

LOUIS R. RIGBY
Mayor
JOHN ZEMANEK
Councilmember At Large A
STEVE GILLETT
Councilmember At Large B
DANNY EARP
Councilmember District 1



CHUCK ENGELKEN
Councilmember District 2
BILL BENTLEY
Councilmember District 3
KRISTIN MARTIN
Councilmember District 4
JAY MARTIN
Councilmember District 5
NANCY OJEDA
Mayor Pro-Tem
Councilmember District 6

CITY COUNCIL MEETING AGENDA

Notice is hereby given of a Regular Meeting of the La Porte City Council to be held January 28, 2019, beginning at 6:00 PM in the City Hall Council Chambers, 604 W. Fairmont Parkway, La Porte, Texas, for the purpose of considering the following agenda items. All agenda items are subject to action.

1. **CALL TO ORDER**
2. **INVOCATION** – The invocation will be given by Assistant City Attorney Clark Askins.
3. **PLEDGE OF ALLEGIANCE** – The Pledge of Allegiance will be led by Councilmember Nancy Ojeda.
4. **PRESENTATIONS, PROCLAMATIONS, and RECOGNITIONS**
 - (a) Recognition - Retirement of City of La Porte Police Department K9 Officer Sylvester - Mayor Rigby
 - (b) Recognition - City of La Porte Emergency Medical Services (EMS) - Gold Plus Achievement Award - Mayor Rigby
5. **PUBLIC COMMENTS** (Limited to five minutes per person.)
6. **CONSENT AGENDA** (*All consent agenda items are considered routine by City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember requests an item be removed and considered separately.*)
 - (a) Consider approval or other action regarding minutes of the meeting held on January 14, 2019 - L. Woodward
 - (b) Consider approval or other action to appoint Karen Wheeler-Hall to the vacant At-Large A position on the Planning and Zoning Commission - Councilmembers Zemanek, D. Earp and K. Martin
 - (c) Consider approval or other action regarding an Ordinance authorizing the sale of Lot 16, Block 715, Townsite of La Porte - T. Evans
 - (d) Consider approval or other action authorizing the City Manager to execute a professional services contract with Huitt Zollars for Public Works Facility Needs Assessment project - D. Pennell
 - (e) Consider approval or other action authorizing the City Manager to execute a contract with Gulf Coast Authority for the treatment of Domestic Sewage/Municipal Waste - D. Pennell
7. **ADMINISTRATIVE REPORTS**
 - City Council Meeting, Monday, February 11, 2019
 - Drainage and Flooding Committee Meeting, Monday, February 25, 2019
 - City Council Meeting, Monday, February 25, 2019

- Planning and Zoning Commission Meeting, Thursday, February 21, 2019
- Zoning Board of Adjustment Meeting, Thursday, February 28, 2019

8. COUNCIL COMMENTS regarding matters appearing on the agenda; recognition of community members, city employees, and upcoming events; inquiry of staff regarding specific factual information or existing policies. Councilmembers Ojeda, J. Martin, K. Martin, Gillett, Zemanek, Bentley, Engelken, Earp and Mayor Rigby.

9. EXECUTIVE SESSION

The City Council reserves the right to meet in closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code, in accordance with the authority contained in:

Texas Government Code, Section 551.074 - Personnel Matters: Deliberation regarding the position of the City Prosecutor, and deliberate the evaluation, appointment, duties, and employment of a public officer or employee, the City Prosecutor.

Texas Government Code, Section 551.074 - Personnel Matters: Deliberation regarding position of the City Manager, and deliberate the evaluation, appointment, duties, and employment of a public officer or employee, the City Manager, Corby Alexander.

10. RECONVENE into regular session and consider action, if any, on item(s) discussed in executive session.

11. ADJOURN

The City Council reserves the right to meet in closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code (the Texas open meetings laws).

In compliance with the Americans with Disabilities Act, the City of La Porte will provide for reasonable accommodations for persons attending public meetings. To better serve attendees, requests should be received 24 hours prior to the meeting. Please contact Lee Woodward, City Secretary, at 281.470.5019.

CERTIFICATION

I certify that a copy of the January 28, 2019 , agenda of items to be considered by the City Council was posted on the City Hall bulletin board on January 22, 2019.



**Council Agenda Item
January 28, 2019**

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3. **PLEDGE OF ALLEGIANCE**– The Pledge of Allegiance will be led by Councilmember Nancy Ojeda.
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 - (b) Recognition - City of La Porte Emergency Medical Services (EMS) - Gold Plus Achievement Award - Mayor Rigby



City of La Porte

Established 1892

Police Department

Recognized as a Best Practices Agency by
the Texas Police Chiefs Association



City of La Porte – Council Meeting

January 28, 2019

Retirement of La Porte Police K9 Sylvester

Officer Michael Harness and his K9 partner Sylvester, were first introduced to one another in September of 2013. The two immediately formed an inseparable bond. After attending three weeks of training at the Harris County Sheriff's Office in October of 2013, Officer Harness became a certified K9 handler and K9 Sylvester was certified as a narcotic detector dog through the National Narcotic Detector Dog Association (NNDDA).

Officer Harness and Sylvester hit the streets of La Porte together as a team in November of 2013, primarily patrolling during the night shift hours. During their five and a half years together, Officer Harness and Sylvester made 760 total arrests. These arrests consisted of 389 Harris County charges ranging from Class B Misdemeanors all the way to First Degree Felonies. Of these charges, 85 were for possession of illegal narcotics ranging from Marijuana, Ecstasy, Methamphetamine, Heroin, and Cocaine. Officer Harness and Sylvester are credited with the seizure of numerous firearms. Many of these weapons are associated with the possession and sale of illegal narcotics found on the streets of La Porte.

Last year Officer Harness and K9 Sylvester earned an 8th place finish in the individual event at the NNDDA National Competition in Amarillo, Texas. They also partnered with La Porte's other K9 team and won 1st place K9 team overall. K9 Sylvester showed that the countless hours of training paved the way for his success and the success of the La Porte K9 unit.

K9 Sylvester is now eight years old and looks forward to his well-earned retirement. Sylvester will get to spend his remaining years, in his fur-ever home with Officer Harness and his family. His remaining years will be spent taking leisurely walks and playing with toys, like normal pets.

Both the La Porte Police Department and the community we serve are in debt to Sylvester for many years of outstanding service. Meanwhile, LPPD continues to deploy one other active K-9 team. The department has named the next K9 Officer to follow in Officer Harness' footsteps and is in the process of selecting Sylvester's replacement.



City of La Porte

Established 1892

Emergency Medical Services

Proud of our Past, Committed to our Future



City of La Porte – Council Meeting

January 28, 2019

American Heart Association - Gold Plus Award

The City of La Porte EMS along with assistance from the La Porte Fire Department, has been selected to receive the 2018 American Heart Association's "Gold Plus Mission Lifeline Award" for their quick and aggressive treatment of cardiac emergencies.

EMS received this award based on how accurately and consistently they acquired and transmitted 12-lead ECG's to receiving hospital physicians. The 12-lead EKG's measure the electrical activity of the heart to help the paramedic determine if a heart attack is actually occurring. Once a determination is made, the paramedics can then quickly and aggressively treat the cardiac emergency with advanced treatment protocols.

The City of La Porte EMS responds to over 350 calls for service a year involving cardiac emergencies and encourages the community to listen to your body and take the symptoms of chest pain very serious by seeking medical attention as quickly as possible as time is of the essence.

In 2017-

- Cardiovascular disease accounted for nearly 801,000 deaths in the US. That's about 1 of every 3 deaths in the US.
- About 2,200 Americans died of cardiovascular disease each day, an average of 1 death every 40 seconds.
- Cardiovascular diseases claim more lives each year than all forms of cancer and Chronic Lower Respiratory Disease combined.

Thank you all for your continued efforts in the cardiac care of those who live in and visit our great community. You are all outstanding paramedics and we are very proud of your accomplishments in receiving this distinguished award.



Council Agenda Item January 28, 2019

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- (a) Consider approval or other action regarding minutes of the meeting held on January 14, 2019 - L. Woodward
 - (b) Consider approval or other action to appoint Karen Wheeler-Hall to the vacant At-Large A position on the Planning and Zoning Commission - Councilmembers Zemanek, D. Earp and K. Martin
 - (c) Consider approval or other action regarding an Ordinance authorizing the sale of Lot 16, Block 715, Townsite of La Porte - T. Evans
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Mayor Pro-Tem

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF LA PORTE
JANUARY 14, 2019**

The City Council of the City of La Porte met in a regular meeting on **Monday, January 14, 2019**, at the City Hall Council Chambers, 604 West Fairmont Parkway, La Porte, Texas, at **6:00 p.m.** to consider the following items of business:

1. **CALL TO ORDER** – Mayor Rigby called the meeting to order at 6:00 p.m. All members of Council were present. Staff present: City Secretary Patrice Fogarty, City Manager Corby Alexander, Assistant City Manager Jason Weeks, and City Attorney Knox Askins.
2. **INVOCATION** –The invocation was given by Councilmember Nancy Ojeda.
3. **PLEDGE OF ALLEGIANCE** – The pledge of allegiance was led by Councilmember Danny Earp.
4. **PRESENTATIONS, PROCLAMATIONS, and RECOGNITIONS**

- (a) Presentation – Administer Oath of Office to newly elected Councilmember Steve Gillett – Judge Mitrano

Municipal Judge Denise Mitrano administered the oath of office to newly elected Councilmember Steve Gillett.

- (b) Proclamation – J.J. Meza Day – Mayor Rigby

Mayor Rigby presented a proclamation to former Mayor J.J. Meza in recognition of J.J. Meza Day and his 90th birthday.

- (c) Recognition – La Porte Texans Pee Wee Football Team – Mayor Rigby

Mayor Rigby recognized the La Porte Texans Football Team on their successful football season.

5. **PUBLIC COMMENTS** (Limited to five minutes per person.)

Jian Zhang, 2433 Regatta Lane, Texas City, addressed Council regarding denial of a license for a foot massage business.

Kevin Manning, 210 S. Nugent, thanked Council for the accomplishments for Dottie Kaminski Day and the support of youth sports.

Chuck Rosa, 812 S. Virginia St., addressed Council in favor of the hotel item and stated not allowing it is an imminent domain issue.

Norma Elliott, 11621 11621 N. D St., addressed Council against the hotel item.

Joe Bertuglia, 101 E. Main St., addressed Council in favor of the hotel item and development of the east side.

