



Grant Agreement Flood Infrastructure Fund

TEXAS WATER DEVELOPMENT BOARD

AND

CITY OF BAY CITY

MATAGORDA COUNTY, TEXAS

TWDB COMMITMENT NO. G1001242

TWDB PROJECT NO. 40055

TWDB RESOLUTION NO. 21-006

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GRANT AGREEMENT

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**GRANT AGREEMENT
BETWEEN THE
TEXAS WATER DEVELOPMENT BOARD
AND THE
CITY OF BAY CITY**

WHEREAS, the City of Bay City (City), located in Matagorda County, has filed an application with the Texas Water Development Board (TWDB) for financial assistance from the Flood Infrastructure Fund to finance a flood project identified as Project No. 40055; and

WHEREAS, on January 28, 2021 the TWDB determined that the City qualifies for financial assistance pursuant to Texas Water Code § 15.534 and the applicable Flood Intended Use Plan (FIUP) and agreed pursuant to the TWDB Resolution to provide a grant in the amount of \$88,740 to the City;

WHEREAS, the City will provide a local share of \$217,260 in the form of cash contributions from the City; and

WHEREAS, the TWDB and the City are the Parties to this Agreement.

NOW, THEREFORE, the Parties mutually agree to adhere to the terms of this Agreement and to administer the Grant Funds provided through this Agreement in conformance with all applicable state and federal laws and regulations, the TWDB Resolution, TWDB guidance, and all terms and conditions set forth herein.

ARTICLE I. DEFINITIONS

The following terms, as used in this Agreement, have the meanings assigned below:

Agreement means this Grant Agreement and the attached exhibits.

Construction Account means an account dedicated to the payment of Project costs, as defined by 31 TAC § 363.2(8) and required by the TWDB Resolution.

Eligible Expenses means the expenses allowed by TWDB program requirements and authorized by the TWDB in the approved Project Budget. Expenses incurred prior to March 12, 2020 are not Eligible Expenses.

Executive Administrator means the Executive Administrator of the TWDB or a designated representative.

Force Majeure means a failure or delay in a Party's performance under this Agreement that is caused by acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either Party and that by exercise of due foresight such Party could not reasonably have been expected to avoid, and that, by the exercise of all reasonable due diligence, such Party is unable to overcome.

Grant Funds means the amount of financial assistance from the TWDB under Commitment Number G1001242 in the amount of \$88,740 to finance the Project.

Outlay Report means TWDB form regarding the total amount of costs incurred relating to the Project for the specified period.

Parties or Party means TWDB and the City and their authorized successors and assignees.

Project means the project for which the TWDB is providing financial assistance under this Agreement and as further described in the TWDB Resolution and identified as Project No. 40055.

State means the State of Texas.

Surplus Funds means those grant funds remaining after the City has submitted final accounting to the Executive Administrator pursuant to 31 TAC § 363.42(a)(2)(C), including interest earned.

TAC means the Texas Administrative Code.

TWDB means the Texas Water Development Board.

TWDB Resolution means TWDB Resolution No. 21-006, dated January 28, 2021, approving the application for financial assistance filed by the City and authorizing the execution of this Agreement.

ARTICLE II. AUTHORITY AND RECITALS

2.1. AUTHORITY. This Agreement is authorized by Texas Water Code Chapter 15, Subchapter I and is also governed by Texas Water Code, Chapter 6; 31 TAC Chapter 363, Subchapters A and D; and the TWDB Resolution.

2.2. RECITALS. The Parties agree that the following representations are true and correct and form the basis of this Agreement:

A. The TWDB may provide financial assistance in the form of a grant for all or a portion of the Project costs in an amount that the TWDB has determined to be eligible.

