Planning and Design grants. Combined with the required \$3,000,000 set-aside, FHWA may provide a total of up to \$19,620,000 in Planning and Design grants.

2. Award Size

FHWA expects to award multiple Planning and Design grants and fewer Construction grants, depending on the availability of funding and the number of applications received, for projects satisfying the minimum project cost requirements in Section § 11529(l)(6)(B) that are described in the section further below. DOT reserves the right to make more, or fewer, awards.

i. Planning and Design Grants

Pursuant to Section 11529(l)(6)(B)(ii) of BIL, Planning and Design grants must be for projects that have planning and design costs of not less than \$100,000. There is no maximum statutory award size for Planning and Design grants. FHWA expects ATIIP awards for Planning and Design grants to range between a minimum of \$100,000 and an expected maximum of \$2,000,000.

It is important to note that this statutory minimum represents the total planning and design costs of the project, which includes the requested amount of ATIIP funding and any matching funds. FHWA reserves the discretion to consider award sizes above and below the minimum award sizes listed above, assuming that the total planning and design costs in the application are at least \$100,000.

ii. Construction Grants

Pursuant to Section 11529(l)(6)(B)(i) of BIL, Construction Grants must have a total project cost of at least \$15,000,000. There is no maximum statutory award size for Construction grants. It is important to note that this statutory minimum represents the total cost of the project, which includes the requested amount of ATIIP funding and any matching funds. In terms of suggested minimum and maximum amounts of ATIIP funds applicants may request, FHWA intends to award a minimum of \$7,500,000 in ATIIP funds for any given Construction grant, and a maximum of \$15,000,000 in ATIIP funds for qualifying disadvantaged communities or \$12,000,000 in ATIIP funds for all other Construction grant applicants. FHWA reserves the discretion to consider award sizes above and below the minimum award sizes listed above, assuming that the total project costs for the application are at least \$15,000,000.

3. Type of Award

If the successful applicant is a State department of transportation (State DOT), or a State DOT will serve as a pass-through entity to a non-State DOT entity, ATIIP funds will be awarded upon the execution of a project agreement, which is a type of grant agreement for administration of funds to a State DOT in Fiscal Management Information System (FMIS).

If the successful applicant is a non-State DOT, ATIIP funds will be awarded upon the execution of a grant agreement with FHWA. A determination will be made if the successful applicant will administer the grant, or at the request of the successful applicant, an applicable State DOT will administer the project.

4. Availability of Funds

The ATIIP awards should be obligated by a signed grant agreement by September 30, 2026.

Obligation of an ATIIP grant occurs when a selected applicant enters a project agreement with FHWA and FHWA authorizes the project to proceed. For construction, this is generally after the applicant has satisfied applicable administrative requirements, including transportation planning and environmental review requirements and compliance with Title 23, Code of Federal Regulations (CFR), Part 635, subpart C for State DOT applicants or 2 CFR 200.318-.327 for non-State DOT applicants.

5. Period of Performance

If a grant recipient will be a State DOT or if a State DOT will serve as a pass-through to a non-State DOT entity awarded a grant, the DOT Payment System will be “Current Bill” in FMIS. The start of the period of performance will begin on the date of authorization for the project FMIS and end on the project end date in FMIS.

If a grant recipient will be a non-State DOT entity, the DOT Payment System will be “DELPHI iSupplier” and the start of the period of performance will begin on the date of the grant agreement executed by FHWA which will obligate ATIIP and end on the period of performance that is listed in the grant agreement.

FHWA expects the period of performance to be no more than 2 years for Planning and Design grants and 5 years for Construction grants.

C. Eligibility Information

To be selected for an ATIIP grant, an applicant must meet the eligibility requirements under this section, including Eligible Organization; Eligible Project; Statutory Cost Sharing or Match requirements; and, if the project is partially on Federal land, entry into a cooperative agreement with the Federal Agency with jurisdiction over the Federal land. Applications that do not meet these eligibility requirements will not be evaluated under the criteria in Section E.1.

1. Eligible Organizations

Pursuant to Section 11529(l)(5) of BIL, eligible organizations are the following:

- A local or regional governmental organization, including a metropolitan planning organization (MPO) or regional planning organization or council;
- A multicounty special district;
- State;⁹
- A multistate group of governments; or
- An Indian Tribe.¹⁰

2. Cost Sharing or Matching

i. General Federal Share

Except as stated below for projects in disadvantaged communities in Section C.2.ii, the Federal share of the cost of a project carried out with an ATIIP grant shall not exceed 80 percent of the

⁹ The term “State” means any of the 50 States, the District of Columbia, or Puerto Rico (23 U.S.C. 101(a)(28)).

¹⁰ The term “Indian Tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act, which is codified at 25 U.S.C. 5304 (BIL § 11529 (l)(7)).

total project cost (BIL § 11529(f)(1)). Such awardees must provide at least a 20 percent matching share of the total project cost. The total project cost consists of the total Federal share, matching funds, and any additional non-ATIIP Federal funds that are not eligible for match. Other Federal funds may be used as matching funds, but only if specifically allowed by statute. Tribal applicants may use their Tribal Transportation Program funding as non-Federal match in accordance with Title 23, United States Code (U.S.C.), Section 120(k). For more information on Federal share, see 2 CFR 200.306.

Additional information on non-Federal matching requirements can be found at https://www.fhwa.dot.gov/legregs/directives/policy/memonfmr_tapered20190515.htm.

FHWA will not consider previously incurred costs or previously expended or encumbered funds towards the matching requirement for any project. Matching funds are subject to the same Federal requirements described in Section F.2 as awarded funds.

See Section D.2.ii for information about documenting cost sharing in the application. Applicants should also note that while projects meeting the 20 percent matching share requirement will be eligible, projects with a greater matching share may receive a higher rating under Merit Criterion 4, as described in more detail in Section E.1.

For each project that receives a grant under this NOFO, FHWA expects the project to be completed using at least the level of non-Federal funding that was specified in the application.

ii. Federal Share for Disadvantaged Communities

For projects serving communities with a poverty rate of over 40 percent based on the majority of census tracts served by the project, the Federal share is 100 percent of the total project cost (BIL § 11529(f)(2)). For such projects, this means that no matching funds are required for the project to be eligible. In addition, such projects will automatically receive the highest rating under Merit Criterion 4, as described in Section E.1.

To identify as such a disadvantaged community and be eligible for a 100 percent Federal share, applicants must provide FHWA with sufficient information that the proposed project would serve communities with a poverty rate of over 40 percent based on the majority of census tracts served by the project, including identifying each census tract that will be served by the project, the poverty rate of each of those census tracts, and how the project serves each identified census tract. Applicants should explain how the proposed project may serve census tracts outside of the census tract(s) where the proposed project is located.

It is important to note that FHWA will make the final determination of whether a project is eligible for the 100 percent Federal share under BIL § 11529(f)(2). For that reason, it may be advisable for applicants who believe they are eligible for the 100 percent Federal share described in this section to nonetheless provide information indicating that, alternatively, they can provide a 20 percent non-Federal share. Otherwise, if FHWA determines that the application is not eligible for the 100 percent Federal share and the applicant does not provide additional information, that application would be deemed ineligible and would not receive ATIIP funds under this NOFO.

One method of determining the poverty rate of the census tracts surrounding your project is as follows:

1. Go to data.census.gov.
2. Click Advanced Search below the search bar.
3. In the sidebar, click Geography > Census Tract > [Your state] > [Your county].
4. Either choose the census tracts you know your project impact or choose “All Census Tracts within [Your county].”
5. In the sidebar, click “Search for filter” and type in “Poverty.” Check the box labeled “Poverty” and then click the X on the top right of the window will.
6. Next, click the “Maps” tab on the top navigation, then select “S1701 | POVERTY STATUS IN THE PAST 12 MONTHS.” You should now see a map with the census tracts of your selected geography displaying the percentage of residents living below the poverty level among the population for whom poverty status is determined using the most up-to-date Census data.
7. Next, click “Classes” in the map toolbar at the top of the window. Add a break value of 40 percent. The map classification will update to clearly show which census tracts have a poverty rate above 40 percent.

3. Eligible Projects Partially on Federal Land

Any eligible organization that submits a project located in part on Federal land must have a cooperative agreement with the appropriate Federal Agency with jurisdiction over the Federal land before submitting an application (BIL § 11529(b)(2)). For projects located in part on Federal land, the eligible organization must include a copy of that cooperative agreement.

This is an eligibility requirement, and a project partially located on Federal lands that does not submit a copy of such a cooperative agreement will not be eligible for ATIIP funds under this NOFO.

4. Other

i. Eligible Projects

To be eligible to receive ATIIP funds, projects must consist of an active transportation project or group of projects within or between a community or group of communities, at least one of which falls under the jurisdiction of the applicant (BIL § 11529(l)(6)(A)).

Applicants may apply for more than one grant. Applicants may apply for both a Planning and Design grant and a Construction grant; however, the applications must be for separate projects. If an applicant applies for a Planning and Design grant and a Construction grant for the same project, it will be treated as a Construction grant. Construction grants may include the full range of planning and design activities that may be undertaken as part of a Planning and Design grant.

Projects must also abide by the minimum project costs described in Section B.2 to be eligible. This means that projects seeking Planning and Design grants must have planning and design costs of at least \$100,000 (BIL § 11529(l)(6)(B)(ii)), and projects seeking Construction grants must have total project costs of at least \$15,000,000 (BIL § 11529(l)(6)(B)(i)).

Applicants can seek a Planning and Design grant for projects that develop a plan for an active transportation network or spine project. Applicants with an existing plan may also apply for a Planning and Design grant to update and further develop their plan.

ii. Eligible Project Costs

a. Planning and Design Grants

Planning grants may be used to fund:

- Public engagement activities, including community visioning, outreach to affected disadvantaged populations, or other place-based strategies for public input into project plans;
- Design and planning studies that support the development of a construction project such as traffic studies supporting an active transportation outcome, active transportation network plans, connectivity analyses, asset inventories, and data collection of active transportation network gaps;
- Conceptual and preliminary engineering tied to projects in an approved plan;
- Other related transportation planning activities for active transportation networks or spines.

b. Construction Grants

Construction Grants may be used to fund, among other things:

- Property acquisition;
- Site preparation, demolition, or development;
- Payment of bonds/notes;
- Fees in connection with execution and financing of the project;
- Cost of studies, surveys, plans, permits, insurance, interest, financing, tax and assessments;
- Cost of construction, rehabilitation, reconstruction;
- Cost of land improvements;
- Contractor fees;
- Training and education related to safety of users as part of project.

All costs must conform with applicable law to be eligible, including 23 U.S.C.; 23 CFR; and 2 CFR part 200, as applicable.

D. Application and Submission Information

1. Address to Request Application Package

All grant application materials can be accessed at grants.gov.

Once at grants.gov, select the Search Grants tab. Then enter one of the following:

- Opportunity Number: 693JJ324NF00012
- Opportunity Name: Active Transportation Infrastructure Investment Program
- Assistance Listing Number: 20.205

When at one of these pages, select the Opportunity, which will open to a page with several tabs. The first tab is a synopsis of the opportunity. Select the “Application Package” tab to download the forms needed to submit an FY 2023 ATIIP application.

For a Telephone Device for the Deaf (TDD), please call (202) 366-3993. If potential applicants are unable to download the application package from the internet, they may send a written request for a paper copy to the below address. Requests should be sent to:

Kenan Hall
Agreement Specialist
Office of Acquisition and Grants Management
Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE.
Washington, DC 20590
Email: ATIIP@dot.gov (preferred)
Phone: 202-366-1533

Alternate:
Hector Santamaria
Agreement Officer/Team Leader
Office of Acquisition and Grants Management
Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE.
Washington, DC 20590
Email: ATIIP@dot.gov (preferred)
Phone: 202-493-2402

2. Content and Form of Application Submission

Planning and Design Grants and Construction Grants have distinct application submission and supporting document requirements. The FHWA strongly recommends use of the template provided below. All applications should submit the following: SF; Narrative; and Budget.

i. Application

All applications must be submitted electronically through grants.gov.

Note: FHWA may share application information within FHWA or with other Federal Agencies if FHWA determines that sharing is relevant to the respective program’s objectives.

a. Standard Forms

All applicants must submit the following SFs:

Required Forms for Planning and Design Grant Applications:	Required Forms for Construction Grant Applications:
SF 424 (Application for Federal Assistance)	SF 424 (Application for Federal Assistance)

Note: Applicants may leave fields 5a, 5b, 6, 7, and 13 blank. The Project Narrative must be added as an Attachment to Item 15 of the SF-424.	Note: Applicants may leave fields 5a, 5b, 6, 7, and 13 blank. The Project Narrative must be added as an Attachment to Item 15 of the SF-424.
Grants.gov Lobbying Form (Certification Regarding Lobbying)	Grants.gov Lobbying Form (Certification Regarding Lobbying)
Disclosure of Lobbying Activities form (SFLLL)	Disclosure of Lobbying Activities form (SFLLL)
SF 424A (Budget Information for Non-Construction Programs) Note: The form should be supported by a budget narrative explaining each element of cost.	SF 424C (Budget Information for Construction Programs) Note: The form should be supported by a budget narrative explaining each element of cost.
SF 424B (Assurances for Non-Construction Programs)	SF 424D (Assurances for Construction Programs)

All mandatory SFs of the 424 family are available for download at <https://www.grants.gov/forms/forms-repository/sf-424-family>.

b. Project Narrative

The project narrative should clearly state whether the application is for a Planning and Design grant or a Construction grant.

FHWA recommends that the project narrative follow the outline below. Following the outline will also assist evaluators in locating relevant information.

I. Basic Project Information – Description, Location, and Parties	See D.2.i.b.I
II. Grant Funds, Sources, and Uses of all Project Funding	See D.2.i.b.II
III. Merit Criteria	See D.2.i.b.III
IV. Project Readiness and Environmental Risk	See D.2.i.b.IV
V. Administration Priorities and Departmental Strategic Plan Goals	See D.2.i.b.V
VI. FHWA Priority Selection Considerations	See D.2.i.b.VI
VIII. Letters of Support	

The project narrative should provide information, including a table of contents, maps, and graphics as appropriate, necessary for FHWA to determine that the project satisfies project requirements described in Section C and to assess the merit criteria specified in Section E.1.

To the extent practicable, applicants should provide supporting data and documentation in a form that is directly verifiable by FHWA. FHWA may, but is not required to, request additional information, including additional data, to clarify supporting data and documentation submitted in an application, but FHWA encourages applicants to submit the most relevant and complete information they can provide. FHWA also encourages applicants, to the extent practicable, to provide data in a form that is publicly available or verifiable. To ensure a fair and unbiased evaluation of applications submitted under this NOFO, FHWA will not request additional information to perfect incomplete applications.

FHWA recommends that the project narrative be prepared with standard formatting preferences (i.e., a single-spaced document, using a standard 12-point font such as Times New Roman, with 1-inch margins). For Planning and Design Grants, the project narrative should not exceed 15 pages; for Construction Grants, the narrative should not exceed 20 pages. Appendices may include documents supporting assertions or conclusions made in the 15- or 20-page project narrative and do not count toward the page limit. If possible, Website links to supporting documents should be provided rather than copies of these supporting materials. If supporting documents are submitted, applicants should clearly identify within the project narrative the relevant portion of the project narrative that each supporting document supports. FHWA recommends using appropriately descriptive final names (e.g., “Project Narratives,” “Maps,” “Memoranda of Understanding and Letters of Support,” etc.) for all attachments.

I. Basic Project Information – Project Description, Location, and Parties:

a) Project Description

The applicant should provide a concise description of the project, including a discussion of the project’s history and a description of any previously incurred project costs. This section should describe what improvements the project will provide for the relevant active transportation network or spine, describe the communities impacted by the project and how the proposed project will reduce emissions by providing low or zero-emission transportation options, improve access to economic opportunity and community economic benefits, and increase safety for those communities, and any other high-level background information that would be useful to understand the rest of the application. The applicant may use this section to place the project into a broader context of other infrastructure investments being pursued by the project sponsor.

b) Project Location

The application should provide a concise description of the project, including a detailed geographical description of the proposed project, a map of the project’s location and connections to existing transportation infrastructure, and geospatial data describing the project location (shapefiles will be accepted under 200 MB file size). This section should also describe current barriers to community connectivity, including to safe mobility, access, or economic development, as well as a description of the surrounding community impacted by the project. This section should include a detailed geographic description and map of the project area location and identify elements of the existing transportation network.

If the applicant is requesting a 100 percent Federal share under Section C.2.ii of this NOFO, the applicant should clearly indicate which communities the project is serving, how the project serves those communities, and the poverty rates of those communities.

The application should include whether the project is located in an urban or rural community. For the purpose of this NOFO, FHWA will consider communities that are within Urbanized Areas (i.e., areas with a population of 50,000 or more) to be urban communities and all other communities to be rural. FHWA will rely on the digital maps and geographic shapefiles for the 2020 Census urban areas depicted on FHWA HEPGIS maps of [MPO and 2020 Census Urban Areas - FHWA HEPGIS Maps \(dot.gov\)](#) (refer to the “MPO and Air Quality Tab” and then scroll to “MPO and 2020 Census Urban Areas”) which correlates the definitions of “urban”¹¹ and “rural areas”¹² under 23 U.S.C. and Bureau of the Census (Census Bureau) data. A list of 2020 census designated urban areas is available in the Census Bureau’s [December 29, 2022 Federal Register Notice](#) (87 FR 80114).”

c) Lead Applicant

This section of the application should provide details about the lead applicant. The details should include the lead applicant’s demonstrated experience with receipt and expenditure of Federal-aid highway program funds under 23 U.S.C. FHWA will consider the degree of experience as part of the project readiness evaluation. If an application is rated highly under other criteria, but the applicant has no or limited experience with the receipt and expenditure of Federal-aid highway program funds, FHWA may contact the applicant prior to final selection of FY 2023 awards to discuss technical resources that may be available to assist the applicant in obtaining the capacity and expertise to ensure compliance with all applicable Federal requirements and timely delivery of the project.

d) Other Public and Private Parties

The applicant should describe in detail all of the other public and private parties who are involved in delivering the project, including a specific description of the role of each entity in delivering the project.

The applicant should state whether or not a private or non-private entity will receive a direct and predictable financial benefit if the project is selected for award. This includes, but is not limited to, private and non-private entities directly benefitting from completion of the proposed project. If this project directly involves or benefits a specific private corporation, a non-public entity, or a public entity, please identify the full name of each entity, separated by a comma.

¹¹ The term “urban area” means an urbanized area or, in the case of an urbanized area encompassing more than one State, that part of the urbanized area in each such State, or urban place as designated by the Census Bureau having a population of 5,000 or more and not within any urbanized area in each State, or urban place as designated by the Census Bureau having a population of 5,000 or more and not within any urbanized area. (23 U.S.C. 101(35)). The term “urbanized area” means an area with a population of 50,000 or more designated by the Census Bureau, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urbanized area within a State as designated by the Census Bureau. (23 U.S.C. 101(36)).

¹² The term “rural areas” means all areas of a State not included in urban areas. (23 U.S.C. 101(25)).

II. Grant Funds, Sources, and Uses of all Project Funding

In addition to the information provided in the mandatory forms described above, as part of the project narrative, applicants should describe the project's budget in detail and the plans for covering the full cost of the project from all sources.

The project budget should show how different funding sources will share in each major project activity and present those data in dollars and percentages. The budget should identify other Federal funds the applicant is applying for or has been awarded, if any, that the applicant intends to use. Funding sources should be grouped into three categories: (1) Non-Federal; (2) ATIIP Funds; and (3) Other Federal Funds, with specific amounts from each funding source.

The project budget should identify all Federal funds to be used for future eligible costs of the project, including the requested ATIIP grant amount, other Federal grants that have been awarded to the project or for which the project intends to apply in the future, and any Federal formula funds that have already been programmed for the project or are planned to be programmed for the project. For each category of Federal funds to be used for future eligible project costs, the amount, nature, and source of any required non-Federal match for those funds should be provided.

If a project contains components, the budget should separate the costs of each project component. If the project will be completed in phases, the budget should separate the costs of each phase. The budget should be detailed enough to demonstrate that the project satisfies ATIIP statutory cost-sharing requirement described in Section C.2, if applicable, and those associated with each category of Federal funding.

The application should include information showing that the applicant has budgeted sufficient contingency amounts to cover unanticipated cost increases.

In addition to the information enumerated above, this section should provide complete information on how all project funds may be used, availability, and funding commitments. For example, if a source of funds is available only after a condition is satisfied, the application should identify that condition and describe the applicant's control over whether it is satisfied. Similarly, if a source of funds is available for expenditure only during a fixed period, the application should describe that restriction. Complete information about project funds will ensure that FHWA's expectations for award execution align with any funding restrictions unrelated to FHWA, even if an award differs from the applicant's request.

This section of the narrative should also identify any other Federal programs and opportunities the applicant has applied for and intends to apply for and describe any additional non-ATIIP funding that is available to the applicant.

III. Merit Criteria

The applicant should describe how the proposal meets the merit criteria listed in Section E.1. FHWA encourages applicants to address each criterion. Insufficient information to assess any criterion will negatively impact the project rating. Applicants should note that merit reviewers will focus on this section of the application and will not be required to reference the other

sections in the application package; therefore, all relevant information to demonstrate alignment with the merit criteria as described in Section E.1 should be included in this section of the application. Applicants should describe the merit criteria in the order in which they are described in the NOFO and address each criterion separately. Guidance describing how FHWA will evaluate projects against the merit criteria is in Section E.1 of this NOFO. Applicants should review that section before considering how to organize their application.

IV. Project Readiness and Environmental Risk

The application should include information that, when considered with the project budget information, is sufficient for FHWA to evaluate whether the project is reasonably expected to begin construction in a timely manner. All applications should include a detailed project schedule.

Applications for Construction grants will be reviewed for Project Readiness and assigned three separate readiness evaluation ratings: Environmental Risk Assessment, Technical Capacity Assessment, and Financial Completeness Assessment. Therefore, this section for Construction grant applications should include information that addresses the Environmental Risk Assessment and Technical Capacity Assessment described in Section E. The Financial Completeness Assessment will be based on information contained throughout the application.

Applications for Planning and Design grants will be reviewed for Project Readiness and assigned two evaluation ratings: Technical Capacity Assessment and Financial Completeness Assessment. Therefore, this section for Planning and Design grant applications should include information that addresses the Technical Capacity Assessment described in Section E. The Financial Completeness Assessment will be based on information contained throughout the budget section of the application. An Environmental Risk Assessment will not be performed for planning applications, so applications for Planning and Design grants do not need to provide information related to this assessment.

Applications are not required to follow the specific format described here, but should be organized, address each relevant area of project readiness, as applicable, and promote a clear discussion that assists project evaluators.

a) Technical Feasibility (Construction, and Planning and Design grants)

The applicant should demonstrate the technical feasibility of the project with engineering and design studies and activities; the development of design criteria and/or a basis of design; the basis for the cost estimate presented in the application, including the identification of contingency levels appropriate to its level of design; and any scope, schedule, and budget risk-mitigation measures. Applicants should include a detailed statement of work that focuses on the technical and engineering aspects of the project and describes in detail the project to be constructed. The applicant must demonstrate compliance with Title VI/Civil Rights requirements, to ensure that no person is excluded from participation, denied benefits, or otherwise subjected to discrimination under any program or activity, on the basis of race, color, national origin, sex, age, or disability.

b) Environmental Risk (Construction grants only)

This section of the application should include sufficient information for FHWA to evaluate whether the project is reasonably expected to begin construction in a timely manner consistent with all applicable Federal, State, and local requirements. To assist FHWA's project environmental risk review, applicants should provide the information requested on project schedule, required approvals, and risk and mitigation strategies, each of which is described in greater detail in the following sections.

1. Detailed Project Schedule

The applicant should include a detailed project schedule that identifies all major project milestones. Examples of such milestones include State and local planning approvals (programming on the statewide transportation improvement program (STIP)); start and completion of review under the National Environmental Policy Act (NEPA) and other Federal environmental reviews and approvals, including permitting, design completion, right-of-way acquisition, approval of plans, specifications and estimates; procurement; State and local approvals; project partnership and implementation agreements, including agreements with railroads; and construction. The project schedule should be sufficiently detailed to demonstrate that:

- All necessary activities will be completed to allow ATIIP funds to be obligated on a timely basis and that any unexpected delays will not put the funds at risk of expiring before they are obligated; and
- All real property and right-of-way acquisition necessary for the project will be completed in a timely manner in accordance with 49 CFR 24, 23 CFR 710, and other applicable legal requirements or a statement that no acquisition is necessary. A plan for securing any required right-of-way agreements should be included. If applicable, this section should describe a right-of-way acquisition plan that minimally disrupts communities and maintains community cohesion.

2. Required Approvals

i. Environmental Permits and Reviews.

The application should provide documentation of receipt (or the schedule for anticipated receipt) of all environmental approvals and permits necessary for the project to meet the project delivery timeline specified in the project schedule, and necessary to meet the statutory obligation deadline if applicable, including satisfaction of all Federal, State, and local requirements and completion of the NEPA process. Specifically, in this section the applicant may elaborate on the NEPA evaluation process. If the final agency action with respect to NEPA occurred more than 3 years before the application date, the applicant should describe a proposed approach for updating this material in accordance with applicable NEPA reconsideration requirements. This section should also provide:

- Any information on reviews, approvals, and permits by other Federal and State agencies. An application should indicate whether the proposed project requires reviews or approval actions by other agencies, indicate the status of such actions, and provide detailed information about the status of those reviews or approvals and should demonstrate

compliance with any other applicable Federal, State, or local requirements, and when such approvals are expected. Applicants should provide a Website link or other reference to copies of any reviews, approvals, and permits prepared.

- Environmental studies or other documents—preferably through a Website link—that describe in detail known project impacts, and possible mitigation for those impacts.
- A description of discussions with FHWA regarding the project’s compliance with NEPA and other applicable Federal environmental reviews and approvals.
- A description of public engagement about the project that has occurred, including details on the degree to which public comments and commitments have been integrated into project development and design.

ii. State and Local Approvals

The applicant should demonstrate receipt (or the schedule for anticipated receipt) of State and local approvals on which the project depends, such as State and local environmental and planning approvals, and STIP or transportation improvement program (TIP) funding. Additional support from relevant State and local officials is not required; however, an applicant should demonstrate that the project has broad public support.

iii. Federal Transportation Requirements Affecting State and Local Planning

The planning requirements applicable to the Federal-aid highway program apply to all ATIP projects.¹³ Applicants should demonstrate that a project that is required to be included in the relevant State, metropolitan, and local planning documents has been or will be included in such documents. If the project is not included in a relevant planning document at the time the application is submitted, the applicant should submit a statement from the appropriate planning agency that actions are underway to include the project in the relevant planning document. Applicants should provide links or other documentation supporting this consideration.

Because projects have different schedules, the construction start date for each grant will be specified in the project-specific agreements signed by FHWA and the grant recipients, will be based on critical path items that applicants identify in the application, and will be consistent with relevant State and local plans.

iv. Assessment of Project Risks and Mitigation Strategies

Project risks, such as procurement delays, environmental uncertainties, increases in real estate acquisition costs, uncommitted local match, pushback from stakeholders or impacted communities, or lack of legislative approval, affect the likelihood of successful project start and completion. The applicant should identify all material risks to the project and the strategies that

¹³ In accordance with 23 U.S.C. 134 and 135, all projects requiring an action by FHWA must be in the applicable plan and programming documents (e.g., metropolitan transportation plan, TIP, and STIP). Further, in air quality non-attainment and maintenance areas, all regionally significant projects, regardless of the funding source, must be included in the conforming metropolitan transportation plan and TIP. Inclusion in the STIP is required under certain circumstances. To the extent a project is required to be on a metropolitan transportation plan, TIP, and/or STIP, it will not receive a grant until it is included in such plans. Projects not currently included in these plans can be amended by the State and MPO. Projects that are not required to be in long range transportation plans, STIPs, and TIPs will not need to be included in such plans to receive a grant.

the lead applicant and any project partners have undertaken or will undertake to mitigate those risks.¹⁴ The applicant should assess the greatest risks to the project and identify how the project parties will mitigate those risks.

To the extent an applicant is unfamiliar with the Federal-aid highway program, the applicant should contact the FHWA Division Office in their State as found at <https://www.fhwa.dot.gov/about/field.cfm> for information on what steps are prerequisite to the obligation of Federal funds to ensure that their project schedule is reasonable and that there are no risks of delays in satisfying Federal requirements.

c. Administration Priorities and Departmental Strategic Plan Goals

Applications should discuss the administration priorities outlined in Section A and how the project addresses them along with the respective corresponding merit criteria.

I. Safety

Applicants should address how their project provides substantial safety benefits in Merit Criteria 3, 5, and 6, as applicable. Prior to receiving funds, all projects are expected to, at a minimum, identify and mitigate to the extent practicable any significant safety risks that could result after the project's completion. Applicants should include how their project will not negatively impact the overall safety of the traveling public.

II. Climate Change and Sustainability

Applicants should address how the project will consider climate change and environmental justice in the planning stage and in project delivery in Merit Criteria 1 and 6, as applicable. In particular, applicants should address how the project reduces GHG emissions in the transportation sector, incorporates evidence-based climate resilience measures and features, and reduces the lifecycle GHG emissions from the project materials. Applicants should provide information on the potential of the project to avoid emissions caused by high-emission forms of transportation, such as single-occupancy vehicles, by providing opportunities for active transportation trips. Applicants should also address the extent to which the project avoids adverse environmental impacts to air or water quality, wetlands, and endangered species, as well as address disproportionate negative impacts of climate change and pollution on disadvantaged communities, including natural disasters, with a focus on prevention, response, and recovery.

III. Equity

Applicants should address how the project will consider equity in the planning stage and in project delivery in Merit Criteria 2, 5, and 6, as applicable. Applicants should address how their project will include an equity assessment which evaluates whether the project will create proportional impacts and remove transportation related disparities to all populations in a project area. Applicants should demonstrate how meaningful public engagement will occur throughout a project's life cycle. Applicants should address how project benefits will increase affordable

¹⁴ FHWA considers an applicant's lack of experience with receipt and expenditure of Federal-aid highway funds under 23 U.S.C. a material risk.

transportation options, improve safety, connect Americans to good-paying jobs, fight climate change, and/or improve access to resources and quality of life.

IV. Workforce Development, Job Quality, and Wealth Creation

Applicants should address how their project will create good-paying jobs with the free and fair choice to join a union; promote investments in high-quality workforce development programs with supportive services to help train, place, and retain people in good-paying jobs or registered apprenticeships, with a focus on women, people of color, and others that are underrepresented in infrastructure jobs (people with disabilities, people with convictions, etc.); and change hiring policies and workplace cultures to promote the entry and retention of underrepresented populations in Merit Criterion 6. Applicants should address how the project promotes local inclusive economic development and entrepreneurship such as the utilization of DBEs, Minority-owned Businesses, Women-owned Businesses, or 8(a) firms.

d. FHWA Priority Selection Considerations

The applicant should describe how the proposal meets the FHWA Priority Selection Considerations listed in Section E.1. The applicant should include a section to highlight any priority considerations the project will address. Detailed information demonstrating how the project supports the priority consideration(s), and references to earlier sections of the narrative along with supporting documentation should be included in the application.

3. Unique Entity Identifier (UEI) and System for Award Management (SAM)

Effective April 4, 2022, the Data Universal Numbering System (DUNS) number is no longer required for entities doing business with the Federal Government and has been replaced by the SAM UEI. As of that date, applicants are required to use a UEI issued during the SAM.gov registration process. Active registrants in SAM.gov have had their SAM UEI automatically assigned and it is currently viewable within SAM.gov. There is no additional action necessary for registered entities to take to obtain their SAM UEI. If you are a new entity or your registration has expired, you must register your entity in SAM.gov and you will be assigned a UEI.

Each applicant is required to: (i) Be registered in SAM.gov before submitting an application; (ii) Provide a valid UEI in their application; and (iii) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal Agency.

Please see <https://www.grants.gov/web/grants/applicants/applicant-faqs.html#UEI> for more information on the transition from DUNS to SAM UEI, including what UEI to enter into the UEI field on grants.gov and on application package forms.

FHWA may not make a Federal award to an applicant until the applicant has complied with all applicable UEI and SAM requirements. If an applicant has not fully complied with the requirements by the time FHWA is ready to make an award, FHWA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant.

NOTE TO APPLICANTS: The SAM.gov requires the registrants to provide a UEI number to complete the registration. These processes can take several weeks to complete so should be started well before the application deadline.

4. Submission Dates and Times

Applications must be submitted electronically through grants.gov no later than 11:59 p.m., Eastern Standard Time on Monday, June 17, 2024.

5. Intergovernmental Review

An application under this NOFO is not subject to the State review under E.O. 12372.

6. Funding Restrictions

Unless authorized by FHWA in writing after FHWA's announcement of FY 2023 ATIIP awards, any costs incurred prior to FHWA's obligation of funds for a project ("pre-award costs") are ineligible for reimbursement or to count as cost share.

Grant funds may not be used to support or oppose union organizing, whether directly or as an offset for other funds.

7. Other Submission Requirements

i. Scalable Project Options

Applicants are encouraged to identify scaled funding options in case insufficient funding is available to fund a project or a bundled project at the full requested amount. If an applicant advises that a project is scalable, the applicant must provide an appropriate minimum funding amount that will fund an eligible project that achieves the objectives of the program and meets all relevant program requirements. The applicant must provide a clear explanation of how the project budget would be affected by a reduced award. FHWA may award a lesser amount whether or not a scalable option is provided.

ii. Submission Location

The complete application must be submitted via www.grants.gov.

iii. Consideration of Applications

Only applicants who comply with all submission deadlines described in this NOFO and electronically submit valid applications through grants.gov will be eligible for award. Applicants are strongly encouraged to make submissions in advance of the deadline.

iv. Late Applications

Applicants experiencing technical issues with Grants.gov that are beyond the applicant's control must contact atiip@dot.gov prior to the application deadline with the username of the registrant and details of the technical issue experienced. The applicant must provide:

- Details of the technical issue experienced;
- Screen capture(s) of the technical issues experienced along with corresponding Grants.gov "Grant tracking number";
- The "Legal Business Name" for the applicant that was provided in the SF-424;
- The Point of Contact name submitted in the SF-424;

- The UEI associated with the application; and
- The Grants.gov Help Desk Tracking Number.

To ensure a fair competition of limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) failure to complete the registration process before the deadline; (2) failure to follow Grants.gov instructions on how to register and apply as posted on its Website; (3) failure to follow all instructions in this NOFO of funding opportunity; and (4) technical issues experienced with the applicant's computer or information technology environment.

After FHWA reviews all information submitted and contacts the Grants.gov Help Desk to validate reported technical issues, FHWA staff will contact late applicants to approve or deny a request to submit a late application through Grants.gov. FHWA will not accept appeals of an FHWA decision to approve or deny a request for a late application. If the reported technical issues cannot be validated, late applications will be rejected as untimely.

Compliance with Section 508 of the Rehabilitation Act of 1973

FHWA encourages applicants to submit documents that are compliant with Section 508 of the Rehabilitation Act of 1973. Section 508 guidelines are available at <https://www.access-board.gov/ict/>.

E. Application Review Information

1. Criteria

FHWA will award ATIIP funds based on an evaluation of merit criteria, project readiness, and responsiveness to the FHWA Priority Selection Considerations as described in this section.

i. Merit Criteria

FHWA will evaluate FY 2023 ATIIP grant applications using the following merit criteria:

Criterion #1: Mobility and Community Connectivity

FHWA will assess whether the eligible organization submitted a plan for an eligible project that is likely to provide substantial additional opportunities for walking and bicycling, including effective plans to (1) create an active transportation *network* connecting destinations within or between communities, including schools, workplaces, residences, businesses, recreation areas, and other community areas, or create an active transportation *spine* connecting two or more communities, metropolitan regions, or States; and (2) integrate active transportation facilities with transit services, where available, to improve access to public transportation.

The application should include a plan for the proposed project, preferentially one that includes a description and map of the proposed project. The plan should include information on how the project will provide opportunities for walking and bicycling and the extent of those opportunities, including access to key destinations and economic benefits associated with those opportunities, the sizes, and kinds of destinations that the project would connect to, and the percentage of the community's population living within walking or biking distance of the project. For active transportation networks, the plan should also describe the community destinations the project would connect, including schools, workplaces, residences, businesses, recreation area,

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and other community areas. For active transportation spines, the plan should describe how the project will connect two or more communities, metropolitan regions, or States.

In addition, the plan should show or describe the locations at which the active transportation facilities will integrate with transit services, if available, and the extent to which the project will improve access to public transportation, such as by showing how the project would extend or complement public transit trips. The application should also describe how physically integrated the transit network currently is with active transportation facilities.

High: For projects related to active transportation networks, the plan substantively and comprehensively demonstrates how the project will connect community destinations and, if available, public transit facilities, to improve access to jobs, schools, and key destinations. For projects related to active transportation spines, the plan substantively and comprehensively demonstrates how the project will connect two or more communities, metropolitan regions, or States. For all projects, the plan demonstrates that the project is likely to provide substantial additional opportunities for active transportation and access to jobs, schools, and key destinations, including demonstrating how the proposed active transportation infrastructure would extend or complement public transit trips, if available in the project area.

Medium: For projects related to active transportation networks, the plan is moderately responsive in demonstrating how the project will connect community destinations and, if available, public transit facilities, to improve access to jobs, schools, and key destinations. For projects related to active transportation spines, the plan is moderately responsive in demonstrating how the project will connect two or more communities, metropolitan areas, or States. For all projects, the plan demonstrates that the project is likely to increase active transportation trips and access to jobs, schools, and key destinations.

Low: For projects related to active transportation networks, the plan minimally demonstrates how the project will connect community destinations and, if available, public transit facilities, to improve access to jobs, schools, and key destinations. For projects related to active transportation spines, the plan minimally demonstrates how the project will connect two or more communities, metropolitan areas or States. For all projects, the plan demonstrates that the project is likely to only minimally increase active transportation trips and access to jobs, schools, and key destinations.

Non-Responsive: The plan is not likely to provide additional opportunities for walking and bicycling.

Criterion #2: Community Support

FHWA will assess whether the eligible organization demonstrates broad community support through the use of public input in the development of transportation plans, and the commitment of community leaders to the success and timely implementation of an eligible project.