6. CONSENT AGENDA *(All consent agenda items are considered routine by City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember requests an item be removed and considered separately.)*

- (a) Consider approval or other action regarding minutes of the Regular meeting held on December 10, 2018 and Special meeting held on December 17, 2018 – P. Fogarty
- (b) Consider approval or other action regarding an Ordinance ordering a general election of the City of La Porte to be held on May 4, 2019, for the election of officials to offices of Councilperson-at-large Position A; Councilperson-District 4 and Councilperson-District 5 – P. Fogarty
- (c) Consider approval or other action regarding payment in the amount of \$19,645.90 to Oakland Land and Development Inc., for development of Sector 23, in accordance with Chapter 380 Agreement dated March 27, 2017 – R. Cramer
- (d) Consider approval or other action authorizing the City Manager to execute a 3-year agreement with the Bay Area Houston Economic Partnership – R. Cramer
- (e) Consider approval or other action awarding Bid # 19003 for annual Water and Sewer Supplies – D. Pennell

Councilmember Engelken made a motion to approve the Consent Agenda items pursuant to staff recommendations. Councilmember Jay Martin seconded the motion. **MOTION PASSED UNANIMOUSLY 9/0.**

Prior to council action, City Attorney Knox Askins read the caption of **Ordinance 2018-3733 AN ORDINANCE ORDERING THE REGULAR ANNUAL ELECTION OF THE CITY OF LA PORTE, TEXAS; DESIGNATING ELECTION PRECINCTS AND POLLING PLACES; PROVIDING FOR A JOINT ELECTION WITH THE LA PORTE INDEPENDENT SCHOOL DISTRICT AND THE SAN JACINTO COLLEGE DISTRICT; PROVIDING FOR THE USE OF VOTING MACHINES; APPOINTING ELECTION OFFICIALS; PROVIDING FOR METHOD, LOCATIONS AND DATES OF EARLY VOTING; PROVIDING FOR AN EARLY VOTING BALLOT BOARD; PROVIDING FOR RETURN AND CANVASS OF VOTES OF SAID ELECTION; PROVIDING FOR A RUN-OFF ELECITON, IF NECESSARY, ON THE SECOND SATURDAY IN JUNE; PROVIDING FOR NOTICE; PROVIDING A SAVINGS CLAUSE; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.**

7. PUBLIC HEARING AND ASSOCIATED ORDINANCES

- (a) Public hearing to receive comments regarding the recommendation by the Planning and Zoning Commission to deny Special Conditional Use Permit # 18-91000014 to allow for a Hotel/Motel use in the General Commercial (GC) Zoning District, located on a 2.28-acres tract of land located at 711 W. Fairmont Pkwy., and legally described as Lots 1-16 and 19-32, Block 1103 and East 30 feet of 7th Street right-of-way and adjacent 16-foot alley, La Porte Subdivision; consider approval or other action regarding an Ordinance amending the Code of Ordinances of the City of La Porte, Chapter 106 "Zoning," by granting Special Conditional Use Permit # 18-91000014 to allow for a Hotel/Motel use in the General Commercial (GC) Zoning District, located on a 2.28-acres tract of land located at 711 W. Fairmont Pkwy., and legally described as Lots 1-16 and 19-32, Block 1103 and East 30 feet of 7th Street right-of-way and adjacent 16-foot alley, La Porte Subdivision, in the General Commercial (GC) Zoning District – I. Clowes **(Item continued from the December 10, 2018 regular meeting.)**

The public hearing opened at 6:34 p.m.

City Planner Ian Clowes presented a summary.

Councilmember Jay Martin asked what the main reason is for Planning and Zoning Commission turning down the permit. Mr. Clowes responded that it the location.

Philip Dunn, 701 San Jacinto St., spoke in favor of the hotel and commented he does not believe traffic will be an issue.

Maggie Anderson, 909 Garden Walk, spoke against the location of the hotel.

Mary Dio, 1205 S. 7th Street, spoke against the hotel.

Donna O'Conner, 217 Sylvan, spoke against the hotel.

Amanda Loreda, 212 N. 5th Street, spoke in favor of the hotel.

General Manager of Holiday Inn Express, Prinish Bhatt, 908 W. G Street, spoke in favor of the hotel and job opportunities in the community.

Jackie Ramirez, 113 Sylvia, Deer Park, spoke in favor of the hotel.

Applicant Dimple Patel spoke and presented a PowerPoint presentation and gave a plea for development of this project.

Councilmember Bentley asked Mr. Patel if anyone approached him to purchase this land in the 10 years since he's owned it. Mr. Patel advised one individual was interested in a corner of the land for a repair shop.

Wesley Neill, 308 S. 11th Street, spoke in favor of the hotel.

Kathleen Duncan, 10010 Dover Hill, spoke in favor of the hotel.

Mark Follis, 111 N. Broadway, spoke in favor of the hotel.

Dana Byrd, 10435 Rustic Rock, spoke against the hotel.

Thomas Garza, 623 S. 6th Street, commented decisions should not be delegated; traffic issues should be resolved; Main Street needs improvements and rules changing 10 years after purchasing property is outrageous.

Chuck Rosa, 812 S. Virginia, spoke again and commented the constitution protects property rights.

There being no additional comments, the public hearing closed at 7:47 p.m.

Councilmember Bentley moved to approve the hotel. Mayor Rigby seconded.

Councilmember Jay Martin commented he would like to be advised of legal concerns. City Attorney Knox Askins advised he would like to discuss legal issues in an executive session.

Mayor Rigby commented it was mentioned that someone wanted the property for retail, and it was pointed out earlier that retail will create more or as much traffic as a hotel. Mayor Rigby commented he does not understand how we can approve many hotels on the west side and not on this side of 146. Mayor Rigby also commented he questions if the Planning and Zoning Commission and Staff are setting policy because he keeps hearing comments that the City prefers hotels to be in clusters and he does not recall City Council being presented with a policy to approve that hotels can only be built in one location as a group. In

addition, Mayor Rigby commented Mr. Follis made a valid comment about the condition of the hotel 20-30 years down the road. Mayor advised if Council has an issue with hotels, Council needs to pass a moratorium until Council decides what they are going to do.

City Council recessed the regular Council meeting to convene an executive session at 7:57 p.m.

Council returned to the regular meeting at 8:08 p.m.

Councilmember Bentley made a motion to overturn the recommendation of the Planning and Zoning Commission and to allow the hotel development. Mayor Rigby seconded. **MOTION FAILED 3/6.**

Ayes:	Mayor Rigby, J. Martin and B. Bentley
Nays:	Councilmembers Engelken, Earp, Zemanek, Gillett, K. Martin and Ojeda
Absent:	None

Prior to council action, City Attorney Knox Askins read the caption of **Ordinance 2018-3734** AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF LA PORTE, CHAPTER 106, MORE COMMONLY REFERRED TO AS THE ZONING ORDINANCE OF THE CITY OF LA PORTE BY GRANTING SPECIAL CONDITIONAL USE PERMIT NO. 18-91000014, TO ALLOW FOR A HOTEL (EXCEPT CASINO HOTELS) AND MOTEL USE IN A GENERAL COMMERCIAL (GC) ZONING DISTRICT, ON A 2.28 ACRE TRACT OF LAND BEING LEGALLY DESCRIBED AS LOTS 1-16 AND 19-32, BLOCK 1103 AND EAST 30 FEET OF 7TH ST. ROW AND ADJACENT 16 FOOT ALLEY, LA PORTE SUBDIVISION, LA PORTE, HARRIS COUNTY, TEXAS, MAKING CERTAIN FINDINGS OF FACT RELATED TO THE SUBJECT; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.

Councilmember Earp made a motion to uphold the Planning and Zoning Commission recommendation for denial of the development of the hotel. Councilmember Zemanek seconded. **MOTION PASSED 6/3.**

Ayes:	Councilmembers Ojeda, K. Martin, Gillett, Zemanek, Earp and Engelken
Nays:	Mayor Rigby, Councilmembers J. Martin and B. Bentley
Absent:	None

8. DISCUSSION AND POSSIBLE ACTION

(a) Discussion and possible action regarding appointment to the vacant position on the Board of Directors of the La Porte Fire Control, Prevention and Emergency Medical Services District – P. Fogarty

City Secretary Patrice Fogarty presented a summary.

Councilmember Zemanek made a motion to appoint Patrick McElroy to the vacant position on the Board of Directors of the La Porte Fire Control, Prevention and Emergency Medical Services District. Councilmember Ojeda seconded. **MOTION PASSED UNANIMOUSLY 9/0.**

(b) Discussion and possible action regarding hiring process for city prosecutor – J. Weeks

Assistant City Manager Jason Weeks presented a summary.

City Council recessed the regular Council meeting to convene an executive session at 8:22 p.m.

City Council reconvened the regular meeting at 8:41 p.m.

Council requested additional information, and they will discuss this item at the next meeting in an executive session.

9. REPORTS

- (a) Receive report of the Fiscal Affairs Committee – Councilmember Jay Martin

Councilmember Chuck Engelken provided a report of the Fiscal Affairs Committee Meeting held prior to the City Council Meeting.

- (b) Receive report of the Drainage and Flooding Committee – Councilmember Jay Martin

Councilmember Jay Martin provided a report of the Drainage and Flooding Committee Meeting held prior to the City Council Meeting.

10. ADMINISTRATIVE REPORTS

City Manager Corby Alexander advised that Council will be receiving a report on the reason the license for a foot massage business was denied as mentioned by Mr. Zhang during the public comments section of the meeting.

- 11. COUNCIL COMMENTS** regarding matters appearing on the agenda; recognition of community members, city employees, and upcoming events; inquiry of staff regarding specific factual information or existing policies – Those present: Councilmembers Engelken, Earp, Ojeda, J. Martin, K. Martin, Zemanek, Bentley and Mayor Rigby.

Councilmember Earp congratulated Councilmember Steve Gillett on being sworn into office; former Mayor J.J. Meza on his proclamation; La Porte Texans Pee Wee Football Team; and requested City Manager Corby Alexander confirm if there are changes being made after decisions are made by the Planning and Zoning Commission.

Councilmember Ojeda congratulated Councilmember Steve Gillett; advised Mr. Patel he did a great job on his presentation and wished him the best.

Councilmember J. Martin congratulated Councilmember Steve Gillett; J.J. Meza on his proclamation; wished City Secretary Patrice Fogarty well in her retirement; commented the hotel item is one of the hardest items he has had to vote on and wished Mr. Patel the best.

Councilmember K. Martin congratulated Councilmember Steve Gillett; J.J. Meza on his proclamation; and thanked the City for recognizing the La Porte Texans Pee Wee Football Team.

Councilmember Gillett thanked Council for the welcoming and congratulatory comments; commented he is pleased to see J.J. Meza recognized; complimented the La Porte Texans Pee Wee Football Team for being respectful; and wished City Secretary Patrice Fogarty the best in her retirement.

Councilmember Zemanek thanked City Secretary Patrice Fogarty for her years of services; welcomed Councilmember Steve Gillett; expressed appreciation for the City recognizing J.J. Meza; congratulated the La Porte Texans Pee Wee Football Team; and provided an update on the Fitness Center Subcommittee.