- B. On January 28, 2021, the TWDB considered an application filed by the City for financial assistance for a flood project. Based on the representations made by the City in that application, the TWDB adopted the TWDB Resolution in which the TWDB:
 - 1. determined that the City qualifies for a grant and is eligible for financial assistance; and
 - 2. made a commitment to provide financial assistance consisting of a grant in the amount of \$88,740 for the planning of the Project.
- C. The TWDB and the City enter this Agreement to memorialize and set forth the terms and conditions for the Grant Funds. The Executive Administrator is authorized to execute this Agreement on behalf of the TWDB pursuant to the TWDB Resolution, which is attached to this Agreement as **EXHIBIT A**. The City is authorized to execute this Agreement through its authorized representative designated in a resolution duly adopted by the governing body of the City, a copy of which is attached hereto as **EXHIBIT B**.
- D. If the City signs this Agreement with a false statement or it is subsequently determined that the City has violated any of the representations, guarantees, warranties, certifications, or affirmations included in the Agreement, the City will be in default under the Agreement and TWDB may terminate or void the Agreement.
- E. The City and the TWDB act in their individual capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party will not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
- F. The City represents and warrants that the provision of financial assistance under this Agreement will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. The City also represents that if any existing or potential conflict arises during the term of this contract, it will immediately notify TWDB.

ARTICLE III. LEGAL REQUIREMENTS

3.1. APPLICABLE LAWS. In consideration of the performance of the mutual agreements set forth in this Agreement, the City, by and through its designated and authorized representatives, agrees to plan the Project in compliance with the following:

- A. all federal laws and regulations that may be applicable to the Project;
- B. Texas Water Code Chapter 15, Subchapter I; and
- C. 31 TAC Chapter 363.

3.2. PROCUREMENT. The City must engage in competitive procurements for work on the Project. All purchases for goods, services, or commodities made with funds provided under this Agreement will comply with State and local procurement and contracting laws.

3.3. IRON AND STEEL. The City will abide by all applicable construction contract requirements related to the use of iron and steel products and manufactured goods produced in the United States, as required by Texas Water Government Code, Chapter 2252, Subchapter G.

3.4 NATIONAL FLOOD INSURANCE PROGRAM. The appropriate entities within the PLANNING/PROJECT AREA must currently enforce and continue to enforce floodplain management standards at least equivalent to National Flood Insurance Program minimum standards and may exceed the National Flood Insurance Program minimum standards.

3.5 TERRORIST WATCH LIST. The City certifies that it will not enter into a contract with any contractor or subcontractor that is listed on the federal government's terrorism watch list as described in Executive Order 13224.

3.6 FOREIGN TERRORIST ORGANIZATION. The City certifies that it will not enter into a contract with any contractor or subcontractor that is engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Texas Government Code § 2252.152.

3.7 HUMAN TRAFFICKING PROHIBITION. Under Texas Government Code § 2155.0061, the City certifies that the City is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

3.8 PRIOR DISASTER RELIEF. Texas Government Code §§ 2155.006 and 2261.053 prohibit state agencies from accepting a response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Texas Government Code § 418.004, occurring after September 24, 2005. Under Texas Government Code §§ 2155.006 and 2261.053, the City certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

3.9 LOBBYING PROHIBITION. The City represents and warrants that TWDB's payments to the City and the City's receipt of appropriated or other funds under the contract are not prohibited by Texas Government Code §§ 556.005 or 556.0055, related to the prohibition on payment of state funds to a lobbyist or for lobbying activities.

ARTICLE IV. PLANNING

- 4.1. PROJECT REQUIREMENTS.** The City must comply with the following requirements.
- A. Plans and Specifications. The City will construct the Project in accordance with the plans and specifications as sealed by a State licensed engineer and as approved by the Executive Administrator in compliance with 31 TAC § 363.41, as applicable.
 - B. Changes to Plans and Specifications. The City will not make or implement any changes to the scope of the Executive Administrator's approved Project or to the specifications for the Project without the written approval of the Executive Administrator.
 - C. Project Schedule. The City will adhere to the TWDB approved Project schedule, attached as **EXHIBIT C**. The City must not exceed or revise the Project schedule except upon written approval from the TWDB. The City must not delay the Project completion date except by amendment to this Agreement.
 - D. Project Budget. The City will be solely responsible for all costs that exceed the TWDB approved Project Budget, attached as **EXHIBIT D**. The City must notify the Executive Administrator immediately of all changes to the Project Budget, including when it appears that the Project Budget may not be sufficient to complete the Project.
 - E. Personnel. City must assign only qualified personnel to perform the services required to execute the Project as required under this Agreement. City is responsible for ensuring that any contractor or subcontractor also assigns only qualified personnel. Qualified personnel are persons who are properly licensed to perform the work and who have sufficient knowledge, skill, and ability to perform the tasks and services required herein according to the standards of performance and care for their trade or profession.
 - F. Professional Standards. City must provide the services and deliverables in accordance with applicable professional standards. City represents and warrants that it is authorized to acquire contractors and/or subcontractors with the requisite qualifications, experience, personnel and other resources to perform in the manner required by this Agreement.
- 4.2. PROGRESS REPORTS.** The City must submit quarterly status reports on the progress of the project in accordance with the Resolution.