Applications should demonstrate support from municipalities in the project area, relevant community leaders, and other partners like private sector entities. Applications should include documentation of this support, such as through letters of support. Applications may also include evidence of partnerships leveraged within the project area, such as with other governmental

entities, nongovernmental organizations, private sector entities, academic institutions, and other relevant stakeholders to achieve project benefits. The application should describe the commitment community leaders have made to the success and timely implementation of the project.

Applications should also provide a **history of transportation planning in the project area**, particularly with respect to the proposed project, and evidence of public involvement, including public involvement of disadvantaged communities. Public involvement may be shown through community benefit agreements and discussions with relevant stakeholders, such as private sector and community groups. Applications should demonstrate how public input has impacted transportation planning, particularly with respect to the proposed project, if applicable.

High: The application shows comprehensive and substantial community support in the development of transportation plans, including the plan for the proposed project, and comprehensive and substantial community support in the implementation of the proposed project from a broad cross-section of the community within and around the project area, including disadvantaged communities. If applicable based on community feedback received, the project advances the aims of disadvantaged communities. The application demonstrates full support from community leaders and organizations critical to the timely completion of the project to ensure its success.

Medium: The application shows moderate community support of the project in the development of transportation plans and the implementation of the proposed project or only shows extensive support from a limited cross-section of the community within and around the project area. The project does not negatively impact disadvantaged communities, based on community feedback received from such communities. The application demonstrates some support from community leaders and organizations that may likely lead to its timely completion and may likely ensure its success.

Low: The application shows limited community support in the development of transportation plans and the implementation of the proposed project. The project does not negatively impact disadvantaged communities, based on community feedback received from such communities. The application does not fully demonstrate that community leaders and organizations critical to the timely completion and success of the project support it.

Non-Responsive: The application does not demonstrate community support, or the application demonstrates that disadvantaged communities will be negatively impacted by the proposed project based on community feedback from such communities.

Criterion #3: Commitment to Increasing Walking, Biking, and Other Types of Active Transportation

FHWA will assess whether the eligible organization provides evidence of the following that facilitate significant increases in walking and biking:

- Commitment to and improvement of traffic safety,

- Regulations (such as development/land use codes that support/enable active transportation),
- Financial incentives (such as transportation demand management strategies), or
- Community design policies (such as policies or design guidance that prioritize safety, comfort, and accessibility of pedestrians and bicyclists).

Applications should detail the specific steps they are taking to provide a commitment to traffic safety, and any regulations, financial incentives, or community design policies related to active transportation. Applications should detail how those commitments, regulations, financial incentives, and design policies have facilitated increases in walking and bicycling and the extent of that increase. Where possible, applicants should demonstrate how the project integrates principles from DOT's NRSS and the SSA.

High: The application demonstrates commitment to traffic safety, regulations, financial incentives, or community design policies that facilitate significant increases in walking and bicycling. The application shows how these commitments, regulations, financial incentives, or community design policies have significantly improved safety, in line with the NRSS and SSA.

Medium: The application demonstrates commitment to traffic safety, regulations, financial incentives, or community design policies that facilitate increases in walking and bicycling. The application shows how these commitments, regulations, financial incentives, or community design policies have improved safety.

Low: The application explains minimally how the applicant has demonstrated commitment to traffic safety, regulations, financial incentives, or community design policies that facilitate increases in walking and bicycling; or the application explains how the applicant has demonstrated commitment to traffic safety, regulations, financial incentives, or community design policies that facilitate limited increases in walking and bicycling.

Non-Responsive: The application does not address how the applicant has shown a commitment to traffic safety, regulations, financial incentives, or community design policies, or the application does not show how those are connected to increases in walking and bicycling, or the application demonstrates or suggests that the project will result in negative safety outcomes.

Criterion #4: Financial Completeness

FHWA will assess the extent to which the eligible organization demonstrates commitment of State, local, or eligible Federal matching funds, and in-kind contributions such as land, in addition to the local match required under subsection C.2, unless the applicant qualifies for an exception under subsection C.2.ii, in which case the application will receive a *High* score for this criterion.

More detail on required information to be included in the project narrative regarding grant funds, sources, and uses of all project funding is presented in Section D. 1.ii.b of this NOFO. More detail on cost sharing or matching is presented in Section C.2 of this NOFO.

High: The application demonstrates fully committed funding that goes above and beyond the 80 percent match requirement, or the project qualifies for a 100 percent Federal share pursuant to Section C.2.ii of the NOFO.

Medium: The application demonstrates fully committed funding that meets the 80 percent match requirement.

Low: The applicant demonstrated funding that meets the 80 percent match requirement, but one or more Federal or non-Federal match sources are still uncertain as to whether they will be secured.

Non-Responsive: The application does not demonstrate a full commitment of funding to meet the 80 percent match requirement.

Criterion #5: Equitable Development

FHWA will assess the extent to which the eligible organization demonstrates that the project will address existing disparities in bicyclist and pedestrian fatality rates based on race or income level or provide access to jobs, schools, and services for low-income communities, disadvantaged communities, and people with disabilities.

Applications should describe how they intend to measure change in existing disparities and what metrics the applicant will use throughout the lifecycle of the project. Applicants are encouraged to use the FHWA [Screening Tool for Equity Analysis of Projects](#) to understand what groups will be impacted by the proposed project, as applicable.

Applicants should provide a plan for how they will identify groups based on race or income level with existing disparities to the general population of the community in terms of bicyclist and pedestrian fatality rates. The application should explain how the project intends to decrease such disparities, such as through an equity analysis and how the project intends to measure changes and what metrics will be used.

The application should also describe how it intends to provide access to jobs and services for low-income communities and disadvantaged communities (e.g., children, seniors, Black, Latino, Indigenous and Native Americans, Asian Americans and Pacific Islanders, other persons of color, persons with disabilities, persons who live in rural areas, and persons otherwise adversely affected by persistent poverty or inequality), and how the project would support economic competitiveness and wealth creation, such as through increased mobility and expanded connectivity.

Applicants are strongly encouraged to use the [DOT Equitable Transportation Community \(ETC\) Explorer](#) to understand how their project area is experiencing disadvantage in terms of existing disparities in bicyclist and pedestrian fatality rates or access to jobs and services and use the analysis to help explain how the proposed project will positively impact the root causes of disadvantage.

High: The application demonstrates that the project will reduce existing disparities in bicyclist and pedestrian fatality rates based on race or income level *and* provide access to jobs, schools,

and other key destinations. The application provides how the project will measure effectiveness over its lifecycle in terms of decreasing disparities and includes relevant metrics to be tracked.

Medium: The application demonstrates that the project will reduce existing disparities in bicyclist and pedestrian fatality rates based on race or income level *or* demonstrates how it will provide access to jobs, schools, and other key destinations.

Low: The application demonstrates that the project will reduce existing disparities in bicyclist and pedestrian fatality rates based on race or income level only to a limited degree *or* will only provide limited access to jobs, schools, and other key destinations.

Non-Responsive: The project did not address the Equitable Development criterion, or the project negatively impacts disadvantaged communities, or the project increases disparities faced by disadvantaged communities.

Criterion #6: Other DOT Goals and Priorities

FHWA will assess whether the eligible organization demonstrates how their investment in active transportation will advance:

- Safety for pedestrians and cyclists,
- Access to jobs and key destinations,
- Economic competitiveness,
- Environmental protection, and
- Quality of life.

In addressing this criterion in applications, applicants should not present duplicative information already supplied in their application. The focus of this criterion is on demonstrating how the applicant's investment in active transportation will advance mode shift to reduce GHG emissions, improve access for people of all ages and abilities, and address workforce considerations.

The applicant should describe how its investment in active transportation, especially through the proposed project, advances the above key priorities and the metrics the applicant will use to measure progress made in achieving these priorities throughout the life cycle of the project.

In terms of safety, applications should demonstrate how the implementation of the proposed project advances safety for all pedestrians and cyclists, including through the incorporation of the [Complete Streets Design Model](#).

In terms of access to jobs, schools, and key destinations, applications should demonstrate how the implementation of the proposed project, advances and improves access to jobs, schools, and key destinations.

In terms of economic competitiveness, applications should describe how the implementation of the proposed project, advances workforce development goals, such as by incorporating strong labor standards for skilled construction labor needed on the project (e.g., wages and benefits at or above prevailing; use of project labor agreements or registered apprenticeship programs); committing to supporting training opportunities as part of the project, including pre-

apprenticeship or apprenticeship readiness programs, youth corps, and conservation corps; tracking and publishing aggregate workforce data, including information demonstrating that employment opportunities are available for historically underserved or disadvantaged individuals in the community; and furthering local inclusive economic development and entrepreneurship, such as by utilizing DBEs, Minority-owned Businesses, Women-owned businesses, or 8(a) firms.

In terms of environmental protection, applications should describe how the implementation of the proposed project advances environmental protection goals, such as through an analysis of the project's anticipated increase in the percentage of person trips by active transportation and by transit integrated with active transportation facilities; resultant reductions in air pollution and GHG emissions; and any changes in land-use patterns that may reduce emissions. Where applicable, applications should also explain how the project incorporates climate resilience measures and features, reduces lifecycle GHG emissions from project materials, avoids adverse environmental impacts, and addresses the disproportionate negative impacts of transportation on disadvantaged communities. Applications should incorporate analysis of emissions reduction strategies for transportation infrastructure such as those considered in a State Carbon Reduction Plan or TIP or equivalent local plan.

In terms of quality of life, applications should describe how the implementation of the proposed project, is comfortable for and accessible to the needs of all active transportation users, including young children, older adults, and people with disabilities.

High: The application demonstrates how the project's investment in active transportation will support all five goals described above: improvement in safety for pedestrians and cyclists; improvement in access to jobs and key destinations; improvement in economic competitiveness; improvements in environmental protection; *and* improvement in quality of life by showing how the project will support accessibility for all users and abilities.

Medium: The application demonstrates how the project's investment in active transportation will support three of the five goals described above: improvement in safety for pedestrians and cyclists; improvement in access to jobs and key destinations; improvement in economic competitiveness; improvements in environmental protection; and improvement in quality of life by showing how the project will support accessibility for all users and abilities.

Low: The application demonstrates how the project's investment in active transportation will support one of the five goals described above: improvement in safety for pedestrians and cyclists; improvement in access to jobs and key destinations; improvement in economic competitiveness; improvements in environmental protection; *or* improvement in quality of life by showing how the project will support accessibility for all users and abilities.

Non-Responsive: The application does not address how investment in active transportation will advance any of the five goals described above: improvement in safety for pedestrians and cyclists; improvement in access to jobs and key destinations; improvement in economic competitiveness; improvements in environmental protection; or improvement in quality of life by showing how the project will support accessibility for all users and abilities.

ii. Project Readiness

FHWA will consider project readiness to assess the likelihood of a successful project.

Projects applying for Construction grants will be reviewed for Project Readiness and assigned three evaluation ratings: Environmental Risk Assessment, Technical Capacity Assessment, and Financial Completeness Assessment.

Projects applying for Planning and Design grants will be assigned two evaluation ratings: Technical Capacity Assessment and Financial Completeness Assessment. An Environmental Risk Assessment will not be performed for applications for Planning and Design grants. For applications for Construction grants, applications should contain a section that explicitly addresses Environmental Risk. The Technical Capacity Assessment and Financial Completeness Assessment will be completed for all applications based on information contained throughout the application.

For Construction grants, the Environmental Risk Assessment analyzes the project's environmental approvals and the likelihood of the necessary approval affecting project obligation, resulting in a rating of "high risk," "moderate risk," or "low risk."

The Technical Capacity Assessment will be reviewed for all eligible applications and will assess the applicant's capacity to successfully deliver the project in compliance with applicable Federal requirements based on factors including the recipient's experience working with Federal Agencies, civil rights compliance (including compliance with Title VI of the Civil Rights Act of 1964 and accompanying FHWA regulations, the Americans with Disabilities Act of 1990 (ADA), and Section 504 of the Rehabilitation Act), previous experience with DOT or FHWA discretionary grant awards, and the technical experience and resources dedicated to the project. The Technical Capacity Assessment for each application will result in a rating of "certain," "somewhat certain or unknown," or "uncertain." Lack of previous project delivery experience according to Federal requirements is not a sufficient justification by itself for a rating of "uncertain," but may result in a rating of "unknown."

The Financial Completeness Assessment will be reviewed for all eligible applications and will review the availability of matching funds and whether the applicant presented a complete funding package. The Financial Completeness Assessment for each application will result in a rating of "complete," "partially complete," or "incomplete." For projects that receive a rating of "complete" and include funding estimates that are based on early stages of design (e.g., less than 30 percent design) or outdated cost estimates, without specified contingency, evaluators may add a comment to note the potential for uncertainty in the estimated project costs. All applicants should describe a plan to address potential cost overruns and future maintenance and preservation costs and how those costs will be funded.

The Project Readiness Ratings described above will be translated to a high, medium-high, medium, medium-low, or low rating, using the tables below:

Rating	1	2	3
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Technical Capacity	Uncertain: The team is not confident in the applicant's capacity to deliver this project in a manner that satisfies Federal requirements	Somewhat Certain/Unknown: The team is moderately confident in the applicant's capacity to deliver the project in a manner that satisfies Federal requirements	Certain: The team is confident in the applicant's capacity to deliver the project in a manner that satisfies Federal requirements
Financial Completeness	Incomplete Funding: The project lacks full funding, or one or more Federal or non-Federal match sources are still uncertain as to whether they will be secured in time to meet the project's construction schedule	Partially Complete/Appears Stable and Highly Likely to be Available: Project funding is not fully committed but appears highly likely to be secured in time to meet the project's construction schedule	Complete, Stable and Committed: The Project's Federal and non-Federal sources are fully committed and there is demonstrated funding available to cover contingency/cost increases
Environmental Review and Permitting Risk (ONLY for applications for Construction grants)	High Risk: The project has not completed or begun NEPA and there are known environmental, or litigation concerns associated with the project	Moderate Risk: The project has not completed NEPA or secured necessary Federal permits, and it is uncertain whether they will be able to complete NEPA or secure necessary Federal permits in the time necessary to meet their project schedule	Low Risk: The Project has completed NEPA, or it is highly likely that they will be able to complete NEPA and other environmental reviews in the time necessary to meet their project schedule

To determine the overall Project Readiness rating for applications for Construction grants, FHWA will use the following table:

Rating	Description
High	All 3's
Medium-High	Two 3's, one 2
Medium	One 3, two 2's
Medium-Low	All 2's
Low	Any 1's

To determine the overall Project Readiness rating for applications for Planning and Design grants, FHWA will use the following table:

Rating	Description
High	All 3's
Medium-High	One 3, one 2
Medium	All 2's
Low	Any 1's

iii. Overall Application Rating

FHWA will assign each eligible application an overall rating of 'Highly Recommended,' 'Recommended,' or 'Not Recommended' on the following basis:

Overall Merit Rating	Individual Criteria Rating
Highly Recommended	<u>Merit Criteria</u> - At least three 'High' ratings; and - No more than one 'Low' rating; and - No 'Non-Responsive' ratings; and <u>Project Readiness</u> - At least a Medium-High rating
Recommended	<u>Merit Criteria</u> - At least one 'High' rating; and - No more than one 'Low' rating; and - No 'Non-Responsive' ratings; and <u>Project Readiness</u> - At least a Medium rating
Not Recommended	<u>Merit Criteria</u> - One or more 'Non-Responsive' ratings; or - Combination of ratings that do not fit within the definitions of Highly Recommended, Recommended; or <u>Project Readiness</u> - A Medium-Low or Low rating

iv. Priority Selection Considerations

After completing the merit review, among projects of similar merit, FHWA will prioritize FY 2023 ATIIP projects that meet the following:

- Projects that connect key community institutions through active transportation infrastructure, particularly schools; and
- Projects that provide substantial benefits to disadvantaged communities within or around the project area.

2. Review and Selection Process

FHWA will conduct an application intake and eligibility review by providing an initial eligibility screening based on the criteria in Section C. Only eligible projects will be evaluated against the merit criteria and for project readiness as described in Section E.1. The ATIIP application evaluation and selection project consists of (1) a Technical Review, (2) an FHWA Senior Review, and (3) Project Selections.

i. Technical Review

The evaluation of eligible applications will be conducted by a Technical Review Team who may consist of FHWA staff with broad expertise in the subject areas included in the criteria. The Technical Review Team will evaluate each eligible application against the merit criteria in Section E.1.i. and assign an overall application rating as defined under Section E.1.iii. The Technical Review Team will also evaluate the Project Readiness Rating in Section E.1.

Based on the outcome of these reviews, the Technical Review Team will assign an overall rating of Highly Recommended, Recommended, or Not Recommended to each application as outlined in Section E.1.iii.

All of the Highly Recommended and Recommended applications will be reviewed by the FHWA Division Office in the State in which the project is located. The Divisions will review the respective applications and evaluate whether there are any aspects in the delivery of the proposed projects that may prevent the project from timely moving forward upon receipt of an ATIIP grant.

The Technical Review Team will also evaluate each Highly Recommended and Recommended application against its responsiveness to the FHWA Priority Selection Considerations.

ii. Applications Recommended for Consideration by the FHWA Senior Review Team (SRT)

The Technical Review Team will send to the FHWA SRT the overall application rating for each eligible ATIIP application and evaluation of responsiveness to the FHWA Priority Selection Considerations for all Highly Recommended and Recommended projects.

iii. FHWA SRT Process

The FHWA SRT consists of senior FHWA officials who have been requested to serve by the FHWA Administrator. The SRT, which may include the FHWA Administrator's participation in the SRT review process, advises the FHWA Administrator which Highly Recommended and Recommended projects the FHWA Administrator should select for funding.

The FHWA SRT may also propose the selection of a project that is rated Recommended over a Highly Recommended project. When proposing a Recommended project over a Highly Recommended one, the FHWA SRT will select Recommended projects by considering how well the project addressed the merit criteria and number of criteria rated High, as well as the responsiveness to the FHWA Priority Selection Considerations.

When identifying applications to recommend to the FHWA Administrator, the FHWA SRT may consider geographic diversity including, as applicable, the need for a balance between the needs

of rural and urban communities. They may also consider an application's responsiveness to the DOT Priority Selection Considerations.

iv. Project Selections

The FHWA Administrator makes final project selections and will select among the projects advanced by the FHWA SRT. The review process gives the Administrator the discretion to determine which applications best address program requirements, advance the Administration's Priorities and Departmental Strategic Plan Goals, and should be selected. When selecting projects, the Administrator may also consider geographic diversity including the need for a balance between the needs of rural and urban communities, and selecting projects that ensure the effective use of Federal funding.

In selecting projects, the Administrator will ensure that the funding requirements described in Section B.1 of this NOFO are met.

FHWA is not obligated to make any award as a result of this NOFO.

3. Risk Assessment

Prior to entering into a grant agreement, each selected applicant will be subject to a risk assessment as required by 2 CFR § 200.206. The DOT must review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System [FAPIIS]). An applicant may review information in FAPIIS and comment on any information about itself that a Federal awarding agency previously entered. FHWA will consider comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants.

4. Additional Information

FHWA may, during the selection process, enter into discussions with an applicant that may include mutually agreeing upon a lesser amount of a potential award than originally requested in the application if necessary due to the quantity, size, and scope of the applications received in response to this NOFO and the results of the application review process. However, at no times will grants be awarded for projects that would fall beneath the minimum total project cost thresholds of \$100,000 in planning and design costs for Planning and Design grants and \$15,000,000 in total costs for Construction grants. Discussions may include scalable project options as described under Section D.6.i of this NOFO.

Because award recipients under this program may be first-time recipients of Federal funding, FHWA is committed to implementing the program as flexibly as permitted by statute and to provide assistance to help award recipients through the process of securing a grant agreement.

F. Federal Award Administration Information

1. Federal Award Notices

Following the evaluation outlined in Section E, the FHWA Administrator will announce awarded projects by posting a list of selected projects at

https://www.fhwa.dot.gov/environment/bicycle_pedestrian/atiip/. Notice of selection is not authorization to begin performance or to incur costs for the proposed project. Following that announcement, FHWA will contact the point of contact listed in the SF- 424 to initiate negotiation of the project agreement for authorization. If the negotiations do not result in the execution of a grant agreement, FHWA reserves the right to decline to fund the announced project.

Recipients of ATIIP Grant awards will not receive lump-sum cash disbursements at the time of award announcement or obligation of funds. Instead, FHWA will reimburse ATIIP Grant funds only after a project agreement has been executed, allowable expenses are incurred, and valid requests for reimbursement are submitted. Unless authorized by FHWA in writing after FHWA's announcement of FY 2023 ATIIP awards, any costs that a recipient incurs before FHWA executes a project agreement for that recipient's project are ineligible for reimbursement and are ineligible match for cost share requirements.

2. Administrative and National Policy Requirements

All awards will be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR Part 200, as adopted by DOT at 2 CFR Part 1201. Applicable Federal laws, rules, and regulations set forth in title 23, U.S.C., and title 23 of the CFR, shall apply to awards provided under this program.

In connection with any program or activity conducted with or benefiting from funds awarded under this NOFO, recipients of funds must comply with all applicable requirements of Federal law, including, without limitation, the Constitution of the United States; the conditions of performance, non-discrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of the DOT and FHWA; and applicable Federal financial assistance and contracting principles promulgated by OMB. In complying with these requirements, recipients, in particular, must ensure that no concession agreements are denied, or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If FHWA determines that a recipient has failed to comply with applicable Federal requirements, FHWA may terminate the award of funds and disallow previously incurred costs, requiring the recipient to reimburse any expended award funds.

In particular, E.O. 14005 directs the Executive Branch Departments and agencies to maximize the use of goods, products, and materials produced in, and services offered in, the United States through the terms and conditions of Federal financial assistance awards. If selected for an award, grant recipients must be prepared to demonstrate how they will maximize the use of domestic goods, products, and materials in constructing their project. Any grant projects involving vehicle acquisition must involve only vehicles that comply with applicable Federal Motor Vehicle Safety Standards (FMVSS) and Federal Motor Carriers Safety Regulations (FMCSR), or vehicles that are exempt from FMVSS or FMCSR in a manner that allows for the legal acquisition and deployment of the vehicle or vehicles.

i. Program Requirements

a. Critical Infrastructure Security, Cybersecurity and Resilience

It is the policy of the United States to strengthen the security and resilience of its critical infrastructure against all hazards, including physical and cyber risks, consistent with Presidential Policy Directive 21 - Critical Infrastructure Security and Resilience, and the National Security Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems. Each applicant selected for Federal funding must demonstrate, prior to the signing of the grant agreement, effort to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the project. Projects that have not appropriately considered and addressed physical and cyber security and resilience in their planning, design, and project oversight, as determined by DOT and the U.S. Department of Homeland Security, will be required to do so before receiving funds.

b. Domestic Preference Requirements

As expressed in E.O. 14005, “Ensuring the Future is Made in All of America by All of America’s Workers,” (86 FR 7475), the policy of the executive branch is to maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. Funds made available under this NOFO are subject to the domestic preference requirements for steel, iron, and manufactured products found in 23 U.S.C. 313, as implemented by 23 CFR 635.410, and the domestic preference requirements for construction materials found in the Build America, Buy America Act (Pub. L. 117-58, div. G §§ 70901-70927), as implemented by 2 CFR part 184. FHWA expects all applicants to comply with those requirements.

The applicability of Federal requirements to a project may be affected by the scope of the NEPA reviews for that project. For example, under 23 U.S.C. 313(h), FHWA’s Buy America requirements regarding steel, iron, and manufactured products apply to all contracts that are eligible for assistance under title 23, U.S.C. and are carried out within the scope of the NEPA finding, determination, or decision, regardless of the funding source of such contracts if at least one contract is funded with Title 23 funds.

c. Civil Rights and Title VI

As a condition of a grant award, grant recipients should demonstrate that the recipient has a plan for compliance with civil rights obligations and nondiscrimination laws, including Title VI of the Civil Rights Act of 1964 and implementing regulations (49 CFR § 21), the ADA, and Section 504 of the Rehabilitation Act, all other civil rights requirements, and accompanying regulations. This should include a current Title VI Plan, completed Community Participation Plan, and a plan to address any legacy infrastructure or facilities that are not compliant with ADA standards. FHWA Office of Civil Rights may work with awarded grant recipients to ensure full compliance with Federal civil rights requirements.

d. Federal Contract Compliance

As a condition of grant award and consistent with E.O. 11246, “Equal Employment Opportunity (30 FR 12319, and as amended),” all federally assisted contractors are required to make good faith efforts to meet the goals of 6.9 percent of construction project hours being performed by women, in addition to goals that vary based on geography for construction work hours and for

work being performed by people of color. Under Section 503 of the Rehabilitation Act and its implementing regulations, affirmative action obligations for certain contractors include an aspirational employment goal of 7 percent workers with disabilities.

The U.S. Department of Labor's (DOL) Office of Federal Contract Compliance Programs (OFCCP) is charged with enforcing E.O. 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. The OFCCP has a Mega Construction Project Program through which it engages with project sponsors as early as the design phase to help promote compliance with non-discrimination and affirmative action obligations. Additional information on how OFCCP makes their selections for participation in the Mega Construction Project Program is outlined under "Scheduling" on DOL's Website: <https://www.dol.gov/agencies/ofccp/faqs/construction-compliance>.

3. Reporting

i. Progress Reporting on Grant Activities

Each applicant selected for ATIIP grant **funding must submit semi-annual progress reports** and Federal Financial Reports (SF-425) to monitor project progress and ensure accountability and financial transparency in ATIIP.

ii. Performance and Program Evaluation

As a condition of grant award, ATIIP grant recipients may be required to participate in an evaluation undertaken by FHWA, or another agency or partner. The evaluation may take different forms such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grant recipients, or a benefit/cost analysis or assessment of return on investment. The DOT may require applicants to collect data elements to aid the evaluation and/or use information available through other reporting. As a part of the evaluation, as a condition of award, grant recipients must agree to: (1) make records available to the evaluation contractor; (2) provide access to program records, and any other relevant documents to **calculate costs and benefits**; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; (4) access to right-of-way to contractor or FHWA staff for long-term data and observation collection; and (5) follow evaluation procedures as specified by the evaluation contractor or FHWA staff.

Recipients and sub-recipients are also encouraged to incorporate program evaluation including associated data collection activities from the outset of their program design and implementation to meaningfully document and measure the effectiveness of their projects and strategies. Title I of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), Pub. L. No. 115–435 (2019) urges Federal Awarding Agencies and Federal assistance recipients and sub-recipients to use program evaluation as a critical tool to learn, to improve equitable delivery, and to elevate program service and delivery across the program lifecycle. Evaluation means “an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency” (codified at 5 U.S.C. § 311). For grant recipients, evaluation expenses are allowable costs (either as direct or indirect), unless prohibited by statute or regulation, and such expenses may include the personnel and equipment

needed for data infrastructure and expertise in data analysis, performance, and evaluation (2 CFR Part 200).

iii. ATIIIP Project Specific Reporting Requirements

Each applicant selected for ATIIIP grant funding must collect and report to FHWA information on the project's performance based on performance indicators FHWA identifies related to program goals and other information as requested by FHWA. Program goals include: 1) improving safety for people walking, bicycling, and rolling; 2) promoting equity throughout the active transportation planning, design, funding, implementation, and evaluation process; 3) achieving safe, accessible, comfortable, and connected multimodal networks; and 4) getting more people walking, bicycling, and rolling. Performance indicators should include measurable goals or targets that FHWA will use internally to determine whether the project meets program goals, and grant funds achieve the intended long-term outcomes of ATIIIP. FHWA will work with the grant recipient to establish a recommended two to four performance measures that enable FHWA to measure and evaluate the outcomes of the individual grant. Performance reporting continues for several years after project construction is completed.

Each applicant selected for ATIIIP grant funding must report to FHWA on 1) best practices in implementing their project and 2) impediments experienced in developing and shifting to active transportation.

iv. Reporting of Matters Related to Recipient Integrity and Performance

If the total value of a selected applicant's currently active grants, cooperative agreements, and procurement contracts from all Federal Awarding Agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then the applicant during that period of time must maintain the currency of information reported to the SAM that is made available in the designated integrity and performance system (currently FAPIIS) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. § 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

v. Other

FHWA reserves the right to request additional information, if deemed needed, to better understand the status of the project. The successful applicant will provide additional financial reporting beyond the semi-annual reporting, if such statements are necessary to address FHWA's Stewardship and Oversight responsibility of the funds. The successful applicant also agrees to allow periodic project inspections and FHWA will provide notice for such inspections.

G. Federal Awarding Agency Information

For questions concerning this NOFO and ATIIIP, [please contact](#):

Kenan Hall
Agreement Officer
Office of Acquisition and Grants Management
Federal Highway Administration

U.S. Department of Transportation
1200 New Jersey Avenue, SE.
Washington, DC 20590
Email: ATIIP@dot.gov (preferred)
Phone: 202-366-1533

Alternate:

Hector Santamaria
Agreement Officer/Team Leader
Office of Acquisition and Grants Management
Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE.
Washington, DC 20590
Email: ATIIP@dot.gov (preferred)
Phone: 202-493-2402

A TDD is available for individuals who are deaf or hard of hearing at (202) 366-3993.

Office hours are from 7:30 a.m. to 4:00 p.m., Eastern Standard Time, Monday through Friday, except Federal holidays.

H. Other Information

1. Protection of Confidential Business Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the applicant submits information that the applicant considers to be a trade secret or confidential commercial or financial information, the applicant must provide that information in a separate document, which the applicant may cross-reference from the application narrative or other portions of the application. For the separate document containing confidential information, the applicant must do the following: (1) State on the cover of that document that it “Contains Confidential Business Information (CBI)”; (2) mark each page that contains confidential information with “CBI”; (3) highlight or otherwise denote the confidential content on each page; and (4) at the end of the document, explain how disclosure of the confidential information would cause substantial competitive harm. DOT will protect confidential information complying with these requirements to the extent required under applicable law. If FHWA receives a Freedom of Information Act (FOIA) request for the information that the applicant has marked in accordance with this section, FHWA will follow the procedures described in its FOIA regulations at 49 CFR 7.29. Only information that is in the separate document, marked in accordance with this section, and ultimately determined to be confidential under § 7.29 will be exempt from disclosure under FOIA.

2. Publication/Sharing of Application Information

Following the completion of the selection process and announcement of awards, FHWA may publish a list of all applications received along with the names of the applicant organizations and funding amounts requested. This includes unsuccessful applicants. Except for the information properly marked as described in Section H.1, FHWA may make application narratives publicly available or share application information within DOT or with other Federal Agencies if FHWA determines that sharing is relevant to the respective program's objectives.

3. Feedback on Applications

Debriefs by FHWA are available to applicants not selected for award to receive information about the evaluation of their application.

4. Grant Application Resources

FHWA intends to provide resources to help interested applicants understand ATIIP discretionary grant programs through Webinars, frequently asked questions, and other materials provided such as the ATIIP program Website https://www.fhwa.dot.gov/environment/bicycle_pedestrian/atiip/. Additional grant applications resources for this and other Departmental grant programs can be found on the DOT Navigator at www.transportation.gov/dot-navigator. User-friendly information and resources regarding DOT's discretionary grant programs relevant to rural applicants can be found on the Rural Opportunities to Use Transportation for Economic Success (ROUTES) Website at www.transportation.gov/rural. Resources on meaningful public involvement can be found at <https://www.transportation.gov/priorities/equity/promising-practices-meaningful-public-involvement-transportation-decision-making>.

5. Definitions

Term	Definition
Active Transportation	Mobility options powered primarily by human energy, including bicycling and walking. <i>See</i> BIL § 11529(l)(1).
Active Transportation Network	Facilities built for active transportation, including sidewalks, bikeways, and pedestrian and bicycle trails, that connect destinations within a community or metropolitan region. <i>See</i> BIL § 11529(l)(2).
Active Transportation Spine	Facilities built for active transportation, including sidewalks, bikeways, and pedestrian and bicycle trails that connect between communities, metropolitan regions, or States. <i>See</i> BIL § 11529(l)(3).
Community	A geographic area that is socioeconomically interdependent and may include rural, suburban, and urban jurisdictions. <i>See</i> BIL § 11529(l)(4).
Complete Streets	Complete Streets are streets designed and operated to enable safe use and support mobility for all users. Those include people of all ages and abilities, regardless of whether they are travelling as drivers, pedestrians, bicyclists, or public transportation riders. The concept of Complete Streets encompasses many approaches to planning, designing, and operating roadways and rights of way with all users in mind to make the transportation network safer and more efficient.

Term	Definition
	Complete Street policies are set at the State, regional, and local levels and are frequently supported by roadway design guidelines.
Disadvantaged Community	Communities with a poverty rate of over 40% based on the majority of census tracts served by the proposed project. <i>See</i> BIL § 11529(f)(2).
Indian Tribe	Has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304, defined below): Any Indian Tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. <i>See</i> BIL § 11529(l)(7).
State	Any of the 50 States, the District of Columbia, or Puerto Rico. <i>See</i> 23 U.S.C. 101(a)(28).
Safe System Approach	The SSA is a data-driven, holistic, and equitable method to roadway safety that fully integrates the needs of all users, anticipates the possibility of errors by drivers and other road users, and manages crash impact forces to levels tolerated by the human body. The SSA includes five elements: safe road users, safe vehicles, safe speeds, safe roads, and post-crash care.

5 ways multi-use trail systems transform communities

Multi-use trails are an infrastructure asset for cities and communities — why aren't we prioritizing them?

By **Kevin Mills**

May 21, 2019



Most people agree that good schools are critical to high-quality cities, and many recognize other community assets as essential, such as libraries and stadiums. Multi-use trails are less often seen as essential infrastructure to cities aspiring to attract people and sustain a high quality of life. Trails are safe, convenient, enjoyable places where residents can walk, bike and connect with neighbors; but what makes trails transformational for communities?

These are five of my favorite ways in which free, public, multi-use trails transform communities:

1. Connectivity

Trails are transportation corridors, connecting people to the places that they need to go. Urban trails are heavily used for commuting and other utilitarian trip. As for roads and rails, our trail builders focus on seamless trail networks that connect to key destinations such as schools, transit facilities, shops and entertainment.

Trails also connect people to each other, serving as social infrastructure to build strong neighborhood and personal bonds. In addition, they serve as linear parks, providing urban residents with easy access to the outdoors and nature.

2. Health and safety

Building healthy places for healthy people is embedded in Rails-to-Trails Conservancy's mission. More than 60 percent of people in the United States fail to get the recommended 150 minutes of physical activity each week, and 25 percent are completely inactive. Millions of Americans use trails to become more active and the low-stress, traffic-free environment entices people of all ages and abilities.

“ With transportation being the second biggest drain on household budgets, affordable mobility options are critical for lower income families to make ends meet. ”

Safe places to walk or ride are a critical option given rising pedestrian and bicycle fatalities and serious injuries. Pedestrian traffic deaths alone stand about 6,000 per year, representing 15 percent of total fatalities and a 35 percent increase over a decade.

3. Protecting the environment

Miles walked or biked for a utilitarian purpose replace car trips, making an incremental contribution to reducing emissions associated with climate change. In 2014, a Congressional pilot program documented 85 million driving miles avoided across four communities. Shifting short car trips to non-polluting travel modes has an even greater impact in cutting air pollution as cars pollute far more when first started. Greenways and trails provide additional environmental benefits, such as [safe corridors for wildlife](#) to travel.

4. Economic development:

Trails are in high demand, and proximity to them can make a place more attractive. In fact, small towns which have been hit hard by job losses have redeveloped around trails. Cumberland, Maryland, for example, a once booming coal mining town that experienced decades of decline, has found new vitality by catering to trail users.

In an urban context, [the economic boost](#) can manifest as increased foot traffic for stores and restaurants, as well as new trailside businesses and residences. In neighborhoods where residents may experience pressures to leave because of rising costs, deploying policies and tools to prevent physical or cultural displacement can help mitigate unintended negative consequences.

5. Social equity

With transportation being the second biggest drain on household budgets, affordable mobility options are critical for lower income families to make ends meet. Trails are part of the solution for those who cannot drive due to the high costs of car ownership, age or disability. With nearly half of all trips in the United States within a 20-minute bike ride, and more than 1 in 5 trips within a 20-minute walk, active transportation is a practical choice. For longer trips, urban trails often connect to transit facilities, enabling residents to safely access public transportation.

Further, rail-trails are relatively flat and highly accessible for persons with disabilities. Lower-income neighborhoods and persons of color have [even more to gain from access to trails](#), given higher average incidences of chronic diseases associated with inactivity and less access to green outdoor spaces. California has recognized these needs and requires that a share of active transportation funds flow to disadvantaged communities.

As the benefits of trails are remarkable and the cost minimal, they are among the biggest bargains for fostering and maintaining sustainable cities. Many local leaders passionately support trails given their popularity and the wide array of benefits that they provide. So, what do we need to do better to fully realize the potential for trails to transform American communities?

The top line answer is that federal, state and municipal governments need to give greater priority to trail networks. These are three critical next steps to elevate trails as essential assets.

Invest

A mere penny and a half of federal surface transportation dollars go to trails, walking and biking. Reauthorization of the federal transportation law, due in 2020, is an opportunity to strike a better balance and orient more resources to filling strategic gaps in regional networks and spine trails connecting between communities. State DOTs are critical partners. Some, such as Michigan, are actively championing trails, but many do a poor job of [allocating federal funds](#) and end up transferring active transportation funds to other purposes. At the same time, more state legislatures [have provided dollars](#) for unmet transportation needs, often including trails, walking and biking facilities.

Urban regional planning organizations also receive a share of the federal active transportation dollars and have been doing a marginally better job of deploying them than states. Some standout cities are themselves investing substantially in developing trail networks, while many more find matching funds to leverage federal and/or state funds. The greatest successes come from orchestrating collaboration across these levels of government.

Organize and partner

To develop great trail networks, people need to organize themselves to sustain the political will and focus to succeed. Coalitions of cross-disciplinary supporters need to work together to ensure that the vision and plan for the network unites, rather than divides, the community and leads to equitable outcomes that broadly advance quality of life for all residents.

Trails are among the key community assets that any city aspiring to attract people and sustain a high quality of life should have in ample supply. Federal, state and city governments need to give greater priority to trail networks and partner in providing resources to further develop this critical physical and social infrastructure.

Rails-to-Trails Conservancy is working deeply in eight regions to develop robust regional trail networks that clearly will transform those cities into more vital places. A driving force in each of these TrailNation projects is a trails vision that focuses on the network the region really needs rather than individual projects that are most ready to move forward. The challenge then becomes how to forge the vision into a plan and then implement the plan in a reasonable timeframe.