Councilmember Bentley congratulated Councilmember Steve Gillett; J.J. Meza on his proclamation; and thanked the City for recognizing the La Porte Texans Pee Wee Football Team.

Councilmember Engelken congratulated Councilmember Steve Gillett; J.J. Meza on his proclamation; wished City Secretary Patrice Fogarty well in her retirement; commented the Legislature is in session and would like to have the Legislative Update provided by the City.

Mayor Rigby congratulated Councilmember Steve Gillett; J.J. Meza on his proclamation; wished City Secretary Patrice Fogarty well in her retirement and that he appreciates her and her staff.

12. **EXECUTIVE SESSION** – The City reserves the right to meet in closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code, including, but not limited to, the following:

Texas Government Code, Section 551.072 – Deliberation regarding purchase, exchange, lease or vault of Real Property: Meet with City Manager and City Attorney to discuss value of real property in industrial districts, concerning negotiations with industry representatives for terms of new Industrial District Agreements.

City Council recessed the regular Council meeting to convene an executive session at 8:58 p.m. regarding the item listed above.

Councilmember Earp left the regular meeting at 9:02 p.m. and did not attend the Executive Session.

13. **RECONVENE** into regular session and consider action, if any, on item(s) discussed in executive session.

Council reconvened the regular Council meeting at 9:40 p.m.

Council met with the City Manager, City Attorney, City Appraiser and Finance Staff and directed the City Manager to draft an Industrial District Agreement.

14. **ADJOURN** - There being no further business, Councilmember Engelken made a motion to adjourn the meeting at 9:42 p.m. Councilmember Zemanek seconded the motion. **MOTION PASSED UNANIMOUSLY 8/0.**

Patrice Fogarty, City Secretary

Passed and approved on January 28, 2019.

Mayor Louis R. Rigby

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: <u>January 28, 2019</u>	<u>Budget</u>
Requested By: <u>Councilmembers, Zemanek, Earp and K. Martin</u>	Source of Funds: <u>N/A</u>
Department: <u>City Council</u>	Account Number: _____
Report: <u> </u> Resolution: <u> </u> Ordinance: <u> </u>	Amount Budgeted: _____
Exhibit: Exhibit: _____	Amount Requested: _____
	Budgeted Item: _____

SUMMARY & RECOMMENDATION

This item is being added at the request of Councilmembers Zemanek, Earp and K. Martin to appoint Karen Wheeler-Hall to the vacant At-Large A position on the Planning and Zoning Commission.

Action Required by Council:

Consider approval appointing Karen Wheeler-Hall to fill the vacant At-Large A position on the Planning and Zoning Commission.

Approved for City Council Agenda

Corby D. Alexander, City Manager Date _____

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: <u>January 28, 2019</u>
Requested By: <u>Teresa Evans, Director</u>
Department: <u>Planning and Development</u>
Report: <u> </u> Resolution: <u> </u> Ordinance: <u> X </u>

<u>Appropriations</u>	
Source of Funds:	<u>N/A</u>
Account Number:	<u>N/A</u>
Amount Budgeted:	<u>N/A</u>
Amount Requested:	<u>N/A</u>
Budgeted Item:	<u>N/A</u>

Exhibits: **Ordinance**
 Deed
 Appraisal Summary
 Area Map

SUMMARY & RECOMMENDATION

The City has received a request from Mr. Mark Domingue, President and Owner of Chem Spray, Inc., to purchase a vacant lot near the applicant’s property located at 111 N 17th Street. The lot to be purchased is legally described as Lot 16, Block 715, Townsite of La Porte. The total area of the city owned parcel equals approximately 1,525 square feet. The applicant seeks to purchase this property and add it to his other properties to increase the overall square footage of land for his existing business. The applicant will follow up with a request to the City to close and purchase the adjacent 16’ alley, which currently separates Lot 16 from the other lots. The purchase and consolidation of the city owned lot and right of way will allow for an expansion of Mr. Dominque’s current business operations.

LGC 272.001(b)(1) authorizes the sale of land without notice and bidding, at fair market value per an appraisal, for “narrow strips of land, or land that because of its shape, lack of access to public roads, or small area cannot be used independently under its current zoning or under applicable subdivision or other development control ordinances”. Staff have determined that Lot 16, being approximately 1,525 square feet (25’ x 61’), measuring 25 feet wide by 61 feet deep, and zoned Business Industrial (BI), is not developable in its current, standalone state. The minimum setback, driveway and parking requirements for a BI zoned property do not allow for the construction of a commercial building on the available square footage. The driveway setbacks alone require a minimum lot width of 40 feet. Therefore, combining the city owned lot with adjacent properties is the only feasible way to utilize Lot 16 for development.

In accordance with Sections 62-32 of the City’s Code of Ordinances, the City has obtained an appraisal of Lot 16 in order to establish fair market value. The appraisal report has established a value of \$2.75 per square foot, for a total lot value of \$4,193.75.

Action Required by Council:

Consider approval of an ordinance or other action to sell a city owned lot on Spencer Hwy., legally described as Lot 16, Block 715, Townsite of La Porte, and authorize the City Manager to execute a deed to the applicant for the subject property.

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

ORDINANCE NO. 2019- _____

AN ORDINANCE APPROVING AND AUTHORIZING THE SALE OF LOT 16, BLOCK 715, TOWNSITE OF LA PORTE, HARRIS COUNTY, TEXAS, TO MARK DOMINGUE, PRESIDENT AND OWNER OF CHEM SPRAY INC.; MAKING VARIOUS FINDINGS AND PROVISIONS RELATING TO THE SUBJECT; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA PORTE:

Section 1. The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of La Porte. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. All ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

Section 3. The City Council officially finds, determines, recites, and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 4. This Ordinance shall be effective from and after its passage and approval,
and it is so ordered.

PASSED AND APPROVED this the 28th day of January, 2019.

CITY OF LA PORTE

By: _____
Louis R. Rigby
Mayor

ATTEST:

City Secretary

APPROVED:

Clark T. Askins
Assistant City Attorney

SPECIAL WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Date: January ____, 2019

Grantor: CITY OF LA PORTE, TEXAS, a municipal corporation.

Mailing Address: 604 West Fairmont Parkway, La Porte, Texas 77571

Grantee: MARK L. DOMINGUE

Mailing Address: 4903 Linden St., Bellaire, Texas 77401

Consideration: Ten and NO/100 Dollars (\$10.00) cash and other good and valuable consideration

Property (including any improvements):

All of Lot No. Sixteen (16), in Block Seven Hundred Fifteen (715), TOWNSITE OF LA PORTE, Harris County, Texas, as per the map or plat of said Townsite recorded in Volume 58, Page 462, of the Deed Records of Harris County, Texas.

Reservations from and Exception to Conveyance and Warranty: Taxes for the current year are assumed by Grantee. This conveyance is made subject to all and singular the restrictions, conditions, oil, gas, and other mineral reservations, easements, and covenants, if any, application to enforcement against the above described property as reflected by the records of the county clerk of the aforesaid county.

Grantor for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise, except as to the reservations from and exceptions to conveyance and warranty.

When the context requires, singular nouns and pronouns include the plural.

CITY OF LA PORTE, TEXAS

By: _____
LOUIS R. RIGBY
Mayor

ATTEST:

City Secretary

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of JANUARY 2019, by LOUIS R. RIGBY, Mayor of the City of La Porte, Texas, a municipal corporation.

Notary Public, State of Texas

AFTER RECORDING RETURN TO:
Askins & Askins, P.C.
P.O. BOX 1218
La Porte, TX 77572-1218

PREPARED IN THE LAW OFFICE OF:
Askins & Askins, P.C.
P.O. BOX 1218
La Porte, TX 77572-1218

R.C. Chuoke & Associates, Inc.

Appraisers & Consultants

**P.O. Box 1447
League City, Texas 77574**

**Office- 281-338-9633
Fax- 281-338-9533**

January 7, 2019

City of La Porte
P.O. Box 1115
La Porte, Texas 77572

RE: Restricted Appraisal regarding the estimated **Market Value** of a +-1,525 square foot tract of land located out of Lot 16, Block 715, Town of La Porte, Harris County, Texas.

Dear Sirs:

In accordance with your request, I have inspected the following described property for the purpose of estimating the **Market Value** following described property as of the date of this Restricted Appraisal. As per our agreement, the data and analysis is presented in an abbreviated Restricted Appraisal format and is not intended to contain the full analysis.

BRIEF LEGAL DESCRIPTION OF PROPERTY

Known as approximately 1,525 square feet tract of land out of the North 12.58 feet of Lot 16 of Block 715, Town of La Porte, Harris County, Texas. (Legal per HCAD data).

I hereby certify that I have personally inspected the property described via a street inspection and that all data gathered by my investigation is from sources believed reliable and true. In preparing this Restricted Appraisal, a study of comparable sales and other related market data was performed.

It should clearly be understood that this letter only constitutes only a statement of the final value and that does not presume to be the complete analysis of the subject property nor a complete appraisal format and is subject to the preparation of a detailed appraisal report.

.....Page 2 Continued.....

Sales of generally similar properties in the subject neighborhood were researched that had locations that range from primary to secondary type roadways. The subject's market area generally has access public utilities. The subject site is a rectangular shaped tract land located on a one-way section of the feeder road of West Main Street in La Porte. The subject's site size is reported at containing +-1,525 square feet per the Harris county Appraisal District data. A survey was not provided. **The subject tract appears to be rectangular in shape having access from West Main Street which is a four lane concrete roadway at the point of the subject. It has all utilities and is zoned for "BI" for Business Industrial use by the City of La Porte.** The Highest and Best Use of the subject property is determined to be for use by adjacent property owners however its configuration would appear to allow development for light industrial use. Adjacent and nearby property uses are primarily light industrial in nature. The client and intended user of this appraisal is the City of La Porte only. The intended use is to estimate the current market value of the subject property of this analysis as described above for use in establishing a market value for the subject property by the client and intended user only. There has been no transfer of the subject property noted for the past 36 months per appraisal district records. The effective date of the appraisal and inspection is January 4, 2019. The date of the report is January 7, 2019. The estimated exposure time is up to 24 months.

After a review of the comparable sales it is my opinion the estimated unit value range of between **\$1.50 to \$5.00 PSF** would be placed on the subject property with a mid-range value of **\$2.75 PSF** being indicated for the parent tract. Therefore the unit market value of the subject tract is estimated at **\$2.75 PSF which is based on 100% fee simple ownership** before any additional discounting by the City.

Therefore the unit market value of the subject tract is estimated at **\$2.75 PSF which is based on 100% fee simple ownership with no discounting applied.**

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Chris Chuoke".

Chris Chuoke, President
R.C. CHUOKE & ASSOCIATES, INC.