ARTICLE V. SPECIAL COVENANTS AND REPRESENTATIONS

- 5.1. CONDITIONS FOR DISBURSEMENT OF GRANT FUNDS.** No Grant Funds will be deposited into Construction Account or released by the Executive Administrator until the applicable requirements and conditions in the TWDB Resolution and 31 TAC § 363.43, relating to Release of Funds, are met.

5.2. DELIVERY OF GRANT FUNDS. The TWDB will deposit the Grant Funds in the City's Construction Account at the direction of the Executive Administrator.

A. Outlay Reports and Invoices. The City must submit TWDB Outlay Report forms identifying:

1. the total amount of expenses incurred by the City for the period covered by the Outlay Report; and
2. identification and description of the City's share of the total costs for the billing period, if applicable; and
3. invoices, receipts, or other documentation satisfactory in form and in substance to the TWDB sufficient to establish the requested amount as an eligible expense incurred by the City.

B. Release of Funds. The Executive Administrator will authorize the release of Grant Funds when Outlay Reports have been approved by the TWDB.

5.3. ELIGIBLE EXPENSES. The City must use Grant Funds for Eligible Expenses. The City must return any Grant Funds that are used for expenses that cannot be verified as eligible or that are ineligible. The amount of Grant Funds used for any ineligible or unverified expenses will be credited against verified Eligible Expenses. If the total amount of Eligible Expenses is insufficient to fully offset the amount of improperly expended Grant Funds, the City must use other funds to fully repay the TWDB. This Section 5.3, Ineligible Expenses, survives the termination or expiration of this Agreement.

5.4. FINAL ACCOUNTING. The City will provide a final accounting of funds expended on the Project pursuant to 31 TAC § 363.42 and return any Surplus Funds from the grant. This Section 5.4, Final Accounting, survives the termination or expiration of this Agreement.

5.5. WATER AUDIT. If the City is a retail public utility as defined in Texas Water Code § 13.002 and the City provides potable water, then the City annually must perform and file a water audit computing the City's most recent annual system water loss with the TWDB. The first water audit will be submitted by May 1st following the passage of one year after the effective date of this Agreement and then by May 1st every year thereafter during the term of this Agreement. The City agrees to comply with 31 TAC § 358.6 relating to water audits. This Section 5.5, Water Audit, survives the termination or expiration of this Agreement.

5.6. ANNUAL FINANCIAL AUDIT. During the Term of this Agreement, the City must submit an annual audit of the general purpose financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) by a certified public accountant or licensed public accountant. Audits must be submitted to the TWDB no later than 180 days after the close of the City's fiscal year.

5.7. INVESTMENT AND COLLATERALIZATION OF PUBLIC FUNDS. Grant proceeds are public funds and, as such, these proceeds must be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257.

5.8. SPECIAL CONDITIONS. The City must deposit into the City's construction account (or Project fund, as applicable), the City's cash contribution of funds, based on the Board approved grant percentage, necessary to complete the upcoming phase(s) or portion of the phase of the Project, as approved by the Executive Administrator.

ARTICLE VI. INTELLECTUAL PROPERTY

6.1. OWNERSHIP OF WORKS. It is agreed that all works developed by the City and any subcontractors using funds provided under this Agreement or otherwise rendered in or related to the performance in whole or part of this Agreement, including but not limited to reports, drafts of reports, material, data, drawings, studies, analyses, notes, plans, computer programs and codes, or other work products, whether final or intermediate, are the joint property of the TWDB and the City. The City hereby conveys co-ownership of such works to the TWDB as they are created in whole or part. If present conveyance is ineffective under applicable law, the City agrees to convey a co-ownership interest of such works to the TWDB after creation and to provide written documentation of such conveyance upon request by the TWDB. The TWDB and the City each have full and unrestricted rights to use such works with no compensation obligation.

