

STATE OF TEXAS §
COUNTY OF MATAGORDA §

§ KNOW ALL MEN BY THESE PRESENTS:

WITNESSETH:

ARTICLE I. PURPOSE

ARTICLE II. AUTHORITY

Gas Board Meeting March 18, 2020

ARTICLE III. TERMS

It is the intent of the parties that the following shall be the obligations of each party to this Agreement:

1. City shall have all operational authority, including, but not limited to, planning, contracting, engineering, and construction, to complete the Projects and issue approximately \$6,000,000.00 in financing for a 15 year term (the “Debt”) by the appropriate method as allowed by law and at the City’s discretion. The City shall endeavor to arrange financing in the most favorable way to benefit the Parties. The City shall be the applicant for the Debt and has all legal responsibility for the Project. The City shall exchange information with BCGC regarding the process of financing and shall seek BCGC’s input.

2. BCGC’s contribution commitment is to one-half of the Debt Service and is estimated not to exceed \$240,000.00 per year (the “Estimated Maximum Annual Contribution”). The City will promptly notify BCGC of the amount of each year’s Debt Service (the “Actual Annual Debt Service”) as soon that information is determined. The City and BCGC recognize that BCGC ratepayers are a subset of the citizens of Bay City and that, if gas rates become uncompetitive, customers are motivated to discontinue service. In the event that BCGC’s profitability may be insufficient to support one-half of the Debt Service up to the Estimated Maximum Annual Contribution, City and BCGC acknowledge that the only recourse available to BCGC will be to draw down reserves or enter into a rate-making process. To the extent that one-half of the Actual Annual Debt Service is less than the Estimated Maximum Annual Contribution, that fact alone shall not operate to reduce the amount of the total disbursement from BCGC to City. Recognizing that market conditions will inevitably vary, BCGC, contemporaneously with this Agreement, is entering into a process to revise the formula for determining financial reserves in order to

support this Agreement. The City acknowledges that, until such a revised formula is funded, annual profitability and distributions to the City in excess of the obligations of this Agreement, will be impacted, but BCGC will in all events honor the provisions of this Agreement.

4. Nothing in this agreement should be construed to restrict the authority of City to expend all sums dispersed to City by BCGC in the sole sound discretion of the City. The Parties agree that the Nile Valley Road project is the first priority. However, if excess funds exist following the completion of the Nile Valley Road project, the City may expend all remaining funds on the repair of roads within the City. The City shall consult with BCGC on its plan of action, however, any further roads to be repaired shall be at the sole discretion of City. Further, any excess funds shall be expended on the repair of roads only.

5. Should there be cost overruns as to the Projects, the City shall assume any further financial responsibility for the costs associated with the Projects contemplated by this Agreement. Should the City increase the total amount of the Debt, scope of the Projects, bundle, or refinance this debt in a manner that operates to increase one-half of the Actual Annual Debt Service to an amount greater than Estimated Maximum Annual Contribution, this agreement shall not operate to bind BCGC to a minimum annual disbursement greater than Estimated Maximum Annual Contribution.

6. The term of this Agreement shall commence on the date of execution hereof and shall terminate when the Debt is paid in full, or upon the expiration of the original term of the Debt whichever comes first. If, for any reason, the Debt as contemplated is not issued prior to the end of City FY 19-20, this Agreement shall be void.

ARTICLE IV. MISCELLANEOUS PROVISIONS

This Agreement constitutes the entire agreement between BCGC and City and supersedes any

prior understandings or written or oral agreements between the parties respecting the subject matter of this Agreement.

This Agreement is solely for the management convenience of the City and BCGC. No other person or entity is entitled to rely upon it. BCGC has no relationship with any holder of the Debt and undertakes no duty thereto. To the extent permitted by law, City shall DEFEND, INDEMNIFY, AND HOLD HARMLESS BCGC, its officers, agents, and employees from any private action or public enforcement arising from the Debt.

No amendment, modifications, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement with the same formality as this execution. Transmittal letters, check memoranda, electronic communications, and other modifications of transactions otherwise acceptable under the UCC are specifically excluded as methods by which this Agreement may be altered.

This Agreement shall be binding upon and inure to the benefits of the parties hereto, their respective successors and assigns.

EXECUTED IN MULTIPLE ORIGINALS, retained by each party hereto, effective on the latest date shown below.

CITY OF BAY CITY, TEXAS

BAY CITY GAS COMPANY

By: _____
Robert K. Nelson, Mayor

By: _____
Terrence D Allen, Chair

Date of Meeting Approved: _____

By: _____
Hon. Robert K Nelson, Mayor

ATTEST:

By: _____
David Holubec, City Secretary

By: _____
Janet L Peden, Trustee

Gas Board Approved: February 25, 2020

ATTEST: _____
Jaclyn Dye, Secretary to the Board

Approved as to form:

Anne Marie Odefey, Esq., City Attorney

Lawrence P Gwin Jr. Esq., General Counsel