AREA MAP

Lot 16, Block 715
Town of La Porte

Spencer @ N. 17th

Legend

-  Lot 16
-  Chem Spray Property
-  Proposed Alley Closure



This product is for informational purposes and may not have been prepared for or be suitable for legal purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries

1 inch = 57 feet

JANUARY 2019
PLANNING DEPARTMENT



REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: <u>January 28, 2019</u>
Requested By: <u>Don Pennell, Public Works Director</u>
Department: <u>Public Works</u>
Report: _____ Resolution: _____ Ordinance: _____

<u>Budget</u>	
Source of Funds:	<u>015</u>
Account Number:	<u>015-7070-530-1100</u>
Amount Budgeted:	<u>\$65,000</u>
Amount Requested:	<u>\$54,385</u>
Budgeted Item:	<u>YES</u>

Exhibit: Access Report

Exhibit: Huitt Zollars Professional Services Proposal

SUMMARY & RECOMMENDATION

The FY 19 budget includes an allocation for the Public Works Facility Needs Assessment. RFQ #19602 was advertised in the Bay Area Observer and the Public Purchase website. The request for qualifications was accessed by thirty-five (35) firms with one respondent, Huitt Zollars. Huitt Zollars was the respondent that has worked with the City in the past on the New Police Building as the Program Manager for design build and Municipal Court Building as the Design Consultant.

Huitt Zollars has provided needs assessments of this type for other municipalities including Pearland, Sugarland, Missouri City, and City of Houston to name a few. Huitt Zollars has provided a proposal for a Public Works Facility Needs Assessment in the amount of \$49,385. They anticipate completion of the “basic services” within ninety (90) calendar days from receipt of notice to proceed.

Staff recommends approval of the Huitt Zollars proposal at \$49,385, with an additional contingency of \$5,000 for a total of \$54,385.

Action Required by Council:

Consider approval or other action to authorize the City Manager to enter into a professional services contract with Huitt Zollars in the amount of \$49,385 with a total authorization of \$54,385 including a \$5,000 contingency.

Approved for City Council Agenda

Corby D. Alexander, City Manager Date

Access Report
Agency
Bid Number
Bid Title

City of La Porte (TX)
19602
Public Works Facility Needs Assessment

Vendor Name	Accessed First Time	Most Recent Access
Strategic Partnerships, Inc.	2018-11-30 04:10 PM CST	2018-11-30 04:10 PM CST
North America Procurement Council	2018-11-16 08:45 AM CST	2018-12-10 05:58 AM CST
Onvia	2018-11-15 01:01 PM CST	2018-11-15 01:01 PM CST
BidClerk	2018-11-16 03:54 AM CST	2018-12-11 04:00 AM CST
Burditt Consultants, LLC	2018-11-15 09:42 AM CST	2018-11-15 09:42 AM CST
Facility Engineering Associates, PC	2018-11-16 12:28 PM CST	2018-11-16 12:28 PM CST
Perkens WS Corporation	2018-11-19 12:14 AM CST	2018-12-11 01:23 AM CST
Hawkins Architecture, Inc	2018-11-16 02:40 PM CST	2018-11-16 02:44 PM CST
ConstructConnect	2018-11-16 05:40 AM CST	2018-11-16 11:25 AM CST
CivilTech Engineering, Inc.	2018-11-15 10:12 AM CST	2018-11-15 10:12 AM CST
Ollis/Akers/Arney	2018-11-20 09:36 AM CST	2018-11-20 09:36 AM CST
Tank Industry Consultants	2018-11-15 10:48 AM CST	2018-11-15 10:48 AM CST
HDR Engineering, Inc.	2018-11-19 08:40 AM CST	2018-11-19 08:40 AM CST
Nadine International Inc.	2018-11-19 08:19 AM CST	2018-11-20 07:53 AM CST
Cobb, Fendley & Associates	2018-11-15 09:31 AM CST	2018-11-15 09:31 AM CST
MGT of America Consulting, LLC	2018-11-15 12:17 PM CST	2018-11-15 12:17 PM CST
Midwest Valley Consulting	2018-11-15 10:44 AM CST	2018-11-15 10:44 AM CST
E/B/E, Inc.	2018-11-15 04:38 PM CST	2018-11-15 04:38 PM CST
Kimberly Advertising, LLC.	2018-11-28 01:30 PM CST	2018-11-28 01:32 PM CST
IMS	2018-11-15 10:22 AM CST	2018-11-15 10:22 AM CST
GC Engineering	2018-11-20 11:53 AM CST	2018-11-20 11:53 AM CST
Pierce Goodwin Alexander & Linville, Inc.	2018-11-16 10:49 AM CST	2018-11-16 10:49 AM CST
ARCHITEXAS - Architecture, Planning and H	2018-11-26 01:31 PM CST	2018-11-26 04:19 PM CST
Management Partners, Inc.	2018-11-15 12:35 PM CST	2018-11-15 12:35 PM CST
SUPERIOR LOCK & SAFE	2018-11-15 11:28 AM CST	2018-11-15 11:28 AM CST
Construction Journal	2018-11-19 06:18 AM CST	2018-11-26 04:06 AM CST
Professional Service Industries, Inc. (PSI)	2018-11-15 09:42 AM CST	2018-11-15 09:42 AM CST
Huitt-Zollars, Inc.	2018-11-15 11:09 AM CST	2018-12-03 11:17 AM CST
Dodge Data & Analytics	2018-11-15 10:15 AM CST	2018-12-11 10:15 AM CST
Maintenance Design Group, LLC	2018-11-16 09:37 AM CST	2018-11-16 09:37 AM CST
Joiner Architects, Inc.	2018-11-16 09:30 AM CST	2018-11-16 09:34 AM CST
SmartProcure	2018-11-30 06:39 AM CST	2018-11-30 06:39 AM CST
Geographic Technologies Group	2018-11-20 06:51 AM CST	2018-11-20 06:51 AM CST
Gilbane Building Company	2018-11-16 08:46 AM CST	2018-11-16 08:47 AM CST
Advanced Starlight International	2018-11-21 11:41 AM CST	2018-12-10 12:16 PM CST

January 3, 2019

Don Pennell
Public Works Director
City of La Porte
2963 North 23rd Street
La Porte, Texas 77571

Reference: Public Works Service Center

Subject: Proposal for Facility Needs Assessment

Dear Mr. Pennell,

Huitt-Zollars, Inc. (Huitt-Zollars) appreciates the opportunity to provide this proposal for professional architectural and engineering services to the City of La Porte (City) for preparation of a needs assessment for the Public Works Service Center located on 23rd Street in La Porte, Texas (Project). Our proposal is based upon the following scope of services, compensation, schedule and terms and conditions.

SCOPE OF SERVICES:

1.0 Basic Services:

A. **Task A** - Programming Questionnaire: Huitt-Zollars shall prepare a programming questionnaire for completion by selected City's staff. Upon receipt of the completed questionnaires, Huitt-Zollars will prepare a space program spreadsheet for the building and the site.

B. **Task B** - Conduct a site visit to assess the condition of the facility (Architecture, MEP & Structure), review utilization of existing spaces and observe operations.

C. **Task C** - Conduct program validation interviews with selected City's staff. During this meeting, we will discuss the responses to the questionnaires and review the space program spreadsheet to fully understand and evaluate a range of options before making critical decisions that will impact the design. The purpose of this meeting is to:

- 1) Obtain input on the overall design concepts for the Project
- 2) Identify best land use and maximize useable space
- 3) Review the projected needs of the City
- 4) Identify and evaluate opportunities to improve operational efficiency
- 5) Review requirements for offices, plants, shops, storage, and other maintenance functions
- 6) Review administrative activities and requirements
- 7) Review public access
- 8) Review existing operational philosophy and policies, procedures, and techniques
- 9) Review contracted activities and requirements
- 10) Review communications (voice and data) and IT requirements
- 11) Review facility maintenance requirements that may affect material selection, plumbing, electrical, heating, ventilation, and air conditioning
- 12) Review site and building security requirements
- 13) Review relationships and required adjacencies between functional areas

- 14) Review fleet size, mix, and projected growth
- 15) Review current and projected staffing plans
- 16) Identify space requirements for administrative, field and operations functions in the project including:
- 17) Requirements for offices, staff and crew areas along with quantity size, and type of spaces
- 18) Review building systems, finishes, materials and FF&E
- 19) Requirements for storage (documents - permanent and temporary, supplies, equipment, tools, etc.)
- 20) Identify parking requirements for City vehicles, employees, visitors, and delivery vehicles
- 21) Discuss alternative site layouts
- 22) Develop project phasing plans and proposed budgets for each phase
- 23) Finalize and document the program that addresses the City's project goals and objectives
- 24) Prepare a conceptual level probable construction cost for the project

D. Task D - Based on the results of the Program Validation Interviews, Huitt-Zollars, Inc. will develop alternative concepts for the building floor plans and site layout. The site layout will be developed with emphasis on safe and efficient circulation patterns, ingress and egress routes, and site area relationships to include facilities, vehicle parking, employee and visitor parking, yard storage and deliveries. The floor layouts will emphasize functionality and efficient operations.

E. Task E - Huitt-Zollars will conduct a design charrette meeting with selected members of the City's staff. During this charrette, we will discuss and evaluate the conceptual site and floor plans with City's staff. Topics shall include:

- 1) Site: Access, circulation, parking, utilities, landscaping, lighting, security, communications, drainage and location.
- 2) Energy Efficiencies, Natural Lighting, Indoor Air Quality, Recycling, Materials Reuse, etc.
- 3) Public Utilities: Water and wastewater, natural gas, etc.
- 4) Private Utilities: Electricity, Natural Gas, Phone, Cable, Internet
- 5) Drainage Features
- 6) Foundation: Performance requirements for foundations (wind ratings) and other related items
- 7) Superstructure: Performance requirements for floor, roof, stairs, and other structural elements
- 8) Exterior closure: Exterior design material, performance requirements for walls, doors, and windows
- 9) Roofing: Performance requirements for roofing elements
- 10) Interior construction: Requirements for partitions, finishes, and specialties.
- 11) Mechanical systems: Requirements for plumbing, HVAC, fire protection, custodial and any need for special mechanical systems
- 12) Electrical and lighting systems: Requirements for lighting, electrical systems, and any special needs
- 13) Clearance requirements (doors, aisle widths, overhead)
- 14) Finishes: Floors, walls (interior and exterior) and ceilings
- 15) Communications (voice and data) and IT
- 16) Audiovisual equipment requirements
- 17) Security and Access Management requirements (site and building)
- 18) Fueling and Fuel Management Systems
- 19) Shop Equipment to include vehicular lifts, cranes and exhaust systems
- 20) Compressed air and lubrication distribution in maintenance shops
- 21) Functional areas and equipment items within each area to be included on an emergency power system
- 22) Lighting levels and type of lighting for exterior areas
- 23) HVAC and/or ventilation requirements and design temperatures for each functional area
- 24) Shared Use Spaces: Restrooms, conference rooms, breakrooms, training rooms, etc.
- 25) Establish functional area relationships both between areas and between workstations within areas with primary considerations to be workflow, supervision, and safety
- 26) Identify major equipment items to be located in each functional area

- 27) Parking for City, employee, visitor and ADA parking
- 28) Probable construction durations and phasing as applicable

Following this discussion, the conceptual design with the best value shall be recommended to City.