6.2. SUBCONTRACTORS. The City must include terms and conditions in all contracts or other engagement agreements with any subcontractors as are necessary to secure these rights and protections and must require that subcontractors include similar such terms and conditions in any contracts or other engagements with their subcontractors.

ARTICLE VII. NON-PERFORMANCE, TERMINATION, AND REMEDIES

7.1. STOP WORK ORDERS.

- A. Stop Work Order (SWO). The Executive Administrator may issue a written SWO to the City at any time for failure to comply with any provision of this Agreement. The SWO will provide the City with notice of the facts supporting the determination to issue the SWO. The SWO may require cessation of work immediately or at a definite future date. The SWO will provide the City with a specified time to cure.
- B. City's Response. The City must provide a written response to the SWO and will provide the Executive Administrator with a detailed plan to address and cure the

conditions causing the SWO. The City must provide the response within five business days from its receipt of the SWO.

- C. Executive Administrator's Reply. The Executive Administrator may accept, reject, or amend the City's plan and will provide notice of such action to the City within five business days of receipt of the plan. The Executive Administrator may issue an amended SWO that allows resumption of work contingent upon the City's execution of the plan to cure. The Executive Administrator may modify the City's plan to cure only in a manner consistent with the terms and conditions of this Agreement.
- D. City's Option. The City must notify the Executive Administrator within five business days whether it accepts the amended plan. If the City does not accept the amended plan, the Executive Administrator may terminate this Agreement. Upon successful completion of the plan to cure the conditions causing the SWO, the City will continue work to complete all obligations under this Agreement.

7.2. TERMINATION. The TWDB may terminate this Agreement, in whole or in part, at any time, without penalty to the TWDB. Upon receipt of a written notice of termination, the City will immediately discontinue all work in connection with the performance of this Agreement and will promptly cancel all existing orders or other financial commitments chargeable to funding provided pursuant to this Agreement provided, however, that any costs for Eligible Expenses incurred prior to the receipt of such written notice by the City will be payable from the funding provided pursuant to this Agreement.

Within thirty (30) days of the notice of termination, the City must submit a statement showing in detail the work performed, all payments received by the City, and all payments made by or due from the City to any contractor prior to the date of termination.

7.3. SURVIVAL OF TERMS AND CONDITIONS. Termination or expiration of this Agreement for any reason will not release either Party from any liabilities or obligations set forth in this Agreement that:

1. the Parties have expressly agreed will survive any such termination or expiration, if any; or
2. by their nature, would be intended to be applicable following any such termination or expiration.

7.4. REAL ESTATE. If the City purchases real estate for the Project with Grant Funds and any of the real estate or portion of the real estate is not used for the Project, the City will repay to the TWDB the full amount of the Grant Funds for purchase of the real estate that is not used for the Project. Such amount will be due and payable within 90 days after termination or expiration of this Agreement.

7.5. REMEDIES.

- A. The City will have all remedies available in law or equity.
- B. The TWDB must have all remedies available in law or equity, including remedies available under Texas Water Code §§ 6.114 and 6.115.
- C. Notwithstanding the availability of all remedies listed above, pursuant to 31 TAC § 363.406(d), if TWDB determines non-performance of the terms of this Agreement, TWDB may require repayment of all or part of the funds provided by grant assistance or impose sanctions such as prohibition of further board financial assistance.
- D. This Section 7.5 survives the termination or expiration of this Agreement.

ARTICLE VIII. GENERAL TERMS AND CONDITIONS

8.1 NEPOTISM. The City must comply with Texas Government Code Chapter 573 by ensuring that no officer, employee or member of City's governing body votes or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition does not prohibit the employment of a person who has been continuously employed for a period of two years prior to the election or appointment of the officer, employee or governing body member related to such person in the prohibited degree.

8.2. OPEN MEETINGS. The City must comply with Texas Government Code Chapter 551, which requires all regular, special or called meetings of governmental bodies to be open to the public, except as otherwise provided by law.

8.3. EXCESS OBLIGATIONS PROHIBITED/NO DEBT AGAINST THE STATE. This Agreement is subject to termination or cancellation without penalty to TWDB, either in whole or in part, subject to the availability of state funds.