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COLLEGE OF AGRICULTURE, HEALTH AND NATURAL RESOURCES

Extension News and Publications

Understanding the Value of Multi-Use Trails

June 9, 2017

Article by Laura Brown



Naugatuck Greenway

Answering growing demand for alternatives to car based transportation and potential improvements to public health and quality of life, Connecticut has vowed to invest billions of dollars in new transportation infrastructure, including \$100 million on pedestrian and bicycle paths[1]. While interest in multi-use trails is growing, they can be expensive to build (estimated \$1,000,000 per mile) and community leaders are often

asked to quantify the health and quality of life benefits. This was the case for a group of community leaders along the Naugatuck River Greenway (NRG), a proposed 44-mile multi-use trail that will run through eleven communities from Derby to Torrington when fully built. Committee members wanted to know: Who uses trails? How and when do people use trails? How much are people spending when they use the trail? What are other potential economic, public health, and quality of life impacts? What can we learn from other trails in our region? How can the trail support brownfield remediation?

In 2016, UConn Extension Educator Laura Brown partnered with the UConn School of Business Center for Community Economic Analysis, the Naugatuck Valley Council of Governments and the Naugatuck River Greenways Council on a multi-year research project to quantify the potential economic impacts of constructing the NRG, and provide recommendations to municipalities on how to maximize impacts during and after trail construction.

The study involved a literature review, collecting trail count data using infrared counters, a trail user intercept survey on five existing sections of the trail, three focus groups with trail administrators, local business owners, public health professionals along a similar fully built trail, and deployment of a Regional Economic Impact Model (REMI) analysis to estimate total economic impacts of the proposed trail. The analysis included estimates of construction costs, operating expenditures, user amenity benefits, user expenditures, as well as potential impacts on population, employment, income, and fiscal impacts. Reports from the study can be found at <http://s.uconn.edu/nrg>

The findings of the study showed that this trail, when fully constructed, could have a significant and positive impact on communities in the region. But, those impacts aren't inevitable even if the trail is built. Trails have to be used, promoted, maintained, and the community, both residents and businesses must be engaged in using and developing the trail. The greatest potential economic impact would result from increased consumer spending by users as well as costs of construction, expansion and maintenance. Currently trail users are spending about \$5.8 million annually on items related to trail use (including gear, rentals, clothes, and food) and this could rise to about \$85.2 million by 2030 when the trail is fully built. Direct construction expenditures may reach \$77.2 million by the year 2030.

Consumer surplus and health benefits also accrued significant economic value over time, including benefits to residents who don't even use the trail or live in the same zip code as a trailhead.

Consumer surplus describes the difference between how much people might be willing to pay to use the trail and how much they actually pay. This includes costs that are *avoided* like paying for gas to drive to a trailhead or for medical care as a result of health problems. Residents within closest proximity to trailheads and those nearby are expected to realize a combined annual consumer surplus of \$13.8 million. That would be expected to rise to about \$90.7 million by 2030 when the trail is fully built.

The more people that use the trail, the greater the economic benefit will be. Many users walk or bike on the trail often enough to realize health benefits by reducing incidents of obesity, diabetes, cardiovascular diseases, and cancer. The net present monetized value of health-related benefits would be expected to increase from about \$10.4 million currently to \$71.1 million in 2030.

The study has yielded other benefits beyond the impact numbers. As a result of the project, many other trail groups expressed interest in gathering data on their own trails to better understand their users and make better investments. UConn Extension partnered with the Naugatuck Valley Council of Governments and received a \$62,000 recreational trails grant from the Department of Energy and Environmental Protection to expand the study to 15 other trails around the state, a project called the CT Trail Census.

[1] LetsGoCT. Connecticut's Bold Vision for a Transportation Future. (2015). Retrieved November 15, 2016 at http://www.governor.ct.gov/malloy/lib/malloy/2015.02.18_CTDOT_30_YR_Vision.pdf

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City Bonds - Uncommitted Balances

Debt & Purpose	Uncommitted	Available	
2007 CO - Utility System	\$ 402,090.00	\$ 402,090.00	\$ -
2016 CO - Utility Infrastructure, SSO, WWTP	\$ 555,318.00	\$ 555,318.00	\$ -
2018 CO - Mun. & Public Safety Bldg Upgrades	\$ 750,000.00	\$ 750,000.00	\$ -
2020 CO - WWTP	\$ 2,690,934.00	\$ 2,690,934.00	\$ -
Total	\$ 4,398,342.00	\$ -	

Estimate as of 7/3/24

Suggested Distribution of Uncommitted Bond Balances

Pending Expenditures/Encumbrances	Estimated Amount	Estimated Due Date	Designated CO Source				Total	Balance	*	Status
			2007	2016	2018	2020				
GLO Match for WWTP	\$ 402,000.00	FY 26					\$ -	\$ 402,000.00	*	Engineering
GLO Match for Lift Stations	\$ 82,800.00	FY 25					\$ -	\$ 82,800.00	*	Construction
GLO Match for Manholes	\$ 75,000.00	FY 25					\$ -	\$ 75,000.00	*	Construction
Merry Melody/Westlawn Project Overage	\$ 362,957.83	FY 24				\$ 362,957.83	\$ 362,957.83	\$ -	*	Final Inspections
WWTP Bar Screen	\$ 1,675,079.00	FY 24	\$ 402,090.00			\$ 147,647.17	\$ 549,737.17	\$ 1,125,341.83	*	Engineering
Main Street Sanitary Sewer	\$ 285,555.14	FY 24		\$ 285,555.14			\$ 285,555.14	\$ -		Engineering
Westwood Stormwater Improvements	\$ 220,000.00	FY 24		\$ 219,762.86			\$ 219,762.86	\$ 237.14		Engineering
Orange & Prune Waterline	\$ 32,750.00	FY 24					\$ -			COMPLETE
Maple & Cedar Sewerline	\$ 55,000.00	FY 24								Planning
Main Street Waterline Project	\$ 1,555,329.00	FY 24/25				\$ 1,555,329.00	\$ 1,555,329.00	\$ -		Construction-GB
Westward & Verkin Sanitary Sewer Emergency	\$ 59,420.00	FY 24					\$ -			COMPLETE
Shady Lane Sanitary Sewer Emergency	\$ 86,177.00	FY 24					\$ -			COMPLETE
Municipal Building Upgrades	\$ 300,000.00	FY 24			\$ 300,000.00		\$ 300,000.00	\$ -		Planning
Police Department Upgrades	\$ 500,000.00	FY 24		\$ 50,000.00	\$ 450,000.00		\$ 500,000.00	\$ -		Planning
Multi-Use Transportation Spline Connecting Trail	\$ 625,000.00	FY 26				\$ 625,000.00	\$ 625,000.00	\$ -		TxDOT Project
GCWA Shannon Project Share - Cash Call 2	\$ 389,858.58	FY 24					\$ -	\$ 389,858.58		Bond Option
TOTALS	\$ 6,706,926.55		\$ 402,090.00	\$ 555,318.00	\$ 750,000.00	\$ 2,690,934.00	\$ 4,398,342.00	\$ 2,075,237.55		

All GLO Match = ARPA
Adjusted with CO & Reallocated funds
Bar Screen Project not in ARPA

Pd from O&M
Delayed

Currently PD from O&M
Currently PD from O&M

* = Allowable ARPA Expense.



CITY COUNCIL AGENDA FORM

Meeting Date: July 8, 2024

Prepared by: Kierra Nance

Department: City Clerk

Agenda Item: 7.I.

Reviewed by: Kierra Nance

AGENDA ITEM DESCRIPTION:

Establishing a Public Safety Building Committee; providing an effective date; and making other provisions

THIS IS THE FIRST READING

STAFF BRIEFING:

At the June 3, 2024, meeting, a request was made for a discussion regarding the Public Safety Building Committee to be presented before the council. In 2022, a Public Safety Building Committee was created to be active for a period not to exceed one year.

HISTORY:

April 11, 2022 - Ordinance No. O-2022-0003 was passed

June 24, 2024 - Council agreed to reinstate the committee and a new ordinance to be drafted by City Attorney and Mayor Pro Tem Compian

July 8, 2024 - First reading

August 12, 2024 - proposed second reading

FISCAL IMPACT:

Unknown

ORDINANCE NO. O-2024-00[]

AN ORDINANCE OF THE CITY OF LA MARQUE, TEXAS, ESTABLISHING A PUBLIC SAFETY BUILDING COMMITTEE; PROVIDING AN EFFECTIVE DATE; AND MAKING OTHER PROVISIONS RELATED TO THE SUBJECT

WHEREAS, in 2022 the City of La Marque, Texas established a Public Safety Building Committee to review and consider options to construct a Public Safety Building in the City of La Marque, Texas.

WHEREAS, the Public Safety Building Committee completed its charge and was automatically dissolved.

WHEREAS, the City of La Marque, Texas wishes to reconstitute the Public Safety Building Committee to consider options to construct a Public Safety Building in the City of La Marque, Texas.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA MARQUE, TEXAS, THAT:

Section 1. The findings and recitals set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

Section 2. A Public Safety Building Committee, consisting of five members who must be citizens of the City of La Marque, Texas, is hereby established. Each Councilmember and the Mayor shall appoint one member to the Public Safety Building Committee. Each member of the Public Safety Building Committee shall serve a one-year term.

Section 3. At the first meeting of the Public Safety Building Committee, the Public Safety Building Committee shall elect a presiding officer of the Public Safety Building Committee to preside over the Public Safety Building Committee meetings and a vice presiding officer of the Public Safety Building Committee to preside over the Public Safety Building Committee meetings in the presiding officer's absence. The conduct and procedure of the Public Safety Building Committee meetings shall conform to and be governed by the City Charter, the City Code of Ordinances, and Robert's Rules of Order, Revised.

Section 4. The Public Safety Building Committee shall post its meetings in accordance with the Texas Open Meetings Act. The City Clerk or designee shall record

minutes of the Committee's meetings and post notice of meetings in accordance with City Ordinances and State Law. A majority of the voting membership shall constitute a quorum for the conducting of business. The meeting shall be held at the City Council Chambers, 1109-b Bayou Road La Marque, Texas 77546 and shall state that members of City Council may be attending and participating in the discussion.

Section 5. The Public Safety Building Committee shall perform the following functions:

1. Analyze work done in 2022 by the Public Safety Building Committee and McLemore Luong Architects and consider possible updates.
2. Analyze how a Public Safety Building would encourage and engage surrounding community features.
3. Analyze and update a proposed budget and project plan for a Public Safety Building for recommendation to the City Council.
4. Analyze how a Public Safety Building establishes public programmatic features so that a Public Safety Building would provide a positive impact on the community, health, and wellness of the citizens of the City of La Marque, Texas.

Section 6. The Public Safety Building Committee shall automatically expire and dissolve one year from final passage of this ordinance and all work shall be turned over to the City Clerk.

Section 7. Severability. In the event any clause, phrase, provision sentence, or part of this Ordinance or the application of the same to any person or circumstance for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it is the intention of the City Council that the invalidity or unconstitutionality of the one or more parts shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision other than the part declared to be invalid or unconstitutional; and the City Council of the City of La Marque, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 8. Publication and Effective Date. This Ordinance shall be effective immediately, after final passage by City Council, a public hearing in accordance with Section 2.19 of the City Charter, and publication of this ordinance or a caption that summarizes the purpose of this ordinance.

PASSED, AND APPROVED by the City Council of the City of La Marque on First Reading this ____ day of _____, 2024; and

PASSED, APPROVED, AND ADOPTED by the City Council of the City of La Marque on
Second and Final Reading this _____ day of _____, **2024**.

***** SIGNATURES ON NEXT PAGE *****

[REMAINDER OF PAGE INTENTIONALLY BLANK]

CITY OF LA MARQUE, TEXAS

Keith Bell, Mayor

ATTEST:

Kierra Nance, TRMC, City Clerk

APPROVED AS TO FORM:

Gus Knebel, Consulting City Attorney

ORDINANCE NO. O-2021-0003

AN ORDINANCE OF THE CITY OF LA MARQUE, TEXAS ESTABLISHING A PUBLIC SAFETY BUILDING COMMITTEE; PROVIDING AN EFFECTIVE DATE; AND MAKING OTHER PROVISIONS RELATED TO THE SUBJECT.

Whereas, on or about January 10, 2022, the City of La Marque, Texas, engaged the firm McLemore Luong Architects (MLA) to provide professional services necessary for the facility assessment and programming of the new Public Safety Building for the City of La Marque, Texas;

Whereas, the City is considering constructing a new Public Safety Building at a location to be determined in the City of La Marque, Texas; and

Whereas, the City Council of the City of La Marque, Texas, is authorized to create boards and commissions in accordance with the City Charter of La Marque, Texas.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LA MARQUE, TEXAS THAT:

Section 1. The findings and recitals set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

Section 2. A Public Safety Building Committee, consisting of five members who must be citizens of the City of La Marque, Texas, is hereby established. Each Councilmember and the Mayor shall appoint one member to the Public Safety Building Committee. Each member of the Public Safety Building Committee shall serve a one-year term.

Section 3. At the first meeting of the Public Safety Building Committee, the Public Safety Building Committee shall elect a presiding officer of the Public Safety Building Committee to preside over the Public Safety Building Committee meetings and a vice presiding officer of the Public Safety Building Committee to preside over the Public Safety Building Committee meetings in the presiding officer's absence.

Section 4. The Public Safety Building Committee shall post its meetings in accordance with the Texas Open Meetings Act.

Section 5. The Public Safety Building Committee shall perform the following functions:

- a. To work with McLemore Luong Architects on the style of architecture as it relates to the continued development and revitalization of Downtown La Marque, Texas;
- b. To work with McLemore Luong Architects in establishing the public programmatic features of the building that directly impact the community, health, and wellness of the Citizens of the City of La Marque, Texas;
- c. To work with McLemore Luong Architects in establishing how the Public Safety Building encourages and engages the surrounding features; and
- d. To work with McLemore Luong Architects to establish a budget for recommendation to the City Council;

Section 6. The Public Safety Building Committee shall automatically expire and dissolve one year from final passage of this ordinance and all work shall be turned over to the City Clerk.

Section 7. Repeal. This ordinance is intended to be cumulative and shall not repeal any provision of a previous ordinance or City Code provision, except to the extent that a provision is inconsistent and cannot be reconciled with this ordinance.

Section 8. Severability. In the event any clause, phrase, provision sentence, or part of this Ordinance or the application of the same to any person or circumstance for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it is the intention of the City Council that the invalidity or unconstitutionality of the one or more parts shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision other than the part declared to be invalid or unconstitutional; and the City Council of the City of La Marque, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 9. Purpose. The purpose of passing this Ordinance is to provide community input on a new public safety building.

Section 10. Publication and Effective Date. This Ordinance shall be effective immediately upon City Council's final adoption of this Ordinance, a public hearing in accordance with Section 2.19 of the City Charter, and publication of this ordinance or

a caption that summarizes the purpose of this ordinance and the penalty for violating this ordinance in accordance with Chapter 52 of the Texas Local Government Code and Article II of the City Charter.

PASSED AND APPROVED, by the City Council of the City of La Marque on First Reading this 14th day of March, 2022; and

PASSED, APPROVED AND ADOPTED by the City Council of the City of La Marque on Second and Final Reading this 11th day of April, 2022; and

CITY OF LA MARQUE, TEXAS



Keith Bell, Mayor

ATTEST:



Kierra K. Nance, TRMC, City Clerk

APPROVED AS TO FORM:

Gus Knebel
Consulting City Attorney



June 13, 2022

CITY OF LA MARQUE
CITY COUNCIL PRESENTATION – PROGRESS UPDATE

MCLEMORE LUONG

Agenda

- 1) Review of Public Safety Building Committee Meetings to Date
 - April 20, 2022 Meeting Review – Assessment
 - May 11, 2022 Meeting Review – Programming
 - June 8, 2022 Meeting Review – Building Site Plans
- 2) Present two site plan/floor plan options
- 3) Review of Public Safety Building Committee Inputs



Public Safety Building Committee Recap

April 20, 2022 – Review of Existing Police Station and Facility Assessment Report

Meeting Location: Police Station, Roll Call Room Housekeeping Summary Review

- Committee members briefed on Open Meetings Act and Meeting Procedures
- Committee agreed to meet every other Wednesday, starting May 11, 2022 at 5:00 PM
- Reviewed the goals of the committee – To provide consensus recommendations to council on the following items:
 - Location / Cost / Program / Size / Schedule / Aesthetic

Technical Summary Review

- Reviewed the staff interviews, existing facility data sheets, and staff projection methodology
- Gave committee a detailed tour of the Police Station, accompanied by Police Staff for questions
- Reviewed the Facility Assessment Report in detail

MSLEMORE LƯƠNG		A.M.D.G.	
Project Name	City of La Marque Public Safety Building	Room Name	Lieutenant Sargeant Forrest Gandy's Office
Client Name	City of La Marque	Room Number	N/A
Building Name	Police Department	Department	CC
Building Address	431 Bayou Road, La Marque, Texas 77568		
Project Phase	Existing Conditions Assessment		
Prepared By Client	Detective Matthew Cypert		
Prepared by M&A	Alec Luong		
General			
General Room Description	Lieutenant Gandy's		
Functional Relationships			
Space Data	Area (SF)		
Description of Activities	Office to work and		
Special Access Notes	Has outside door to		
Equipment			
Lighting	Type	Artic	
HVAC	Type	Stand	
Acoustics	Type		
Safety	Ballistic	None	
Blinds	Type		
Services			
Electrical	Type	120V	
Data	Notes		
Security	Notes	No	
Plumbing	Notes	No	
Fire System	Type	Alarm	
Finishes			
Room	Floor	Vinyl	
Doors	Type	Full R	
Windows	Type	Door	
Equipment / Millwork			
AV	TV		
Office	EQ1	Came	
Appliance	API	Relig	
	API		
Furniture	Desk	Single	
Boards	Notes	2 Sin	
Millwork	Type	Dry E	
Countertop	Notes		

MSLEMORE LƯƠNG

expected to continue to grow at a rate of 2.5% annually as residential development continues to provide suburban housing in the city.

§1.2 Community Demographics

The US Census 2019 ACS 5-Year Survey shows the City of La Marque having a population of 18,861 with a median household income of \$53,964. Since 2010, the population has grown from 14,568 to the current total, with an average annual growth rate of 2.06%.

Year	Population	Growth	Annual Growth Rate
2022	18,861	514	2.80%
2021	18,347	514	2.88%
2020	17,833	514	2.97%
2019	17,319	514	3.06%
2018	16,805	56	0.39%
2017	16,729	360	2.20%
2016	16,379	564	3.70%
2015	15,795	336	2.17%
2014	15,459	319	2.11%
2013	15,140	216	1.45%
2012	14,924	211	1.71%
2011	14,673	105	0.72%
2010	14,568	885	6.03%

Figure 1-1 La Marque Population by Year¹

The City of La Marque is a diverse community, with roughly equal representation of White, Hispanic, and African American populations within the city. The following breakdown of population by race is provided:

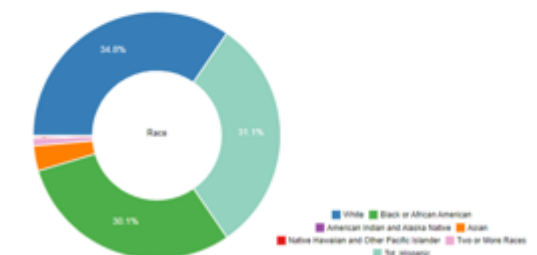


Figure 1-2 La Marque Population by Race

¹ Note: 2021 and 2022 data are projected

8 | City of La Marque Police and Municipal Courts Facility Assessment Report



Public Safety Building Committee Recap

May 11, 2022 – Review of Proposed Public Safety Building Program

Meeting Location: Council Chambers
Housekeeping Summary Review

- No items to review

Technical Summary Review

- Detailed review of the proposed Program Documents provided by MLA
 - Reviewed program on a department by department basis
 - Reviewed methodology to determine square footage requirements
 - Reviewed “wants” vs “needs”
 - Reviewed benchmark stations sizes and square footage requirements for future expansion
- Detailed discussion on combined program benefits to including courts and utilizing shared spaces for civic events

MSLEMORE LUONG		A.M.D.G. 2/16/2022		
Project Name	City of La Marque Public Safety Building			
Client Name	City of La Marque			
Building Name	Police Department			
Building Address	431 Bayou Road, La Marque, Texas 77568			
Project Phase	Program Based on Bellare, Webster, League City, and Texas City Stations			
Prepared By Client				
Prepared by MLA	Alec Luong			

MSLEMORE LUONG		A.M.D.G. 2/16/2022		
Project Name	City of La Marque Public Safety Building			
Client Name	City of La Marque			
Building Name	Police Department			
Building Address	431 Bayou Road, La Marque, Texas 77568			
Project Phase	Program Based on Bellare, Webster, League City, and Texas City Stations			
Prepared By Client				
Prepared by MLA	Alec Luong			

Departments	Comments	Number	Area	Total
Community				
Community Room	Multi-Purpose			
Conference	legal use.			
Elevator	Public Elevator			
Entrance Vestibule	Secure entry			
Men's Restroom	Men's public			
Public Lobby	Main entry to Second floor			
Women's Restroom	Women's public			
Community Total				
Courts				
Clerk Workroom	Front of house			
Court Records	High density many file boxes			
Court Room	Court Room bench, with			
Courts Breakroom	Breakroom			
Judge's Office	Judge's Office			
Jury Deliberation Restroom	Dedicated to Jury meeting			
Jury Room	Shared court			
Office	Shared office			
Prosecutor Office	Prosecutor's Office			
Staff Restroom	Single use			
Courts Total				
Police				
Administration				
Administration Conference	Conference			
Chief Office	Chief Office			
Chief Storage	Private storage			
Clerk Workroom	Front of house			
Copy Room	Printer / Copier			
Dispatch	Dispatch work area			
Dispatch Admin Office	Dispatch administrative			
Dispatch Breakroom	Dispatch breakroom			
DMARC	Main terminal			
IT Office	Dedicated IT			
Men's Locker Room	Men's locker			
Men's Restroom	Men's restroom			
Men's Shower	Men's shower			
Police Breakroom	Police breakroom			

Departments	Comments	Number	Area	Total
Police Records	high density storage for police records. Need to determine how many file boxes of records are required.	1	178	178
Police Secretary	Front reception desk secretary	1	138	138
Server Room	Main Server room for police building	1	258	258
Tactical Training	Specialty training room for simulated exercises	1	480	480
Training Room	Training room for up to 30 people	1	600	600
Visitor Restroom	Single use restroom for Police Admin and Visitors	1	60	60
Women's Locker Room	Women's locker room with 28 lockers	1	238	238
Women's Restroom	Women's restroom	1	138	138
Women's Shower	Women's Shower with 2 showers	1	78	78
Admin Services Div. Lt. Office	Admin Lt. Office	1	138	138
Patrol Services Div. Lt. Office	Compliance Officer Office	1	128	128
Assistant Chief Office	Assistant Chief Office	1	148	148
Fitness	Fitness area for police employees	1	600	600
Department				
CID Offices	CID Officer Offices	7	128	840
Evidence Drop	Evidence processing, tagging work area	1	188	188
Evidence Lab	Evidence lab area with specialty equipment. Full list of equipment to be provided.	1	208	208
Evidence Office	Evidence processing tech office space. To be included in evidence storage room	1	188	188
Evidence Storage	for staff	1	408	408
Interview Room	Hard / Soft interview room	1	188	188
Major Case Workroom	Workroom with locked door for major case	1	128	128
Narcotics Storage	Storage for narcotics, both cold and room temperature, with dedicated staff	1	188	188
Investigative Services Div. Lt. Office	CID Lt. Office	1	138	138
Jail				
AFIS Room	AFIS machine with wall for photographs	1	78	78
Booking Area	Detention area with three workstations	1	458	458
DWI Room	DWI Administration area with camera recording station	1	138	138
Holding Cell	Detention cell with masonry bench	2	58	108
Inmate Restroom	Female restroom detention cell	1	68	68
Isolation Cell	Specialty isolation cell with in ground toilet and padded walls	1	38	38
Jail Staff Restroom	Jail Staff Restroom	1	68	68
Jail Supply	refrigerator	1	258	258
Jailer Office	Jailers office with two shared workstations	1	158	158
Juvenile Processing	Juvenile processing area	1	188	188
Men's ADA Detention Cell	ADA Jail Detention cell with two masonry beds each	1	118	118
Men's Detention Cell	Jail detention cell with two masonry beds each	5	188	940
Men's Shower Cell	ADA Shower Cell	1	68	68
Security Vestibule	Secure vestibule with gun lockers	2	38	108
Women's ADA Detention Cell	ADA Jail Detention cell with two masonry beds each	1	118	118
Women's Detention Cell	Jail detention cell with two masonry beds each	2	188	376
Women's Shower Cell	ADA Shower Cell	1	68	68
Patrol				
Armory	Armory for gun cleaning, parts and supply storage	1	188	188
Beverage Bar	Coffee / water bar area for patrol	1	28	28



Public Safety Building Committee Recap

June 8, 2022 – Review of Proposed Site Plan Options

Meeting Location: Community Room
Housekeeping Summary Review

- No items to review

Technical Summary Review

- Review of two site plan options and associated pro and cons
(will be reviewed with Council this evening)
- Discussed input requirements needed from the Committee to
present to Council at the June 13 meeting



Site Plan Option Review

Two Site Plan Options and Blocking Diagrams for Review

Summary

- Two site plan options developed for review by the Public Safety Building Committee and City Council
- Site plan options are high level exercises to confirm general adjacencies, site layout, and square footages

Similarities

- Both site plan options are approximately 28,000 gross square feet
- Both site plan options contain police, courts, and civic spaces
- Both site plan options are two story buildings, with the possibility of future second floor expansion

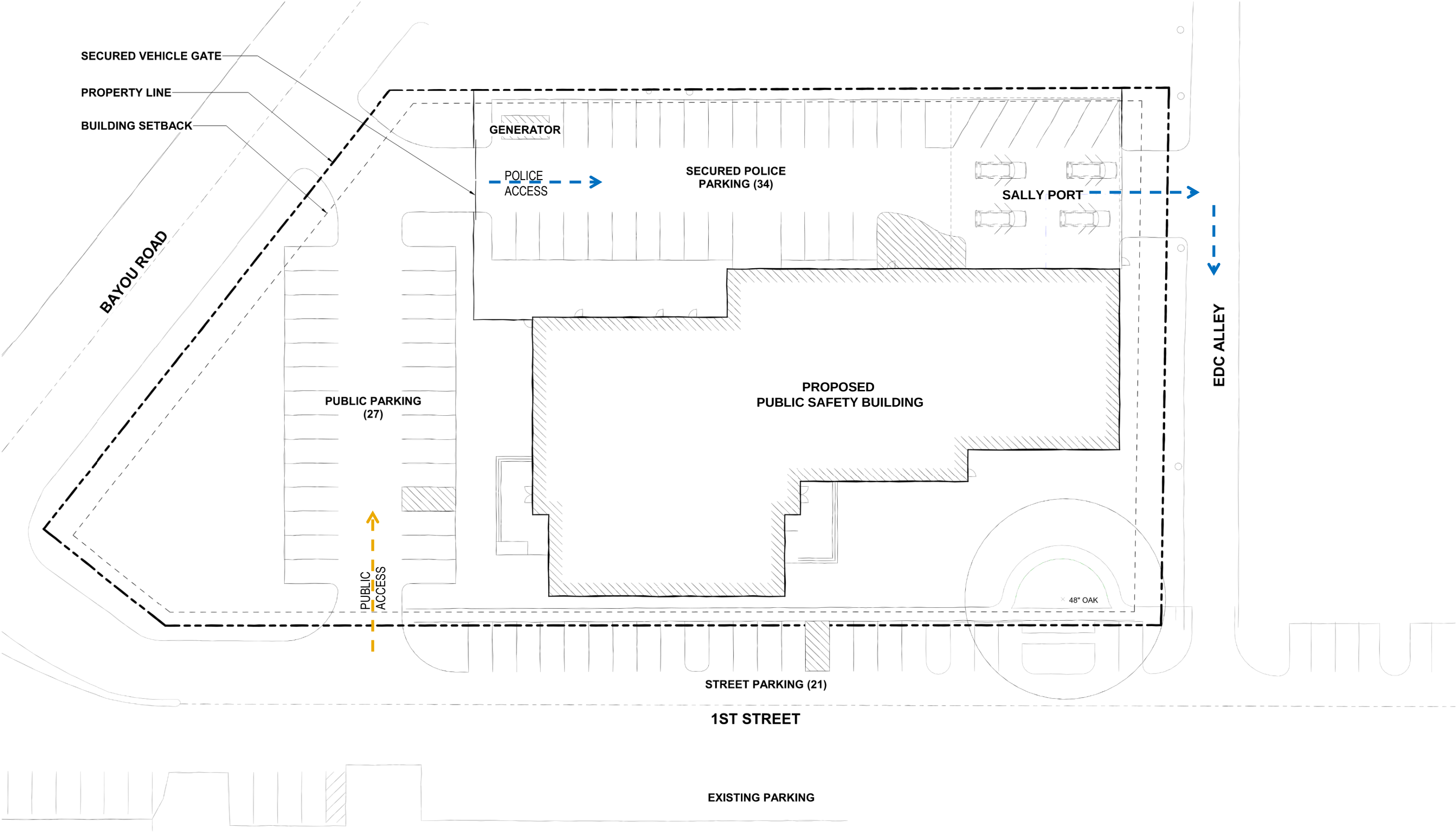
Differences

- Site plans offer different approaches to the EDC alleyway
- Have different entrance experiences for police and courts
- Site plans offer different relationships to the public right of way



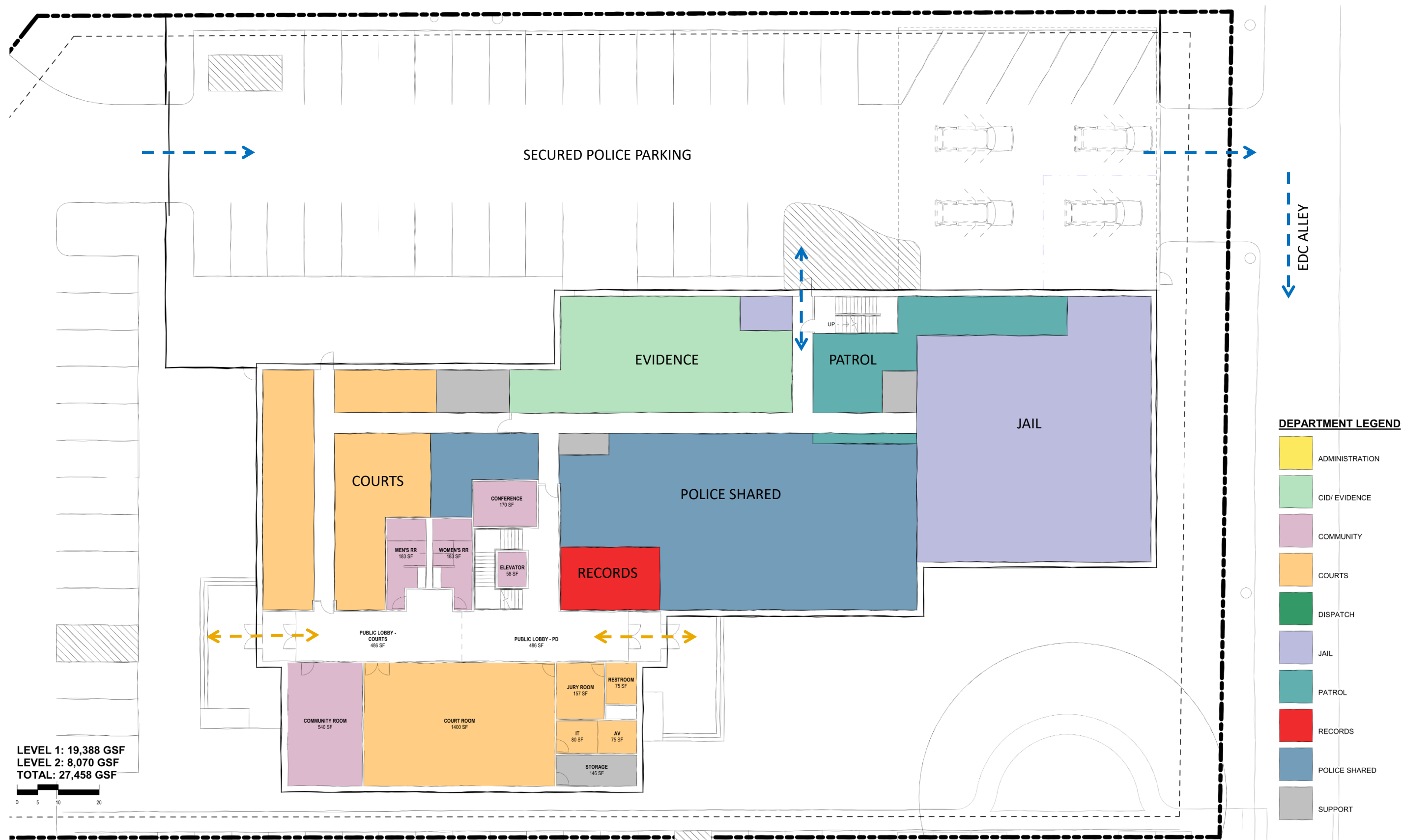
Site Plan Options

Option 1 – Site Plan Diagram



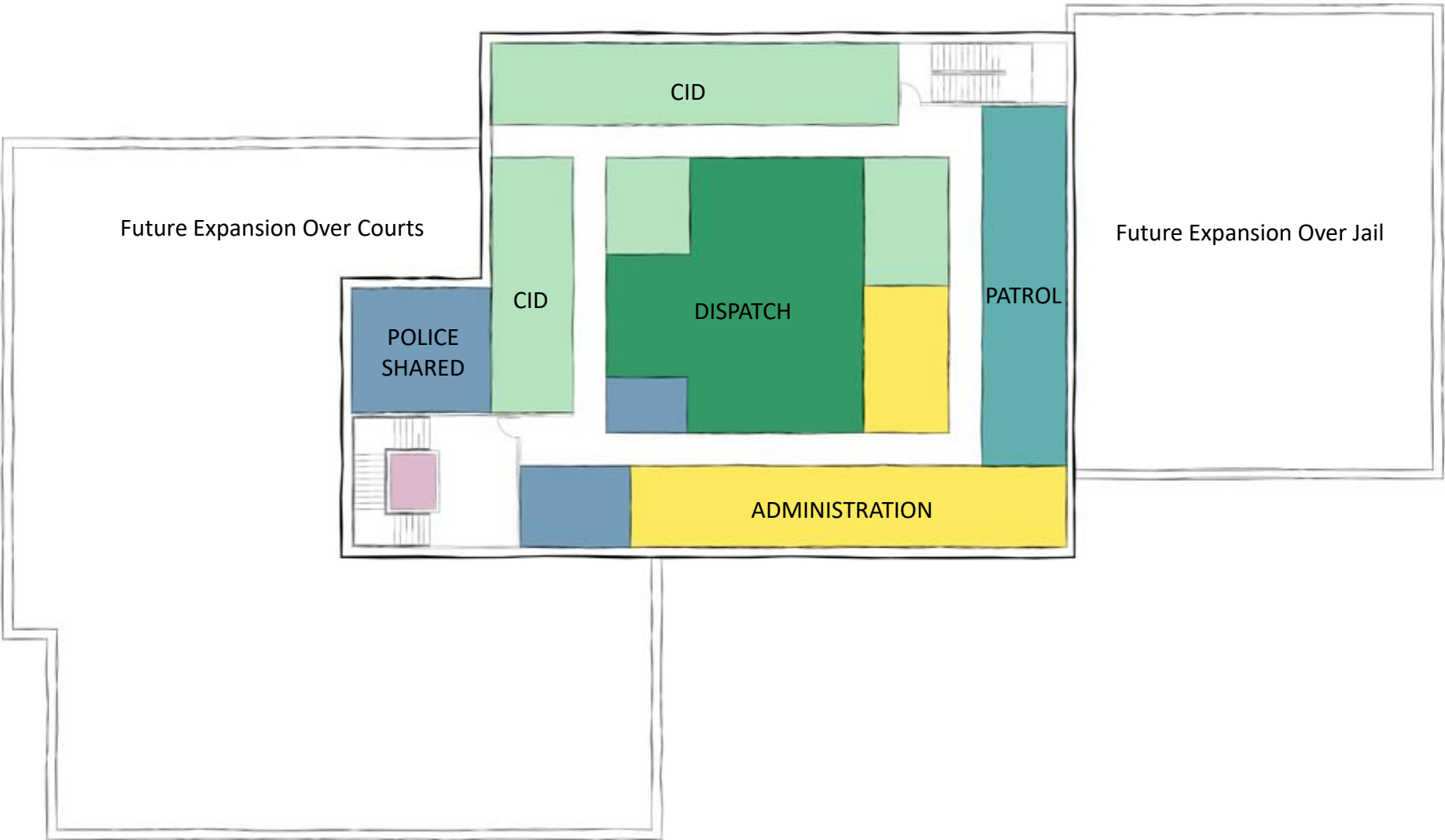
Site Plan Options

Option 1 – First Floor Blocking Diagram



Site Plan Options

Option 1 – Second Floor Blocking Diagram



DEPARTMENT LEGEND

- ADMINISTRATION
- CID/ EVIDENCE
- COMMUNITY
- COURTS
- DISPATCH
- JAIL
- PATROL
- RECORDS
- POLICE SHARED
- SUPPORT

LEVEL 1: 19,388 GSF
LEVEL 2: 8,070 GSF
TOTAL: 27,458 GSF



Site Plan Options

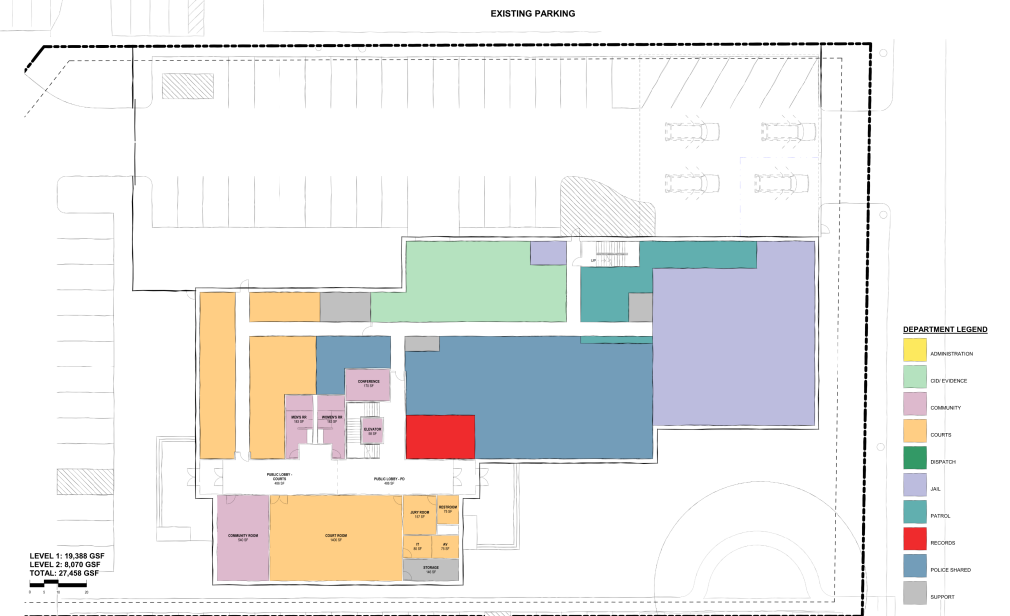
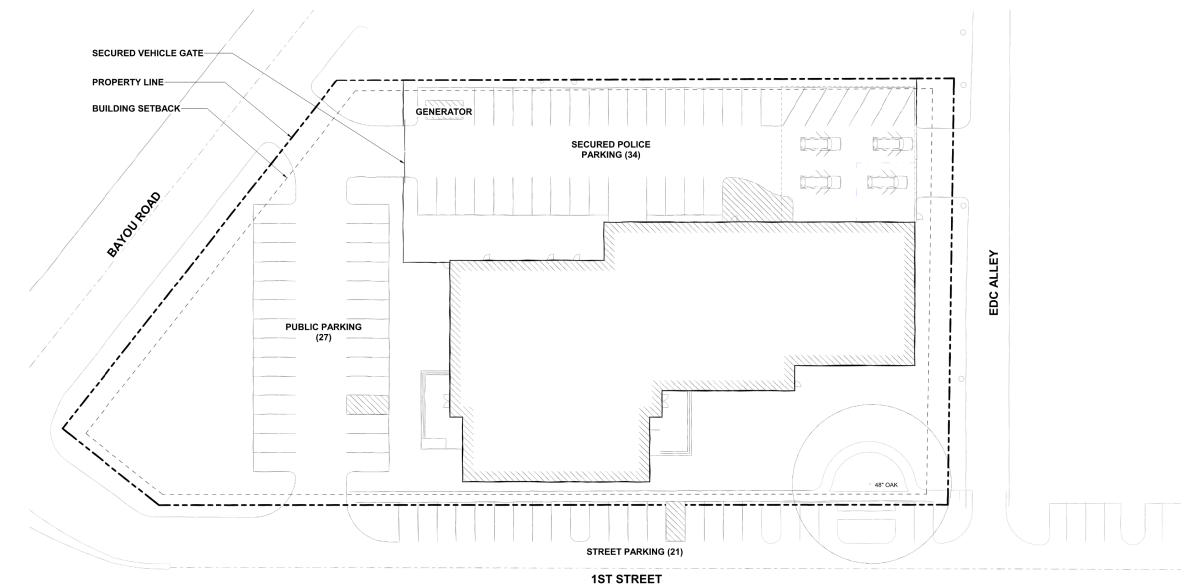
Options 1 - Review