F. **Task F** – Based on selection of the best value concept by City and input during the design charrette, Huitt-Zollars, Inc. will finalize the conceptual design documents for the project. These documents shall include:

- 1) Site Plan depicting circulation and traffic patterns, building location, parking areas, etc.
- 2) Building Floor Plan
- 3) Exterior Elevations - 3-D views of building
- 4) Detailed Probable Construction Cost Estimate

G. **Task G** - Huitt-Zollars will meet with the City to review the conceptual design documents and present to the City's staff and/or City Council as required.

2.0 Additional Services:

Because the effort required for some items of work varies considerably from project to project, and because some items of work are sometimes provided separately by the City, these items of work are not included in the basic services fees and are charged separately. Additional Services, mutually agreed upon and authorized separately by the City in writing, shall be completed on a lump sum or an hourly basis in accordance with the attached Hourly Rate Sheet. Such additional services may include:

- A. Final Design Services
- B. Bidding Services
- C. Construction Phase Services
- D. Measured drawings of existing conditions
- E. Making revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or are due to other causes not solely within the control of Huitt-Zollars
- F. Fees associated with Agency Reviews, Plats, Recordation, Tax Certificates, Title Commitments, Private Utility Information, Permitting and/or Inspections
- G. Any other service not otherwise included in the Basic Services

3.0 City Provided Services:

City shall provide Huitt-Zollars with the following:

- A. Access to the Project Sites
- B. As-Built Drawings of the facilities and site
- C. Any Available Reports

COMPENSATION:

1.0 Fee Budget

Our estimated fee budget for the above scope of services is \$48,585.00 (lump sum).

2.0 Reimbursable Expenses

Reimbursable expenses include mileage, tolls, outside (out of office) services, such as overnight mailings, printing, or other fees required by agencies. These expenses are not included in the above fees. A probable not to exceed estimate for reimbursable expenses is \$ 800.00.

3.0 Total Proposed Budget

Our total proposed budget is estimated to be \$ 49,365.00.

4.0 Invoicing

Invoices will be submitted monthly. Lump sum tasks shall be invoiced based upon the percent of work accomplished during the invoice period. Reimbursable expenses shall be reimbursed based on the attached Hourly Rate Sheet to a maximum not to exceed amount authorized by the Client.

SCHEDULE:

We anticipate completion of the Basic Services within ninety (90) calendar days from receipt of notice to proceed.

TERMS & CONDITIONS

1. AUTHORIZATION FOR WORK TO PROCEED

Signing of this AGREEMENT for services shall be authorization by the City for Huitt-Zollars, Inc. to proceed with the work.

2. ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COSTS

Construction cost estimates provided by Huitt-Zollars are prepared from experience and judgment. Huitt-Zollars has no control over market conditions or construction procedures and does not warrant that proposals, bids, or actual construction costs will not vary from Huitt-Zollars estimates.

3. STANDARD OF CARE

Services performed by Huitt-Zollars under this AGREEMENT will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any report, opinion, document or otherwise.

4. TAXES

All taxes, including but not limited to gross receipts tax, sales tax, etc., required to be paid will be billed to the City in addition to fees.

5. BILLING AND PAYMENT

The City, recognizing that timely payment is a material part of the consideration of this AGREEMENT, shall pay Huitt-Zollars for services performed in accordance with the rates and charges set forth herein. Invoices will be submitted by Huitt-Zollars on a monthly basis and shall be due and payable within thirty (30) calendar days of invoice date. If the City objects to all or any portion of an invoice, the City shall so notify Huitt-Zollars in writing within ten (10) calendar days of receipt of the invoice in question, but will pay, when due, that portion of the invoice not in dispute.

The City shall pay an additional charge of one-and-one-half percent (1.5%) (or the maximum percentage allowed by law, whichever is lower) of the invoiced amount per month for any payment received by Huitt-

Zollars more than forty-five (45) calendar days from date of the invoice, excepting any portion of the invoiced amount in dispute and resolved in favor of City. Payment thereafter shall first be applied to accrued interest and then to the principal unpaid amount.

If City, for any reason, fails to pay an invoice or the undisputed portion of a Huitt-Zollars invoice within sixty (60) calendar days of invoice date, Huitt-Zollars will notify the City by registered mail that Huitt-Zollars shall cease work on the project in ten (10) calendar days if the invoice in question is not paid. In this case, the City shall waive any claim against Huitt-Zollars, and shall defend and indemnify Huitt-Zollars from and against any claims for injury or loss stemming from Huitt-Zollars' cessation of service. City shall also pay Huitt-Zollars the cost associated with premature project demobilization. In the event the project is remobilized, City shall also pay the cost of remobilization, and shall renegotiate appropriate contract terms and conditions, such as those associated with budget, schedule or scope of service.

In the event any invoice or portion thereof is disputed by City, City shall notify Huitt-Zollars within ten (10) calendar days of receipt of the bill in question, and City and Huitt-Zollars shall work together to resolve the matter within forty-five (45) days of its being called to Huitt-Zollars' attention. If resolution of the matter is not attained within forty-five (45) calendar days, either party may terminate this AGREEMENT.

6. CONSEQUENTIAL DAMAGES

The City shall not be liable to Huitt-Zollars and Huitt-Zollars shall not be liable to the City for any consequential damages incurred by either due to the fault of the other, regardless of the nature of this fault, or whether it was committed by the City or Huitt-Zollars, their employees, agents or subcontractors. Consequential damages include, but are not limited to loss of use and loss of profit.

7. TERMINATION

In the event termination becomes necessary, the party (City or Huitt-Zollars) effecting termination shall so notify the other party, and termination will become effective fourteen (14) calendar days after receipt of the termination notice. Irrespective of which party shall effect termination or the cause of termination, the City shall within thirty (30) calendar days of termination remunerate Huitt-Zollars for services rendered and costs incurred up to the effective time of termination, in accordance with Huitt-Zollars' prevailing Fee Schedule and Expense Reimbursement Policy.

8. ADDITIONAL SERVICES

Any services beyond those specified herein will be provided for separately under a mutually agreed upon Scope of Services, Budget and Schedule and an additional written authorization from the City.

9. GOVERNING LAW

The laws of the State of Texas will govern the validity of this AGREEMENT, its interpretation and performance. Any litigation arising in any way from this AGREEMENT shall be brought to the courts of that State.

10. HAZARDOUS MATERIALS--SUSPENSION OF SERVICES

As used in this Agreement, the term *hazardous materials* shall mean any substances, including without limitation asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site.

Both parties acknowledge that Huitt-Zollars' scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event Huitt-Zollars or any other party encounters any hazardous or toxic materials, or should it become known to Huitt-Zollars that such materials may be present

on or about the jobsite or any adjacent areas that may affect the performance of Huitt-Zollars' services, Huitt-Zollars may, at its sole option and without liability for consequential or any other damages, suspend performance of its services under this AGREEMENT until the City retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations.

11. CONSTRUCTION OBSERVATION

If Construction Phase Services are part of this AGREEMENT, Huitt-Zollars shall visit the site at intervals agreed to in writing by the City and Huitt-Zollars, in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow Huitt-Zollars to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents.

Based on this general observation, Huitt-Zollars shall keep the City informed about the progress of the Work and shall advise the City about observed deficiencies in the Work.

If the City desires more extensive project observation or fulltime project representation, the City shall request that such services be provided by Huitt-Zollars as Additional Services in accordance with the terms of this AGREEMENT. Huitt-Zollars shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.

Huitt-Zollars shall not be responsible for any acts or omissions of the Contractor, any subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. Huitt-Zollars does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

12. JOBSITE SAFETY

Neither the professional activities of Huitt-Zollars, nor the presence of Huitt-Zollars or its employees and subconsultants at a construction/project site, shall impose any duty on Huitt-Zollars, nor relieve the Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. Huitt-Zollars and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The City agrees that the Contractor shall be solely responsible for jobsite and worker safety and warrants that this intent shall be carried out in the City's contract with the Contractor.

The City also agrees that the Contractor shall defend and indemnify the City, Huitt-Zollars and Huitt-Zollars' subconsultants. The City also agrees that the City, Huitt-Zollars and Huitt-Zollars' subconsultants shall be made additional insureds under the Contractor's policies of general liability insurance. The City shall furnish to Huitt-Zollars certificates of insurance from the Contractor evidencing the required coverage specified above. The certificates shall include a provision that Huitt-Zollars shall receive thirty (30) days minimum written notification in the event of cancellation, non-renewal or material change of coverage.

13. RIGHT TO RELY ON CITY-PROVIDED INFORMATION

City shall be responsible for, and Huitt-Zollars may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by City or any of its other consultants (collectively the City) to Huitt-Zollars pursuant to this Agreement. Huitt-Zollars may use such requirements, programs, instructions, reports, data, plans and information in performing or furnishing services under this Agreement. Any increased costs incurred by Huitt-Zollars due to changes in or the incorrectness of information provided by the City shall be compensable to Huitt-Zollars.

14. OWNERSHIP OF INSTRUMENTS OF SERVICE

All reports, drawings, specifications, computer files, field data, notes and other documents and instruments prepared by Huitt-Zollars as instruments of service shall remain the property of Huitt-Zollars. Huitt-Zollars shall retain all common law, statutory and other reserved rights, including the copyright thereto.

15. SEVERABILITY

Any term or provision of this AGREEMENT found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this AGREEMENT shall remain in full force and effect.

16. ASSIGNMENT

Neither party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by Huitt-Zollars as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

17. DISPUTE RESOLUTION

17.1 Huitt-Zollars will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder, Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work in respect of changes in the Contract Price or Contract Times will be referred initially to Huitt-Zollars in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute, or other matter will be delivered by the claimant to the other party of the Agreement promptly (but in no event later than thirty [30] days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to Huitt-Zollars and the other party within forty-five (45) days after start of such occurrence or event unless Huitt-Zollars allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing part shall submit any response to Huitt-Zollars and the claimant within thirty (30) days after receipt of the claimant's last submittal (unless Huitt-Zollars allows additional time). Huitt-Zollars will render a formal decision in writing within thirty (30) days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. The Huitt-Zollars' rendering of a formal decision shall be a condition precedent to further dispute resolution actions.