8.4. INSURANCE AND INDEMNIFICATION.

- A. The City must at all times keep insured with a responsible insurance company or companies such portions of the Project as are customarily insured by political subdivisions in the State that operate like properties in similar locations under similar circumstances. The City will insure against risks, accidents, casualties, or loss in an amount that is customarily carried by such municipalities and political subdivisions and is at least sufficient to protect the TWDB's interest in the Project.
- B. The City is solely responsible for liability resulting from acts or omissions of the City, its employees, contractors, or agents. The City will indemnify and hold the TWDB and the State harmless to the extent that the City may do so in accordance with State law.

- C. Grant Funds for the Project must not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law.

8.5. PERMITS. The City will be responsible for timely filing applications for all licenses, permits, registrations, and other authorizations that the City has identified in the application for financial assistance as required for the planning of the Project. The City will submit copies of all of these final licenses, permits, registrations, and other authorizations issued by local, state, and federal agencies to the TWDB within thirty (30) days of receipt from the issuing agency.

8.6. RECORDS. The City will comply with all terms and conditions relating to records of the Project as follows:

- A. Duty to Maintain Records. The City will maintain financial accounting records relating to the Project in accordance with Generally Accepted Accounting Principles. The City must also require its contractors to maintain financial accounting records consistent with Generally Acceptable Accounting Principles and with State laws applicable to government accounting. All accounting and other financial documentation will be accurate, current, and will reflect recordation of the transactions at or about the time the transactions occurred;
- B. Duty to Retain Records. The City will retain all financial records and supporting documents and any other documents pertinent to the Project in accordance with the requirements of applicable State law relating to retention and access to records. The TWDB requires the City to retain all records related to this Agreement for a period of three (3) years after Project completion;
- C. Public Records. The City understands and agrees that all documents relating to this Agreement are subject to the Public Information Act, Texas Government Code, Chapter 552, and that such documents may not be withheld from public disclosure, except in accordance with law and with the rulings of the Texas Attorney General. The City is required to make any information created or exchanged pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge. The City must promptly respond to a request by the TWDB for copies of any of the City's records related to this Agreement; and

D. Access to Records.

1. State Auditor. By executing this Agreement, the City accepts the authority of the Texas State Auditor's Office to conduct audits and investigations in connection with all Grant Funds received pursuant to this Agreement. The City must comply with directives from the Texas State Auditor and must cooperate in any such investigation or audit. The City agrees to provide the Texas State Auditor with access to any information the Texas State Auditor considers relevant to the investigation or audit. The City also agrees to include a provision in any contract or subcontract related to this Agreement that requires the contractor and the subcontractor to submit to audits and investigations by the Texas State Auditor's Office in connection with all Grant Funds received pursuant to the contract or subcontract.
2. TWDB. The City agrees that the standards of administration, property management, audit procedures, procurement and financial management, and the records and facilities of the City and its contractors are subject to audit and inspection by the TWDB and by any other authorized state or federal entity. All books, documents, papers, and records of the City related to this Agreement must be made available for audit, examination, excerption, and transcription by the TWDB within a reasonable time after a request from the TWDB.

E. Proprietary and Confidential Information. City warrants and represents that any information that is proprietary or confidential and is received by City from TWDB will not be disclosed to any third party without the written consent of TWDB, whose consent will not be unreasonably withheld.

8.7. UPDATING INFORMATION. The City must provide the TWDB with updated information, reports, statements, and certifications as requested by the Executive Administrator relating to the financial condition of the City or the Project and the use of Grant Funds. The City will promptly notify the TWDB of any material change in the activities, prospects, or conditions of the City relating to the Project, or its ability to observe and perform its duties, covenants, and agreements under this Grant Agreement.

8.8. FORCE MAJEURE. Unless otherwise provided, neither the City nor the TWDB nor any agency of the State will be liable to the other for any delay in or failure of performance of a requirement contained in this Agreement caused by *Force Majeure*. The existence of such causes of delay or failure will extend the period of performance until after the causes of delay or failure have been removed provided the non-performing Party exercises all reasonable due diligence to perform. Each Party must inform the other in writing with proof of receipt within five (5) business days of the existence of such *Force Majeure* or otherwise waive this right as a defense.

8.9. NON-ASSIGNABILITY. The terms and conditions of the financial assistance provided by this Agreement may not be assigned, transferred, or subcontracted in any manner without the express written consent of the TWDB.