Summary

- Staff parking lot is secured and provides privacy on all sides
- Has two separate public entry vestibules, one for Courts and one for the Police Department, that serve as panic rooms
- Includes a Community Room separate from the Court room for public use

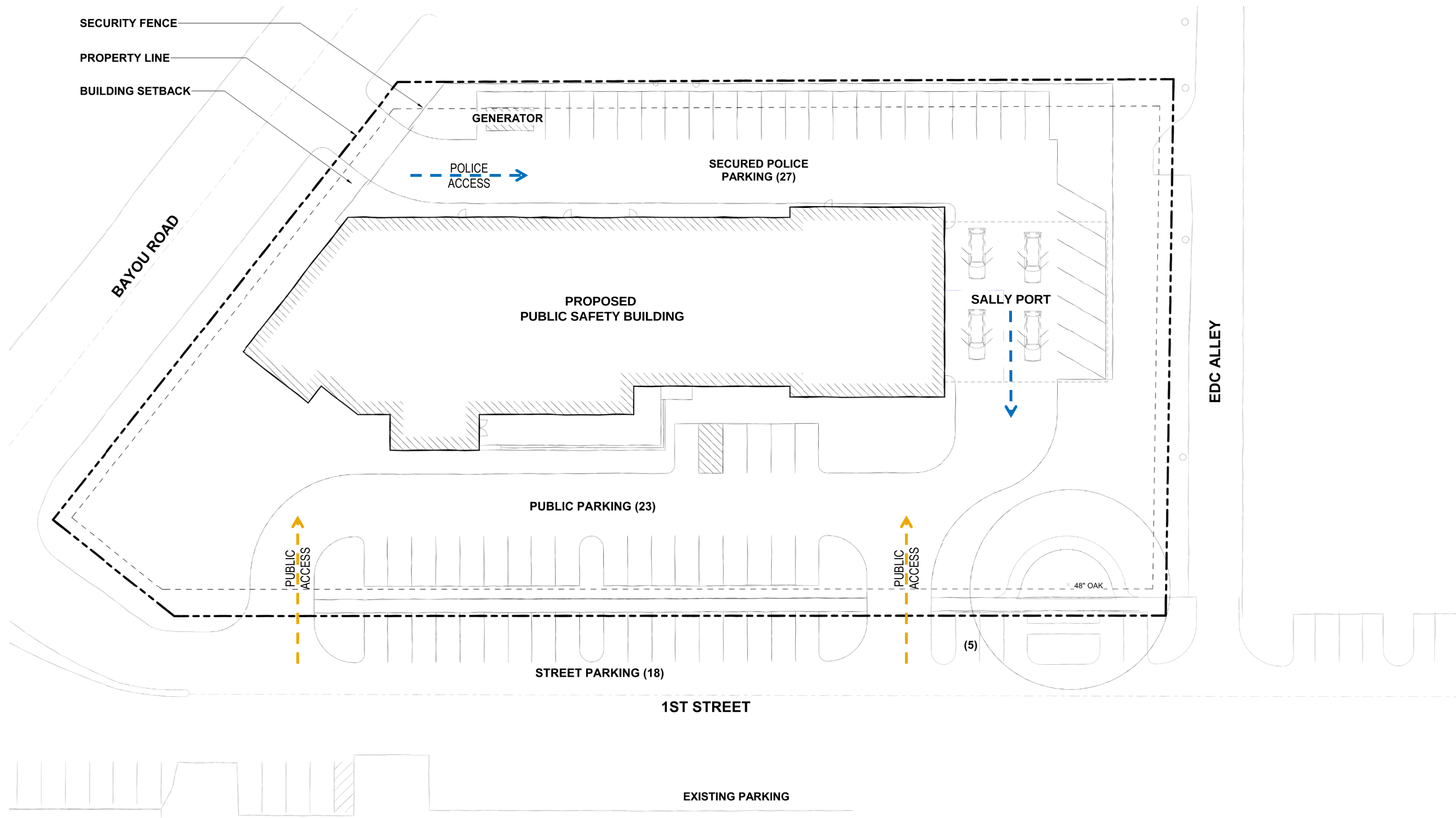
Cons

- Will utilize the EDC alley
- Unused space at the Bayou and 1st Street corner
- No direct views from the lobby to the street



Site Plan Options

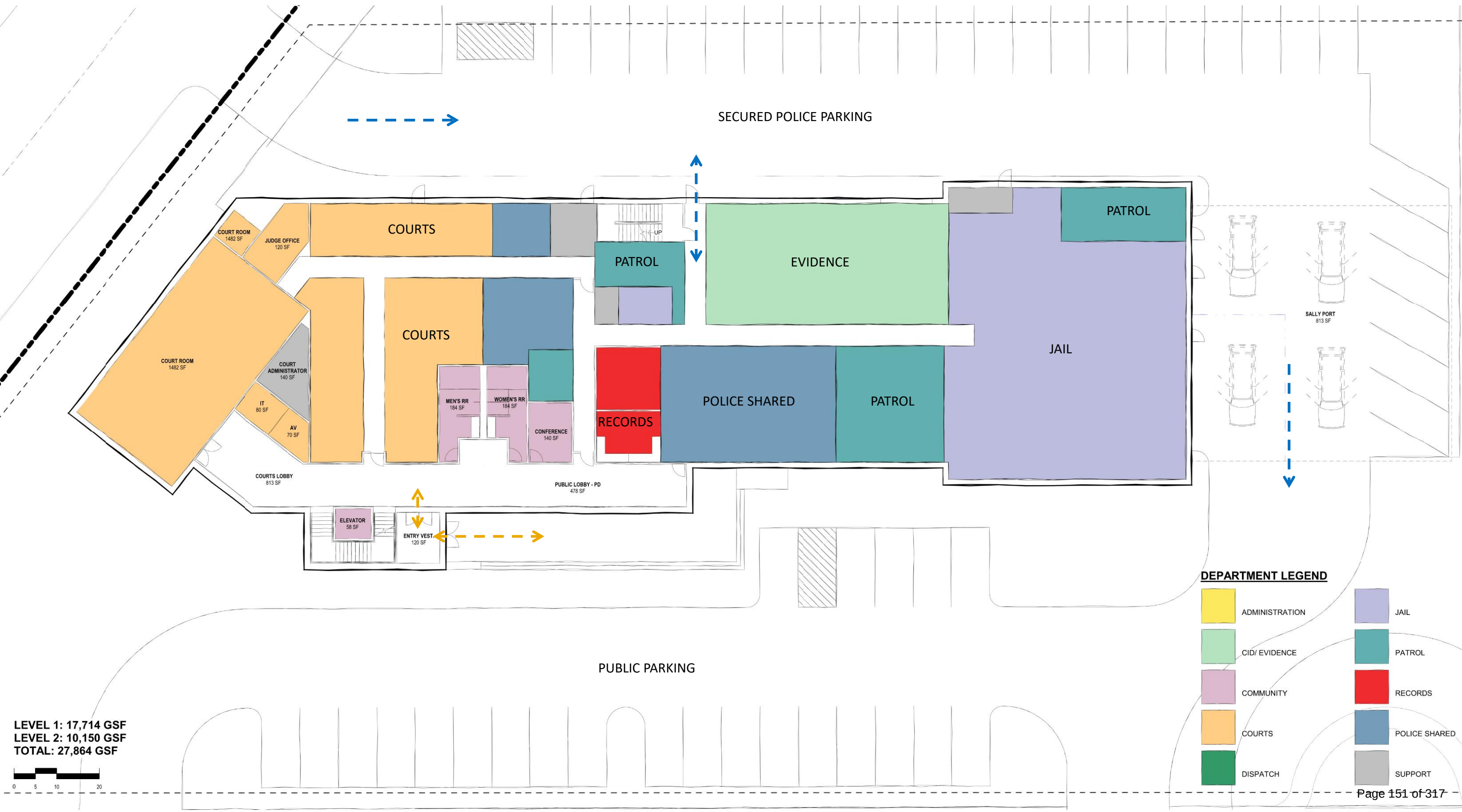
Option 2 – Site Plan Diagram





Site Plan Options

Option 2 – First Floor Blocking Diagram

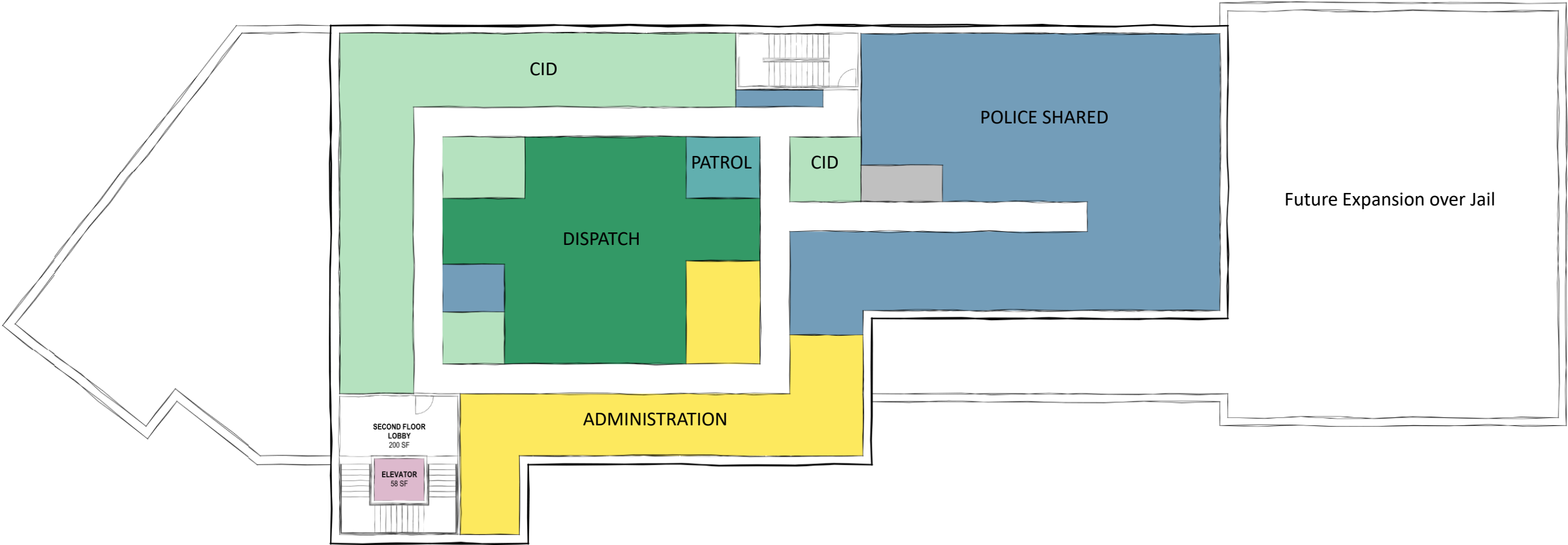


LEVEL 1: 17,714 GSF
LEVEL 2: 10,150 GSF
TOTAL: 27,864 GSF



Site Plan Options

Option 2 – Second Floor Blocking Diagram



DEPARTMENT LEGEND

	ADMINISTRATION		JAIL
	CID/ EVIDENCE		PATROL
	COMMUNITY		RECORDS
	COURTS		POLICE SHARED
	DISPATCH		SUPPORT

LEVEL 1: 17,714 GSF
LEVEL 2: 10,150 GSF
TOTAL: 27,864 GSF



Site Plan Options

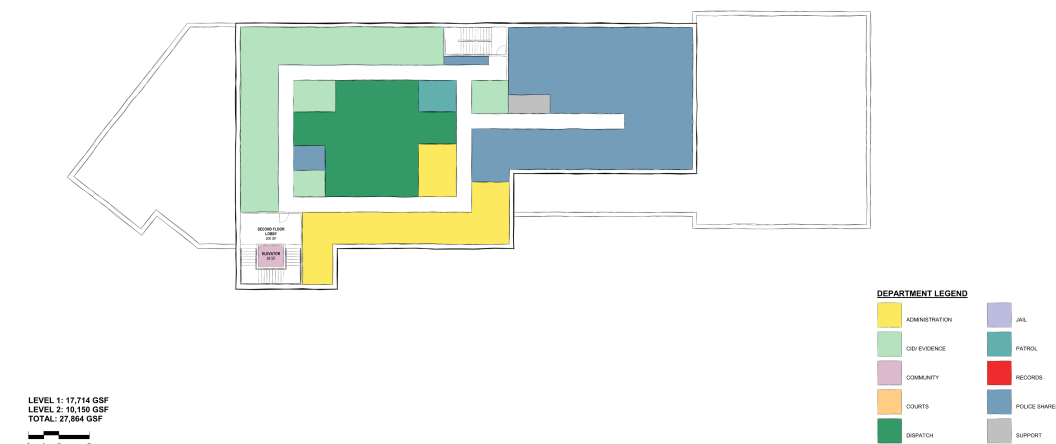
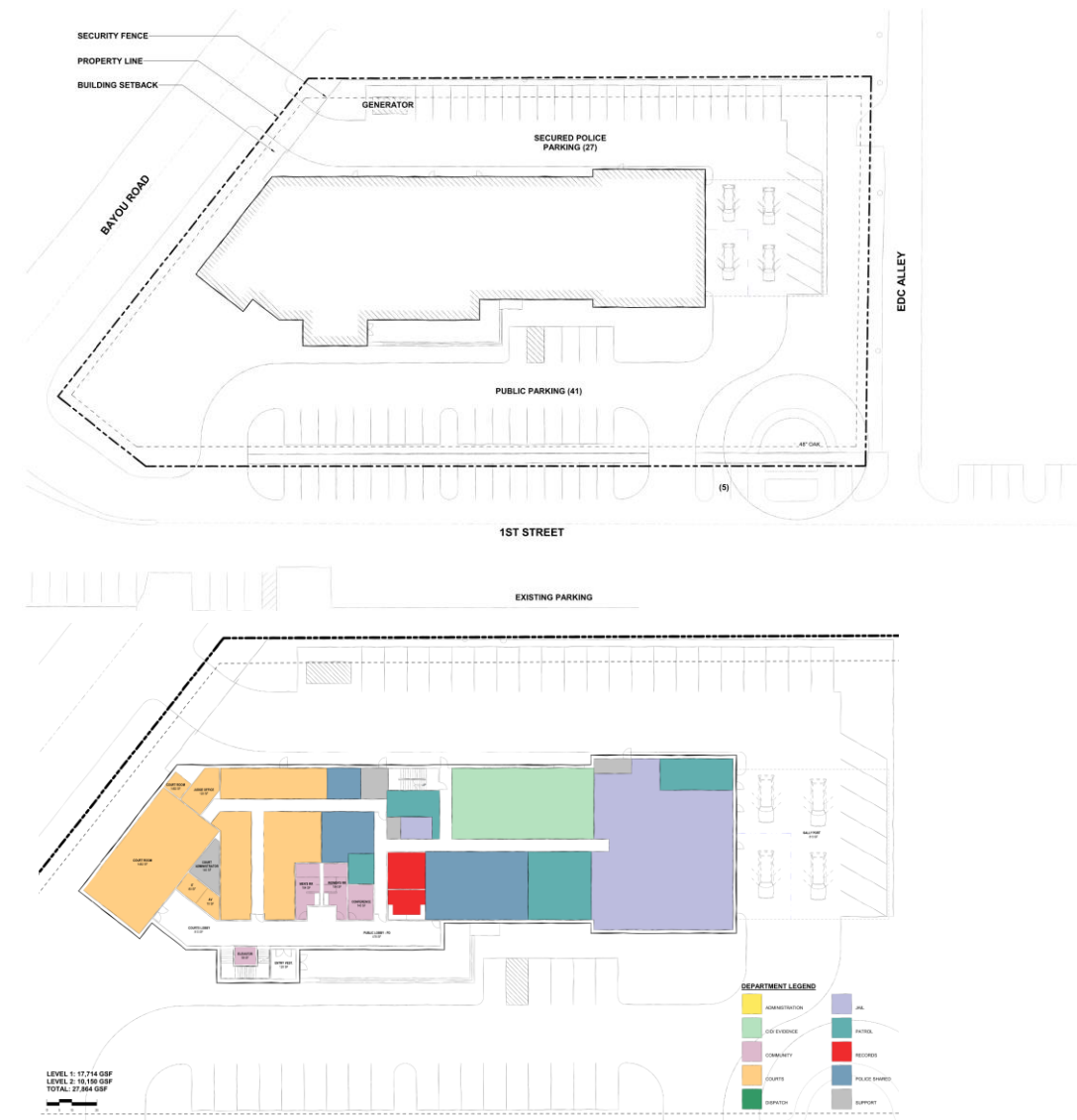
Options 2 - Review

Pros

- Staff parking lot is secured and provides privacy on all sides
- Does not require use of the EDC alley for access
- Public parking is consolidated on the south side
- Lobby has direct visual connection to 1st Street
- Most efficient use of the site at the Bayou and 1st Street corner
- Court Room is a flex space that can be utilized by the community outside of Court hours of operation
- Police training/briefing room is accessible from the Lobby

Cons

- One main lobby, with two entrances
- Police exit through facility parking lot to 1st Street
- Marginally fewer parking spaces on site



Public Safety Building Committee Inputs

Consensus Recommendations to Move Forward

Items for the Public Safety Committee to Provide Input On

- Confirm site selection and location for the project or provide direction to assess other site locations
- Confirm the findings of the Facility Assessment Report
- Confirm the Building Program Square Footages or provide direction
- Confirm the program will include Court and Community program elements
- Confirm selection of preferred site plan and blocking diagram option for further development
- Confirm acceptance of cost estimates provided for the general scope of the project

Next Steps:

- City Council to provide direction on further development of the project



Houston | +1 346 708 8241
San Antonio | +1 726 245 1378
Santa Monica | +1 213 394 7230

mclemoreluong.com

MCLEMORE LƯƠNG



CITY COUNCIL AGENDA FORM

Meeting Date: July 8, 2024

Prepared by: Kasey Lott

Department: City Clerk

Agenda Item: 7.II.

Reviewed by: Kierra Nance

AGENDA ITEM DESCRIPTION:

Establishing the Code of Ordinances Review Committee, providing for the committee's duties, term, membership, quorum, voting, meeting, and rules of procedure

THIS IS THE FIRST READING

STAFF BRIEFING:

Councilmember Ross requested an Ordinance Review Board in June 2023.

HISTORY:

June 3, 2024 - Councilmember Ross proposed an Ordinance Review Committee to consider areas of opportunity within the city's Code of Ordinances

July 8, 2024 - First Reading

August 12, 2024 - Proposed Public Hearing/ Second Reading

FISCAL IMPACT:

N/A

ND ORDINANCE NO. O-2024-00[]

AN ORDINANCE OF THE CITY OF LA MARQUE, TEXAS, ESTABLISHING THE CODE REVIEW COMMITTEE, PROVIDING FOR THE COMMITTEE'S DUTIES, TERM, MEMBERSHIP, QUORUM, VOTING, MEETINGS, AND RULES OF PROCEDURE; PROVIDING FOR FINDINGS OF FACT AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, City Council wishes to have various codes reviewed by a Committee to make recommendations to City Council regarding code amendments.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA MARQUE, TEXAS, THAT:

Section 1. The findings and recitals set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

Section 2. The City Council of the City of La Marque, Texas hereby establishes the Code Review Committee as follows:

Established

The City of La Marque, Texas Code Review Committee (the "Committee") is established as a temporary advisory board whose purpose shall be to make recommendations to the City Council pertaining to the review of portions of the Code of Ordinances, City of La Marque, Texas as identified by the City Council of the City of La Marque, Texas.

Membership, Qualifications, and Term

The Committee shall be composed of 5 voting members with each councilmember and the Mayor appointing one member to the Committee. The Committee may appoint a Chairperson and Vice-Chairperson at its discretion.

Quorum and Voting

A majority of the voting membership shall constitute a quorum for the conducting of business.

Meetings

The Committee may conduct meetings during the next twelve (12) months to discuss matters within the concern of the Committee. The Chairperson of the Committee or any two (2) members of the Committee may call a special meeting as

necessary to conduct business. The meeting shall be held at the City Council Chambers, 1109-b Bayou Road La Marque, Texas 77546, Texas and in accordance with the Texas Open Meetings Act.

The City Clerk or designee shall record minutes of the Committee's meetings and post notice of meetings in accordance with City ordinances and state law. All meeting agendas shall state that members of the City Council may be attending and participating in the discussion.

Rules of Procedure

The conduct and procedure of the Committee meetings shall conform to and be governed by the City Charter, the City Code of Ordinances, and Robert's Rules of Order, Revised.

Section 3. The Committee shall automatically expire and dissolve one year from final passage of this ordinance and all work shall be turned over to the City Clerk.

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

Section 5. Publication and Effective Date. This Ordinance shall be effective 30 days' after final passage by City Council, a public hearing in accordance with Section 2.19 of the City Charter, and publication of this ordinance or a caption that summarizes the purpose of this ordinance.

PASSED AND APPROVED by the City Council of the City of La Marque on First Reading this ____ day of _____, 2024; and

PASSED, APPROVED, AND ADOPTED by the City Council of the City of La Marque on Second and Final Reading this ____ day of _____, 2024.

***** SIGNATURES ON NEXT PAGE *****

[REMAINDER OF PAGE INTENTIONALLY BLANK]

CITY OF LA MARQUE, TEXAS

Keith Bell, Mayor

ATTEST:

Kierra Nance, TRMC, City Clerk

APPROVED AS TO FORM:

Gus Knebel, Consulting City Attorney



CITY COUNCIL AGENDA FORM

Meeting Date: July 8, 2024

Prepared by: Rick Sailler

Department: Public Works

Agenda Item: 7.III.

Reviewed by: Cesar Garcia, City
Manager

AGENDA ITEM DESCRIPTION:

Request for Proposal regarding the construction of the Westwood Stormwater Improvement - Phase 2 Project

STAFF BRIEFING:

- The City Council approved the Project and Engineering Design in September 2023 to make additional improvements to the Phase 1 section of the Westwood Stormwater Improvement Project and complete the west-end improvements within the Westwood Subdivision.
- The Westwood Subdivision was constructed without a defined drainage system; there are no drainage channels and no underground stormwater infrastructure. The streets act as the stormwater conduit, (*referred to as 'sheet flow'*), which directs flows towards three (3) concrete flumes which carry the water to the outfall locations.
- Phase 1 was completed in 2021. However, the natural drainage channel across the eastern edge of the subdivision has been a problem for the adjoining property owners; a concrete flume will be constructed to improve flow in this long semi-flat channel.
- Adico Engineers, LLC completed the Construction Plans for the Project, and we are prepared to publish the Bid Documents for construction bids.
- The attached documents provide a review of the general project plans, contract documents and the project schedule.
- The Bid Opening is scheduled for July 30, 2024, Estimated Construction Start - September 2024, Completion December 2024

HISTORY:

October 2021 - Phase 1 Westwood Stormwater Improvements completed

September 2023 - City Council approves Phase 2 Westwood Stormwater Improvement Project and Design Engineering

FISCAL IMPACT:

Estimated Project Cost is \$260,000 - funded with the 2016 Certificate of Obligation Bond

INVITATION TO BIDDERS

The City of La Marque will receive sealed bids, in duplicate, addressed to City Clerk, City of La Marque, **City Hall, 1111 Bayou Road, La Marque, Texas 77568**, Galveston County, for the construction of **"WESTWOOD SUBDIVISION PAVEMENT & DRAINAGE IMPROVEMENTS TO SERVE CITY OF LA MARQUE"** until 10:00 A.M., Tuesday, July 30, 2024.

BIDS shall be submitted in sealed envelopes and marked in the upper left-hand corner **"WESTWOOD SUBDIVISION PAVEMENT & DRAINAGE IMPROVEMENTS TO SERVE CITY OF LA MARQUE"**. BIDS received after 10:00 A.M. will be returned unopened.

Bids will be publicly opened and read in person at City of La Marque, **4916 Texas Ave., Suite C, La Marque, Texas 77568** on Tuesday, July 30, 2024, at 10:15 A.M.

All BIDS shall be accompanied by a cashier's or certified check upon a national or state bank in the amount of five percent (5%) of the total maximum bid price payable without recourse to the City of La Marque, Texas, or a bid bond in the same amount from a reliable surety company, as a guarantee that bidder will enter into a Contract. The notice of award of Contract shall be given by the Owner within sixty (60) days following the opening of bids. Bid security will be returned to the respective bidders within ten (10) days after bids are opened, except those checks or bonds which the Owner elects to hold until the successful bidder has executed the Contract. Thereafter, the remaining checks, including security of successful bidder, will be returned within five (5) days. Remaining bid bonds will not be returned unless requested by Bidder.

The successful bidder must furnish Performance Bond and Payment Bond upon the forms which are attached hereto in the amount of one hundred percent (100%) of the contract price within 15 days after receipt of the contract documents. Payment and performance bonds shall be issued from sureties with a minimum "A" or "A-" rating from Best's Key Rating Guide and who are licensed by the Texas Department of Insurance to do business in Texas and to issue said bonds. The bonds must be signed by an authorized representative of the surety and licensed by the State Board of Insurance.

Specifications and bidding documents may be secured from Civcast, www.civcastusa.com. Search City of La Marque.

Plans and/or Exhibits and Specifications may be examined at the following location:

City Hall
City of La Marque
1111 Bayou Rd.
La Marque, TX 77568

In conformance with all applicable statutes, the general prevailing wage rates in the locality in which the work is to be performed have been ascertained, and such rates shall be the minimum paid for labor employed upon this project.

The Owner reserves the right to reject any or all bids and to wave informalities in bidding. In case of ambiguity or lack of clearness in stating the prices in any bid, the Owner reserves the right to consider the most advantageous construction thereof, or to reject the bid. The award will be made to the responsible bidder submitting the lowest acceptable bid.

Contractors are urged to make a "good faith effort" to utilize local La Marque businesses for project participants through subcontracts and/or suppliers.

A Non-Mandatory Pre-Bid Conference for prospective bidders, suppliers, etc., will be held 10:00 A.M. on Tuesday, July 23, 2024, in person at **4916 Texas Ave., Suite C, La Marque, Texas 77568** in accordance with the Instructions to Bidders.

By submitting a bid, Bidder agrees to promote and actively pursue diversity and inclusion. This may be accomplished by any or all of the following or similar actions: actively contacting historically underutilized businesses beyond what is required by law in order to encourage participation as a subcontractor, requiring subcontractors to agree to this provision or a similar requirement, and promoting diversity and inclusion through organizational values, inclusive hiring practices and employee training. A copy of the Bidder's diversity and including plan should be included in Bidder's proposal as an appendix.

Westwood Subdivision Pavement & Drainage Improvements
ADICO Project No. 23100-04

Design and Construction Schedule

ACTIVITIES	End Date	Calendar Days
Design Schedule		
Issue for Bid Set		
Approval for Advertisement	Monday, July 8, 2024	2
1 st . Advertisement	Wednesday, July 10, 2024	7
2nd. Advertisement	Wednesday, July 17, 2024	6
Pre-Bid	Tuesday, July 23, 2024	7
Bid Date – Receiving Sealed Proposals	Tuesday, July 30, 2024	6
Recommendation to City Council	Monday, August 5, 2024	7
City Council Approval	Monday, August 12, 2024	7

PROJECT MANUAL

FOR

WESTWOOD SUBDIVISION
PAVEMENT & DRAINAGE IMPROVEMENTS

TO SERVE

CITY OF LA MARQUE
LA MARQUE, TEXAS



ADICO, LLC
TBPE FIRM NO. F-16423

INTERIM REVIEW ONLY

Document incomplete: not intended for
regulatory approval, permit or construction.

BRENT BERTHIER

Engineer

108493

Registration Number

06/18/2024

ADICO PROJECT NO. 23100-04

JULY 2024



TBPE FIRM NO. 16423
2114 El Dorado Blvd., Suite 400
Friendswood, TX 77546
(832) 895-1093

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In conformance with all applicable statutes, the general prevailing wage rates in the locality in which the work is to be performed have been ascertained, and such rates shall be the minimum paid for labor employed upon this project.

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BID
WESTWOOD SUBDIVISION
PAVEMENT & DRAINAGE IMPROVEMENTS
TO SERVE CITY OF LA MARQUE

City of La Marque, TX

City Hall
1111 Bayou Rd.
La Marque, TX 77568

CONTRACTOR: _____
(Legal Name of Company)

ADDRESS: _____
County: _____

TELEPHONE: _____ FAX: _____

E-MAIL: _____

The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Bid Times indicated in this Bid and in accordance with the terms and conditions of the contract Documents.

BIDDER accepts all of the terms and conditions of the Invitation to Bidders and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for **sixty (60) days** after the day of Bid opening. BIDDER will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within **seven (7) days** after the date of OWNER'S Notice of Award.

In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:

BIDDER has examined, carefully studied, and understands all the terms and conditions set forth in the Bidding Documents and the following Addenda receipt of all which are hereby acknowledged:

<u>Addendum No.</u>	<u>Date Received</u>	<u>Acknowledgement</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.

BIDDER will complete the Work in accordance with the Contract Documents for the following prices: (see attached bid form.)

BIDDER agrees that the Work will be completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within **60 calendar days** after the date when the Contract Times commences to run.

BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified in the Agreement.

The prescribed Bid Security in the form of a **Cashier's Check / Bid Bond** is attached to and made a condition of this Bid.

Terms used in this Bid which are defined in the General Conditions or Instructions to Bidders will have the meanings indicated in the General Conditions or Instructions to Bidders.

SUBMITTED on _____, 2024.
State Contractor License No. _____

INDIVIDUAL:

(individual) _____ (Seal)
doing business as _____
Business Address _____
Business Phone _____

PARTNERSHIP:

By (firm) _____ (Seal)
(General Partner) _____
Business Address _____
Business Phone _____

CORPORATION:

By (corp.) _____ (Seal)
State of Incorporation _____
By (person authorized) _____
Title _____

Attest (Secretary) _____
Business Address _____
Business Phone _____
Date of Qualification to do business is _____

JOINT VENTURE:

By (name) _____ (Seal)
Address: _____
By (name) _____ (Seal)
Address: _____

Address & Phone No. for official communications:

BID PROPOSAL
WESTWOOD SUBDIVISION PAVEMENT & DRAINAGE IMPROVEMENTS
TO SERVE
CITY OF LA MARQUE
LA MARQUE, TX 77568
ADICO PROJECT NO. 23100-04

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT BID
<u>SECTION A - GENERAL</u>					
1.	Mobilization/Payment/ Performance Bonds/Permits & Fees	LS	1	\$ _____	\$ _____
SUBTOTAL SECTION A - GENERAL					\$ _____
<u>SECTION B - PAVEMENT REPAIR</u>					
2.	Provide all supervision, labor, materials, tools, equipment, incidentals, and related items for concrete pavement removal and replacement inclusive of offsite disposal, as shown on plans and according to specifications. Includes removal and replacement of existing mailboxes.	SY	682	\$ _____	\$ _____
3.	Provide all supervision, labor, materials, tools, equipment, incidentals, and related items for curb and gutter removal and replacement inclusive of offsite disposal, as shown on plans and according to specifications.	LF	248	\$ _____	\$ _____
SUBTOTAL SECTION B - PAVEMENT REPAIR					\$ _____
<u>SECTION C - DRAINAGE EASEMENT</u>					
4.	Provide all supervision, labor, materials, tools, equipment, incidentals, and related items for fence removal and replacement, as shown on plans and according to specifications.	LF	47	\$ _____	\$ _____
5.	Provide all supervision, labor, materials, tools, equipment, incidentals, and related items for pilot channel construction, as shown on plans and according to specifications.	SY	533	\$ _____	\$ _____
6.	Provide all supervision, labor, materials, tools, equipment, incidentals, and related items for sloped concrete construction, as shown on plans and according to specifications.	SY	15	\$ _____	\$ _____
7.	Provide all supervision, labor, materials, tools, equipment, incidentals, and related items for swale regrading, as shown on plans and according to specifications.	LF	600	\$ _____	\$ _____
SUBTOTAL SECTION C - DRAINAGE EASEMENT					\$ _____

**BID PROPOSAL
WESTWOOD SUBDIVISION PAVEMENT & DRAINAGE IMPROVEMENTS
TO SERVE
CITY OF LA MARQUE
LA MARQUE, TX 77568
ADICO PROJECT NO. 23100-04**

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT BID
<u>SECTION D - STORM WATER POLLUTION PREVENTION</u>					
8.	Provide all supervision, labor, materials, tools, equipment, incidentals and related items to supply and install Rock Filter Dam (to be installed prior to any construction activity and properly maintained throughout construction) as indicated on plans and according to specifications, complete in place. Includes removal.	EA	3	\$ _____	\$ _____
9.	Provide all supervision, labor, materials, tools, equipment, incidentals and related items to supply and install Reinforced Filter Fabric Fence (to be installed prior to any construction activity and properly maintained throughout construction) as indicated on plans and according to specifications, complete in place. Includes removal. Per specifications.	LF	820	\$ _____	\$ _____
10.	Provide all supervision, labor, materials, tools, equipment, incidentals and related items for Turf Establishment by Hydromulch Seeding on Maintenance berms, pond side slopes from high bank to toe elevation. Includes watering, fertilizing, mowing and maintenance, until a full stand of Bermuda grass has been established and all Governing agencies have Inspected and accepted (in writing) the subject Project.	AC	0.5	\$ _____	\$ _____
11.	Provide all supervision, labor, materials, tools, equipment, incidentals and related items for Turf Establishment by Sodding on Maintenance berms, pond side slopes from high bank to toe elevation. Includes watering, fertilizing, mowing and maintenance, until a full stand of Bermuda grass has been established and all Governing agencies have Inspected and accepted (in writing) the subject Project.	SF	4,022	\$ _____	\$ _____
SUBTOTAL SECTION D - STORM WATER POLLUTION PREVENTION					\$ _____
<u>SECTION E - MISCELLANEOUS</u>					
12.	Provide all supervision, labor, materials, tools, equipment, incidentals and related items for Construction Staking, as indicated on plans and according to specifications, complete in place.	LS	1	\$ _____	\$ _____
13.	Provide all supervision, labor, materials, tools, equipment, incidentals and related items to install and Implement Traffic Control Plan, as indicated on plans and according to specifications, complete in place. Includes removal.	MONTHS	2	\$ _____	\$ _____
SUBTOTAL SECTION E - MISCELLANEOUS					\$ _____
TOTAL BASE BID					\$ _____

Bid Sheet Must Be Initialed By Same
Person Who Signs Proposal
Initial _____

**BID PROPOSAL
WESTWOOD SUBDIVISION PAVEMENT & DRAINAGE IMPROVEMENTS
TO SERVE
CITY OF LA MARQUE
LA MARQUE, TX 77568
ADICO PROJECT NO. 23100-04
BID SUMMARY**

SUBTOTAL SECTION A - GENERAL	\$ _____
SUBTOTAL SECTION B - PAVEMENT REPAIR	\$ _____
SUBTOTAL SECTION C - DRAINAGE EASEMENT	\$ _____
SUBTOTAL SECTION D - STORM WATER POLLUTION PREVENTION	\$ _____
SUBTOTAL SECTION E - MISCELLANEOUS	\$ _____
TOTAL BASE BID (A+B+C+D+E)	\$ _____

IV. STANDARD FORM OF AGREEMENT

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

THIS AGREEMENT is dated as of _____, 2024 by and between **City of La Marque**, (hereinafter called OWNER) and _____, hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**WESTWOOD SUBDIVISION
PAVEMENT & DRAINAGE IMPROVEMENTS
TO SERVE CITY OF LA MARQUE**

Contract Amount: \$ _____

Article 2. ENGINEER.