The General process for dispute resolution shall be:

- Huitt-Zollars renders a decision
- Senior representatives meet to resolve further dispute
- Mediation

17.2 CONFERENCE BETWEEN SENIOR REPRESENTATIVES:

Subsequent to the decision by the Huitt-Zollars, the disputing party shall give the other party written notice of appeal of the dispute including the Huitt-Zollars. Within ten (10) days after receipt of said notice, the receiving party shall submit to the other a written response. The notice and response shall include (a) a statement of each party's position and a summary of the evidence and arguments supporting its

position, and (b) the name and title of the executive officers who will represent that party. The executive officers shall meet at a mutually acceptable time and place within twenty (20) days of the date of the disputing party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.

17.3 MEDIATION

If the controversy or claim has not been resolved within thirty (30) days of the meeting of the Senior Representatives, the parties agree to settle the dispute by mediation administered by the American Arbitration Association under its Construction Industry Mediation currently in effect. The request may be made concurrently with the filing of a demand for litigation, but, in such event, mediation shall proceed in advance of litigation, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties. Request for mediation shall be filed in writing with the other party to the Contract and with the American Mediation Association. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

For any controversy or claim to mediation under the terms of this contract in which no party's total disclosed claim or counter-claim exceeds \$75,000, exclusive of interest, the parties shall participate in mediation under the Fast Track Procedures as set forth in the Construction Industry Mediation Rules of the American Arbitration Association.

Where no party's claim exceeds \$10,000, exclusive of interest, and in other cases where the parties agree, the dispute shall be resolved by submission of documents, as provided for in Rule F-9 of the Fast Track Procedures of the Construction Industry Mediations Rules of the American Arbitration Association.

17.4 LIMITATION ON CONSOLIDATION OR JOINDER:

No mediation shall include, by consolidation or joinder or any other manner, parties other than the City, Contractor and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in mediation. No person or entity other than the City or Contractor shall be included as an original third party or additional third party to a mediation whose interest or responsibility is insubstantial. Consent to mediation involving an additional person or entity shall not constitute consent to mediation of a Claim not described therein or with a person or entity not described therein. The foregoing agreement to mediate and other agreements to mediate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

17.5 CLAIMS AND TIMELY ASSERTION OF CLAIMS:

The party filing a notice to demand for mediation must assert in the demand all Claims then known to that party on which mediation is permitted to be demanded.

17.6 NON-JURY TRIAL:

Any claims disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth above shall be resolved through litigation. The parties stipulate that venue for any such proceedings shall be in the district courts Harris County, Texas. In the event the parties are forced to litigate their disputes, owner and contractor agree to each waive their right to a trial by jury and further agree that the judge shall be the sole finder of fact and rule on the law of the case, without a jury.

AUTHORIZATION:

Should this proposal meet with your approval and acceptance, please sign below and return a copy of this

Agreement. We will schedule the above services as soon as we receive your written authorization. If you have any questions, please call.

Respectfully submitted,
Huitt-Zollars, Inc.



Gregory R. Wine, P.E., LEED AP
Senior Vice President

Attachment

**Accepted and Approved for
City of La Porte, Texas**

(Signature)

(Name)

(Title)

(Date)

HUITT-ZOLLARS

Houston

2018

HOURLY RATE SHEET

Engineering/Architecture

Principal-In-Charge	\$ 245.00
Design Principal	\$ 210.00
Sr. Project Manager	\$ 210.00
QA Manager	\$ 190.00
Project Manager	\$ 185.00
Sr. Civil Engineer	\$ 180.00
Sr. Structural Engineer	\$ 190.00
Sr. Mechanical Engineer	\$ 180.00
Sr. Electrical Engineer	\$ 185.00
Civil Engineer	\$ 175.00
Structural Engineer	\$ 170.00
Mechanical Engineer	\$ 150.00
Electrical Engineer	\$ 160.00
Plumbing Engineer	\$ 150.00
Engineer Intern	\$ 120.00
Sr. Architect	\$ 185.00
Architect	\$ 150.00
Architect Intern 1	\$ 90.00
Architect Intern 2	\$ 110.00
Architect Intern 3	\$ 140.00
Sr. Landscape Architect	\$ 165.00
Landscape Architect	\$ 130.00
Landscape Architect Intern	\$ 95.00
Sr. Planner	\$ 205.00
Planner	\$ 120.00
Planner Intern	\$ 80.00
Sr. Designer	\$ 150.00
Designer	\$ 125.00
Sr. CADD Technician	\$ 130.00
CADD Technician	\$ 90.00

Interior Design

Sr. Interior Designer	\$ 110.00
Interior Designer	\$ 95.00
Interior Designer Intern	\$ 75.00

Survey

Survey Manager	\$ 160.00
Sr. Project Surveyor	\$ 150.00
Project Surveyor	\$ 125.00
Surveyor Intern	\$ 120.00
Survey Technician	\$ 105.00

Survey Crews

1-Person Survey Crew	\$ 95.00
2-Person Survey Crew	\$ 140.00
3-Person Survey Crew	\$ 170.00

Construction

Construction Manager	\$ 175.00
Resident Engineer	\$ 165.00
Sr. Project Representative	\$ 125.00
Resident Project Representative	\$ 95.00

Administrative

Sr. Project Support	\$ 95.00
Project Support	\$ 70.00

Reimbursable Expenses

Consultants	Cost + 10%
Other Direct Costs	Cost + 10%
Mileage	IRS Standard Business Mileage Rate

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: <u>January 28, 2019</u>
Requested By: <u>Don Pennell, Public Works Director</u>
Department: <u>Public Works</u>
Report: <u> </u> Resolution: <u> </u> Ordinance <u> </u>

<u>Budget</u>
Source of Funds: <u>Utility Fund</u>
Account Number: <u>002-6176-515-7006</u>
Amount Budgeted <u>\$ 24,000</u>
Amount Requested: <u>\$ 24,000</u>
Budgeted Item: YES

Exhibits: Contract Agreement to Treat Domestic Sewage

Exhibits: _____

Exhibits _____

SUMMARY & RECOMMENDATION

With the annexation of Bay MUD (now southern La Porte) by the City of La Porte in the 1980's the City assumed a contract with Gulf Coast Waste Disposal Authority (now Gulf Coast Authority or GCA) for the treatment of the domestic waste water from southern La Porte. The contract was renewed by the City in 1999 for a ten year term. In 2009 the contract was not renewed between GCA and the City. In 2013 City staff followed up with GCA about renewing and GSA did not require a contract at that time. GCA has continued to treat the southern La Porte area waste water at the rates established in 1998.

GCA has recently requested staff to renew the contract at the rates established in 1998. The proposed contract is for ten (10) years, with annual cost adjustments based on the Authority's cost to treat wastewater. Although industry typically sees a periodic rate increase, the City of La Porte has not had an increase in over 20 years. The rates proposed are:

<u>Rate:</u>	<u>For flows of:</u>
\$0.20	500,000 gallons per day or less
\$0.40	500,001 to 600,000 gallons per day
\$0.60	600,001 to 800,000 gallons per day
\$0.80	800,001 to 1,000,000 gallons per day
\$1.00	over 1,000,000 gallons per day

Staff recommends entering into a contract with Gulf Coast Authority to treat domestic sewage/municipal waste from the southern part of the City of La Porte.

Action Required by Council:

Consider approval or other action authorizing the City Manager to execute a contract with Gulf Coast Authority for the treatment of Domestic Sewage/Municipal Waste.

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

**WASTEWATER TREATMENT AGREEMENT
(CITY CUSTOMER AGREEMENT)**

This Agreement is made and entered into on this ____ day of _____, 2019, (“Effective Date”), by and between Gulf Coast Authority (“GCA”), a local government and body politic and corporate of the State of Texas, and the City of La Porte, a home-ruled municipality of the State of Texas (the “City”).

W I T N E S S E T H:

Recitals

WHEREAS, GCA is a conservation and reclamation district created pursuant to the provisions of Article XVI, Section 59 of the Texas Constitution and, by virtue of its enabling legislation and the laws of the State of Texas, is duly authorized and empowered to enter into certain agreements with public and private entities regarding treatment and disposal of wastes of municipal and industrial origin; and

WHEREAS, GCA owns and operates a waste treatment facility known as the Bayport Wastewater Treatment Facility (“Treatment Facility”) located at 10800 Bay Area Boulevard in Pasadena, Texas; and

WHEREAS, the City desires to transport domestic sewage to the Treatment Facility for treatment; and

WHEREAS, Chapter 791 of the Texas Government Code provides that a municipality may contract with a conservation and reclamation district to obtain wastewater treatment services; and

WHEREAS, subject to the terms and conditions of this Agreement, GCA is willing to accept and treat the City's domestic sewage and discharge the resulting treated effluent at the Treatment Facility in accordance with all federal, state, and local rules and regulations.

Agreement

Now, therefor, for and in consideration of the premises and the mutual promises, covenants, obligations, and benefits hereinafter set forth, GCA and the City hereby agree as follows:

I.

Delivery and Treatment of Wastewater

1.01. The wastewater the City collects and transports to GCA's Treatment Facility shall be normal domestic sewage or normal municipal wastewater ("Domestic Sewage/Municipal Waste"), which means a combination of the water-carried wastes from residences, businesses, and buildings and institutions, together with such infiltration water as may be present. All such Domestic Sewage/Municipal Waste shall be acceptable for

biological treatment and shall comply with and meet such limits on physical and chemical parameters as GCA shall establish as is necessary to ensure compliance with its permit obligations, protection of its treatment facility, and protection of its ability to provide wastewater treatment services to the other customers served by the Treatment Facility. The initial parameters for such Domestic Sewage/Municipal Waste are set forth in Exhibit "A," attached hereto and made a part hereof for all purposes. The City acknowledges that Exhibit "A" may be amended, supplemented or modified by GCA from time to time to meet the requirements of the Texas Commission on Environmental Quality, the Environmental Protection Agency or any governmental entity or agency having authority over the Treatment Facility. In the event the City discharges Domestic Sewage/Municipal Waste through the Point of Delivery (as defined below) that exceeds the parameters established herein in Exhibit "A:" as it may be amended from time to time, GCA shall immediately notify the City of such noncompliance. Upon receipt of such notice, the City shall take immediate action to determine the identity of the offending originator and require the offending originator to cease discharging such wastewater.

1.02. The City shall maintain, at its sole cost, risk, and expense, all pipelines and appurtenances thereto necessary to transport its Domestic Sewage/Municipal Waste to the delivery point described in Exhibit "B" attached hereto and made part hereof, ("Point of Delivery"). Furthermore, the City shall provide all labor, supervision, materials and equipment necessary to deliver its Domestic Sewage/Municipal Waste to the Point of Delivery at sufficient pressure or elevation as will enable GCA to transfer such wastewaters into the Treatment Facility. The City and GCA agree that the Point of Delivery shall be the location at which Domestic Sewage/Municipal Waste from the City's facilities first commingles with other wastewater flowing to the Treatment Facility.