8.10. ENTIRE AGREEMENT AND AMENDMENT. This Agreement, which incorporates all attached Exhibits, constitutes the entire agreement between the Parties. This Agreement may be amended only in writing signed by the Parties. The changes allowed under Section 4.1 do not require an amendment to this Agreement unless a change to the Project Schedule, **EXHIBIT C**, or the Project Budget, **EXHIBIT D**, results in a different project completion date or total budget amount.

8.11. NO WAIVER. The failure of any Party to insist upon the strict performance of any of the terms, provisions, or conditions of this Agreement will not be construed as a waiver or relinquishment for the future of the strict performance of any such term, provision, or condition or any other term, provision, or condition.

8.12. LAW AND VENUE. The validity, operation, and performance of this Agreement will be governed and controlled by the laws of the State of Texas and applicable federal regulations, and the terms and conditions of this Agreement will be construed and interpreted in accordance with the laws of the State. The Parties understand and agree that this Agreement is for the provision of financial assistance for the planning, design, acquisition and construction of the Project and as such all or part of the performance of the terms and obligations of the Agreement will be performed in Matagorda County, Texas. Notwithstanding the location of the Project, the Parties understand and agree that any proceeding brought for any breach of this Agreement involving the TWDB will be in Travis County, Texas. This section does not waive the sovereign immunity of the State or the TWDB.

8.13. NOTICES. All notices, notifications, or requests required or permitted by this Agreement will be in writing and will be transmitted by (1) email and (2) personal delivery or transmitted by United States certified mail, return receipt requested, postage prepaid, to the addresses of the Parties shown below. Notice shall be effective when received by the Party to whom notice is sent.

Email:

Dain.Larsen@twdb.texas.gov

Personal delivery to mail:

Texas Water Development Board
Attn: Executive Administrator
1700 N. Congress Ave., 6th Floor
Austin, Texas 78711-3231

City of Bay City
Attn: Mayor
1901 5th Street
Bay City, Texas 77414

8.14. TERM. This Agreement is effective on the date signed by the Executive Administrator. The Agreement will expire upon successful completion of the Project and Final Accounting in accordance with Section 5.4 of this Agreement.

8.15. SURVIVAL OF TERMS AND CONDITIONS. This Article VIII, General Terms and Conditions, survives the termination or expiration of this Agreement.

TEXAS WATER DEVELOPMENT BOARD	CITY OF BAY CITY
<hr/> Jeff Walker Executive Administrator	<hr/> Robert Nelson Mayor
<hr/> Date	<hr/> Date

EXHIBIT A

TWDB Resolution No. 21-006

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE
IN THE AMOUNT OF \$88,740 TO THE CITY OF BAY CITY
FROM THE FLOOD INFRASTRUCTURE FUND
THROUGH
THE EXECUTION OF A GRANT AGREEMENT IN THE AMOUNT OF \$88,740

(21-006)**

WHEREAS, the City of Bay City (City), located in Matagorda County, Texas, has filed an application for financial assistance from the Flood Infrastructure Fund (FIF) in accordance with Texas Water Code Chapter 15, Subchapter I, to finance planning of a regional drainage study, a flood project identified as Project No. 40055; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$88,740 through execution of a Grant Agreement, all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, the City will provide a local share of \$217,260 in the form of a cash contribution from the City; and

WHEREAS, the TWDB hereby finds:

1. that the application and financial assistance requested meet the requirements of Texas Water Code, Chapter 15, Subchapter I; 31 TAC Chapter 363, Subchapters A and D; and the State Fiscal Year 2020 Flood Intended Use Plan (FIUP);
2. the City has demonstrated a sufficient level of cooperation among eligible political subdivisions and has included all of the eligible political subdivisions substantially affected by the flood project in accordance with Texas Water Code § 15.536(2);
3. that no debt obligations are to be assumed by the City for the financial assistance and no taxes or revenues are required to be pledged by the City in accordance with Texas Water Code § 15.536(3);
4. that the City is eligible to receive grant funding in accordance with Texas Water Code § 15.534 and the applicable FIUP;
5. that the request for financial assistance does not include redundant funding for activities already performed and/or funded through another source, in accordance with the FIUP; and
6. that the City has demonstrated that the application meets the requirements of the FIUP related to the National Flood Insurance Program in the area to be served by the Project; and

7. that the Project was developed using the best and most recent available data, in accordance with the FIUP; and
8. that the current water audit has been completed by the City and filed with the TWDB in accordance with Texas Water Code § 16.0121.