The project has been designed by Adico, LLC Consulting Engineers, 2114 El Dorado Blvd., Suite 400, Friendswood, Texas 77546 (832-895-1093), who is hereinafter called ENGINEER and who is to act as OWNER'S representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIMES.

The Work will be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within **60 calendar days** after the date when the Contract Times commence to run.

OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in the above paragraph, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in ascertaining and proving the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER **Five Hundred Dollars (\$500.00)** for each day that expires after the time specified in the above paragraph for completion and readiness for final payment. OWNER and CONTRACTOR agree that such amount is a reasonable forecast of the damages OWNER will sustain per day that the work remains uncompleted. OWNER shall have the option of deducting the amount of any liquidated damages from any monies that may be owed to CONTRACTOR or to recover such amount from the CONTRACTOR or its Sureties, at CONTRACTOR'S expense.

Article 4. CONTRACT PRICE.

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to the Bid Proposal and any subsequent change orders thereto.

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions and Supplemental Conditions.

OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER and in conformance with the procedures described in the General Conditions. All such payments will be measured by the schedule of values established in paragraph 2.07 of the General Conditions (and on the number of units of each bid item completed). Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

Article 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 7) and the other related data identified in the Bidding Documents including "technical data".

CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance or furnishing of the Work.

CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.

CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents, are not a warranty of surface or subsurface conditions, and may not be complete for CONTRACTOR'S purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of the information and data relating to surface or subsurface conditions or with respect to Underground Facilities at or contiguous to the site or CONTRACTOR'S interpretation of such information and data. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.

CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 7. CONTRACT DOCUMENTS.

1. This Agreement and Special Conditions of Agreement
2. Exhibits to this Agreement
3. Performance, Payment, and other Bonds identified

4. Invitation to Bidders
5. Instructions to Bidders
6. Notice to Proceed
7. General Conditions
8. Supplementary Conditions
9. Standard and Special Specifications
10. Construction Plans
11. Addenda
12. CONTRACTOR'S Bid
13. Documentation submitted by CONTRACTOR prior to Notice of Award
14. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached thereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.04 of the General Conditions.

There are no Contract Documents other than those listed in this Article. The Contract Documents may only be amended, modified, or supplemented as provided in paragraphs 3.04 of the General Conditions.

Article 8. INDEMNITY PROVISIONS.

THE GENERAL, SPECIAL, AND SUPPLEMENTARY CONDITIONS ATTACHED TO THIS AGREEMENT CONTAIN PROVISIONS THAT MAY RELIEVE ONE PARTY FOR RESPONSIBILITY IT WOULD OTHERWISE HAVE UNDER THE LAW FOR DAMAGES OR OTHER LIABILITY ARISING OUT OF THE WORK.

EACH OF THE PARTIES HERETO SPECIFICALLY AGREES THAT IT HAS A DUTY TO READ THIS AGREEMENT, THE GENERAL, SPECIAL, AND SUPPLEMENTARY CONDITIONS, AND ALL OTHER ATTACHMENTS TO THIS AGREEMENT AND AGREES THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS OF THIS AGREEMENT AND ALL ATTACHMENTS HERETO; THAT IT HAS IN FACT READ THIS AGREEMENT AND ALL ATTACHMENTS HERETO AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT; THAT IT HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF ITS CHOICE PRECEDING ITS EXECUTION OF THIS AGREEMENT AND HAS RECEIVED OR VOLUNTARILY CHOSEN NOT TO RECEIVE THE ADVICE OF ITS ATTORNEY IN ENTERING INTO THIS AGREEMENT; AND THAT IT RECOGNIZES THAT CERTAIN TERMS OF THIS AGREEMENT AND ALL ATTACHMENTS HERETO RESULT IN ONE PARTY ASSUMING THE LIABILITY INHERENT IN SOME ASPECTS OF THE TRANSACTION AND RELIEVING THE OTHER PARTY OF ITS RESPONSIBILITY FOR SUCH LIABILITY. EACH PARTY HERETO AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEMENT OF ANY EXCULPATORY PROVISION OF THIS AGREEMENT, THE GENERAL, SPECIAL, AND SUPPLEMENTARY CONDITIONS, OR ANY OTHER ATTACHMENTS TO THIS AGREEMENT ON THE BASIS THAT THE PARTY HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT THE PROVISION IS NOT "CONSPICUOUS".

Article 9. MISCELLANEOUS.

Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

No assignment by a party hereto of any rights or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

OWNER and CONTRACTOR each binds itself, its officers, directors, shareholders, partners, successors, assigns, and legal representatives to the other party hereto, its officers, directors, shareholders, partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

Any provision of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

By executing this Agreement, Contractor agrees to promote and actively pursue diversity and inclusion. This may be accomplished by any or all of the following or similar actions: actively contacting historically underutilized businesses beyond what is required by law in order to encourage participation as a subcontractor, requiring subcontractors to agree to this provision or a similar requirement, and promoting diversity and inclusion through organizational values, inclusive hiring practices and employee training. Contractor further agrees to comply with the diversity and inclusion plan submitted with Contractor's bid/proposal documents.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR, and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on _____, 2024 (which is the effective date of the Agreement).

OWNER: City of La Marque

By: _____

Attest: _____

Address for giving notices:

CONTRACTOR:

By: _____

(CORPORATE SEAL)

Attest: _____

Address for giving notices:

License No. _____

Agent for service of process: _____

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

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NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on

Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;
2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer’s Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner’s obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer’s findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor’s cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and

contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the

consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also

meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained;

- a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
 2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
 3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
 4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
 5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
 6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors,

members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's

interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
 - 1. "*Or-Equal*" Items: If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2.

Substitute Items:

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

- c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
 - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be

required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner,

Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

- 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
- 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
- 3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought

by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and

shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is

required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

- a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
- b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
- d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures:

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - 1. observations by Engineer;
 - 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. use or occupancy of the Work or any part thereof by Owner;
 - 5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
 - 6. any inspection, test, or approval by others; or
 - 7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
1. written notice thereof will be given to Contractor prior to starting any such other work; and
 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 3. the extent of such authority and responsibilities will be provided.

- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or

continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not

exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
 - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data

shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of

said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not

limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee*: When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 *Allowances*

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*:
 1. Contractor agrees that:
 - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*:
 1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to

the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or

neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
 2. correct such defective Work; or
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. Applications for Payments:

- 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an

Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or

- involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
- b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment:

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before

final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying

documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due:

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when

so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 - 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 - 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days

to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
 - 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agrees with the other party to submit the Claim to another dispute resolution process; or
 - 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

STANDARD GENERAL CONDITIONS

The Standard General Conditions of the EJCDC, 2007 Edition, of these Contract Documents with all current revisions are made a part of these Contract Documents with the same force and effect as though bound herein.

Copies may be examined at the office of Adico, LLC - Consulting Engineers.

XII. SUPPLEMENTARY CONDITIONS

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (C-700) (2007 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect. To the extent of a conflict between the standard General Conditions and these Supplementary Conditions, these Supplementary Condition Control.

SC-1 The terms used in the Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (C-700, 2007 Edition) have the meanings assigned to them in the General Conditions.

SC-2.1 Delete Paragraph 2.01.A of the General Conditions in its entirety and insert the following in its place:

When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds and insurance as CONTRACTOR may be required to furnish in accordance with Article 5, as amended by these Supplementary Conditions.

SC-2.7 Delete Paragraph 2.01.B of the General Conditions in its entirety.

SC-4.2 There's no geotechnical report.

Contractor may not rely upon the data, interpretations, opinions or information contained in such reports or otherwise relating to the subsurface conditions at the site, nor upon the completeness thereof for the purposes of bidding or construction.

Copies of such subsurface reports will be made available by Owner to Contractor on request. Those reports are not part of the Contract Documents and are not a warranty of surface or subsurface conditions. Contractor is responsible for any interpretation or conclusion drawn from any "technical data" contained therein. Contractor acknowledges that Owner and Engineer disclaim any responsibility for the accuracy, true location, and extent of the soil, surface, and subsurface investigations that have been prepared by others and disclaim responsibility for Contractor's interpretation of or conclusions or opinions drawn from such reports, e.g., without limitation, projecting soil-bearing values, rock profiles, soil stability and the presence, level and extent of underground water. Contractor is expected to examine the site and such reports and then decide for itself the character of the materials to be encountered.

Information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner and Engineer do not assume responsibility for the accuracy or completeness thereof or for Contractor's interpretation of or conclusions or opinions drawn from such information and data. The Contractor is advised to coordinate closely with Engineer and Operator prior to the commencement of any underground construction activities. Such information and data is not a part of the Contract Documents and is not a warranty of subsurface conditions.

SC-4.4 Delete Paragraph 4.05 of the General Conditions in its entirety and insert the following in its place:

OWNER will supply construction staking to establish both reference points and layout for the project. CONTRACTOR shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. CONTRACTOR shall give a minimum of two working days notice to the survey company employed by the OWNER when requesting staking services and a minimum of 4 working hours notice to the survey company employed by the OWNER for cancellation of scheduled staking services. The CONTRACTOR will pay for any re-staking charges due to CONTRACTOR'S lack of protection for established survey points, and for any charges resulting from CONTRACTOR'S improper cancellation of scheduled staking services. The OWNER shall have the option to deduct and withhold the amount of any re-staking charges and charges for improper cancellation of scheduled staking services from any monies due to the CONTRACTOR or recover such amount from the CONTRACTOR or the CONTRACTOR'S surety at the CONTRACTOR'S expense.

SC-5.1 Delete Paragraph 5.01 of the General Conditions in its entirety and insert the following in its place:

The successful bidder must submit, within **7 days** after the date of the Owner's Notice of Award, Payment and Performance Bonds on the forms furnished, in the amount of 100% of the total contract price. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by laws or regulations or the Contract Documents. The surety company issuing Payment and Performance Bonds, and a Maintenance Bond (if so required by these Supplementary Conditions), must (a) be authorized to do business in the State of Texas as evidenced by licensing through the State Board of Insurance; (b) be authorized to issue Payment and Performance Bonds, and Maintenance Bonds (if so required by these Supplementary Conditions), in the amount required for the contract as indicated by the records of the State Board of Insurance; (c) for contracts over \$100,000, the surety must also hold a certificate of authority from the United States Secretary of Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law ("Certificate of Authority") or have obtained reinsurance for any liability in excess of \$100,000 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a Certificate of Authority; and (d) have a rating of at least "B+" in the current Best's Key Rating Guide or, if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570.

If the surety company does not have a rating in Best's Key Rating Guide and is eligible to participate in the surety bond program of the Small Business Administration, the Payment and Performance Bonds, and the Maintenance Bond (if so required by these Supplementary Conditions) issued by such surety, in addition to the criteria set out above, also must meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury with respect to Performance and Payment Bonds, and Maintenance Bonds (if so required by these Supplementary Conditions), for federal jobs, including specifically the rules related to the underwritten limitation.

The person executing the Payment and Performance Bonds, and the Maintenance Bond (if so required by these Supplementary Conditions), must be licensed as a Texas Local Recording Agent through the State Board of Insurance as required by the laws of the State of Texas and such licensing must be recorded in the files of the State Board of Insurance.

The person executing the Payment and Performance Bonds, and the Maintenance Bond (if so required by these Supplementary Conditions), must hold an appointment from the surety company to execute Payment and Performance Bonds, and the Maintenance Bond (if so required by these Supplementary Conditions), and bind such surety, and such appointment must be recorded in the office of the State Board of Insurance.

SC-5.3.2 Delete Paragraph 5.03.A of the General Conditions in its entirety and insert the following in its place:

CONTRACTOR shall deliver to OWNER, within 7 days after the date of Owner's Notice of Award, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any additional insured) which CONTRACTOR is required to purchase and maintain in accordance with Article 5.

SC-5.4 Delete Paragraph 5.04 of the General Conditions in its entirety and insert the following in its place:

1. INSURANCE.

- a. Procurement. Contractor shall procure and maintain in force and effect during the Work the insurance described in the Contract Documents, procure such endorsements as may be necessary to cause Contractor's insurance to comply with the Contract Documents, and shall obtain such other casualty insurance as Contractor may deem necessary for protection of potential liabilities or Contractor's property. If Contractor fails to procure and maintain in force the insurance required, Owner may, but is not required to, procure the same at Contractor's sole expense. In all events, Contractor shall be liable for all loss caused by its failure to comply with these requirements.

Provision of the required insurance coverages and the actual certificates is a condition precedent to the obligations of Owner under the Contract Documents, and if Contractor shall at any time fail to provide the required insurance coverages, such failure shall constitute a material breach of Contractor's obligations under this Contract.

Contractor agrees to procure and to maintain in full force and effect, at Contractor's sole expense, insurance of the types set forth below, underwritten by insurance companies satisfactory to Owner and having an A.M. Best's Rating of not less than "A- VII":

- i. Workers' Compensation and Employers' Liability. Contractor shall carry statutory Workers' Compensation Insurance covering Contractor's employees in compliance with all requirements of the Texas Workers' Compensation Act, as further described in these Special Conditions below. Contractor shall also carry Employer's Liability Insurance in an amount not less than the following:

Each Accident	\$1,000,000
Each Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000

- ii. General Liability Insurance. Contractor shall carry general liability insurance on a form no less broad than the coverage provided by a "Commercial General Liability Insurance" form promulgated by the Insurance Services Office, and containing language affording coverage for contractual liability, including Personal and Advertising Injury, the products and completed operations hazards, broad form property damage liability, and the explosion, collapse and underground hazards, as respects all operations and work hereunder, for all liability arising out of injury to or death of one or more persons, and injury to or destruction of property, in any one occurrence, in amounts not less than:

General Aggregate (Limit to apply per project)	\$ 2,000,000
Products Comp/Ops Aggregate	\$ 1,000,000
Personal & Advertising Injury	\$ 1,000,000
Each Occurrence	\$ 1,000,000

- iii. Automobile Liability Insurance. Contractor shall carry Automobile Liability Insurance on a form no less broad than the coverage provided by a Business Automobile Liability Insurance form promulgated by the Insurance Services Office, on all owned or hired autos, as well as non owned autos, in an amount not less than \$1,000,000 combined single limit, for all liability arising out of injury to or death of one or more persons, and injury to or destruction of property, in any one occurrence.
- iv. Excess Liability Insurance. Contractor shall carry Excess Liability Insurance that follows the form of the underlying primary liability insurance required by Sections 1.a.ii and 1.a.iii, in an amount not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate. Such excess liability insurance shall name Owner and Engineer as additional insureds in accordance with Section 1.b.i, and shall contain language waiving or otherwise relinquishing any "other insurance" limitation or right of contribution by other insurance that may be maintained by Owner or Engineer.
- v. Builder's Risk Insurance. Contractor shall procure Builder's Risk insurance for any projects or work that include above-ground improvements (including without limitation, water well(s), water plants(s), potable and non-potable water pump stations, wastewater treatment plant(s), but not including underground water, sanitary sewer and storm sewer lines) in the amount of the total Contract Price, and shall name Owner and Contractor as insureds, as their respective interests may appear. If Owner elects to request that Contractor obtain Builder's Risk insurance through a broker designated by Owner, then Contractor shall procure such insurance as Owner may direct, and Owner shall reimburse Contractor the actual cost of the difference in premiums, if any, for such insurance without markup and the insurance offered by Contractor. In the event Owner elects to pursue a claim under any applicable Builder's Risk Policy, Contractor shall cooperate with Owner, the insurer, and their agents and representatives in investigating the loss in question or in asserting or substantiating the claim or in investigating the loss in question.
- vi. Pollution Liability. Insurance for preparatory work related to potentially contaminated areas, if required, in the amount required by Owner.
- vii. Crossings. Whenever Work under the Contract involves construction activities that require the Contractor's employees, agents, subcontractors, equipment and/or materials to cross or temporarily occupy railroad, gas or other utility properties and tracks, the Contractor shall secure and maintain in his own name the types of insurance in the minimum amounts as required by owners of such properties issued by companies satisfactory to the Owner and the owner of such properties.

b. Required Endorsements.

- i. Additional Insured. To the fullest extent allowed by applicable Laws and Regulations, Contractor shall name the Indemnified Parties as additional insureds to the same extent as Contractor is required to indemnify the Indemnified Parties pursuant to the Contract Documents. Such additional insured coverage shall be to the full extent of the limits of liability on all policies of liability insurance (other than Worker's Compensation and Employers' Liability insurance) maintained in force or procured by Contractor during the Work, and shall cause such insurance to provide, if necessary by endorsement, that each such policy shall respond as primary insurance and shall not contribute with or apply as excess over any other valid and collectible other insurance that may be maintained by Owner or Engineer. In addition, Contractor shall cause the insurance required by Sections 1.a.ii, 1.a.iii, 1.a.iv and 1.a.v to provide or be endorsed to provide that such insurance applies separately to each insured against whom claim is made or suit is brought.
- ii. Waiver of Subrogation. Inasmuch as Owner and Contractor intend that all of Contractor's insured loss and liabilities fall upon Contractor's insurers, without recourse against the Indemnified Parties, Contractor agrees to cause of all its policies of insurance maintained in force or procured by Contractor during the Work to provide, if necessary by endorsement, that each such insurer fully waives subrogation against Owner and Engineer. The insurance as to which subrogation waiver is required includes, but is not limited to, that required by Sections 1.a.i, 1.a.ii, 1.a.iii, 1.a.iv and 1.a.v. Contractor hereby waives and releases all Claims it may have against the Indemnified Parties to the extent any of such Claims are covered by insurance required to be furnished by Contractor or any Subcontractors hereunder, whether or not Contractor actually obtains such insurance, and EVEN IF SUCH CLAIMS ARISE OUT OF, RELATE TO OR ARE BASED UPON THE NEGLIGENCE, BREACH OF CONTRACT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR OTHER FAULT, HOWEVER CHARACTERIZED, OR STRICT LIABILITY WITHOUT REGARD TO FAULT, OF AN INDEMNIFIED PARTY.
- iii. Notice of Modification/Cancellation. All policies for which any Indemnified Parties are named insureds or additional insureds shall be endorsed to require the insurer to provide such named insured and additional insureds with at least thirty (30) days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation, or non-renewal of the insurance coverage required under this Contract. For policies on which an Indemnified Party is neither a named insured nor an additional insured, Contractor shall provide such Indemnified Party with at least thirty (30) days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation, or non-renewal of the insurance coverage required under this Contract.
- iv. Indemnified Parties include:

City of La Marque

- c. Deductibles. Any and all deductibles, or self-insured retentions, of all insurance policies maintained by Contractor, including insurance required hereunder, shall be assumed by, for the account of, and at the Contractor's sole risk and expense, and shall not be billed to or payable by Owner.
- d. Certificates of and Proof of Insurance. Contractor shall furnish Owner with certificates of insurance showing Contractor's procurement of the insurance required hereunder, in compliance with Applicable Laws and Regulations. Contractor agrees to review each certificate, and hereby warrants to Owner the accuracy of all information shown on each Certificate furnished. In addition, Contractor, upon request, shall promptly:
 - i. Permit Owner to inspect the originals of all required insurance at the offices of Contractor or its insurance broker;
 - ii. Provide copies of all required insurance to Owner; and
 - iii. Authorize Owner to communicate directly (by telephone, email, or in person) with Contractor's insurance broker for the purpose of verifying Contractor's compliance with these requirements or to answer questions concerning Contractor's insurance.
- e. Claims-Made Insurance. If the insurance required hereunder is procured on a form affording "claims-made" coverage, then (i) all limits stated above as "per occurrence" shall be understood to mean "per claim" or "per occurrence," as is consistent with the terms of the "claims-made" policy; and, (ii) such claims-made insurance shall not provide for a retroactive date later than the commencement of Contractor's performance hereunder.
- f. Insolvency of Insurer and Reinstatement of Impaired Limits. In the event of the insolvency of any insurer underwriting any insurance required hereunder, Contractor shall replace such insurance with insurance meeting the requirements hereof. In the event that the required aggregate limits of liability of any insurance required hereunder are reduced or impaired by 50% or more, then Contractor shall give Owner prompt notice of the impairment and promptly cause such impaired limits to be reinstated to the required limits.
- g. Subcontractors' Insurance. Contractor shall cause its subcontractors, including all persons hired by Contractor who are not Contractor's employees, who perform any part of the work hereunder, to procure and to maintain in full force and effect insurance of the types and amounts, and meeting the requirements described in Sections 1.a.i, 1.a.ii, 1.a.iii, 1.a.iv and 1.a.v and of 1.b.i and 1.b.ii above. In addition, subcontractors shall comply with Section 1.a.v, if applicable.
- h. Term of Required Insurance. All terms of these insurance requirements shall survive termination of this Contract and shall continue until thirty (30) calendar days after completion of all Work or services to be provided hereunder, including the performance of any warranty work. In addition, Contractor shall maintain in force and effect completed operations coverage under the insurance policies required by paragraphs 1.a.ii and 1.a.iv, and any "claims-made" coverage within paragraph 1.e, for a minimum of two (2) years after Final Completion of all work or services to be provided hereunder. Contractor shall purchase an extended reporting period, or "tail coverage," if necessary to comply with the latter requirement.

- i. No Waiver by Owner. Contractor's failure to provide insurance as required hereunder, or Contractor's failure to supply certificates of insurance that comply with Section 1.d, above, or the failure of Owner to require evidence of insurance or to notify Contractor of any breach by Contractor of the requirements of these provisions, or deficiencies in the insurance obtained, shall not constitute a waiver by Owner of any of the these insurance requirements, or a waiver of any other terms and conditions of this Contract, including Contractor's obligations to defend, indemnify, and hold harmless Owner, as required herein.
- j. Minimum Limits. The foregoing insurance requirements are minimum requirements intended to benefit Owner and Engineer, shall not be interpreted to limit Contractor's liability to Owner in any manner whatsoever; and, are separate from and independent of Contractor's other obligations under this Contract, including Contractor's obligations to defend, indemnify and hold harmless Owner.

2. WORKER'S COMPENSATION INSURANCE COVERAGE.

a. Definitions:

- 1. Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
 - 2. Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.
 - 3. Persons providing services on the project ("subcontractor" in §406.096 of the Texas Labor Code) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- b. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
 - c. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
 - d. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the

coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

- e. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 - 1. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - 2. no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- f. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- g. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- h. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- i. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - 1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - 2. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - 3. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - 4. obtain from each other person with whom it contracts, and provide to the contractor:
 - a. a certificate of coverage, prior to the other person beginning work on the project; and
 - b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 6. notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 7. contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- j. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
 - k. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

SC-5.6 Amend the first sentence of Paragraph 5.06 of the General Conditions to read as follows:

CONTRACTOR shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

and as so amended the other Paragraphs under Paragraph 5.06 remain in effect.

Add the following language at the end of Paragraph 5.06 of the General Conditions:

The policies of insurance required to be purchased and maintained by CONTRACTOR in accordance with this Paragraph 5.06 shall comply with the requirements of Paragraph 5.08 of the General Conditions.

SC-5.6.1 Delete Paragraph 5.06.1 of the General Conditions in its entirety and insert the following in its place:

include the interests of OWNER, ENGINEER, ENGINEER'S Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

SC-5.7 Delete Paragraph 5.06.B of the General Conditions in its entirety and insert the following in its place:

CONTRACTOR shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations

which will include the interests of OWNER, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

SC-5.8 Delete Paragraph 5.06.C of the General Conditions in its entirety and insert the following in its place:

All policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by CONTRACTOR in accordance with Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty days' prior written notice by certified mail from insurance company has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

SC-5.9 Delete Paragraph 5.06.D of the General Conditions in its entirety and insert the following in its place:

OWNER shall not be responsible for purchasing and maintaining any property insurance to protect the interests of the CONTRACTOR, Subcontractors or others in the Work to the extent of any deductible amounts. The risk of loss within such deductible amount, will be borne by CONTRACTOR, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

SC-5.10 Delete Paragraph 5.06.E of the General Conditions in its entirety.

SC-5.11 Amend the heading for Paragraph 5.07 of the General Conditions to read as follows:

Waiver and Release of Rights:

SC-5.11.1 Delete Paragraph 5.07.A of the General Conditions in its entirety and insert the following in its place:

All policies purchased in accordance with Paragraph 5.06 will protect OWNER, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insured or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. CONTRACTOR waives all rights against OWNER, ENGINEER, ENGINEER's Consultants, and their respective officers, directors, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance; and, in addition, waives all such rights against ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused.

SC-5.11.2 Amend the first sentence of Paragraph 5.07.B of the General Conditions to read as follows:

In addition, CONTRACTOR waives all rights against OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them for:

and as so amended the other Paragraphs under Paragraph 5.07.B remain in effect.

Amend the last sentence of Paragraph 5.07.B of the General Conditions to read as follows:

Any insurance policy maintained by CONTRACTOR covering any loss, damage or consequential loss referred to in this paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage or consequential loss the insurers will have no rights of

recovery against any of OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them.

SC-5.11.2.1 Delete Paragraph 5.07.B.1 of the General Conditions in its entirety and insert the following in its place:

loss due to business interruption, loss of use or other consequential loss extending beyond direct physical loss or damage to any property or the Work caused by, arising out of or resulting from fire or other peril, whether or not insured; and

SC-5.12 Delete Paragraph 5.08.A of the General Conditions in its entirety and insert the following in its place:

Any insured loss under the policies of insurance required by Paragraph 5.06 will be made payable directly to each of the insureds and additional insureds.

SC-5.13 Delete Paragraph 5.08.B of the General Conditions in its entirety.

SC-5.14 Delete Paragraph 5.09.A of the General Conditions in its entirety and insert the following in its place:

If OWNER has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the CONTRACTOR in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the OWNER party shall so notify the CONTRACTOR in writing within ten days after receipt of the certificates (or other evidence requested) required by Paragraph 2.7. CONTRACTOR shall provide to the OWNER such additional information in respect of insurance provided as the OWNER may reasonably request. If CONTRACTOR does not purchase or maintain all of the Bonds and insurance required by the Contract Documents, CONTRACTOR shall notify OWNER in writing of such failure to purchase prior to execution of the Contract, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the OWNER may elect to obtain equivalent Bonds or insurance to protect OWNER's interests at the expense of the CONTRACTOR who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

SC-5.15 Delete Paragraph 5.09.B of the General Conditions in its entirety.

SC-6.1 Delete the first sentence of Paragraph 6.01.A and substitute the following in lieu thereof:

Contractor shall supervise and direct the Work, using the Contractor's best skill and attention, in a good and workmanlike manner and in the best and most expeditious and economical manner consistent with the interests of the Owner, shall exercise the degree of care, skill and diligence in the performance of the Work in accordance with and consistent with industry standards for similar circumstances, shall utilize its best skill, efforts and judgment in furthering the interests of Owner, and shall furnish efficient business administration and supervision (the Contractor's "Standard of Care").

SC-6.3 Amend the first sentence of Paragraph 6.02.A of the General Conditions to read as follows:

CONTRACTOR shall provide competent, suitably qualified personnel to construct the Work as required by the Contract Documents.

and as so amended Paragraph 6.02.A remains in effect.

SC-6.11 Amend Paragraph 6.06.G to include the following:

CONTRACTOR SHALL AT ITS COST INDEMNIFY, DEFEND, AND SAVE OWNER HARMLESS FROM ALL CLAIMS GROWING OUT OF THE DEMANDS OF PERSONS SUPPLYING LABOR AND/OR MATERIALS FOR THE WORK, AS THOSE TERMS ARE

DEFINED IN CHAPTER 2253 OF THE TEXAS GOVERNMENT CODE. Contractor shall furnish satisfactory evidence that all obligations for labor and materials have been satisfied in the form of an Affidavit of Bills Paid as set forth in these Contract Documents. If Contractor fails to provide an affidavit as to any laborer or supplier, then Owner may, at Owner's option, pay directly any unpaid sums otherwise due to Contractor under this Contract or withhold from Contractor's unpaid compensation a sum of money deemed reasonably sufficient to liquidate any and all claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payments to Contractor shall be resumed in full in accordance with the terms of this Contract. In no event shall the provisions of this paragraph be construed to impose any obligation upon Owner by either Contractor or its Surety.

SC-6.12 Delete Paragraph 6.07 of the General Conditions in its entirety and insert the following in its place:

INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION

- (A) Contractor shall not furnish or provide to Owner any Materials or Work that infringes a third party's intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like). Contractor shall not disclose or provide to Owner any information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas which Contractor does not own or otherwise have the right to disclose or provide to Owner.
- (B) Contractor represents and warrants that the Materials and the Work shall be free from third party claims of ownership and that Owner's right to own, use, or otherwise disclose such Materials and Work shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).
- (C) Contractor represents and warrants to Owner that all information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas disclosed or provided to Owner shall be free from third party claims of ownership and that Owner's right to own, use or otherwise disclose such information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).
- (D) Contractor represents and warrants that all processes or methods utilized by Contractor to provide its services to Owner are free from infringement of third party intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like) and that all products provided by Contractor to Owner are free from third party claims of infringement of intellectual property rights, including allegations that the product infringes the claims of the United States process patent in violation of the Process Patents Amendment Act of 1988. Contractor shall cooperate fully and promptly with Owner with respect to any notice of infringement or request for disclosure or response to a request for disclosure generated or received by Owner in connection with Contractor's Work pursuant to the Process Patents Amendment Act of 1988. To the extent that Contractor obtains products from third parties which it intends to provide to Owner, Contractor shall obtain agreements from Contractor's vendors to cooperate in connection with requests for disclosure generated or received by Owner pursuant to the Process Patents Amendment Act of 1988.
- (E) **CONTRACTOR SHALL DEFEND, PROTECT, INDEMNIFY AND HOLD OWNER HARMLESS FROM AND AGAINST ALL LIABILITY, CLAIMS, DEMANDS AND CAUSES OF ACTION BROUGHT BY THIRD PARTIES (AND ALL COSTS, EXPENSES, DAMAGES, LIABILITIES OR JUDGMENTS SUSTAINED OR INCURRED BY OWNER IN CONNECTION THEREWITH, INCLUDING THE COSTS OF INVESTIGATION AND REASONABLE ATTORNEYS FEES) ARISING OUT OF OR RELATING TO: (I) CONTRACTORS BREACH OF ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, REGARDING INTELLECTUAL PROPERTY RIGHTS; (II)**

ALLEGATIONS THAT OWNER, BY USE OF THE MATERIALS, EQUIPMENT, OR THE WORK, INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS (WHETHER IT BE CLAIMS OF IMPROPER USE OF CONFIDENTIAL INFORMATION, PATENT INFRINGEMENT, COPYRIGHT INFRINGEMENT, TRADEMARK INFRINGEMENT OR THE LIKE); (III) ALLEGATIONS THAT A THIRD PARTY OWNS INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS DESCRIBED OR PROVIDED BY CONTRACTOR TO OWNER; (IV) ALLEGATIONS THAT OWNER'S OWNERSHIP OR USE OF INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS DISCLOSED OR PROVIDED BY CONTRACTOR TO OWNER INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS; (V) ALLEGATIONS THAT THE PROCESSES UTILIZED BY CONTRACTOR IN PROVIDING ITS SERVICES TO OWNER INFRINGE THIRD PARTY INTELLECTUAL PROPERTY RIGHTS (INCLUDING A VIOLATION OF THE PROCESS PATENTS AMENDMENT ACT OF 1988); OR (VI) THE COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES INCURRED BY OWNER IN ENFORCING THE INTELLECTUAL PROPERTY INDEMNITY INCLUDED IN THIS PARAGRAPH. THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL APPLY EVEN IF THE THIRD PARTY ALLEGES OR ESTABLISHES THAT OWNER WAS PARTIALLY NEGLIGENT OR OTHERWISE AT FAULT (E.G., WITHOUT LIMITATION, THAT OWNER WAS NEGLIGENT IN RETAINING CONTRACTOR'S SERVICES AND ACCEPTING MATERIALS, EQUIPMENT, WORK, INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS FROM CONTRACTOR, OR THAT OWNER WAS NEGLIGENT IN FAILING TO ASCERTAIN WHETHER THE MATERIALS, EQUIPMENT, WORK, INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS INFRINGED THE RIGHTS OF THIRD PARTIES). IF USE OF ANY PART OF SUCH EQUIPMENT, MATERIAL OR PROCESS IS LIMITED OR PROHIBITED, CONTRACTOR SHALL, AT ITS SOLE EXPENSE, PROCURE THE NECESSARY LICENSES TO USE THE INFRINGING EQUIPMENT, MATERIAL OR PROCESS, OR THE OWNER MAY, AT ITS OPTION, (1) ALLOW THE CONTRACTOR, WITH THE OWNER'S PRIOR WRITTEN APPROVAL, TO REPLACE SAME WITH SUBSTANTIALLY EQUAL BUT NOT INFRINGING EQUIPMENT, MATERIALS OR PROCESSES, OR MODIFY SAME TO BE NONINFRINGING; PROVIDED THAT ANY SUCH SUBSTITUTE OR MODIFIED EQUIPMENT, MATERIALS OR PROCESS SHALL MEET ALL THE REQUIREMENTS AND BE SUBJECT TO ALL THE PROVISIONS OF THIS CONTRACT, PROVIDED THAT SUCH REPLACEMENT OR MODIFICATIONS SHALL NOT MODIFY OR RELIEVE THE CONTRACTOR OF ITS OBLIGATIONS UNDER THIS CONTRACT; OR (2) OWNER MAY CANCEL THE CONTRACT.

SC-6.13 Add the following language at the end of Paragraph 6.08 of the General Conditions:

The Construction Drawings and Special Specifications include a Storm Water Pollution Prevention Plan in accordance with TCEQ requirements. The Contractor shall be responsible for obtaining permit coverage under the TCEQ's Construction Storm Water General Permit for all phases of project construction, and shall be further responsible for all activities necessary to initially meet and thereafter continuously maintain strict compliance with such permit as well as all applicable rules of TCEQ relating to Storm Water discharges (including, but not limited to, implementing the best management practices set forth in the Storm Water Pollution Prevention Plan for this project.

SC-6.14.1 Add the following language at the end of Paragraph 6.08 of the General Conditions:

Chapter 2258 of the Texas Government Code provides that any political subdivision of the State of Texas shall ascertain the general prevailing wage rate received by the classes of workers employed on projects similar to this project and shall specify in the call for bids and in the Contract the minimum wage rates which shall be paid for each type of worker. This statute further provides

that the Contractor or Subcontractors shall pay, as a penalty, to the Owner Sixty Dollars (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract. The Owner is authorized to withhold from the Contractor the amount of this penalty from any payment due under the Contract.

The statute likewise requires that the Contractor and subcontractors keep an accurate record of the names and occupations of all persons employed by them in the construction of the Project and to show the actual per diem wages paid to each worker. These records are open to the inspection of the Owner.

The Prevailing Wage Rate Scale that applies to this Contract is attached in the Invitation to Bidders.

SC-6.14.3 Add Paragraph 6.09.D as follows:

Contractor shall at all times observe and comply with federal, state, and local laws, ordinances, and regulations which in any manner affect this Contract of the Work; **INDEMNIFY AND SAVE OWNER HARMLESS AGAINST ANY CLAIM ARISING FROM VIOLATION OF ANY SUCH LAWS OR ORDINANCES WHETHER BY CONTRACTOR, ITS EMPLOYEES, AGENTS, PERMITTEES, OR LICENSEES**; and notify Owner promptly upon discovery of any instance of failure to comply with applicable laws, ordinances, and regulations.

SC-6.15 Add the following language at the end of Paragraph 6.10 of the General Conditions:

Owner is exempt from Texas sales and use taxes pursuant to Texas Tax Code § 151.309 as a political subdivision of the State of Texas. Owner shall provide Contractor with a completed Texas Sales and Use Tax Exemption Certification as evidence of the applicability of such exemption and, accordingly, Contractor shall not collect Texas sales and use taxes from Owner with respect to this contract. Contractor and all subcontractors to Contractor shall issue a Texas Sales and Use Tax Exemption Certification with respect to, and shall not pay Texas sales and use taxes on, all purchases of the following items that are exempt from Texas sales and use taxes pursuant to Texas Tax Code § 151.311: (i) tangible personal property that will be incorporated into Owner's realty; (ii) tangible personal property that is necessary and essential for the performance of this contract and is consumed entirely on the job site; and (iii) taxable services for use in the performance of this contract that are performed at the job site and are either integral to the performance of this contract or expressly required to be provided by this contract. In addition, Contractor and all subcontractors to Contractor (i) shall not include any provision for Texas sales and use taxes with respect to such exempt items in any bid or contract amount, and (ii) shall pass on to the Owner cost savings due to the exempt status of such exempt items. Contractor's contracts with all subcontractors to Contractor shall include the foregoing provision regarding the exemption from Texas Sales and use taxes.

Contractor shall pay, when due, all taxes, fees, and contributions imposed by reason of prosecution of the Work **AND SHALL PROTECT, INDEMNIFY, AND HOLD OWNER HARMLESS FROM LIABILITY RESULTING FROM FAILURE TO MAKE TIMELY PAYMENT OF THESE AMOUNTS AND COMPLY WITH THE REPORTING, FILING, OR OTHER PROCEDURAL REQUIREMENTS WITH RESPECT TO PAYMENT**. Interest, penalties, or other liabilities arising from failure to make payments shall not be reimbursed to Contractor.

SC-6.20 Amend Paragraph 6.13 to include the following:

Contractor shall develop a written safety program, including provisions for trench safety, applicable to the Premises and to the Work, and enforce the safety program to the Work at all

times. Further, Contractor shall comply with all applicable laws and regulations, including but not limited to, the standards and regulations promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of Contractor's employees. Contractor shall have complete and sole responsibility for protecting the safety and health of its employees and subcontractors and all other persons.

Contractor shall notify Owner, by telephone with prompt confirmation in writing, of lost time injuries and fatalities that occur on the Premises in connection with any work being performed under this Contract and shall provide Owner with reports of injuries and fatalities as Owner shall deem necessary, including, but not limited to, copies of all reports or other documents filed or provided in connection with injuries or fatalities to Surety or Contractor's insurers or the State of Texas.