1.03. The City further agrees to (a) maintain all its Sanitary Sewage Collection and Transportation Facilities and to repair promptly any breaks therein so as to prevent the entry of surface or ground water, sand, or other foreign materials; (b) adopt and enforce rules and regulations to ensure that connections to its Sanitary Sewage Collection and Transportation Facilities will not allow the discharge into said facilities of anything prohibited by the provisions hereof and, in particular, but without limitation, that no drains shall be installed or connected in such a manner that any rain water or other surface waters are permitted to enter its facilities, and that adequate safeguards will be taken to prevent any abnormal seepage or discharge of any solid matter into said facilities or any abnormal infiltration thereof from water leaking into the facilities through defective joints, breaks in pipes, or porous walls; and (c) without prejudice to any rights or remedies which GCA might otherwise have for the enforcement of this Agreement, and to require compliance with the terms hereof, the City covenants that it will exercise any powers which it now has, or which it may hereafter have, when reasonably necessary to

accomplish compliance with the foregoing.

II.

Acceptance of Wastewater

2.01. The City shall transport its Domestic Sewage/Municipal Waste to the Point of Delivery identified on Exhibit "B," attached hereto and made part hereof for all purposes, at which point GCA shall assume control of the Domestic Sewage/Municipal Waste and treat it at the Treatment Facility prior to the discharge of effluent. GCA shall discharge the effluent in compliance with all applicable rules, regulations, and laws of the United States, the State of Texas, and any other governmental or regulatory agency having jurisdiction.

2.02. GCA shall accept from the City the flow of Domestic Sewage/Municipal Waste collected and transported by the City's Sanitary Sewage Collection and Transportation Facilities described and defined in Exhibit "C" attached hereto and made a part hereof for all purposes.

2.03. The City agrees to reimburse GCA for any fine or penalty assessed against or imposed upon GCA by any governmental agency having jurisdiction, to the extent that the City's failure to comply with the provisions contained in Section 1.01 above, or other violation of this Agreement, proximately caused the assessment or imposition of the fine or penalty. Whenever a governmental agency having jurisdiction takes any action against GCA that may result in the City's obligation to reimburse GCA under the provisions of this Section, GCA shall promptly notify the City of such action and City shall have the right, at its own cost and expense, to participate in the defense of such action.

2.04. Responsibility for all wastewater to be delivered to the Treatment Facility shall be that of the City until it passes through the Point of Delivery. After wastewaters pass through the Point of Delivery, responsibility therefor shall rest with GCA; provided, however, nothing herein shall absolve the City of its obligations, responsibilities, and liabilities as set forth herein and as provided by law. If the City delivers wastewater through the Point of Delivery that exceeds the parameters established under Section 1.01 and such wastewater causes damage to the Treatment Facility or an inability to process all of the wastewater and discharge the treated effluent in accordance with GCA's Permits, the City shall pay one hundred percent (100 %) of all costs and expenses incurred by GCA to repair any such damage and any other cost and expense incurred by GCA associated with the treatment and disposal of such wastewater.

2.05. If the City delivers wastewater through the Point of Delivery that does not constitute Domestic Sewage/Municipal Waste, or exceeds the parameters established in Exhibit A to this Agreement for Domestic Sewage/Municipal Waste, and such wastewater ~~of~~ Domestic Sewage/Municipal Waste causes damage to the

Treatment Facility, the City agrees to pay to GCA all costs and expenses to repair such damage and any extraordinary cost and expense associated with the treatment and disposal of such wastewater or Domestic Sewage/Municipal Waste that exceeds the parameters in Exhibit A, or that otherwise violates a term or condition of this Agreement.

2.06 INDEMNITY. TO THE EXTENT PERMITTED BY LAW, THE CITY AGREES TO INDEMNIFY AND HOLD GCA HARMLESS FROM ANY CIVIL LIABILITIES, FINES, OR PENALTIES, INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS, INCURRED BY GCA AS A RESULT OF THE CITY'S DELIVERY OF WASTEWATER TO GCA IN VIOLATION OF THE REQUIREMENTS SET FORTH IN THIS AGREEMENT. GCA SHALL BE ENTITLED TO REIMBURSEMENT FROM THE CITY FOR ANY SUCH CIVIL LIABILITIES, FINES, OR PENALTIES, OR ANY PART THEREOF, INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS, ACTUALLY PAID BY GCA, TO THE EXTENT THAT THE CITY'S ACT OR OMISSION CAUSED THE ASSESSMENT OR IMPOSITION OF ANY SUCH CIVIL LIABILITIES, FINES, OR PENALTIES.

2.07. GCA shall accept wastewater at the Point of Delivery, in accordance herewith, seven (7) days a week, twenty-four (24) hours a day, except as may be restricted or prohibited by governmental authorities having jurisdiction, for shutdowns for required maintenance, or as determined by GCA as necessary to prevent harm to the Treatment Facility. If, at any time, GCA is restricted or prohibited from accepting delivery of the City's wastewater, GCA shall notify the City verbally and in writing as soon as administratively feasible.

2.08. Capacity Curtailment. Notwithstanding any other provision of this Agreement to the contrary, if at any time during the term hereof GCA is required to curtail or reduce the volume of wastewater it can receive and treat at the Treatment Facility, whether such curtailment or reduction is due to Force Majeure or other reason, then the required percentage reduction in volume of wastewater received from the City shall be equal to the required percentage reduction in the volume of wastewater from the other users of the Treatment Facility. GCA will use its best efforts to provide as much advance notice as possible.

III.

Waste Measurement

3.01. The City shall provide all metering and monitoring devices that are necessary, as reasonably determined by GCA, to accurately measure the volume and strength of wastewater entering the Treatment Facility from City's Sanitary Sewage Collection and Transportation Facilities. Such metering and monitoring devices shall be located at or upstream of the Point of Delivery so that such devices only measure the City's wastewater. GCA shall maintain all such metering and monitoring devices, and reasonable costs of such maintenance shall be

reimbursed to GCA by the City upon its receipt of proper documentation thereof, exclusive of any other charge or fee provided herein. Such metering and monitoring devices shall include, but not be limited to, continuous volume meters, continuous composite samplers, pH monitors, and any other devices deemed by GCA to be necessary to provide accurate measurements of the volume and strength of wastewater. The City shall be entitled to furnish additional data or request additional tests or measurements from GCA at the City's expense. All metering equipment shall be checked and calibrated by GCA, in the presence of a representative of the City, at approximately six-month intervals (or more often if reasonably requested by either party) for the purpose of determining the accuracy thereof, and adjustments shall be made to correct any inaccuracy found to exist. Provided, however, in the event the City is duly notified at least twenty-four (24) hours in advance of the time at which a test or calibration is to be made, and the City's representative fails to appear at such designated time, the results of such tests and calibrations shall be binding upon the City. In the event a test or calibration (conducted according to accepted industry procedures) shows an error of more than five percent (5%), plus or minus, the volume of wastewater delivered shall be corrected for a period extending back to the time such inaccuracy occurred, if such time is ascertainable or, if not ascertainable, for a period extending back one-half (1/2) of the time that has elapsed since the most recent previous test and calibration.

IV.

Charges

4.01. Treatment and Disposal. A monthly treatment and disposal charge shall be paid by the City to GCA, which charge shall be calculated, based upon the readings of the metering and monitoring devices, as provided in Section 3.01 above. The City hereby covenants and agrees that it will: (a) establish, maintain, and from time to time, if necessary, adjust the rates, fees, and charges for the service provided by its sanitary sewage system or combined waterworks and sanitary sewage systems; and/or (b) assess, levy, and collect taxes upon all taxable property within the City in whatever amount may be necessary to pay the obligations of the City hereunder and all such other expenses or costs of operating and maintaining such systems.

Monthly treatment and disposal charges shall be paid by the City in accordance with the following rates per 1,000 gallons of Domestic Sewage/Municipal Waste:

<u>Rate:</u>	<u>For flows of:</u>
\$0.20	500,000 gallons per day or less
\$0.40	500,001 to 600,000 gallons per day
\$0.60	600,001 to 800,000 gallons per day
\$0.80	800,001 to 1,000,000 gallons per day

\$1.00 over 1,000,000 gallons per day

4.02. Modification of Treatment and Disposal Charges. GCA shall have the right to increase the rates set forth in Section 4.01 above by the average percentage increase applicable to the rates of industrial customers of GCA at the Treatment Facility, as reflected in any future amendment to GCA's Order Setting Rates and Charges for Users of the Bayport System. 4.03. Additional Costs. Any additional or extraordinary costs incurred by GCA for treating elements of the City's wastewater shall be borne by the City. If such costs are also applicable to GCA's treatment of an element of the wastewater of another customer or participant at the Facility, the City shall pay its pro rata share of such costs, as determined by GCA.

4.04. Billing. For purposes of this Agreement, and for the purpose of billing hereunder, a day shall begin at 6:00 a.m. on a calendar day and end twenty-four (24) hours later, and a month shall begin at 6:00 a.m. on the first day of a calendar month and extend to 5:59 a.m. on the first day of the following calendar month. Within 30 days of the end of each calendar month, GCA shall bill the City, at the address of the City hereafter specified, for the amount due for treatment of the wastewater delivered hereunder during the preceding month. On or before thirty (30) days from receipt of an invoice by the City, payment shall be due from the City to GCA at GCA's office hereafter specified, for all wastewater treated hereunder during the preceding month. Failure to make any such payment when due shall result in an administrative charge equal to one percent (1%) of the amount of any invoice so unpaid and, further, if such failure to pay continues for thirty (30) days following written notice by GCA to the City of such unpaid invoice, GCA may suspend receipt of wastewater hereunder until payment is made. Such right shall be a continuing right and shall exist from time to time in case of default in payment, and the exercise of such right shall be in addition to all other remedies to which GCA may be entitled.

V.

Term

5.01. Subject to Article VIII, the term of this Agreement shall be for a period of ten (10) years, commencing upon the Effective Date hereof and terminating at midnight immediately preceding the ten-year anniversary date hereof. This Agreement is renewable and may be extended by written agreement of both parties for additional ten-year periods; provided that the cumulative term of this Agreement, including any renewals thereof, shall in no event exceed fifty (50) years provided, however, notwithstanding any other provision herein to the contrary, this Agreement shall become null and void upon the expiration of Environmental Protection Agency NPDES Permit No. TX0005380 or Texas Natural Resource Conservation Commission Permit No. 01054, unless necessary permit extensions by appropriate regulatory agencies are obtained.

VI.

Force Majeure

6.01. In the event either party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, other than the obligation of such party to make payment of the amounts due hereunder, notice shall be given with full particulars of such force majeure, in writing or by electronic transmission, to the other party as soon as reasonably possible after the occurrence of the cause relied on, and the obligation of the party giving such notice, so far as effected by such force majeure, shall be suspended during the continuance of such inability so caused but for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch; provided, however, neither party shall be required to settle a strike or dispute with workmen when such settlement is against the will of the party having the difficulty. The term “force majeure” shall mean acts of God, strikes, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, explosions, breakage (not caused by the failure to maintain and/or follow prudent industry practices) or accident to machinery or lines of pipe, droughts, hurricanes and tornadoes, or any other inability of either party, whether similar to those enumerated or otherwise, not within the control of the party claiming suspension, which by the exercise of reasonable diligence such party shall not have been able to avoid.