NOW THEREFORE, based on these findings, the TWDB resolves as follows:

A commitment is made by the TWDB to the City of Bay City for financial assistance in the amount of \$88,740 from the Flood Infrastructure Fund, to be evidenced by the execution of a Grant Agreement. This commitment will expire on July 31, 2021.

Such commitment is conditioned as follows:

Standard Conditions:

1. this commitment is contingent on availability of TWDB funds on hand;
2. this commitment is contingent upon the City's continued compliance with all applicable laws, rules, policies, and guidance (as these may be amended from time to time to adapt to a change in law, in circumstances, or any other legal requirement), including but not limited to 31 TAC Chapter 363;

The Following Conditions Must Be Included in the Grant Agreement:

3. the Grant Agreement must provide that the City will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
4. the Grant Agreement must contain a provision requiring the City to maintain insurance coverage sufficient to protect the TWDB's interest in the project;
5. the Grant Agreement must include a provision requiring a final accounting to be made of the total sources and authorized use of Project funds within 60 days of the completion of the Project;
6. the Grant Agreement must include a provision stating that the City shall return any grant funds that are determined to be surplus funds remaining after completion of the Project and completion of a final accounting, including any interest earned on the grant funds;
7. the Grant Agreement must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Grant Agreement that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;

8. financial assistance proceeds are public funds and, as such, the Grant Agreement must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256 and the Public Funds Collateral Act, Government Code, Chapter 2257;
9. financial assistance proceeds shall not be used by the City when sampling, testing, removing, or disposing of contaminated soils and/or media at the Project site. The Grant Agreement shall include an environmental indemnification provision wherein the City agrees to indemnify, hold harmless, and protect the TWDB from any and all claims, causes of action, or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment, recycling, and disposition of any contaminated sewage sludge, contaminated sediments, and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials, and employees as a result of activities relating to the Project to the extent permitted by law;
10. the Grant Agreement must contain a provision requiring the City to submit quarterly status reports on the progress of the project that details information requested by the Executive Administrator. The Executive Administrator may withhold authorization to release funds from escrow or adjust the amount of funds to be released from escrow based on the receipt of the quarterly status reports and the projected quarterly needs for the project;
11. prior to release of funds for the relevant services, and if required under the TWDB's financial assistance program and if not previously provided with the application, the City shall submit executed contracts for engineering and, if applicable, financial advisor and legal services, for the Project that are satisfactory to the Executive Administrator. Fees to be reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the contract, and acceptable to the Executive Administrator;
12. prior to closing, when any portion of financial assistance is to be held in escrow or in trust, the City shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;

PROVIDED, however, the commitment is subject to the following special conditions:

Special Conditions:

13. prior to closing, the City shall execute a Grant Agreement in a form and substance acceptable to the Executive Administrator; and

14. prior to release of funds for each Project phase or portion of a Project phase, the City must deposit into the City's construction account (or Project fund, as applicable), the City's cash contribution of funds, based on the Board-approved grant percentage, necessary to complete the upcoming phase(s) or portion of the phase of the Project, as approved by the Executive Administrator.

APPROVED and ordered of record this, the 28th day of January, 2021.


TEXAS WATER DEVELOPMENT BOARD



Peter M. Lake, Chairman

DATE SIGNED: 1/29/21

ATTEST:



Jeff Walker, Executive Administrator

EXHIBIT B
City of Bay City Resolution

EXHIBIT C
Project Schedule

Bay City
40055 Regional Drainage Study

Project Schedule:

Project Task	Schedule Date
Planning Report Completion	September 15, 2021

EXHIBIT D
Project Budget



Project Budget Summary
Bay City
40055 - Regional Drainage Study

Budget Items	TWDB Funds	Local and Other Funds	Total
Special Services			
Project Management (by engineer)	\$5,713.00	\$13,987.00	\$19,700.00
Special Service Other (H&H Analysis)	\$74,327.00	\$181,973.00	\$256,300.00
Surveying	\$8,700.00	\$21,300.00	\$30,000.00
Subtotal for Special Services	\$88,740.00	\$217,260.00	\$306,000.00
Total	\$88,740.00	\$217,260.00	\$306,000.00