No provision on this paragraph shall be interpreted as enlarging any legal duty the Owner may have to Contractor or to Contractor's agents, employees, subcontractors, or third parties, or as altering the status of Contractor as an independent contractor.

The Contractor shall include sufficient compensation in his bid for trench and project safety systems in accordance with all applicable local, state, and federal law, including, but not limited to, OSHA and all proposed OSHA rules and regulations published in the Federal Register related to trench and project safety systems if such are more stringent than rules and regulations of official record. All trench and project safety systems shall be designed by the Contractor's Registered Professional Engineer. The Contractor's Registered Professional Engineer shall be registered in the State of Texas.

The Construction Drawings, prepared by ADICO Consulting Engineers, do not extend to or include designs or systems pertaining to the safety of the Contractor or its employees, agents or representatives in the performance of the Work. The seal of ADICO Consulting Engineer's Registered Professional Engineer(s) on the BID DOCUMENTS AND SPECIFICATIONS OR CONSTRUCTION DRAWINGS or any written explanatory matter thereof, as prepared by ADICO Consulting Engineers does not extend to any such trench or project safety systems that may be necessary in the Contractor's completion of the Work.

THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER AND ENGINEER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS AND AGENTS FROM ANY AND ALL DAMAGES, COSTS (INCLUDING WITHOUT LIMITATIONS, LEGAL FEES, COURT COSTS, AND THE COST OF INVESTIGATION), JUDGMENTS OR CLAIMS BY ANYONE FOR PROPERTY DAMAGE, INJURY, OR DEATH TO PERSONS RESULTING FROM THE COLLAPSE OR FAILURE OF TRENCHES CONSTRUCTED UNDER THIS CONTRACT OR THE FAILURE TO PROVIDE SAFETY EQUIPMENT OR SAFETY SYSTEMS UNDER THIS CONTRACT.

CONTRACTOR ACKNOWLEDGES AND AGREES THAT THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION EXTENDS TO AND COVERS THE OWNER AND ENGINEER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS, OR AGENTS NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, OR GROSS), EITHER BY ACT OR OMISSION, WITH RESPECT TO THE CONTRACTOR'S SAFETY EQUIPMENT OR SYSTEMS, OR THE LACK THEREOF, INCLUDING BUT NOT LIMITED TO INSPECTIONS, FAILURE TO ISSUE STOP WORK ORDERS, AND THE HIRING OF THE CONTRACTOR.

THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION EXTENDS TO THE OWNER AND ENGINEER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS, OR AGENTS NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, OR GROSS) WHETHER SUCH NEGLIGENT ACTION OR OMISSION IS SOLE OR CONCURRENT WITH CONTRACTOR AND/OR OTHERS. THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL BE SUPPORTED BY CONTRACTUAL LIABILITY INSURANCE

AS SPECIFIED IN THE GENERAL AND SUPPLEMENTARY CONDITIONS OF THE CONTRACT.

SC-6.31 Delete Paragraph 6.20 of the General Conditions in its entirety and insert the following in its place:

To the maximum extent allowed by law, the Contractor shall indemnify and hold harmless the Owner, its board, directors, officers, employees and agents, Engineer and its consultants, directors, officers, agents and employees and Developer and its directors, officers, agents and employees (collectively, the "Indemnitees"), from and against any and all claims, demands, suits, causes of action, settlements, liabilities, costs, expenses, fines, and judgments (including, without limitation, reasonable and necessary court costs, experts' fees and attorney's fees) (collectively, "Losses"), whether arising in equity, at common law, or by statute, including without limitation the Texas Deceptive Trade Practices Act (as amended) or similar statute of other jurisdictions, or under the law of contracts, torts (including, without limitation, negligence and strict liability without regard to fault) or property, of every kind or character (including, without limitation, claims for property damage, personal injury (including without limitation emotional distress), and economic loss), arising in favor of or brought by any of the Contractor's employees, agents, Subcontractors, Suppliers or representatives, or by any governmental agency or any other third party, based upon, in connection with, relating to or arising out of the Work, the Contractor's failure to comply with the Contract Documents, or the Contractor's actions or inactions under the Contract Documents, including without limitation any failure to pay taxes or failure to comply with any applicable law, and **EVEN IF ANY SUCH LOSSES ARE DUE IN PART TO ANY INDEMNITEES' SOLE OR CONCURRENT NEGLIGENCE OR OTHER FAULT, BREACH OF CONTRACT OR WARRANTY, VIOLATION OF STATUTE, OR STRICT LIABILITY WITHOUT REGARD TO FAULT.**

The foregoing indemnification obligation shall apply regardless of the amount of insurance coverage held by the Contractor, including without limitation any such coverage under any worker's compensation act, disability act, or other act or law which would limit the amount or type of damages, compensation, or benefits payable by or for the Contractor, and shall not be limited by any insurance carried or provided by the Contractor in accordance with the Contract Documents or otherwise.

Contractor shall and does hereby waive all causes of action it has for, and releases and forever discharges the Indemnitees from, Losses for injuries (including death) to any person or damage to or destruction of any property sustained or alleged to have been sustained in connection with or arising out of or incidental to the Work.

Contractor shall promptly settle or cause the settlement of all Losses for which it is responsible pursuant to the Contract Documents. Upon becoming aware of facts which may constitute any Loss, Contractor shall immediately notify the Owner of the full particulars thereof, and the Owner may elect, by notice to Contractor, to have its representative accompany Contractor's representative in making settlement of the same.

Contractor agrees and covenants that it will not contest the validity or enforceability of any indemnity or exculpatory provision of this Contract on the basis that it has no notice or knowledge of any such provision or that any such provision is not "conspicuous."

Other provisions in the Contract Documents containing indemnities shall be deemed to be cumulative of and to operate independently of the indemnities provided above such that all indemnities provided in the Contract Documents shall be construed to grant indemnity to the Indemnitees to the fullest extent possible.

SC-6.32 Delete Paragraph 6.21 of the General Conditions in its entirety.

SC-7.1 Related Work at the Site. The following projects either have or will be contracted for in the vicinity of the proposed construction in connection with this contract:

There is no related work at site

SC-8.5 and SC-8.10 Delete Paragraph 8.05 and 8.10 of the General Conditions in their entirety.

SC-9.3 Add the following language at the end of Paragraph 9.20 of the General Conditions:

The ENGINEER will provide a project representative for this project whose responsibilities are outlined in the attached Exhibit XC-A.

In addition to inspection by the OWNER and ENGINEER, the work under this contract will be subject to inspection by Brazoria County, the Brazoria County Drainage District, the City of La Marque, and the Texas Commission on Environmental Quality.

SC-12.2 Add the following language at the end of Paragraph 12.02.B of the General Conditions:

The CONTRACTOR and the OWNER agree that time is of the essence of this contract. The CONTRACTOR and the OWNER agree that a breach of this CONTRACT by failure to complete the Work in the specified time will cause harm to the OWNER, and further agree that the harm the OWNER would sustain and the actual measure of damages the OWNER would incur from the breach are incapable or very difficult of ascertainment. Therefore, the CONTRACTOR and the OWNER agree that for each and every day the work or any portion thereof shall remain uncompleted after the expiration of the time limit set in the Contract, or as extended under the provisions for Extension of Time in Article 12 of this Contract, CONTRACTOR shall be liable to OWNER for liquidated damages in the sum stipulated in the Standard Form of Agreement between OWNER and CONTRACTOR, which sum the parties agree is a reasonable forecast of the damages the OWNER will sustain per day that the work remains uncompleted and in no way constitutes a penalty. The OWNER shall have the option to deduct and withhold the amount of any liquidated damages from any monies that the OWNER owes the CONTRACTOR or to recover such amount from the CONTRACTOR or the Sureties on the CONTRACTOR'S bond at the CONTRACTOR'S expense.

SC-13.4 Add the following language at the end of Paragraph 13.03 of the General Conditions:

CONTRACTOR shall give a minimum of two working days notice to the independent testing laboratory employed by the OWNER when requesting testing services and a minimum of 4 working hours notice to the independent testing laboratory employed by the OWNER for cancellation of scheduled testing services. CONTRACTOR will pay all charges for retesting required due to CONTRACTOR'S failure to pass initial tests, and for charges resulting from CONTRACTOR'S improper cancellation of scheduled testing services. The OWNER shall have the option to deduct and withhold the amount of any retesting charges and charges for improper cancellation of scheduled testing services from any monies due to the CONTRACTOR or recover such amount from the CONTRACTOR or the CONTRACTOR'S Surety at the CONTRACTOR'S expense.

SC-13.12 Amend Paragraph 13.07 of the General Conditions to include the following:

The one-year correction period will commence at the time that the project is at the final completion stage and has been accepted by Brazoria County, the Brazoria County Drainage District, the City of La Marque, the Texas Commission on Environmental Quality, the ENGINEER, and the OWNER.

SC-14.2 Amend Paragraph 14.02.A.1 of the General Conditions to include the following:

The CONTRACTOR shall make arrangements to meet the ENGINEER'S Project Representative at the job site to determine the status of work completed for the project prior to the due date for submittal of each monthly application for payment. The due dates for monthly applications for payment will be determined at the Pre-construction Conference or outlined in the Notice to Proceed. The status of work completed as agreed upon between the ENGINEER'S Project Representative and the CONTRACTOR will be the basis for the application for payment submitted to the ENGINEER'S Project Manager. Deviations from the agreed status of work completed in the application for payment may result in processing delays or disapproval of the estimate. In addition, payment may be delayed until the next payment cycle on applications for payment

received after the prescribed submittal due dates. If the CONTRACTOR believes that an oversight was made in the agreed status of work completed, he should contact the ENGINEER'S Project Manager prior to submitting an application for payment that is not in one hundred percent compliance with the agreed status of work completed. Unless specific approval is granted by the Owner, payment will not be approved for materials delivered and stored at the site but not incorporated in the work.

An amount equal to ten percent of the amount of each monthly estimate will be retained by the OWNER until final payment under the Contract is approved. Applications for payment by the CONTRACTOR shall not include payment for retainage without prior approval of the ENGINEER'S Project Manager.

All monthly applications for payment shall include an Affidavit of Bills Paid and all required Storm Water Pollution Prevention Plan inspection and maintenance reports. Absence of an Affidavit of Bills Paid or any required Storm Water Pollution Prevention Plan inspection and maintenance reports from a monthly application for payment may result in processing delays or disapproval of the estimate.

SC-14.4 Delete Paragraph 14.02.B.1 in entirety and insert the following paragraph:

ENGINEER will, within fifteen days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Thirty days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.02.B.5) become due and when due will be paid by OWNER to CONTRACTOR.

SC-14.11 Amend Paragraph 14.06 of the General Conditions to include the following:

Final inspections will also be conducted by the governments entities listed in SC-9.3. It is intended that all inspections by governmental entities pass on the dates of the inspections. CONTRACTOR shall have crews ready and prepared to remedy any and all problems or deficiencies on the dates of the inspections. The CONTRACTOR will be notified by the ENGINEER as to the dates and times of the inspections immediately upon their being scheduled by each governmental entity.

SC-14.12 Amend Paragraph 14.07.A of the General Conditions to include the following:

The final application for payment shall include consent of surety to release final payment, affidavit of bills paid, waiver and release of liens, contractors warranty, any required O&M manuals, any required Storm Water Pollution Prevention Plan inspection and maintenance reports and record drawings. The final application for payment shall not be submitted for approval until the satisfactory completion of all testing and inspection requirements.

SC-15.2 Delete Paragraph 15.02.A of the General Conditions in its entirety and insert the following in its place:

Upon occurrence of any one or more of the following events:

15.02.1. if CONTRACTOR fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as adjusted from time to time pursuant to paragraph 6.6) seven (7) days after written notification from the OWNER, or the ENGINEER;

15.02.2 if CONTRACTOR continues to disregard Laws and Regulations of any public body having jurisdiction seven (7) days after written notification from the OWNER, ENGINEER, or said public body;

15.02.3 if CONTRACTOR continues to disregard the authority of ENGINEER, or if the CONTRACTOR fails to comply with the orders of the ENGINEER, when such orders are consistent with the Contract Documents, seven (7) days after written notification from the OWNER, or the ENGINEER; or

15.02.4 if CONTRACTOR abandons and fails or refuses to resume work or if CONTRACTOR otherwise continues to violate in any substantial way any provisions of the Contract Documents seven (7) days after written notification from the OWNER, or the ENGINEER;

OWNER may, in the case where performance and payment bonds exist, notify the Surety on these bonds in writing to complete the Work, and a copy of said notice shall be delivered to the CONTRACTOR.

After receiving copy of said notice to Surety to complete the Work, the CONTRACTOR shall be excluded from the site and shall not remove from the site any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under contract for the Work, may be held for use on the Work by the OWNER or the Surety on the performance bond, or another contractor in completion of the Work; and the CONTRACTOR shall not receive any rental or credit therefor (except when used in connection with Extra Work, where credit shall be allowed as provided for under Paragraph 11), it being understood that the use of such equipment and materials will ultimately reduce the cost to complete the work and be reflected in the final settlement. In any case, CONTRACTOR shall not be entitled to receive any further payments until the Work is finished.

Where there is no performance bond provided or in case the Surety should fail to commence compliance with the notice to complete the Work hereinabove provided for, within seven (7) days after service of such notice, then the OWNER may provide for completion of the work in either of the following elective manners:

- A. The OWNER may thereupon employ such force of men and use such machinery, equipment, tools, materials and supplies as said OWNER may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to said CONTRACTOR, and expense so charged shall be deducted and paid by the OWNER out of such moneys as may be due, or that may thereafter at any time become due to the CONTRACTOR under and by virtue of this Agreement. In case such expense is less than the sum which would have been payable under this contract, if the same had been completed by the CONTRACTOR, then said CONTRACTOR shall receive the difference. In case such expense is greater than the sum which would have been payable under this contract, if the same had been completed by said CONTRACTOR, then the CONTRACTOR and /or his Surety shall pay the amount of such excess to the OWNER; or
- B. The OWNER under sealed bids, after seven (7) days notice published one or more times in a newspaper having general circulation in the county of the location of the work, may let the contract for the completion of the work under substantially the same terms and conditions which are provided in this contract. In case any increase in cost to the OWNER under the new contract as compared to what would have been the cost under this contract, such increase shall be charged to the CONTRACTOR and the Surety shall be and remain bound therefor. However, should the cost to complete any such new contract prove to be less than what would have been the cost to complete under this contract, the CONTRACTOR and/or his Surety shall be credited therewith.

When the work has been completed the CONTRACTOR and his Surety shall be so notified and Certificates of Completion and Acceptance, as provided in Paragraph 14.07, shall be issued. A

complete itemized statement of the contract account, certified to by the ENGINEER as being correct, shall then be prepared and delivered to the CONTRACTOR and his Surety, whereupon the CONTRACTOR and/or his Surety, or the OWNER as the case may be, shall pay the balance due as reflected by said statement, within thirty (30) days after the date of such Certificate of Completion.

In the event the statement of accounts shows that the cost to complete the Work is less than that which would have been the cost to the OWNER had the Work been completed by the CONTRACTOR under the terms of this contract; or when the CONTRACTOR and/or his Surety pays the balance in full shown to be due by them to the OWNER, then all machinery, equipment, tools, materials or supplies left on the site of the Work shall be turned over to the CONTRACTOR and/or his Surety. Should the cost to complete the Work exceed the contract price, and the CONTRACTOR and/or his Surety fail to pay the amount due the OWNER within the time designated hereinabove, and there remains any machinery, equipment, tools, materials or supplies on the site of the Work, notice thereof, together with an itemized list of such equipment and materials shall be mailed to the CONTRACTOR and his Surety at the respective addresses designated in the contract, provided, however, that actual written notice is given in any manner will satisfy this condition. After mailing, or other giving of such notice, such property shall be held at the risk of the CONTRACTOR and his Surety subject only to the duty of the OWNER to exercise ordinary care to protect such property. After ten (10) days from the date of said notice the OWNER may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the credit of the CONTRACTOR and his Surety. Such sale may be made at either public or private sale, with or without notice, as the OWNER may elect. The OWNER shall release any machinery, equipment, tools, materials, or supplies, which remain on the site of the Work, and belong to persons other than the CONTRACTOR or his Surety, to their proper owners. The books on all operations provided herein shall be open to the CONTRACTOR and his Surety.

Cost by the OWNER to complete the Work as referenced herein, shall include, but not be limited to, all expenses for labor, machinery, equipment, tools, materials, and supplies along with any claims, losses, and damages sustained by OWNER arising out of or resulting from completing the Work.

Such expenses, claims, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and when so approved by ENGINEER incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph OWNER will not be required to obtain the lowest price for the Work performed.

SC-17.2.2 Add the following language to the end of Paragraph 17.02 of the General Conditions:

Contract time will be determined based on Calendar Days. A "Calendar Day" is defined as any day including Saturdays, Sundays, or legal holidays, in which weather or other conditions, not under the control of the CONTRACTOR, will permit construction of the principal units of the work for a period of not less than seven hours between 7:00 a.m. and 6:00 p.m.

END OF SUPPLEMENTARY CONDITIONS

**EXHIBIT X-A TO
SUPPLEMENTARY CONDITIONS**

**A LISTING OF THE DUTIES, RESPONSIBILITIES AND
LIMITATIONS OF AUTHORITY OF THE PROJECT REPRESENTATIVE.**

ENGINEER shall furnish a Project Representative (PR) to assist ENGINEER in observing performance of the work of Contractor.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the PR, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of CONTRACTOR; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the PR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

PR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding PR's actions. PR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. PR's dealings with subcontractors shall be only through or with the full knowledge and approval of CONTRACTOR. PR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of PR

1. *Conferences and Meetings:* Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings.
2. *Liaison:*
 - a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of the Contract Documents; and assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operations affect OWNER's on-site operations.
 - b. Assist in obtaining from OWNER additional details or information when directed by Engineer and when required for proper execution of the Work.
3. *Shop Drawings and Samples:* Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by ENGINEER.

4. *Review of Work, Rejection of Defective Work, Inspections and Tests:*
 - a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever PR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that PR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
5. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.
6. *Modifications:* Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings or Specifications and report with PR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.
7. *Records:* Maintain a diary or log book that reflects project data required to evaluate change order requests, time extension requests, and changed project conditions. The documentations shall include any significant on-site project meetings, and daily observations to ensure construction conformance with contract documents.
8. *Reports:*
 - a. Furnish ENGINEER periodic reports as required of progress of the Work.
 - b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
 - c. Report immediately to ENGINEER and OWNER upon the occurrence of any accident.
9. *Payment Requests:* Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

10. *Completion:*

- a. Before ENGINEER issues a Certificate of Final Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
- b. Conduct final inspection in the company of OWNER, and CONTRACTOR and prepare a final list of items to be completed or corrected.
- c. Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

C. Limitations of Authority

Project Representative:

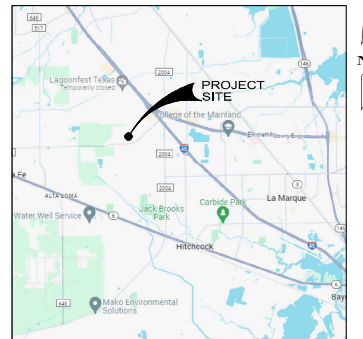
1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER.
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of the CONTRACTOR, subcontractors or CONTRACTOR's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not authorize OWNER to occupy the Project in whole or in part.
7. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

CONSTRUCTION PLANS FOR WESTWOOD SUBDIVISION PAVEMENT & DRAINAGE IMPROVEMENTS

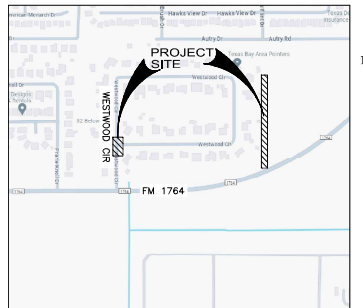
TO SERVE
CITY OF LA MARQUE
ADICO JOB No.: 23100-04 DATE: JUNE 2024



MAYOR KEITH BELL
COUNCILMAN, DISTRICT A KIMBERLEY YANCY
COUNCILMAN, DISTRICT B JOE COMPIAN
COUNCILMAN, DISTRICT C MELANIE ALLRED
COUNCILMAN, DISTRICT D JAMES ROSS
CITY MANAGER CESAR GARCIA
PUBLIC WORKS DIRECTOR RICK SAILLER



LOCATION MAP
NOT TO SCALE



VICINITY MAP
NOT TO SCALE

ADICO
CONSULTING ENGINEERS

2114 EL DORADO BLVD, STE. 400, FRIENDSWOOD, TX 77546
PHONE: 832-895-1089 WWW.ADICO-LLC.COM
TXPE FIRM NO. 16423

Sheet Index

Sheet Number	Sheet Title
1	COVER SHEET
2	GENERAL NOTES 1 OF 2
3	GENERAL NOTES 2 OF 2
4	TOPOGRAPHIC SURVEY 1 OF 2
5	TOPOGRAPHIC SURVEY 2 OF 2
6	OVERALL SITE PLAN
7	EXISTING & DEMOLITION PLAN
8	WESTWOOD CIRCLE PROPOSED PAVEMENT PLAN
9	PROPOSED PILOT CHANNEL PLAN AND PROFILE STA 0+00 TO 5+00
10	PROPOSED PILOT CHANNEL PLAN AND PROFILE STA 5+00 TO 7+00
11	STORM WATER POLLUTION PREVENTION PLAN
12	PAVING DETAILS 1 OF 2
13	PAVING DETAILS 2 OF 2
14	STORM WATER POLLUTION PREVENTION PLAN DETAILS 1 OF 2
15	STORM WATER POLLUTION PREVENTION PLAN DETAILS 2 OF 2
16	TRAFFIC CONTROL PLAN



WARNING:

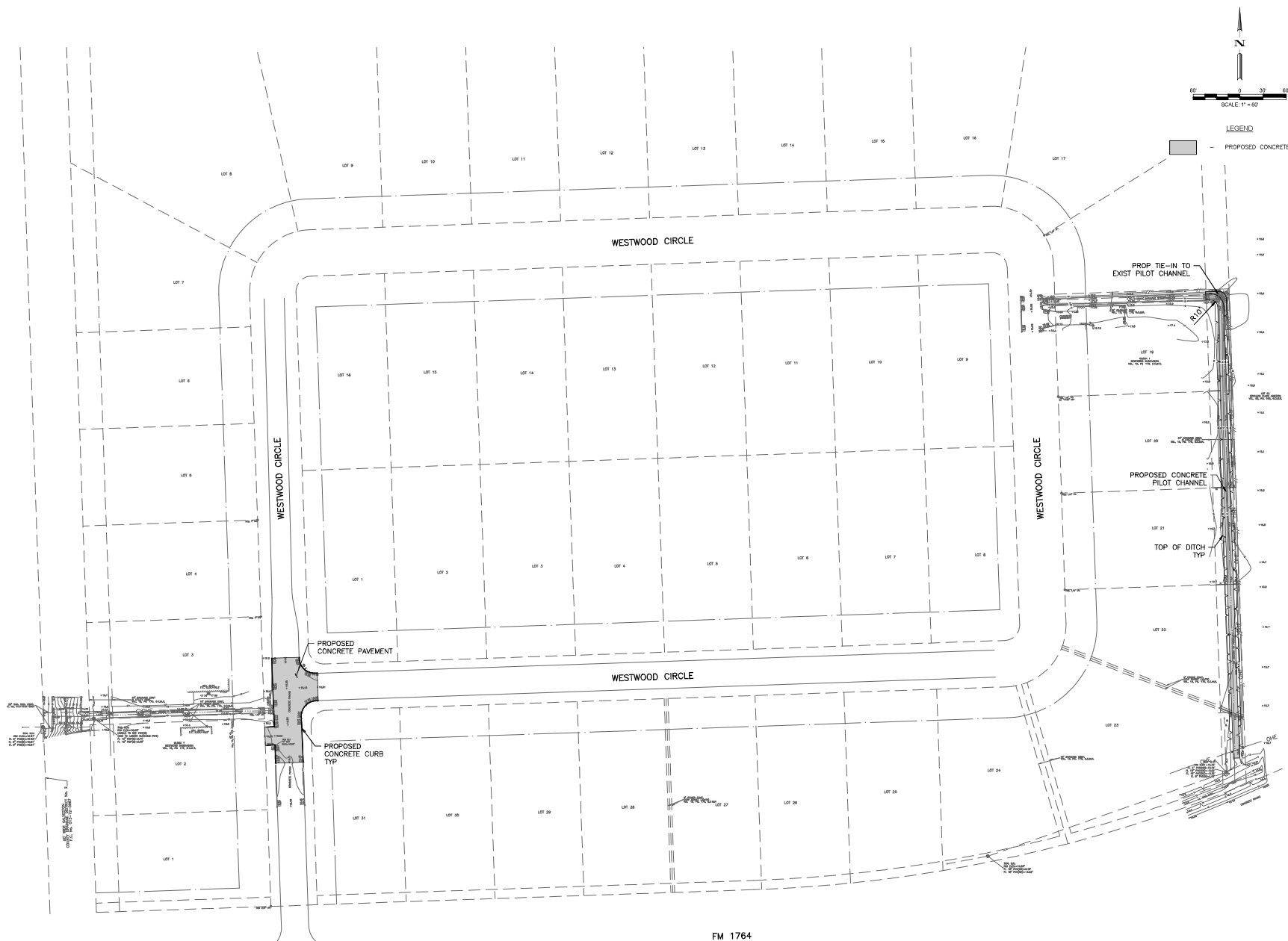
CONTRACTOR SHALL VERIFY LOCATION OF UNDERGROUND UTILITY LINES BY CONTACTING TEXAS 811 AT 811 OR 713-223-4567 AT LEAST 48 HOURS BEFORE YOU DIG, DRILL OR BLAST.

EXISTING, WATER, SANITARY, GAS, ELECTRICAL, TELECOMMUNICATIONS AND ALL OTHER UTILITY LINES ARE SHOWN PER RECORD DRAWINGS. CONTRACTOR SHALL VERIFY LOCATION AT THE SITE PRIOR TO CONSTRUCTION.

ADICO, LLC
TXPE FIRM NO. F-16423
INTERIM REVIEW
Not to be used for construction, bidding or permit purposes.
Engineer: BRENT BERTHEMER, P.E.
PE License No.: 158493
Date: 06-19-2024

SHEET NO. 1 OF 16

C:\Users\jvirel\OneDrive\Desktop\ADICO\ALIC\18100 - LA MARQUE\18100-04 Westwood Subdivision Pavement & Drainage Improvements\18100-04 Westwood Subdivision Pavement & Drainage Improvements.dwg



FM 1764

CIVIL ENGINEER
ADICO
CONSULTING ENGINEERS
2114 EL DORADO BLVD, STE. 403, FRIEDRICHSDALE, TX 77446
PHONE: 832-850-0801 WWW.ADICO-LLC.COM
TYPE: FIRM NO. 14423

BENCHMARK:
HSD MONUMENT "TOLM REF MON 1", BEING A
STAINLESS STEEL ROD IN SLEEVE STAMPED
"TOLM-RN-1", ELEVATION=20.32' (NAD 83).
X: 3,233,849.91, Y: 13,711,702.51

TBM SET "A" PUT ON TOP OF A CONCRETE
CURB LOCATED ON THE SOUTH CORNER OF A
CONCRETE DRIVEWAY FOR LOT 2, AS SHOWN
HEREON. ELEV=16.25'

FLOODPLAIN:
THIS TRACT LIES IN ZONE "X" SHaded AREAS
DETERMINED TO BE WITHIN THE 0.2% ANNUAL
CHANCE FLOODPLAIN, AS PER THE NATIONAL
FLOOD INSURANCE PROGRAM FIRM MAP PANEL
NUMBER 48167022450 EFFECTIVE DATE: AUGUST
15, 2019.

BEARINGS SHOWN HEREON ARE BASED ON THE
TEXAS COORDINATE SYSTEM, SOUTH CENTRAL
ZONE MARKS.

WESTWOOD SUBDIVISION
PAVEMENT & DRAINAGE IMPROVEMENTS

CITY OF LA MARQUE

ADICO, LLC
TYPE FIRM NO. F-16423

INTERIM REVIEW
Not to be used for construction,
bidding or permit purposes.

Engineer: BRENT BERTHER, P.E.

PE License No.: 108463

Date: 08-15-2024

NO.	DATE	REVISION

PROJECT OWNER:
CITY OF LA MARQUE
1111 BAYOU RD
LA MARQUE, TX 77468

PROJECT LOCATION:
WESTWOOD SUBDIVISION
WESTWOOD CIRCLE
LA MARQUE, TX 77468

OVERALL SITE PLAN

ALIC PROJECT NO. 23100-04

DRAWN BY: MP

CHECKED BY: BJ

DRAWING SCALE:

VERT: 1" = 60'

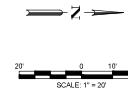
PLAN: 1/4" = 1'

DATE PLOTTED:

Jun 19, 2024 - 8:54am

SHEET NO.

6 OF 16



- NOTES
1. FOR CITY OF LA MARQUE PAVING DETAILS REFER TO SHEETS 12 AND 13.
 2. MATCH EXISTING CONCRETE PAVEMENT THICKNESS AND REBAR.

LEGEND

 - PROPOSED CONCRETE

TP - TOP OF PAVEMENT ELEVATION

CIVIL ENGINEER:

ADICO

CONSULTING ENGINEERS

2114 EL DORADO BLVD. STE. 400, FRIEDENSWOOD, TX 77546
PHONE: 832-616-1093 WWW.ADICO-LLC.COM

TBPE FIRM NO. 16423

BENCHMARK:
NGS MONUMENT "TXLM REF MON 1", BEING A
STAINLESS STEEL ROD IN SLEEVE STAMPED
"TXLM-RM1", ELEVATION=20.30' (NAVD 88).
X: 3,233,849.91, Y: 13,711,702.51

TBM SET "X" CUT ON TOP OF A CONCRETE CURB LOCATED ON THE SOUTH CORNER OF A CONCRETE DRIVEWAY FOR LOT 2, AS SHOWN HEREON. ELEV.=16.25"

FLOODPLAIN:
THIS TRACT LIES IN ZONE "X" SHADED, AREAS DETERMINED TO BE WITHIN THE 0.2% ANNUAL CHANCE FLOODPLAIN, AS PER THE NATIONAL FLOOD INSURANCE PROGRAM FIRM MAP PANEL NUMBER 48167C0245G EFFECTIVE DATE: AUGUST 15, 2019.

BEARINGS SHOWN HEREON ARE BASED ON THE
TEXAS COORDINATE SYSTEM, SOUTH CENTRAL
ZONE NAD83.

WESTWOOD SUBDIVISION
PAVEMENT & DRAINAGE IMPROVEMENTS

CITY OF LA MARQUE

ADICO, LLC
TBPE FIRM NO. F-16423

INTERIM REVIEW
Not to be used for construction,
bidding or permit purposes.

Engineer: BRENT BERTHIER, P.E.

PE License No.: 108493

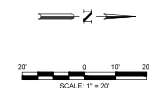
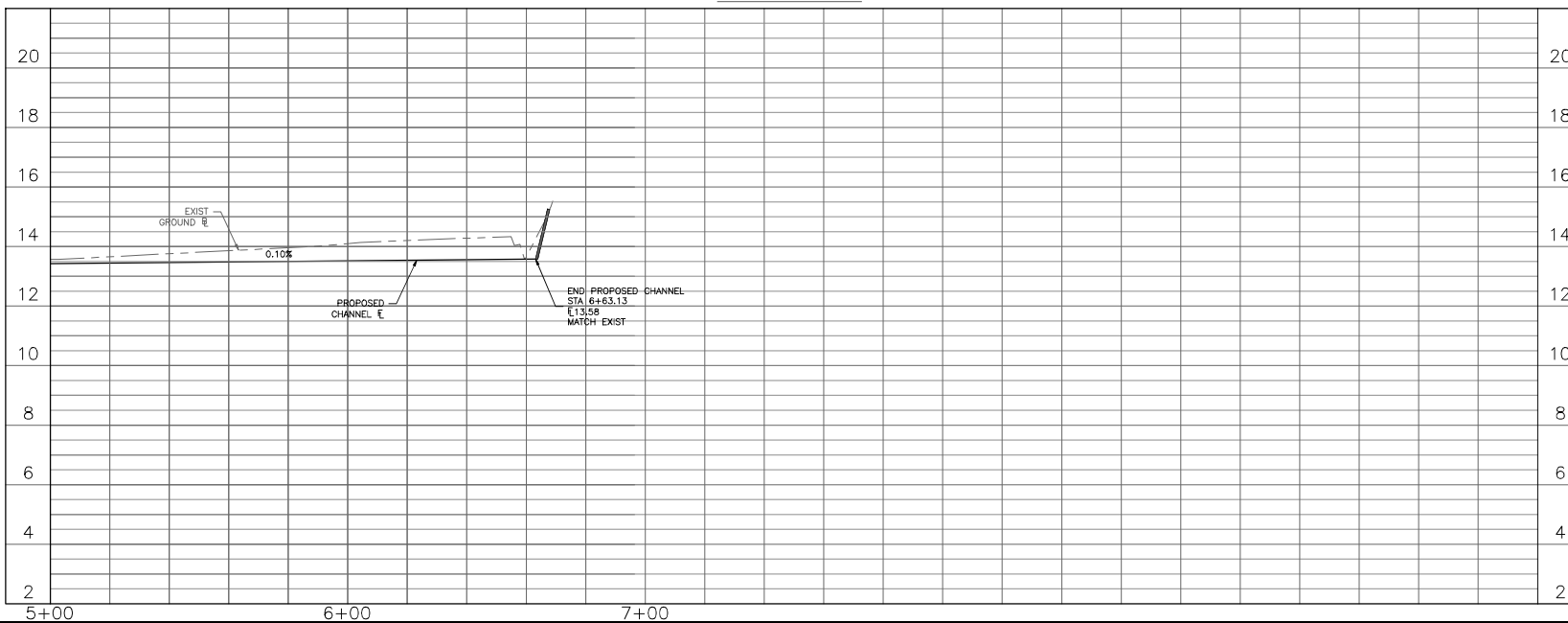
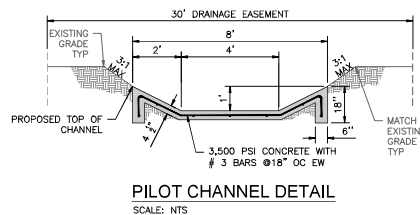
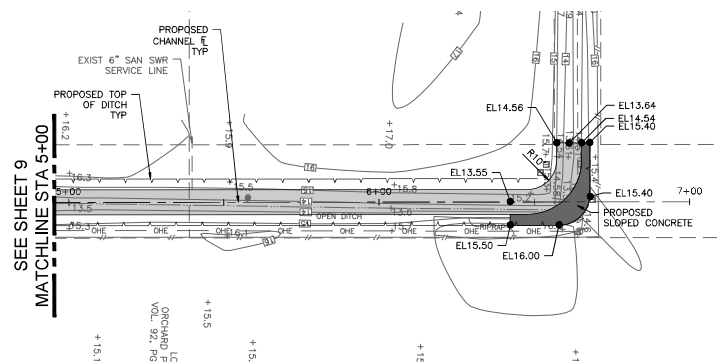
Date: 08-19-2024

PROJECT OWNER:
CITY OF LA MARQUE
1111 BAYOU RD
LA MARQUE, TX 77568

PROJECT LOCATION:
WESTWOOD SUBDIVISION
WESTWOOD CIRCLE
LA MARQUE, TX 77568

WESTWOOD CIRCLE
PROPOSED PAVEMENT
PLAN

ALLC PROJECT NO. 23100-04	SHEET NO.
DRAWN BY: MP	
CHECKED BY: BB	
DRAWING SCALE:	
HORIZ: 1" = 20'	
VERT: N/A	
DATE PLOTTED:	
Jun 10 2004 3:54am	8 OF 16



LEGEND

-  - CONCRETE PILOT CHANNEL
-  - 4" SLOPED CONCRETE WITH #4 BARS @ 12" O.C.E.W.

CIVIL ENGINEER

ADICO
CONSULTING ENGINEERS
2114 EL DORADO BLVD. STE. 400, FRIEDENSWOOD, TX 77541
PHONE: 832-466-1093 WWW.ADICO.ENG.COM
TBPE FIRM NO. 16423

BENCHMARK:
NGS MONUMENT "TXLM REF MON 1", BEING A
STAINLESS STEEL ROD IN SLEEVE STAMPED
"TXLM-RW1", ELEVATION=20.30" (NAVD 88).
X: 3,233,849.91, Y: 13,711,702.51

TBM SET "X" CUT ON TOP OF A CONCRETE CURB LOCATED ON THE SOUTH CORNER OF A CONCRETE DRIVEWAY FOR LOT 2, AS SHOWN HEREON. ELEV.=16.25"

FLOODPLAIN:
THIS TRACT LIES IN ZONE "X" SHADED, AREAS
DETERMINED TO BE WITHIN THE 0.2% ANNUAL
CHANCE FLOODPLAIN, AS PER THE NATIONAL
FLOOD INSURANCE PROGRAM FIRM MAP PANEL
NUMBER 48167C0245G EFFECTIVE DATE: AUGUST
15, 2019.

BEARINGS SHOWN HEREON ARE BASED ON THE
TEXAS COORDINATE SYSTEM, SOUTH CENTRAL
ZONE NAD83.

WESTWOOD SUBDIVISION
PAVEMENT & DRAINAGE IMPROVEMENTS

CITY OF LA MARQUE

ADICO, LLC
TBPE FIRM NO. F-16423

INTERIM REVIEW
Not to be used for construction,
bidding or award purposes

Engineer: BRENT BERTHIER, P.E.

PF License No.: 108493

Date: 08-19-2024

[illegible]

PROJECT OWNER:		
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CITY OF LA MARQUE
1111 BAYOU RD
LA MARQUE, TX 77568

PROJECT LOCATION:

WESTWOOD SUBDIV
WESTWOOD CIRCLE
LA MARQUE, TX 77568

PROPOSED PILOT CHANNEL PLAN AND PROFILE STA 5+00 TO 7+00

AEC PROJECT NO. 23100-04

DEAN: RY	MP
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CHECKED BY:	BB
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CRAWING SCALE:

HORIZ: 1" = 20'

DATE PLOTTED:

SHIFT NO.