VII.

Notice

7.01. Any notice hereunder shall be in writing and delivered personally or by facsimile or other electronic transmission or sent by United States registered or certified mail, return receipt requested and postage prepaid, or any national overnight courier service, with evidence of delivery and postage and/or other fees prepaid, addressed to the respective party at the address set out below or at such other address as they may respectively designate hereafter in writing:

If to GCA: Gulf Coast Authority
 910 Bay Area Boulevard
 Houston, Texas 77058-2604
 Attn: General Manager
 Telephone: (281) 488-4115
 Facsimile: (281) 488-3331
 E-Mail: Ltraweek@gcatx.org

If to City: City of La Porte
 604 West Fairmont Pkwy
 La Porte, Texas 77571
 Attention: City Manager
 Telephone: _____

Facsimile: _____
E-Mail: _____

7.02 GCA certifies that GCA is not included on any debarment list maintained by any federal, state or local governmental authority, nor prevented from performing services for the City by virtue of any governmental order, proceeding or otherwise. If at any time during the term of this Agreement, or at any other time GCA is providing services for City, GCA cannot so certify to the City, GCA shall promptly notify the City as to GCA's status. Failure by GCA or any of its employees or agents to materially comply with all federal, state, and local environmental laws, in connection with providing services for the City under this Agreement or otherwise, constitutes a material breach of this Agreement between the City and GCA and/or in respect of its providing services to the City.

VIII.

Termination

8.01. Termination for Cause. This Agreement may be terminated by GCA upon sixty (60) days advanced written notice to the City in the event GCA is unable to obtain or maintain all Permits and licenses required to operate the Treatment Facility in the manner set forth in this Agreement. In addition, this Agreement may be terminated by either party upon failure of the other party to perform any of its obligations hereunder; however, except as provided in Sections 2.07 and 2.08, before either party may terminate this Agreement, the party desiring to terminate shall give the party in default not less than sixty (60) days advanced written notice specifying the particular breach or failure. After the expiration of such sixty-day period, if the breach or failure has not been corrected by the party in default, this Agreement may be terminated forthwith by the party not in default, by giving written notice thereof to the other party. Continuing or recurring instances of the same or similar nonperformance shall be covered by the original notice under this section.

8.02. Payments upon Termination. Any termination of this Agreement pursuant to the provisions of this Article VIII shall be without prejudice to the right of GCA to collect any amounts then due from the City.

IX.

Miscellaneous

9.01. Waiver. Failure of either party hereto to insist in any one or more instances upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver or relinquishment of future performance of any such term, covenant, or condition, and the obligation of the party in default, with respect to future performance, shall continue in full force and effect.

9.02. Assignment; No Third Party Beneficiaries. This Agreement shall be for the sole and exclusive benefit of GCA and the City and is not intended to confer any benefit, right, or obligation upon any other party or parties. This Agreement shall not be assigned by the City, without the prior written approval of GCA.

9.03 Counterparts; Electronic Delivery. This Agreement may be executed by the parties in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute but one and the same agreement. A signature of a party transmitted to the other party by facsimile, PDF or other electronic means shall constitute the original signature of such party for all purposes.

9.04 Signatures Authorized. This Agreement has been executed by the City by virtue of action taken pursuant to a meeting of its governing City Council and by GCA upon and by authority of an order or resolution passed at a meeting of its Board of Directors. This Agreement constitutes the entire agreement between the parties relative to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which shall be deemed to be an original, as of the effective date hereof.

Exhibits Attached:

Exhibit A - Parameters for Domestic Sewage/Municipal Wastewater

Exhibit B - Point of Delivery

Exhibit C - Sanitary Sewage Collection and Transportation Facilities

GULF COAST AUTHORITY

By: _____

Name: Lori Traweek

Title: General Manager

ATTEST:

By: _____

Name _____

Title _____

CITY OF LA PORTE, TEXAS

By _____

Name _____

Title _____

ATTEST:

By: _____

Name _____

Title _____

EXHIBIT "A"

Parameters for Domestic Sewage/Municipal Wastewater

The wastewater the City collects and transports to GCA's Treatment Facility shall be normal domestic sewage or normal municipal wastewater ("Domestic Sewage/Municipal Waste"), which means a combination of the water-carried wastes from residences, businesses, and buildings and institutions, together with such infiltration water as may be present.

The City shall certify annually that no waste from an Industrial User, as defined in the Rule of GCA Adopting the Approved Pretreatment Program for the Bayport Facility, as amended, has been collected or transported in City's Sanitary Sewage Collection and Transportation Facilities without the express written consent and approval of GCA.

EXHIBIT "B"

Gulf Coast Waste Disposal Authority City of La Porte Point of Delivery

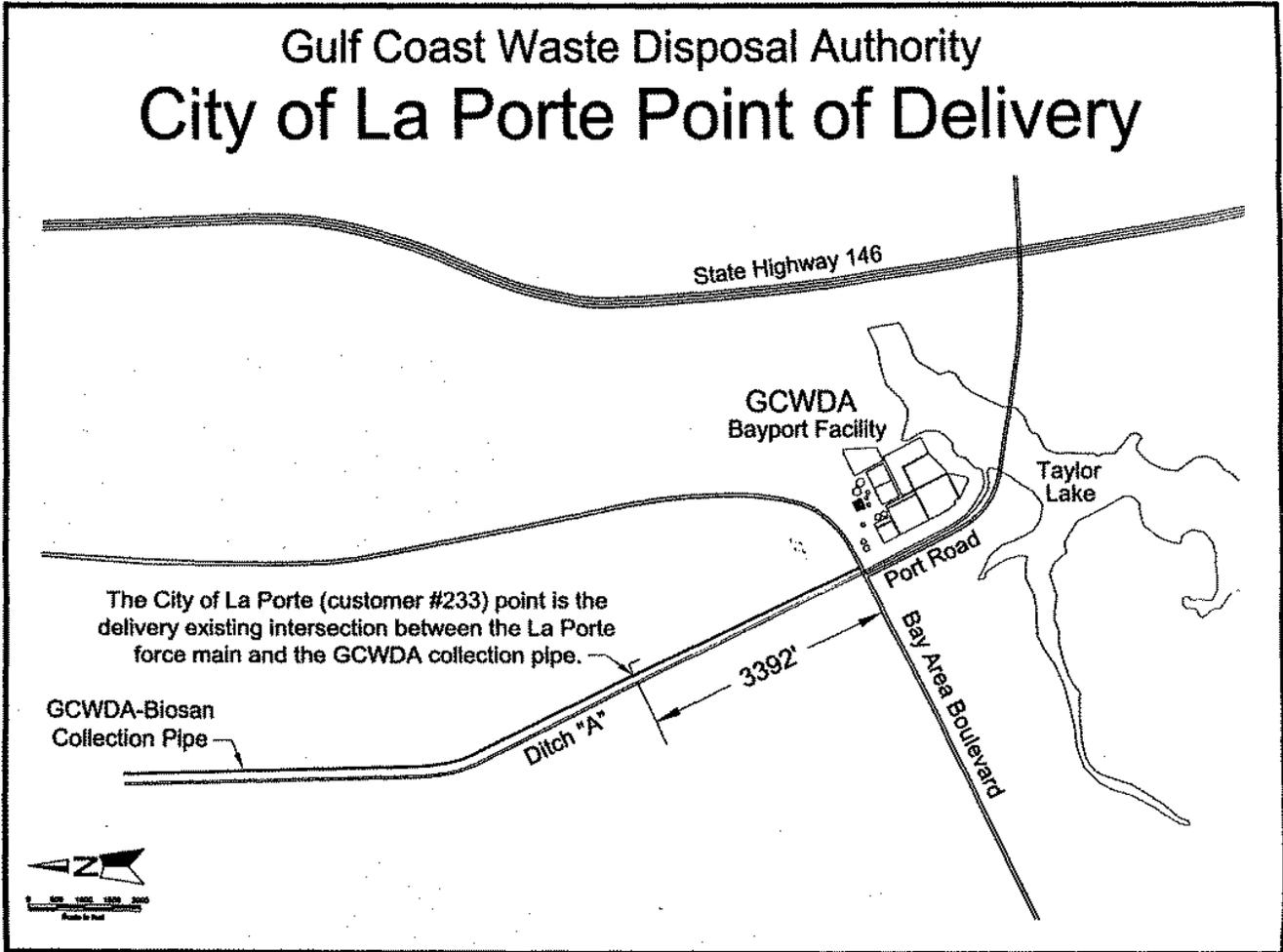


EXHIBIT "C"

City's Sanitary Sewage Collection and Transportation Facilities

Description of Service Area

TRACT 1:

The boundaries of the former Bayshore Municipal Utility District, a conservation and reclamation district which was created and operated under the provisions of Chapter 50 of the Acts of the 57th Legislature of the State of Texas, Regular Session, 1961, prior to its annexation and dissolution by the City of La Porte.

TRACT 2:

That parcel of land being bounded on the north by Wharton Weems Boulevard; on the east by old State Highway 146, also known as South Broadway Street; on the south by McCabe Road; and on the west by new State Highway 146.



Council Agenda Item January 28, 2019

7. **ADMINISTRATIVE REPORTS**

- City Council Meeting, Monday, February 11, 2019
- Drainage and Flooding Committee Meeting, Monday, February 25, 2019
- City Council Meeting, Monday, February 25, 2019
- Planning and Zoning Commission Meeting, Thursday, February 21, 2019
- Zoning Board of Adjustment Meeting, Thursday, February 28, 2019

8. **COUNCIL COMMENTS** regarding matters appearing on the agenda; recognition of community members, city employees, and upcoming events; inquiry of staff regarding specific factual information or existing policies. Councilmembers Ojeda, J. Martin, K. Martin, Gillett, Zemanek, Bentley, Engelken, Earp and Mayor Rigby.

9. **EXECUTIVE SESSION**

The City Council reserves the right to meet in closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code, in accordance with the authority contained in:

Texas Government Code, Section 551.074 - Personnel Matters: Deliberation regarding the position of the City Prosecutor, and deliberate the evaluation, appointment, duties, and employment of a public officer or employee, the City Prosecutor.

Texas Government Code, Section 551.074 - Personnel Matters: Deliberation regarding position of the City Manager, and deliberate the evaluation, appointment, duties, and employment of a public officer or employee, the City Manager, Corby Alexander.

10. **RECONVENE** into regular session and consider action, if any, on item(s) discussed in executive session.

11. **ADJOURN**

The City Council reserves the right to meet in closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code (the Texas open meetings laws).