[illegible][illegible][illegible]

I

10

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RESOLUTION NO. R-2023-0061

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LA MARQUE, TEXAS AUTHORIZING ENGINEERING, DESIGN, BIDDING, & PROJECT MANAGEMENT FOR WESTWOOD STORMWATER IMPROVEMENT PROJECT TOTALING \$23,000

WHEREAS, The Westwood Subdivision was constructed with minimal stormwater infrastructure and rainwater flow was intended to sheet-flow to stormwater channels.

WHEREAS. Between 2021 and 2022 the City of La Marque made improvements to the stormwater system on the east end of the subdivision. however the stormwater channel at 630 Westwood Circle is not performing as designed.

WHEREAS. This project will improve stormwater flow and eliminate water retention, creating a habitat for mosquitoes and other aquatic insects.

WHEREAS. The second phase of the project will include modifications and repairs to the flow channel on the west side of the subdivision.

WHEREAS. This project is considered qualified under the 2016 Certificates of Obligation, with an estimated total including construction of \$264,288.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF LA MARQUE, TEXAS THAT:

The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

The City Manager is authorized to execute any payments issued under the Work Order attached as Exhibit 1.

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

DULY PASSED by a majority vote of all members of the City Council of the City of La Marque on the 25th day of September 2023.

A handwritten signature in cursive script, appearing to read "Kierra Nance", written over a horizontal line.

Kierra Nance, TRMC
City Clerk

A handwritten signature in cursive script, appearing to read "Keith Bell", written over a horizontal line.

Keith Bell
Mayor

**CITY OF LA MARQUE, TEXAS
WORK ORDER – No. 2023-03**

**Engineering Service
Westwood Subdivision Pavement and Drainage Improvements**

Adico, LLC will provide professional engineering services to the City of La Marque for the Westwood Subdivision Paving and Drainage Improvements in La Marque, TX 77568.

PROJECT DESCRIPTION:

Adico, LLC ("ADICO") understands the Westwood Subdivision requires pavement repairs and drainage improvement in parts of the subdivision. Based on a preliminary assessment by Adico, LLC, below is our understanding of the project.

1. Prepare plans for pavement repairs at Westwood Circle, approximately 300' north of FM 1764 intersection.
2. Remove and replace concrete swale to drain the subdivision.
3. Install concrete pilot channel along the eastern boundary of the subdivision.

SCOPE OF SERVICES:

1. **Construction Document Phase (4 Weeks):** Upon receiving a notice to proceed and any further adjustments in the scope authorized by Owner, ADICO shall prepare Construction Documents consisting of Drawings and Specifications in accordance with Owner written requirements for construction of the Project.
 - a. Perform a preliminary site visit to determine existing drainage patterns, verify surface features and potential conflicts as needed before beginning design documents, and coordinate with the Surveyor for any specific topographic survey needs we will require for the preparation of construction drawings.
 - b. Construction Drawings shall consist of Civil *Engineering Drawings* to construct this Project.
 - c. Coordinate with governmental authorities having jurisdiction over the project.
 - d. Design review submittal shall be at the 100% Construction Documents.
 - e. Prepare Project Manual including Technical Specifications.
 - f. Submittal to the City shall be in electronic (pdf) format.
2. **Coordination and Approvals:** Submit the construction plans to the City of La Marque and TxDOT. We will coordinate with all review agencies to address comments and/or review plans as needed to obtain final approval.
3. **Bidding Phase Services:** Prepare contract bid documents and obtain public competitive bids for the project. Review bids, prepare tabulations, and recommend award to the City. Assist the City will contract documents for execution.

4. **Construction Phase Services:** Provide construction phase services to include construction meetings, coordinate construction observers, review of contractor's materials and shop drawings submittals, review contractor pay estimates, coordination of required laboratory testing, preparation of change orders and communications between Owner and contractor.
5. **Construction Observation Services:** Provide the services of a field construction observer for part-time on-site observation of the drainage improvements. Our estimated fee is based on 3 trips per week, 3 hours per trip for a 4 week construction duration.
6. **Reimbursable:** Reimbursable expenses including reproduction, delivery, advertising for bids and construction observer vehicle trip charges (@ \$25/trip) will be provide for the project on actual cost.

Specifically excluded from these services is any reviews if the contractor's means or methods of construction or safety procedures. The means, methods and safety procedures will remain the sole responsibility of the contractor.

COMPENSATION:

Compensation for this assignment shall be in accordance with this letter agreement for Professional Engineering services executed between the City of La Marque and ADICO. Billing for this assignment will be a monthly invoice based on a total percentage of effort provided with payment due 10 days upon receipt from Owner. Based on this agreement and the scope of work described above, we recommend a lump sum **Total Professional Services Fee Not to Exceed \$23,000.00** be established.

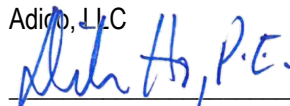
<u>Item</u>	<u>Description:</u>	<u>Fee Basis</u>	<u>Fee</u>
1.	Topographic Survey	Lump Sum	\$4,000
2.	Construction Documents and Specifications	Lump Sum	\$9,500
3.	Bidding Phase	Lump Sum	\$2,500
4.	Construction Phase Services	Lump Sum	\$3,500
5.	Construction Observation Services (as required)	Hourly	\$3,500
6.	Reimbursables	As required	
TOTAL PROPOSED PROFESSIONAL FEES			\$23,000

Lump Sum Fee not to Exceed \$23,000.00 plus reimbursable expenses.

If you agree with the professional engineering services that Adico, LLC will provide to the City of La Marque for engineering fee and basis of compensation for our services, please sign both copies of this work order and return one copy to me. Thank you for considering our firm for your professional engineering services.

Very truly yours,

Adico, LLC


Dinh V. Ho, P.E. 5/16/2023
Date

Accepted: City of La Marque, Texas

Mr. Rick Sailer, Public Works Director Date

City Bonds - Uncommitted Balances

Debt & Purpose	Uncommitted	Available	
2007 CO - Utility System	\$ 402,090.00	\$ 402,090.00	\$ -
2016 CO - Utility Infrastructure, SSO, WWTP	\$ 555,318.00	\$ 555,318.00	\$ -
2018 CO - Mun. & Public Safety Bldg Upgrades	\$ 750,000.00	\$ 750,000.00	\$ -
2020 CO - WWTP	\$ 2,690,934.00	\$ 2,690,934.00	\$ -
Total	\$ 4,398,342.00	\$ -	

Estimate as of 7/3/24

Suggested Distribution of Uncommitted Bond Balances

Pending Expenditures/Encumbrances	Estimated Amount	Estimated Due Date	Designated CO Source				Total	Balance	*	Status
			2007	2016	2018	2020				
GLO Match for WWTP	\$ 402,000.00	FY 26					\$ -	\$ 402,000.00	*	Engineering
GLO Match for Lift Stations	\$ 82,800.00	FY 25					\$ -	\$ 82,800.00	*	Construction
GLO Match for Manholes	\$ 75,000.00	FY 25					\$ -	\$ 75,000.00	*	Construction
Merry Melody/Westlawn Project Overage	\$ 362,957.83	FY 24				\$ 362,957.83	\$ 362,957.83	\$ -	*	Final Inspections
WWTP Bar Screen	\$ 1,675,079.00	FY 24	\$ 402,090.00			\$ 147,647.17	\$ 549,737.17	\$ 1,125,341.83	*	Engineering
Main Street Sanitary Sewer	\$ 285,555.14	FY 24		\$ 285,555.14			\$ 285,555.14	\$ -		Engineering
Westwood Stormwater Improvements	\$ 220,000.00	FY 24		\$ 219,762.86			\$ 219,762.86	\$ 237.14		Engineering
Orange & Prune Waterline	\$ 32,750.00	FY 24					\$ -			COMPLETE
Maple & Cedar Sewerline	\$ 55,000.00	FY 24								Planning
Main Street Waterline Project	\$ 1,555,329.00	FY 24/25				\$ 1,555,329.00	\$ 1,555,329.00	\$ -		Construction-GB
Westward & Verkin Sanitary Sewer Emergency	\$ 59,420.00	FY 24					\$ -			COMPLETE
Shady Lane Sanitary Sewer Emergency	\$ 86,177.00	FY 24					\$ -			COMPLETE
Municipal Building Upgrades	\$ 300,000.00	FY 24			\$ 300,000.00		\$ 300,000.00	\$ -		Planning
Police Department Upgrades	\$ 500,000.00	FY 24		\$ 50,000.00	\$ 450,000.00		\$ 500,000.00	\$ -		Planning
Multi-Use Transportation Spline Connecting Trail	\$ 625,000.00	FY 26				\$ 625,000.00	\$ 625,000.00	\$ -		TxDOT Project
GCWA Shannon Project Share - Cash Call 2	\$ 389,858.58	FY 24					\$ -	\$ 389,858.58		Bond Option
TOTALS	\$ 6,706,926.55		\$ 402,090.00	\$ 555,318.00	\$ 750,000.00	\$ 2,690,934.00	\$ 4,398,342.00	\$ 2,075,237.55		

All GLO Match = ARPA
Adjusted with CO & Reallocated funds
Bar Screen Project not in ARPA

Pd from O&M
Delayed
Currently PD from O&M
Currently PD from O&M

* = Allowable ARPA Expense.



CITY COUNCIL AGENDA FORM

Meeting Date: July 8, 2024
Prepared by: _____
Department: Administration

Agenda Item: 7.IV.
Reviewed by: Kierra Nance

AGENDA ITEM DESCRIPTION:

Authorizing an application to the Houston Galveston Area Council Focused Livable Centers Study

STAFF BRIEFING:

Focused Livable Centers Study: Serve as targeted, community-node studies that must meet two Livable Centers Program goals, to create multi-modal travel choices, resilient quality places, and one additional Livable Centers goal that best fits the needs of the study sponsor. Goals include evaluation of equitable infrastructure, promotion of economic generators, or housing choice. Letter of Intent and Notice of Application were brought to Council for the body to be made aware.

Study recommendations will ideally lead to locally sponsored Livable Centers projects for potential inclusion in the Regional Transportation Plan (RTP) and future Transportation Improvement Programs (TIP). H-GAC anticipates awarding six to eight studies in this application cycle.

HISTORY:

FISCAL IMPACT:

10% Match - \$25,000 from the City. Total estimated project cost of \$250,000. (90% : 10% Split)

Proposed Livable Center Study Information

1. Is the proposed study a Livable Center Study or Focused Livable Centers Study? [Focused Livable Centers Study](#)
2. Proposed Livable Center Study Title: [La Marque Focused Livable Centers Study: *Developing Equitable and Resilient Multimodal Transportation Choices for Community*](#)
3. Please provide a brief statement of the need for this proposed Livable Center Study, including size and boundaries of the proposed study area. Consider how this study meets Livable Centers Program goals, including how this study relates to the vulnerable population and the greater community. *(295 out of 300 Words)*

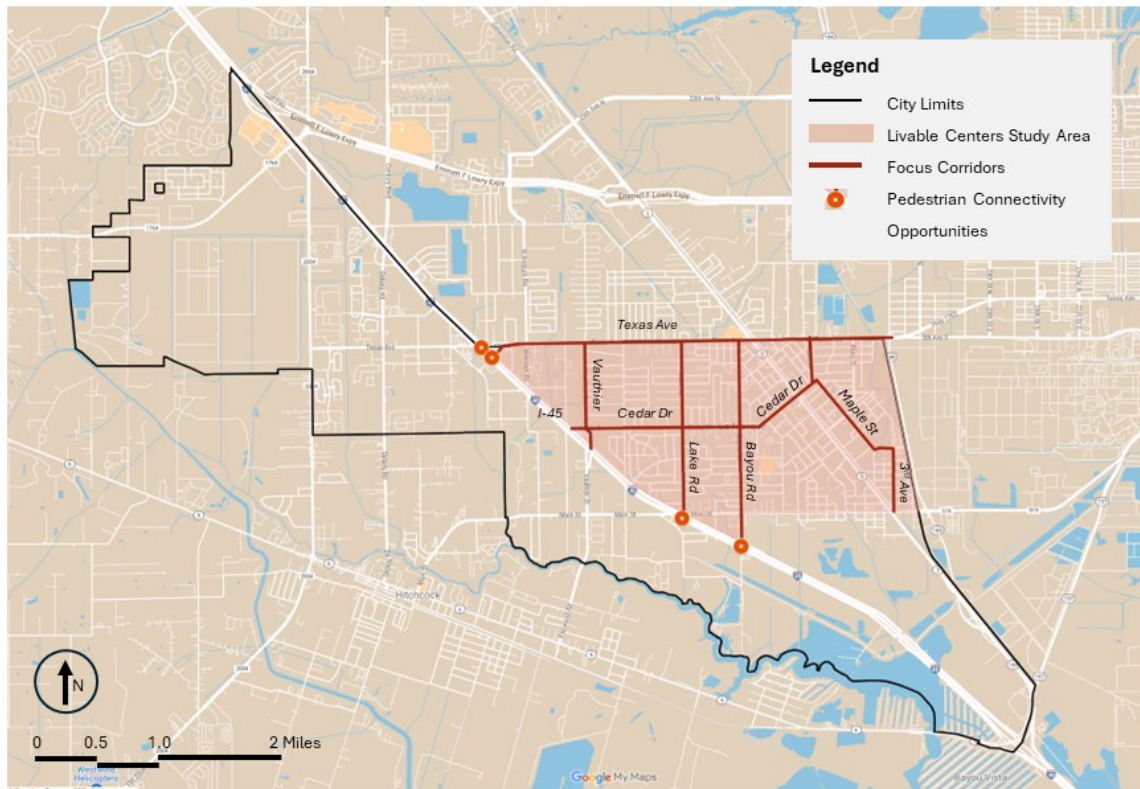
La Marque, a rapidly growing community 36 miles southeast of Houston, is part of the Houston–The Woodlands–Sugar Land metropolitan area. The city's transportation infrastructure, served by I-45, SH-3, Hwy 146, and Union Pacific Railroad, primarily supports freight for surrounding industries, creating significant access barriers for residents. Historically, La Marque's street network has favored automobiles, providing minimal accommodations for walking, biking, or transit. This lack of multimodal integration places a disproportionate financial burden on households, with the H+T index showing that an average La Marque household spends 46% of its annual income on housing and transportation costs. This burden is particularly burdensome for lower-income and minority groups, who also face greater road safety challenges and lack direct connectivity to essential services and transit options. Moreover, the city's proximity to the Texas Gulf Coast exposes it to hurricanes and flooding, underscoring the need for a resilient transportation network that supports efficient evacuation and emergency responses.

[La Marque Focused Livable Center Study: *Developing Equitable and Resilient Multimodal Transportation Choices for Community*](#) addresses these issues by collaborating with regional stakeholders and adopting best practices to develop an equitable, resilient, and multimodal transportation network. The study area is bounded by Texas Ave/FM 2004 to the north, N Freeway 146 to the east, Main St/FM 519 to the south, and I-45 to the west. It aims to enhance non-motorized accessibility and connectivity along key arterial corridors such as FM 1765, Vauthier St., Lake Rd, Bayou Rd, Cedar St., and FM 2004, linking them to major activity centers and transit facilities. This initiative will not only transform La Marque into a more walkable and resilient community but also stimulate economic growth and improve livability, aligning with the Livable Centers Program's goals of creating sustainable urban environments that meet community needs.

4. Please upload a map of the proposed Livable Centers Study. GIS or Aerial Image with marked boundaries will be accepted. The Study Map can be a draft and later be re-uploaded in the application.
File uploads are limited to document and image files and may not exceed 30MB.

La Marque Focused Livable Centers Study

Developing Equitable and Resilient Multimodal Transportation Choices for Community



Areas of Interest

Corridor

Roadways classified as major collectors or higher that increase multi-modal accessibility and connectivity to major centers or transit facilities and communities that would be significantly impacted by planned roadway expansions.

Emerging Centers or Corridors

Those areas that are experiencing rapid growth and could develop as regional centers.

High Density Area

High density area with mixed land uses and a traditional street grid system, such as Urban Core areas.

Regional Centers

Areas of concentrated employment or other major trip generators.

Town or Village Centers

Concentration of housing, retail/office, and civic destinations within walking distance of a community gathering place and a good pedestrian network.

Transit-Oriented Development

High density mix of uses within walking distance of, and with good access to, a transit facility.

5. Which area of interest best describes the Livable Centers or Focused Livable Centers project study area? [Corridor](#)

Additional Information

This section is designed to help us gain a deeper understanding of the study sponsor's organization to better support sponsor efforts throughout the study. This section will not be graded.

1. Please describe the community engagement process utilized in your city or organization? What obstacles have you encountered during this process, and what strategies have you employed to overcome them?

227 out of 300 Words or Less - Currently 0 Words

The city of La Marque in the past has engaged with the community through surveys and public meetings to understand and incorporate the specific needs and concerns of disadvantaged communities into its planning and project delivery process.

Despite these efforts, the city has encountered the following challenges. Firstly, engaging a demographically and economically diverse population proved difficult, as lower-income and minority groups often have lower participation rates in public planning processes. To address this, we tailored our outreach by holding meetings in various neighborhoods, particularly in areas with higher concentrations of disadvantaged communities, and at different times to accommodate different schedules. City staff have often encountered initial skepticism about the impact of these meetings, particularly among businesses concerned about the effect on congestion, mobility and parking. We addressed these concerns through targeted discussions with business owners and by bringing experts in planning sessions to help articulate the long-term benefits of a more accessible and resilient multimodal transportation system.

2. How does your leadership approach and handle adversity or resistance to change within the community?

257 out of 300 Words or Less - Currently 0 Words

The city's leadership approach in handling adversity or resistance to change within the community emphasizes open communication, transparency, and adaptive decision-making. These principles are critical as they allow our administration to respond effectively to challenges and opposition that naturally arise during transformative community development projects.

Open Communication: We prioritize maintaining open communication with all stakeholders. This is facilitated through regular community meetings, updates on our website and social media platforms. By ensuring that community members are well-informed about the goals and benefits of the project and its processes, we strive to reduce misunderstandings and misinterpretations that often lead to resistance.

Transparency: We make all planning materials, research findings, and data publicly available, which helps in establishing trust. Additionally, we clearly outline how community feedback has been integrated into the project, and if skipped the underlying reasons. This approach helps community members see how their input directly influences project outcomes, reinforcing the value of their participation.

Inclusive Engagement: Recognizing the diversity within La Marque, we strive to engage all community segments, especially those who might feel marginalized or less inclined to participate. This includes conducting outreach in multiple languages, hosting meetings in various neighborhoods to increase accessibility, and using diverse media channels to reach different age groups and demographics.

3. If your study encounters resistance, what strategies do you anticipate employing to address these challenges?

184 out of 300 Words or Less - Currently 0 Words

If the study encounters resistance, the City of La Marque plans to utilize the following strategies, in addition to those outlined in the previous section, to address community and stakeholder resistance:

Adaptive Decision-Making: We will adopt a flexible approach to planning and implementation, allowing us to adjust our strategies based on community feedback and changing conditions. This adaptability will be communicated to the community, demonstrating our commitment to addressing their concerns and adapting the project to better meet their needs.

Conflict Resolution: When facing direct opposition, we will engage in constructive dialogue to understand the root causes of resistance. This process often involves negotiating compromises and exploring alternative solutions that address the concerns of dissenting groups while still advancing essential project components that benefit the majority of the community.

Educational Initiatives: Resistance sometimes stems from a lack of understanding of the benefits of change. Should the Focused Livable Centers Study face community resistance, our staff will organize educational sessions and workshops to explain the long-term advantages of a multimodal and resilient transportation network, such as increased safety, economic growth, and improved quality of life.

Proposed Funding Contributions

1. What is the proposed Livable Centers Study's total cost? **\$250,000**
2. What is the proposed Livable Centers Study's Livable Centers Need Index Score? **50 (~49.7)**
3. What is the proposed Livable Centers Study's local contribution? **10%**
4. What is the proposed Livable Centers Study's federal match? (H-GAC Contribution) **90%**
5. Please provide any additional funds. (Optional) **Not Applicable.**

Assistance with Your Application

1. Would you like to schedule a meeting with H-GAC staff to receive assistance with your application? **Yes**
 - 1a. When would you prefer to have this meeting? **Monday, April 29. 2 pm to 3 pm**

May 17, 2024

Review Committee
Houston-Galveston Area Council,
3555 Timmons Lane, Suite 120
Houston, TX 77027

Re: Letter of Funding Commitment for La Marque Livable Center Study

As the authorized representative of the City of La Marque, Texas, this letter serves as a commitment to undertake the roles and responsibilities associated with the acceptance of funds through the Houston-Galveston Area Council (H-GAC) Livable Centers program. We are requesting \$250,000 to conduct a Focused Livable Centers Study aimed at developing an equitable and resilient multimodal network for our community. The City of La Marque will provide the required 10% local match of \$25,000 to support the advancement of this study.

La Marque's current transportation infrastructure, which is primarily designed for automobiles, significantly limits the mobility of its residents, particularly the most vulnerable groups, including minorities, low-income families, seniors, and individuals with disabilities. These residents are disproportionately affected by the lack of safe, reliable, and efficient multimodal transportation options.

The study will focus on transforming key arterial corridors within the study area to improve non-motorized accessibility and connectivity between major activity centers and transit facilities. Additionally, the study aims to create a resilient transportation system that mitigates impassable conditions and supports efficient evacuation and emergency responses during and after disasters. This transformation is essential for supporting the area's economic vitality and enhancing the quality of life for all residents.

We look forward to a favorable evaluation of our application to deliver an equitable and resilient multimodal transportation network for our community. This study has the potential to set a precedent for many small communities facing similar challenges in the Houston-Galveston region. We are eager to collaborate with you and our other key stakeholders to transform accessibility and multimodal connectivity in La Marque.

Sincerely,

Cesar Garcia
City Manager

La Marque Focused Livable Centers Study - Scope Summary

Developing Equitable and Resilient Multimodal Transportation Choices for Community

About the funding opportunity: The Houston-Galveston Area Council (H-GAC) is seeking proposals from local governments or other eligible project sponsors to conduct Livable Centers planning studies. Study Types include Livable Centers and Focused Livable Centers.

- **Livable Centers Study:** Serve as small area plans and fulfill all four Livable Centers Program goals which include creating multi-modal travel choices, resilient quality places, and equitable infrastructure investments while promoting economic generators and housing choice with complementary transportation planning.
- **Focused Livable Centers Study:** Serve as targeted, community-node studies that must meet two Livable Centers Program goals, to create multi-modal travel choices, resilient quality places, and one additional Livable Centers goal that best fits the needs of the study sponsor. Goals include evaluation of equitable infrastructure, promotion of economic generators, or housing choice.

Study recommendations will ideally lead to locally sponsored Livable Centers projects for potential inclusion in the Regional Transportation Plan (RTP) and future Transportation Improvement Programs (TIP). H-GAC anticipates awarding six to eight studies in this application cycle.

Study's Need and Purpose: La Marque, a rapidly growing community located 36 miles southeast of Houston, is part of the Houston–The Woodlands–Sugar Land metropolitan area. The city's transportation infrastructure, served by I-45, SH-3, Hwy 146, and Union Pacific Railroad, primarily supports freight for surrounding industries, creating significant access barriers for residents. Historically, La Marque's street network has favored automobiles, providing minimal accommodations for walking, biking, or transit. This lack of multimodal integration places a disproportionate financial burden on households, with the H+T index showing that an average La Marque household spends 46% of its annual income on housing and transportation costs. This burden is particularly significant for lower-income and minority groups, who also face greater road safety challenges and lack direct connectivity to essential services and transit options. Moreover, the city's proximity to the Texas Gulf Coast exposes it to hurricanes and flooding, underscoring the need for a resilient transportation network that supports efficient evacuation and emergency responses.

La Marque Focused Livable Center Study: Developing Equitable and Resilient Multimodal Transportation Choices for Community addresses these issues by collaborating with regional stakeholders and adopting best practices to develop an equitable, resilient, and multimodal transportation network. The study area is bounded by Texas Ave/FM 2004 to the north, N Freeway 146 to the east, Main St/FM 519 to the south, and I-45 to the west. It aims to enhance non-motorized accessibility and connectivity along key arterial corridors such as FM 1765, Vauthier St., Lake Rd, Bayou Rd, Cedar St., and FM 2004, linking them to major activity centers and transit facilities. This initiative will not only transform La Marque into a more walkable and resilient community but also stimulate economic growth and improve livability, aligning with the Livable Centers Program's goals of creating sustainable urban environments that meet community needs.

Study Area Map

La Marque Focused Livable Centers Study

Developing Equitable and Resilient Multimodal Transportation Choices for Community

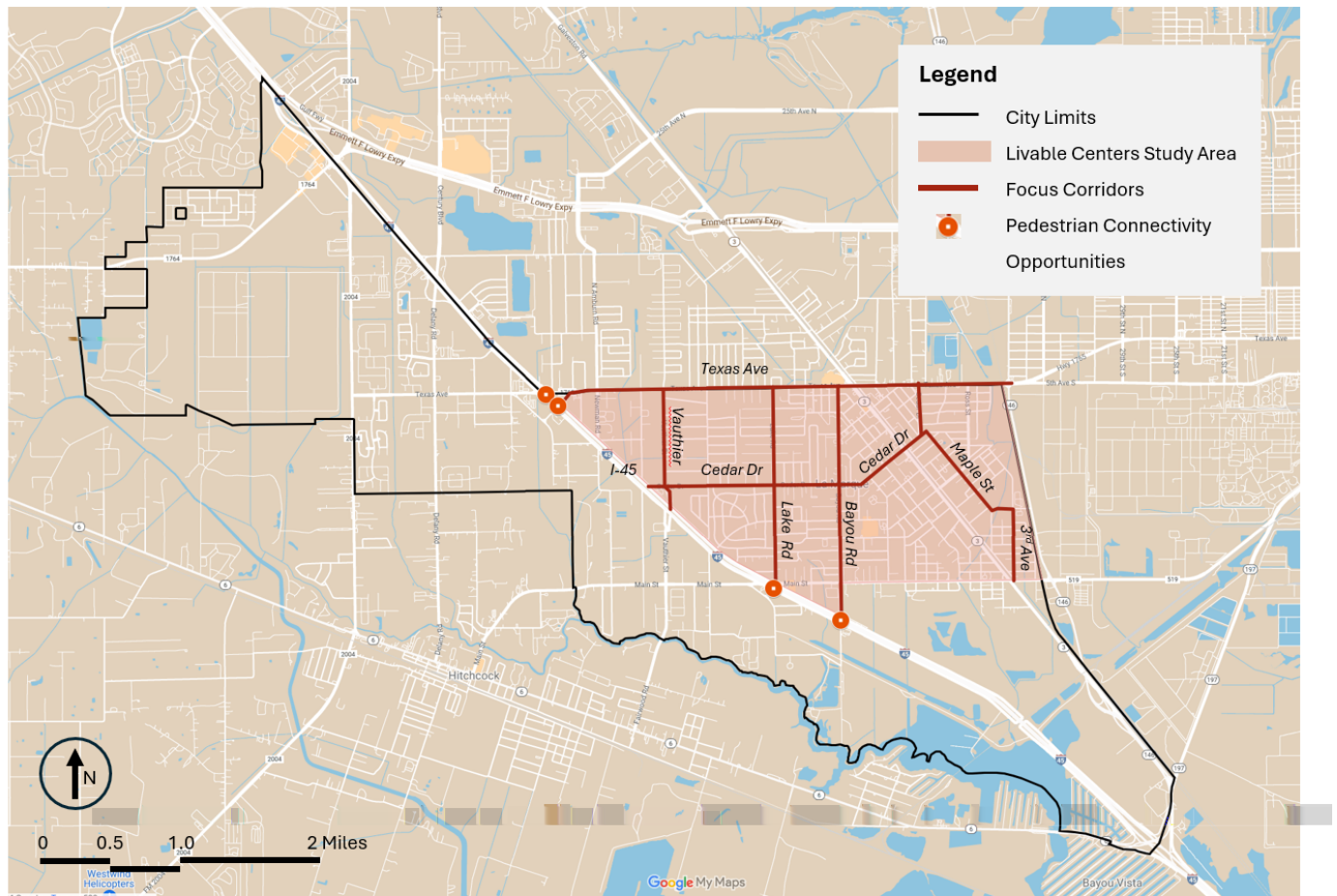


Figure 1 Study Area Map

Type of Study: Corridor

Proposed Cost of the Study: \$250,000

Proposed Study's Livable Centers Need Index Score (LCNI): 50 – calculated as per [ACE Tool](#). Local contribution requirements are calculated based on the level of community need in the study area boundary. Need will be determined through a Livable Centers Need Index (LCNI) created by H-GAC.

- LCNI Score > 75: 0% Cash Contribution
- LCNI Score < 75: 10% Cash Contribution – applicable to La Marque's case
- LCNI Score < 50: 20% Cash Contribution

Local Match: 10% of the total study cost

Project Status: Stage 1 (Letter of Intent) is due on May 9, 2024. La Marque has submitted LOI. Upon approval from H-GAC, applicants are invited to submit the detailed applications which are due by July 8, 2024. A letter of funding commitment is necessary for detailed application stage.



CITY COUNCIL AGENDA FORM

Meeting Date: July 8, 2024

Prepared by: _____

Department: Administration

Agenda Item: 8.I.

Reviewed by: Kierra Nance

AGENDA ITEM DESCRIPTION:

STAFF BRIEFING:

Grant to advance a local assessment, planning process, or program aimed at boosting upward mobility of residents

HISTORY:

N/A

FISCAL IMPACT:

\$20,000 Grant Award - No Match

ICMA Selects 2024 Economic Mobility and Opportunity Cohort

ICMA's Economic Mobility and Opportunity (EMO) Cohort is an opportunity for ICMA members to implement EMO-centered strategies through policies, practices, processes, and programs.

Jun 13, 2024 | ARTICLE - ARTICLE



Local governments selected for ICMA's 2024 Economic Mobility and Opportunity Cohort

Fifteen cities, towns, and counties representing diverse populations, geographies, operating budgets, and other local conditions have been selected for ICMA's 2024 Economic Mobility and Opportunity Peer Learning Cohort and Grant Program. In addition to professional development and networking opportunities for their team leaders, the selected local governments will each receive a \$20,000 grant to advance a local assessment, planning process, or program aimed at boosting upward mobility of residents. This program from ICMA is made possible by support from the [Gates Foundation's Economic Mobility and Opportunity \(EMO\) program](#).

Economic mobility refers to the ability of individuals and generations to move up the economic ladder over time, a concept often explained colloquially as “doing better than your parents.” While economic mobility is frequently associated with income, several factors can influence an individual's economic mobility outcome, and local governments are uniquely positioned to influence conditions that make it possible for all residents and households to access opportunities and get ahead. The following local

governments were selected through an application process that gauged understanding of local needs and readiness to implement EMO strategies through the cohort program and beyond:

- Prescott Valley, AZ
- Needles, CA
- Redwood City, CA
- Miami Gardens, FL
- Newton, KS
- Gaithersburg, MD
- Lisbon, ME
- Tunica County, MS
- Thomasville, NC
- Washington County, OR
- La Marque, TX
- Denton, TX
- Charlottesville, VA
- Danville, VA
- Eau Claire, WI

Over the next several months, with leadership support from ICMA members, the selected local governments anticipate undertaking such activities as service gap assessments, community needs assessments, action planning, and pilot programming to address local challenges surrounding housing affordability, workforce development opportunities, household financial security, and other needs of their vulnerable populations.

ICMA will be featuring the ongoing work and findings from these local governments, as well as guidance from expert EMO practitioners and evidence-based tools and resources, in additional programming and engagement opportunities to be rolled out through our partnership with the Gates Foundation. [Visit the website](#) for the latest offerings.

Subgrant Agreement

INTERNATIONAL CITY/COUNTY
MANAGEMENT ASSOCIATION
777 N Capitol St. NE, Ste. 500
Washington, DC 20002-4201
202.962.3680 | 202.962.3500 (f)
icma.org

ICMA Subgrant Number:	U09/City of La Marque TX/Subgrant/Fixed Price/06252024
Subgrantee Name:	City of La Marque, TX
Subgrantee Address:	1111 Bayou Rd. La Marque, TX 77568
Subgrant Period of Performance:	May 31, 2024 – January 31, 2025
Total Subgrant Amount:	\$24,000
Subgrant Summary Project Description:	Gates Foundation COP Network Partner, 2024 Cohort – Tackling local economic mobility and opportunity issues in communities.
Prime Grant Agreement Client/Funder:	Bill and Melinda Gates Foundation
Gates Foundation Investment No.	INV- 064910
Prime Award Title:	COP Network Partner - ICMA
Prime Award Type:	Grant Agreement
Prime Grantee:	International City/County Management Association (ICMA)

Contents: Award Cover Page
 Subgrant Agreement Terms and Conditions
 Attachment A Scope of Work (SOW) and Subgrant Funds Allocation
 Attachment B Subgrantee Payment Request Template
 Attachment C Prime Grant Agreement Flow-down Terms and Conditions

Entire Agreement: This Subgrant Agreement supersedes and replaces all written or oral agreements, if any, and constitutes the entire understanding between the parties with respect to the subject matter hereof. This Subgrant Agreement may be modified by subsequent written addenda mutually agreeable to both parties, with the exception of those made pursuant to the clause entitled "Changes" of the General Provisions of this Agreement.

Each party represents that it has read this entire Agreement and agrees to perform in accordance with the terms and conditions contained herein. Each signatory to this Agreement warrants by affixing his or her signature below that he or she is duly authorized to bind the party whom such signatory represents.

**International City/County
Management Association**

City of La Marque, TX

Name: Sabina Agarunova
Title: Chief Financial Officer
Date:

Name: Cesar Garcia
Title: City Manager
Date:

ARTICLE 1 PURPOSE OF SUBGRANT AGREEMENT

The Bill and Melinda Gates Foundation (hereinafter referred to as “Gates Foundation” or “Funder”) has executed a Grant Agreement/Prime Award to the International City/County Management Association (hereinafter referred to as “ICMA”), to implement the COP Network Partner - ICMA, hereafter referred to as the “Gates Economic Mobility Project” for the purpose of establishing ICMA as a member of a public goods community of practice whose goal is to support local governments representing 6-10 million individuals in EMO’s focus population. Subgrantee shall comply with all terms and conditions, specifications, directions and other applicable information throughout the performance of this Subgrant. Subgrantee shall perform or cause to be performed all work or services required in a detailed Work Plan and detailed Budget to be provided in accordance with Deliverable #3 listed on the Schedule of Deliverables and Payment, following the first in-person cohort meeting. This Subgrant Agreement incorporates a general Scope of Work (Attachment A) addressing the expectations between the community and ICMA.

ARTICLE 2 PERIOD AND PLACE OF PERFORMANCE

2.1 Period of Performance: The term of performance for this Agreement is specified on the Award Cover page, unless terminated earlier by either party or extended by ICMA as provided herein. Subgrantee’s period of performance is from **May 31, 2024 – January 31, 2025**.

2.2 Place of Performance: For this Subgrant place of performance shall be the United States, in accordance with applicable terms and conditions of this Subgrant and ICMA’s prime award with its Client.

2.3 All periods of time referred to in this Agreement shall be measured in calendar days, unless otherwise specified.

ARTICLE 3 SUBGRANT TYPE

This is a Fixed-Price type Subgrant. For the consideration set forth below, Subgrantee shall provide the deliverables or outputs described in the **Scope of Work, ATTACHMENT A** and the detailed Work Plan and budget in accordance with Deliverable #3 to comply with all Agreement requirements.

ARTICLE 4 CONSIDERATION AND PAYMENT

4.1 Subgrant Budget and Ceiling

ICMA hereby awards to **the City of La Marque, TX** (hereinafter referred to as “Subgrantee”), a Subgrant Agreement for a total amount of **\$ 24,000 USD** payable according to the **Payment Schedule**, and as more fully described, in the **Scope of Work in ATTACHMENT A** and the detailed Work Plan and budget in accordance with Deliverable #3 . The total Subgrant Agreement amount is inclusive of the **\$4,000** authorized via the Letter of Authorization issued prior to Subgrant Agreement execution.

This award amount may not be adjusted without a mutually agreeable modification to this Subgrant Agreement. The Subgrantee will not request payment for any amounts against this Subgrant in excess of the amounts specified for each deliverable listed under the **Payment Schedule** in the **Scope of Work in ATTACHMENT A**.

4.2 Requests for Payment

The Subgrantee shall submit a request for payment per the **Payment Schedule** in the **Scope of Work in ATTACHMENT A**. Please see **Attachment B**, Subgrantee Payment Request Template, for additional guidance. Requests should be sent to the attention of Anna Mitchell, Senior Program Manager at amitchell@icma.org with a copy to: Accounts Payable at accountspayable@icma.org.

The Subgrantee should retain on file the original receipts for all expenditures and individuals' original timesheets for claimed labor costs, and work rendered. Original documentation should be made available to an authorized representative of ICMA or the Gates Foundation upon request.

ICMA shall pay the Subgrantee within 30 calendar days following the receipt of a complete error-free payment request by ICMA, subject to approval by ICMA. Subgrantee shall retain record of transactions related to this Subgrant Agreement for four years from the day of the last payment under this Subgrant Agreement. All charges claimed by the Subgrantee remain subject to ICMA and the Gates Foundation audit and subsequent adjustment. Subgrantee agrees to reimburse ICMA for any costs disallowed by the Gates Foundation, if payment was received by Subgrantee.

The final payment request shall be clearly marked as "final."

4.3 Return of Funds

Any Subgrant funds that have not been used for, or committed to, the Project upon expiration or termination of this Subgrant Agreement must be (a) returned promptly to ICMA no later than 30 days from submission of the final report which includes reporting of the total expenditures.

ARTICLE 5 INDIRECT COST RATES

The Subgrantee shall not change its established method of classifying or allocating indirect costs without the prior written approval of ICMA. If such a change is made, the Subgrantee shall notify ICMA of the proposed rates and bases.

ARTICLE 6 REPORTS AND DELIVERABLES

6.1 The Subgrantee shall, except as otherwise provided, furnish the personnel, materials, equipment, property, and travel necessary to perform the Work as described in the **Scope of Work, ATTACHMENT A** and the detailed Work Plan and budget in accordance with Deliverable #3. All efforts performed shall also be in accordance with the terms and conditions of the Subgrant and any attachments specifically incorporated by reference herein and modifications hereto. For all Work performed, the Subgrantee shall report to and, where required, seek approval from ICMA throughout the life of this Subgrant.

6.2 If required by ICMA, the Subgrantee shall provide assistance in the completion of the reports and deliverables as further described in **ATTACHMENT A Scope of Work** and the detailed Work Plan and budget in accordance with Deliverable #3.

6.3 All reports and other outputs must be in the English language, unless otherwise specified by ICMA.

ARTICLE 7 SUBSTANTIAL INVOLVEMENT

Substantial involvement is anticipated between ICMA and Subgrantee during the performance of activities under this Agreement. Substantial involvement shall be limited to:

- (a) Participating and providing guidance in the design, direction, and execution of all program activities;
- (b) Approving any travel, if applicable, by Subgrantee staff that is not in the approved budget;
- (c) Participating and/or providing input on the development of program timelines and agendas;
- (d) Approving expenses that are not in the approved budget;
- (e) Approving decisions related to special circumstances or problems throughout the duration of the program.

ARTICLE 8 PRIMARY POINT OF CONTACT

Subgrantee contacts with ICMA regarding Subgrant Agreement terms and conditions, issues, etc. shall be made with ICMA's designated representatives as listed below. Agreements and/or actions taken by the Subgrantee which by their nature effect a change to this Agreement shall only be binding upon the Subgrantee when such agreement or action is specifically authorized in writing by ICMA's authorized representative. All correspondence between the Subgrantee and ICMA shall be addressed to the following individuals are designated as ICMA's and Subgrantee's representatives.

For	ICMA	Subgrantee
Address:	777 North Capitol Street, N.E. Suite 500 Washington, DC 20002-4201	1111 Bayou Rd. La Marque, TX 77568
Subgrant Administrator:	Brancy Finkler Director of Contracts/Compliance Email: bfinkler@icma.org	Cesar Garcia City Manager c.garcia@cityoflamarque.org
Technical Representative:	Laura Goddeeris Program Director Email: lgoddeeris@icma.org	
Program Administration Representative	Anna Mitchell Senior Program Manager, Email: amitchell@icma.org	
Financial Representative	Nada Mohamed Controller Email: nmohamed@icma.org	

Any notice given by any of the parties will be sufficient only if in writing and (1) delivered in person, (2) sent by confirmed courier mail, (3) sent by registered mail with return requested, or (4) sent by email to the ICMA and Subgrantee representatives designated above.

ARTICLE 9 COMMUNICATION WITH CLIENT

All the Subgrantee's written or oral communications with or to the Client, or local agencies directly relative to work under the Subgrant Agreement, must be through or with the authorization of ICMA. Should Subgrantee be required to communicate directly with ICMA's Client, Subgrantee shall request written consent from ICMA within a reasonable amount of time prior to any communications taking place, and such consent shall not be unreasonably withheld.

ARTICLE 10 NON-SOLICITATION

Neither party shall knowingly solicit, recruit, hire or otherwise employ or retain any employee of the other, performing under this Subgrant, during the term of this Subgrant, and for one year following the termination or expiration of this Subgrant, without the prior written consent of the other party. This provision shall not prevent any employee of either party applying for a publicly advertised position of the other.

ARTICLE 11 RELATION BETWEEN THE PARTIES

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of joint venture, partnership, agency or employment between the parties hereto or of Agreement either as an agent, representative or employee of the other for any purpose or in any manner whatsoever. Subgrantee and any officers or employees and ICMA and any officers or employees thereof shall not be considered an employee of the other.

ARTICLE 12 TAXES

The Subgrantee and their personnel shall pay such taxes, duties, fees, and other impositions levied under the Applicable Law.

ARTICLE 13 INSURANCE

The Subgrantee shall purchase and maintain throughout the course of the Work and period of performance of this Subgrant, insurance that is required under the Applicable Law and such insurance that will protect the Subgrantee, Client, and ICMA from the following claims which may arise out of or result from its operations hereunder (whether by itself, any Subgrantees, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable): claims under workmen's compensation, disability benefit and other similar employee benefit acts; claims for damages because of bodily injury, occupational sickness or disease, or death, of its

employees or any other person; claims which are sustained by any person as a result of the actions of the Subgrantee or by any other person; and claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from. At ICMA's request, the Subgrantee will provide ICMA with satisfactory evidence of compliance with this requirement.

ARTICLE 14 INDEMNIFICATION

14.1 The Subgrantee shall defend, indemnify, and hold harmless the Gates Foundation, ICMA and its agents, officers and directors and employees from and against any and all claims, liability, losses, cost or expenses, including attorney's fees, arising out of the acts, errors or omissions of the recipient, its agent, officers and directors, employees and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This indemnification obligation shall not be limited in any way by required, actual, or available insurance coverage. The Subgrantee agrees to flow down the substance of this clause to all applicable consultants, Subgrantees, and subcontractors. Likewise, ICMA shall defend, indemnify, and hold harmless the Subgrantee and its agents, officers and directors and employees from and against all claims, liability, losses, costs or expenses, including attorney's fees, arising out of the acts, errors or omissions of ICMA, its agents, officers and directors, employees, Subgrantees, subcontractors, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The indemnification obligation shall not be limited in any way by required, actual, or available insurance coverage. This clause shall apply to the damage, destruction or loss of personal property and any personal injuries that may be incurred throughout the performance of this Agreement. Except as specifically stated in this Agreement, this agreement does not create any rights or benefits to parties other than ICMA and the Subgrantee.

14.2 The Subgrantee further agrees that if ICMA should incur any legal cost whatsoever resulting from the lack of the insurance coverage identified in Article 13 on the part of the Subgrantee, while engaged in the Work as identified in this agreement, the Subgrantee will indemnify, and hold harmless ICMA and the Client from any such costs which the Subgrantee may legally be required to pay.

14.3 Except as specifically stated in this Agreement, this Agreement does not create any rights or benefits to parties other than ICMA and the Subgrantee.

ARTICLE 15 INTELLECTUAL PROPERTY RIGHTS

15.1 The term "intellectual property" shall include but not be limited to publications, work products, software and software codes, trade names, documentation, and technical data that are created under the Subgrant with funding made available by or through ICMA. Unless otherwise agreed, all intellectual property created by Subgrantee and/or its employees, agents and Subgrantees under the Subgrant will be the property of the Gates Foundation. Subgrantees shall include the substance of this section in any lower-tier subcontracts.

15.2 The Subgrantee warrants that it is not aware of any copyright, patent, trademark, trade secret or other proprietary right that it might infringe upon in providing the work required under the Agreement. The Subgrantee shall indemnify and save ICMA and ICMA's Client harmless from any and all claims, suits, liability, expense or damages for any alleged or actual infringement of any

copyright, patent, trademark, trade secret or other proprietary right arising in connection with the work provided by the Subgrantee under this Agreement.

ARTICLE 16 CONFIDENTIAL AND PROPRIETARY INFORMATION

16.1 All reports generated and data collected during this activity shall be considered confidential and shall not be reproduced, disseminated or discussed in open forum, other than for the purposes of completing the tasks described in this document, without the express written approval of a duly-authorized representative of ICMA. All findings, conclusions and recommendations shall be considered confidential and proprietary.

16.2 In performing the Work, the Subgrantee shall not directly or indirectly or through its employees disclose to any third person or use for the benefit of anyone other than ICMA, either during or after the term of this Agreement (or for the period of time stipulated in applicable data), any proprietary information of ICMA, whether relating to the Work performed hereunder or to the business and affairs of ICMA, or ICMA's Client. Such information shall include, without limitation, ICMA or Client manuals, forms, or procedures. Disclosure shall not be made without the prior written consent of the ICMA unless disclosure is required by law, in which case notification of the request for such information shall be provided to ICMA prior to release. Information identified in writing by the Subgrantee as confidential and/or proprietary shall be similarly treated by ICMA. This clause applies to information which has been designated as proprietary or which should be treated as proprietary in light of the circumstances surrounding its acquisition without the prior written consent of ICMA.

16.3 The Subgrantee shall not publish or publicly disseminate any information or data derived or obtained from or in connection with any services rendered hereunder, without the prior written consent of ICMA which shall not be unreasonably withheld.

ARTICLE 17 WARRANTIES AND REPRESENTATIONS

Subgrantee warrants and represents that it is duly formed and existing and has all rights necessary to perform its obligations hereunder. Additionally, Subgrantee warrants that all Work performed hereunder shall be performed to the industry highest professional standards, and Subgrantee agrees to correct or re-perform any Work not in compliance with this standard at no additional cost, if ICMA notifies Subgrantee within five (5) business days from the receipt of notice from the Client if reperformance is requested by the Client. Subgrantee warrants and certifies, to the best of its knowledge and belief, that it and its principals: (a) are not presently debarred, suspended, or proposed for debarment or suspension by any Federal department or agency, (b) have not within a three-year period preceding this Subgrant been convicted of or had a civil judgment rendered for commission of fraud or a criminal offense in connection with a public sector (Federal, State, or local) contract, (c) are not currently the subject of a civil or criminal investigation or an inspector general audit, (d) have neither solicited nor obtained bid or proposal information or source selection information related to the Prime Award, (e) do not have a relevant conflict of interest or the appearance thereof, (f) have not offered anything of value to a current or former U.S.

Government Grant Official who participated personally and substantially in the Prime Award and (g) have not made, and will not make, any payment of money or anything of value, directly or indirectly, to any government official, political Party, or candidate for a political office for the purpose of obtaining or retaining business. Subgrantee agrees to promptly notify ICMA should it learn that any of the above warranties or representations are no longer fully correct.

ARTICLE 18 BINDING EFFECT OF CLIENT DECISIONS

If a binding decision is made by the Client under the Prime Award that pertains to the subject matter of this Subgrant, the binding Client decision also shall be binding upon Subgrantee. If, as a result of any such binding decision, ICMA is unable to obtain payment or reimbursement under the Prime Award or is required to refund or credit the relevant amount, Subgrantee shall, on demand, promptly withdraw its relevant invoice(s) and/or repay or reimburse such amount(s) to ICMA.

ARTICLE 19 ASSIGNMENT

The Subgrantee shall not further assign any services or work to be performed under this Subgrant without prior written authorization from ICMA's Subgrant Administrator, which shall not be unreasonably withheld.

ARTICLE 20 APPLICABLE LAW

20.1 In the performance of the Work under this Subgrant, the Subgrantee shall comply with all applicable US Federal, state, and local laws, rules, and regulations. In the event the Subgrantee is authorized by the Gates Foundation and ICMA to perform work outside the United States, the Subgrantee shall follow all host country laws, rules and regulations. In addition, the Subgrantee shall obtain and maintain the applicable licenses and authorizations to work in the host country through the entire performance period of this Subgrant. Failure to comply with this requirement shall be construed as a material deficiency in the Subgrantee's performance under this Subgrant. This Subgrant shall be construed, interpreted and applied in accordance with the laws of the District of Columbia.

20.2 These provisions shall be interpreted in accordance with the Federal common law of Government as applied by the Federal Courts, Board of Contract Appeals, and quasi-judicial agencies of the Federal government.

ARTICLE 21 STANDARDS OF BUSINESS ETHICS AND CONDUCT

ICMA believes in fair and open competition and is committed to conducting its business fairly, impartially and in an ethical and proper manner. It is imperative that ICMA employees, agents, Subgrantees and representatives adhere to a particularly high ethical standard. ICMA's expectation is that Subgrantee also will conduct its business fairly, impartially and in an ethical and proper manner. If Subgrantee has cause to believe that ICMA or any employee or agent of ICMA has acted improperly or unethically under this agreement/order, Subgrantee shall report such behavior to

the ICMA's Hot Line at 1-877-874-8416 (Toll Free for use within the United States) or online at <http://icma.org/hotline>.

ARTICLE 22 CHANGES

22.1 ICMA may at any time, by written order, make changes, revisions, additions, or deletions (collectively hereinafter called "changes") in the Subgrant scope of services or to **ATTACHMENT A, Scope of Work** and the detailed Work Plan and budget in accordance with Deliverable #3. If any change causes an increase or decrease in the Subgrantee's cost of, or the time required for, the performance of any part of the Work, whether or not changed by any such change authorization, ICMA shall make an equitable adjustment and modify in writing the Agreement as applicable. Any claim by Subgrantee for an adjustment under this paragraph must be asserted in writing, fully supported by factual information, to ICMA within thirty (30) calendar days from the date of receipt by Subgrantee of the written change authorization from ICMA or within such extension of that 30-day period as ICMA, in its sole discretion, may grant in writing at Subgrantee's request prior to expiration of said period. The Subgrantee will not proceed with any changes unless notified to proceed in writing by ICMA. Any changes to this Subgrant must be in writing.

22.2 Nothing herein will be construed as relieving Subgrantee of its obligations to perform, including without limitation, the failure of the parties to agree upon Subgrantee entitlement to, or the amount of, any adjustment in time or compensation. If the Work is reduced by a change authorization issued hereunder, such action will not be the basis for a claim based on loss of anticipated profits.

ARTICLE 23 RIGHTS AND REMEDIES

23.1 No failures of or delay by ICMA in the exercise of any right under this Agreement shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other such right. The waiver by ICMA of any breach of any provision of this Agreement shall not be deemed to be a waiver of any subsequent breach or of any other provision of this Subgrant.

23.2 Neither the ICMA's nor the Client's review, approval, nor payment for, any of the services required under this Agreement shall be construed to have operated as a waiver of any rights under this Agreement, or of any cause of action arising out of the performance of this Subgrant and the Subgrantee shall be and remain liable to ICMA and the Client for damages caused by the Subgrantee's negligent performance of any of the services furnished under this Subgrant.

23.3 The rights and remedies of ICMA or the Subgrantee provided for under this Agreement are in addition to any other rights and remedies provided by law.

ARTICLE 24 DISPUTE RESOLUTION

24.1 For any issues or claims arising out of or relating to the terms of this Subgrant, or the breach thereof, both parties agree to provide best efforts to resolve such issues through documented communications between identified personnel in Article 8. Should Subgrantee and ICMA be

unable to reach an amicable resolution, such issues shall be elevated to applicable levels of senior management within Subgrantee's and ICMA's respective organizations. For any controversy or claim which cannot thus be settled amicably, it shall be settled by arbitration under the Rules of the American Arbitration Association.

24.2 The place of arbitration shall be Washington, D.C. The language to be used in the arbitral proceedings shall be English. As independent, irrevocable covenants to each other, neither party will institute any action or proceed against the other party in any court or judicial forum concerning any matter under dispute, other than to seek entry of a judgment upon an award rendered by the arbitrator(s) pursuant to these terms and conditions.

24.3 The provisions in this Article shall survive the termination or expiration of the Subgrant. During the term of any pending controversy or claim hereunder, the Subgrantee shall proceed diligently with the performance of Work under the Subgrant in accordance with the direction(s) given by ICMA.

ARTICLE 25 TERMINATION

The Subgrant Agreement may be terminated by ICMA at any time, in whole or in part, with a 30-day written notice to the Subgrantee. Also, the Subgrant Agreement may be suspended or terminated by ICMA, if ICMA has notice of or has reasonable cause to believe that the Subgrantee is unable to pay its obligations in the ordinary course of business. If ICMA terminated this Agreement, the Subgrantee may submit a claim within 30 calendar days of such termination for any costs incurred in performance of activities in support of the Agreement. The ICMA Subgrant Administrator must determine the amount(s) to be paid by ICMA to the Subgrantee under such claim in accordance with the legally applicable Cost Principles.

ARTICLE 26 FLOW DOWNS

Subgrantee shall be required to comply with the applicable flow-down terms and conditions from the Prime Grant Agreement as **per Attachment C**.

ARTICLE 27 COMPLIANCE REQUIREMENTS

27.1 Anti-Terrorism. By signing this Agreement, Subgrantee certifies that it does not and will not promote or engage in violence or terrorism. Further, Subgrantee agrees that it shall at all times comply with all relevant laws prohibiting transactions with individuals and organizations associated with terrorism, including, without limitation, Executive Order 13224 and the Patriot Act. Without limitation, Subgrantee agrees that prior to incurring and making any payment pursuant to this Agreement, it will ensure that the payee is not on the "Specially Designated Nationals" list maintained by the United States Department of the Treasury, or on a terrorist list maintained by the United Nations.

ATTACHMENT A
SCOPE OF WORK
COP Network Partner 2024 Cohort

A. Background

ICMA has been awarded a grant from the Gates Foundation (Funder) to drive awareness and adoption among ICMA's membership and other local decision makers of tools, resources, and strategies supporting economic mobility and opportunity in their communities. Among other strategies to accomplish this goal, this grant aims to assess and address local economic mobility and opportunity issues through the creation and facilitation of a peer learning cohort of local governments, enhancing economic mobility in their communities.

The specific purpose of this agreement is to confirm the partnership between the EMO Cohort member and ICMA.

B. Purpose of the Subgrant

Upon execution of this Agreement, the Subgrantee will complete an approved detailed Work Plan for the purpose of addressing economic mobility within their community. As the effort progresses, the Subgrantee will manage the overall development and completion of their scope.

C. Roles and Responsibilities

Prime Grantee, ICMA, Specific Activities/Tasks:

1. Closely work with the Subgrantee throughout the Subgrant Agreement period of performance to provide oversight and guidance on detailed Work Plan development and execution.
2. Approve and monitor the Subgrantee budget to ensure proper timeliness and compliance.
3. Provide various Subgrantee trainings and networking events, in person and virtually to supplement Subgrant Agreement Work Plan activities.

Subgrantee, the Community, Specific Activities/Tasks:

1. Adhere to the approved timeline and Deliverable Schedule (below) and provide ICMA staff with timely notice of problems that could cause delay.
2. Attend all ICMA-organized virtual and in-person Subgrantee cohort meetings and participate in ICMA data collection.
3. Comply with all reporting and evaluation requests from ICMA and funding partner. See **D. Reporting Requirements** below.
4. Upon completion of the Subgrantee's detailed Work Plan, work closely with ICMA program staff to provide a final summary report that will inform ICMA's final program report to funding partner.

D. Reporting Requirements

1. Subgrantee will report monthly on their economic mobility efforts, i.e., progress, challenges, etc. in the ICMA-organized virtual and in-person meetings. This reporting-out process will inform ICMA's progress and final reports to the funding partner.
2. Subgrantee may be asked to respond to surveys and/or interviews from ICMA staff and/or from the funding partner as a part of measurement, learning, and evaluation activities.

3. Subgrantee will submit an ICMA-approved final written report summarizing 1) the results of the project listed in ATTACHMENT A, as well as 2) a detailed summary of total expenditures, due no later than January 15, 2025, to ICMA staff.

Note: ICMA will provide a final program and financial expenditure report template December 2024 and will work with Subgrantee to develop an approved report.

E. Deliverable-Payment Schedule

The first payment of \$4,000 will be issued upon execution of the Letter of Authorization. The second payment of \$15,000 will be issued to the Subgrantee upon acceptance of an ICMA-approved detailed Work Plan and Detailed Budget. The final payment of \$5,000 will be issued to the Subgrantee upon submission of the Final Report and ICMA acceptance/confirmation that Subgrantee has fulfilled all deliverables.

Deliverable No.	Deliverable	Deadline/Due Date	Payment Amount
1	Full execution of Letter of Authorization	As fully executed	\$4,000
2	Participation in ICMA in-person meeting #1	June 26-28, 2024	
3	ICMA-approved detailed Work Plan and Detailed Budget	July 19, 2024	\$15,000
4	Participation in regular ICMA-sponsored virtual meetings	Ongoing (monthly) through January 2025	
5	Participation in in-person meeting #2	January 2025 (TBD)	
6	Final Written Report and Final Expenditure Report	January 15, 2025	\$5,000
TOTAL			\$24,000

G. Subgrant Funds Allocation

Budget item	Unit	Cost	Notes
Travel Costs	2 ppl x 2 meetings	\$4,000	Travel for two Subgrantee staff associated with the two ICMA-sponsored in-person EMO Cohort meetings.
Subgrant Costs		\$20,000	Costs associated with the ICMA approved detailed Work Plan and Budget according to Deliverables #3 and #6.
	TOTAL	\$24,000	

Note:

RETURN OF FUNDS. Any Subgrant Agreement Funds that have not been used for, or committed to, the Project upon expiration or termination of this Subgrant agreement must be returned promptly to ICMA.

**ATTACHMENT B
SUBGRANTEE PAYMENT REQUEST TEMPLATE**

SUBGRANTEE NAME:		REQUEST DATE:	
SUBGRANTEE ADDRESS:		ICMA SUBGRANT NUMBER:	U09/City of La Marque TX/Subgrant/Fixed Price/06252024
REQUESTED AMOUNT		SUBGRANT PERIOD OF PERFORMANCE:	May 31, 2024 - January 31, 2025
PAYMENT METHOD (ACH, CHECK MAILED)		AMOUNT PREVIOUSLY PAID:	
<i>If the ACH method is selected, please complete the attached "Direct Deposit Authorization Agreement"</i>		REMAINING TO BE PAID:	

G/L Acct	Cost Center #	Description of Cost	Amount	Notes
543-03	U09.001.00			
		Total Amount	\$ -	

Comments/Further Instructions

Authorized Name (Print):

Authorized Signature:

Phone Number: _____

Gates Foundation Investment No. INV- 064910

U09/City of La Marque TX/Subgrant/Fixed Price/06252024

ATTACHMENT C

PRIME GRANT AGREEMENT FLOW-DOWN TERMS AND CONDITIONS

For the purposes of the “Subgrant Agreement” and “Subgrantee,” the following Gates Foundation, “the Funder,” Prime Grant Agreement Terms and Conditions shall be applicable.

“You”/“Your” shall be interpreted as the “Subgrantee”/“Subgrantee’s.”

“Grant” shall be interpreted as the “Subgrant Agreement.”

“Agreement” shall be interpreted as the “Subagreement.”

This Subgrant Agreement is subject to the following applicable Prime Agreement Funder Terms and Conditions:

MANAGEMENT OF FUNDS

USE OF FUNDS

You may not use funds provided under this Agreement (*“Grant Funds”*) for any purpose other than for the Project. You may not use Grant Funds to reimburse any expenses You incurred prior to the Start Date. At the Foundation's request, You will repay any portion of Grant Funds and/or Income used or committed in material breach of this Agreement, as determined by the Foundation in its discretion.

GLOBAL ACCESS

GLOBAL ACCESS COMMITMENT

You will conduct and manage the Project and the Funded Developments in a manner that ensures Global Access. Your Global Access commitments will survive the term of this Agreement. *“Funded Developments”* means the products, services, processes, technologies, materials, software, data, other innovations, and intellectual property resulting from the Project (including modifications, improvements, and further developments to Background Technology). *“Background Technology”* means any and all products, services, processes, technologies, materials, software, data, or other innovations, and intellectual property created by You or a third party prior to or outside of the Project used as part of the Project. *“Global Access”* means: (a) the knowledge and information gained from the Project will be promptly and broadly disseminated; and (b) the Funded Developments will be made available and accessible at an affordable price (i) to people most in need within developing countries, or (ii) in support of the U.S. educational system and public libraries, as applicable to the Project.

HUMANITARIAN LICENSE

Subject to applicable laws and for the purpose of achieving Global Access, You grant the Foundation a nonexclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid up, sublicensable license to make, use, sell, offer to sell, import, distribute, copy, create derivative works, publicly perform, and display Funded Developments and Essential Background Technology. “Essential Background Technology” means Background Technology that is: (a) owned, controlled, or developed by You, or in-licensed with the right to sublicense; and (b) either incorporated into a Funded Development or reasonably required to exercise the license to a Funded Development. You confirm that You have retained sufficient rights in the Funded Developments and Essential Background Technology to grant this license. You must ensure this license survives the assignment or transfer of Funded Developments or Essential Background Technology. On request, You must promptly make available the Funded Developments and Essential Background Technology to the Foundation for use solely under this license. If You demonstrate to the satisfaction of the Foundation that Global Access can best be achieved without this license, the Foundation and You will make good faith efforts to modify or terminate this license, as appropriate.

PUBLICATION

Consistent with Your Global Access commitments, if the Project description specifies Publication or Publication is otherwise requested by the Foundation, You will seek prompt Publication of any Funded Developments consisting of data and results. “Publication” means publication in a peer-reviewed journal or other method of public dissemination specified in the Project description or otherwise approved by the Foundation in writing. Publication may be delayed for a reasonable period for the sole purpose of seeking patent protection, provided the patent application is drafted, filed, and managed in a manner that best furthers Global Access. If You seek Publication in a peer-reviewed journal, You agree to adhere to the Foundation’s Open Access Policy available at: www.gatesfoundation.org/How-We-Work/General-Information/Open-Access-Policy, which may be modified from time to time. Nothing in this section shall be construed as requiring Publication in contravention of any applicable ethical, legal, or regulatory requirements. You will mark any Funded Development subject to this clause with the appropriate notice or attribution, including author, date and copyright (e.g., © 20<> <Name>).

PROHIBITED ACTIVITIES

ANTI-TERRORISM

You will not use funds provided under this Agreement, directly or indirectly, in support of activities (a) prohibited by U.S. laws relating to combating terrorism; (b) with persons on the List of Specially Designated Nationals (www.treasury.gov/sdn) or entities owned or controlled by such persons; or (c) in or with countries or territories against which the U.S. maintains comprehensive sanctions (currently, Cuba, Iran, Syria, North Korea, and the Crimea Region and so-called Luhansk and Donetsk People’s Republics of Ukraine), including paying or reimbursing the expenses of persons from such countries or territories, unless such activities are fully authorized by the U.S. government under applicable law and specifically approved by the Foundation in its sole discretion.

ANTI-CORRUPTION; ANTI-BRIBERY

You will not offer or provide money, gifts, or any other things of value directly or indirectly to anyone in order to improperly influence any act or decision relating to the Foundation or the Project, including by assisting any party to secure an improper advantage. Training and information on compliance with these requirements are available at www.learnfoundationlaw.org.

LOBBYING AND ELECTIONEERING PROHIBITION

You may not use Grant Funds to influence the outcome of any election for public office or to carry on any voter registration drive. You acknowledge that the Foundation has not earmarked Grant Funds to support lobbying activities or to otherwise support attempts to influence legislation. Activities will be conducted consistent with the private foundation lobbying rules and exceptions under Internal Revenue Code Section 4945 and related regulations. You confirm that the Budget (or the combined project budget if there are multiple funders) accurately reflects that You will expend at least the amount of the Grant Funds on (a) non-lobbying activities in the project year, or (b) for multiple year projects, the total non-lobbying portion of the project.

OTHER LOBBYING, GIFT, AND ETHICS RULES

You agree to comply with any national, state, local, or other lobbying, gift, and ethics rules applicable to the Project. The Foundation is not retaining or employing You to engage in lobbying activities.

OTHER PUBLICITY

A Party may publicly disclose information about the award of this grant, including the other Party's name, the total amount awarded, and a description of the Project, provided that a Party obtains prior written approval before using the other Party's name for promotional purposes or logo for any purpose. Any public disclosure by You or Your subgrantees, subcontractors, contingent workers, agents, or affiliates must be made in accordance with the Foundation's then-current brand guidelines, which are available at: www.gatesfoundation.org/brandguidelines.

LEGAL ENTITY AND AUTHORITY

You confirm that: (a) You are an entity duly organized or formed, qualified to do business, and in good standing under the laws of the jurisdiction in which You are organized or formed; (b) You are not an individual (i.e., a natural person) or a disregarded entity (e.g., a sole proprietor or sole-owner entity) under U.S. law; (c) You have the right to enter into and fully perform this Agreement; and (d) Your performance will not violate any agreement or obligation between You and any third party. You will notify the Foundation immediately if any of this changes during the term of this Agreement.

COMPLIANCE WITH LAWS

In carrying out the Project, You will comply with all applicable laws, regulations, and rules and will not infringe, misappropriate, or violate the intellectual property, privacy, or publicity rights of any third party.

COMPLIANCE WITH REQUIREMENTS

You will conduct, control, manage, and monitor the Project in compliance with all applicable ethical, legal, regulatory, and safety requirements, including applicable international, national, state, local, institutional, and school district or school network standards ("*Requirements*"). You will obtain and maintain all necessary approvals, consents, and reviews before conducting the applicable activity. As a part of Your annual progress report to the Foundation, You must report whether the Project activities were conducted in compliance with all Requirements.

If the Project involves:

- any protected information (including personally identifiable, protected health, or third-party confidential), You will not disclose this information to the Foundation without obtaining the Foundation's prior written approval and all necessary consents to disclose such information; and/or
- children, students, or vulnerable subjects, You will obtain any necessary consents and approvals unique to these subjects.

Any activities by the Foundation in reviewing documents and providing input or funding does not modify Your responsibility for determining and complying with all Requirements for the Project.

TERM AND TERMINATION

RETURN OF FUNDS

Any Grant Funds that have not been used for, or committed to, the Project upon expiration or termination of this Agreement must be (a) returned promptly to the Foundation, or (b) applied

to another mutually-agreed upon charitable purpose, as directed in writing by the Foundation. Any Income that has not been used for, or committed to, the Project must be applied to another mutually-agreed upon charitable purpose, as directed in writing by the Foundation.

MONITORING, REVIEW, AND AUDIT

The Foundation may monitor and review Your use of the Grant Funds, performance of the Project, and compliance with this Agreement, which may include onsite visits to assess Your organization's governance, management and operations, discuss Your program and finances, and review relevant financial and other records and materials. In addition, the Foundation may conduct audits, including onsite audits, at any time during the term of this Agreement, and within four years after Grant Funds have been fully spent. Any onsite visit or audit shall be conducted at the Foundation's expense, following prior written notice, during normal business hours, and no more than once during any 12-month period.

INTERNAL OR THIRD PARTY AUDIT

If during the term of this Agreement You are audited by your internal audit department or by a third party, You will provide the audit report to the Foundation upon request, including the management letter and a detailed plan for remedying any deficiencies observed ("*Remediation Plan*"). The Remediation Plan must include (a) details of actions You will take to correct any deficiencies observed, and (b) target dates for successful completion of the actions to correct the deficiencies.

RECORD KEEPING

You will maintain complete and accurate accounting records and copies of any reports submitted to the Foundation relating to the Project. You will retain such records and reports for 4 years after Grant Funds have been fully spent. At the Foundation's request, You will make such records and reports available to enable the Foundation to monitor and evaluate how Grant Funds have been used or committed.

**2024 ICMA ECONOMIC MOBILITY AND OPPORTUNITY COHORT
DETAILED WORK PLAN**

1. **Brief Project Summary** (2-3 sentences about what you are planning to do and how you intend to use the funds).
2. **Anticipated output(s) and outcome(s) of the project.** What is the community looking to accomplish related to local economic mobility and opportunity through this subgrant? Make sure outputs and outcomes are measurable and has a time limit within this cohort timeline.
3. **Anticipated timeline.** Briefly note expected monthly activities/milestones (program completion January 2025).
4. Please fill in the attached detailed budget template according to your anticipated expenditures.

			Program Period of Performance:		
	Unit Cost	Unit Name (Day/hours)	Number of Units	Amount	Notes
PERSONNEL					
Salaries					
Participant 1	\$ -		0	0	
Participant 2	\$ -		0	0	
Total Personnel				0	
TRAVEL					
In person cohort meeting travel (airfare, parking, airport transfers)	\$ 1,000	trip	4	4,000	
Total Travel				4,000	
CONSULTANTS					
Consultant(s)	\$ -			0	
Total Contractual				0	
OTHER DIRECT COSTS					
Supplies	\$ -		0	0	
Printing	\$ -		0	0	
Meeting facilities & AV	\$ -		0	0	
Meeting food	\$ -		0	0	
Participant Stipends	\$ -		0	0	
Total ODCs				0	
Total Costs				4,000	
TOTAL BUDGET				\$ 4,000	



CITY COUNCIL AGENDA FORM

Meeting Date: July 8, 2024

Prepared by: _____

Department: Administration

Agenda Item: 8.II.

Reviewed by: Kierra Nance

AGENDA ITEM DESCRIPTION:

STAFF BRIEFING:

On June 24, 2024, the Council requested information regarding all grants the City of La Marque has applied to over the last 12 months. An extension is being requested with the information to be presented to the council at the July 22, 2024 City Council meeting.

HISTORY:

Requested by Council 6/24/2024

FISCAL IMPACT:

N/A

LA MARQUE

EST 1953

Date: July 3, 2024

To: Mayor and City Council, City of La Marque

From: Christine Turner, Finance Director

Re: Grants Applied/Rewarded/Denied

Mayor and City Council,

Due to the extent of research required to compile all the data in its entirety and produce a completed list of all Grants requested from the dais on Monday, June 24, 2024, it will not be presented for this council meeting. I will need another couple of weeks to complete.

Thank you kindly,

Christine Turner, Finance Director





CITY COUNCIL AGENDA FORM

Meeting Date: July 8, 2024

Prepared by: _____

Department: City Clerk

Agenda Item: 8.III.

Reviewed by: Kierra Nance

AGENDA ITEM DESCRIPTION:

STAFF BRIEFING:

The question continues to be raised about City of La Marque auditing practices and the responsibility of local municipal financial practices to include the need and depth of a forensic audit.

HISTORY:

Every year an auditor, who is selected by Council through RFP process, signs the engagement letter along with our Finance Director outlining responsibilities, financial statements, and all material aspects, within generally accepted accounting principles of the United States of America.

As mandated by professional standards, the auditor's role is to plan and execute the audit to attain reasonable, rather than absolute, assurance regarding the absence of material misstatement in the financial statements. Additionally, auditors are tasked with communicating significant matters related to the audit that, in their professional judgment, are pertinent to the oversight responsibilities in the financial reporting process.

Forensic audit investigations are typically conducted for specific and pointed fraudulence (involving conflicts of interest, bribery, or extortion), asset misappropriation, and financial statement fraud. It's noteworthy that none of these issues were identified by our audit firm, in the audit results for the fiscal year 2021, 2022, 2023, or any of the known years before that by previously approved auditing firms.

FISCAL IMPACT:

Depending on the depth of the audit these services could cost \$300-\$500 per hour or \$7-\$8 per transaction investigated depending on billing format used. Further, depending on depth of audit, this process could take an extended period of time to exceed over a year's time. These are not official quotes. A formal RFP would need to be compiled and released. The depth of the cost would be determined by how in depth and in which areas Council wishes to have searched. If it is the Council's will to proceed, please let us know through Council action in a

forthcoming Council Meeting in a timely manner so we can properly add it for consideration in next year's budget.



July 3, 2024

CITY AUDIT PROCEDURES

The question was raised about City of La Marque auditing practices and the responsibility of local municipal government. What are forensic audits used for, to accomplish, practices?

ANSWER:

To the residents of La Marque,

I'd like to provide clarification regarding the audit conducted for the fiscal year 2022. The engagement letter, signed by the Finance and BrooksWatson & Co., outlines their responsibility, as per professional standards, to form and express opinions on whether the financial statements, prepared by management, fairly represent, in all material aspects, in accordance with generally accepted accounting principles in the United States of America. It's crucial to note that the audit of financial statements does not absolve management of these responsibilities.

As mandated by professional standards, the auditor's role is to plan and execute the audit to attain reasonable, rather than absolute, assurance regarding the absence of material misstatement in the financial statements. Additionally, auditors are tasked with communicating significant matters related to the audit that, in their professional judgment, are pertinent to your oversight responsibilities in the financial reporting process.

Forensic audit investigations are typically conducted for reasons such as corruption (involving conflicts of interest, bribery, or extortion), asset misappropriation, and financial statement fraud. It's noteworthy that none of these issues were identified by our audit firm, BrooksWatson & Co., in the audit results for the fiscal year 2022.

Staff Briefing 07/01/2024

The statement above was my initial response to inquiries surrounding the request for a forensic audit. The question continues to be raised about City of La Marque auditing practices and the responsibility of local municipal financial practices to include the need and depth of a forensic audit. I wanted to provide more details regarding this topic.



History –

Every year an auditor, who is selected by Council through RFP process, signs the engagement letter along with our Finance Director outlining responsibilities, financial statements, and all material aspects, within generally accepted accounting principles of the United States of America.

As mandated by professional standards, the auditor's role is to plan and execute the audit to attain reasonable, rather than absolute, assurance regarding the absence of material misstatement in the financial statements. Additionally, auditors are tasked with communicating significant matters related to the audit that, in their professional judgment, are pertinent to the oversight responsibilities in the financial reporting process.

Forensic audit investigations are typically conducted for specific and pointed fraudulence (involving conflicts of interest, bribery, or extortion), asset misappropriation, and financial statement fraud. It's noteworthy that none of these issues were identified by our audit firm, in the audit results for the fiscal year 2021, 2022, 2023, or any of the known years before that by previously approved auditing firms.

As mandated by professional standards, the auditor's role is to plan and execute the audit, to attain reasonable, rather than absolute, assurance regarding the absence of material misstatement in the financial statements. Additionally, auditors are tasked with communicating significant matters related to the audit that, in their professional judgment, are pertinent to your oversight responsibilities in the financial reporting process.

Forensic audit investigations are typically conducted for reasons such as corruption (involving conflicts of interest, bribery, or extortion), asset misappropriation, and financial statement fraud. It's noteworthy that none of these issues were identified by our audit firm, in the audit results for the fiscal year 2021, 2022, 2023, or of any known years before that by previous auditing firms.

Fiscal impact –

Depending on the depth of the audit, these services could cost \$300-\$500 per hour or \$7-\$8 per transaction investigated depending on the billing format used. Further, depending on depth of audit, this process could take an extended period to exceed over a year's time. *These are not official quotes.* A formal RFP would need to be compiled and released. The depth of the cost would be determined by how in depth and in which areas the Council wishes to have researched. If it is the Council's will to proceed, please let us know through Council action in a forthcoming Council Meeting in a timely manner so we can properly add it for consideration in next year's budget.

Respectfully submitted,



Christine Turner, MBA, CGFO
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BUDGET WORKSHOPS



10:00 AM



**August 5th, 6th,
8th, 12th, & 13th**



**Council Chambers
1109B Bayou Rd.**



CITY COUNCIL AGENDA FORM

Meeting Date: July 8, 2024
Prepared by: _____
Department: Code Compliance

Agenda Item: 8.V.
Reviewed by: _____

AGENDA ITEM DESCRIPTION:

STAFF BRIEFING:

At the time of the closing of the agenda, a full report is not available, and we hope to have one by the next available Council Meeting. Main challenge has been our software limitations and we continue to work through them with the company.

HISTORY:

At the June 24th Council Meeting, an update on Code Enforcement operations was requested by the next Council Meeting. Unfortunately, a comprehensive update is not available at this time, and an extension is being requested.

FISCAL IMPACT:

None.