

RESOLUTION 21-05

A RESOLUTION OF THE TOWN OF PONDER TOWN COUNCIL FINDING AND DECLARING AN EMERGENCY TO PERFORM THE NECESSARY CONSTRUCTION WORK TO THE PONDER WASTEWATER TREATMENT PLANT; AUTHORIZING EXPENDITURES FOR THE PERFORMANCE OF SAID WORK; RATIFYING TOWN STAFF'S AWARDED OF CONTRACT FOR SAID WORK AND DECLARING AN EFFECTIVE DATE

WHEREAS, in 2016, the Town of Ponder determined that significant improvements were necessary for the Town's wastewater treatment plant to remain operational; and

WHEREAS, on December 14, 2016, a Contract for the work was awarded to Fryer Construction Company for an amount not to exceed \$2,569,655.00. On February 13, 2017, Fryer Construction Company was given a Notice to Proceed with 270 calendar days allotted for substantial completion and 300 calendar days for final completion; and

WHEREAS, on October 24, 2019, a Notice of Contract Default was issued to Fryer Construction Company for failure to complete the work within the contract period and authorized extensions, and for defective and substandard work; and

WHEREAS, the Town of Ponder has already been forced to spend \$130,626.00 in an attempt to remedy defective work performed by Fryer Construction Company and additional work and associated costs are also needed to complete the project; and

WHEREAS, the Town of Ponder's Wastewater Treatment Plant currently may not meet Texas Commission on Environmental Quality effluent permit limits which may subject the Town to substantial fines and may result in the Town losing its license to operate the plant unless improvements are made promptly; and

WHEREAS, Town staff are now searching for a new construction company to complete the project at an estimated cost of at least \$320,000.00; and

WHEREAS, the Town Council finds and concludes that an emergency exists that requires the immediate appropriation of funds to complete the Wastewater Treatment Plant improvements, to protect the public health and safety of the Town's residents and to preserve the safety of the Town and its citizens; and

WHEREAS, this emergency obligates the Town to complete the construction work in the most efficient manner possible; and

WHEREAS, the Town Council finds and concludes that the citizens are best

served by the Town completing the repair work through a contract with a new construction company and for the retention of related professional services, without the necessity of accepting additional competitive bids pursuant to Chapter 252, Texas Local Government Code; and

WHEREAS, all statutory and legal requirements for the adoption of this Resolution have been met, including but not limited to the Open Meetings Act; and

WHEREAS, the Town Council declares that the adoption of this Resolution is in the best interests of the health, safety, and welfare of the public.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PONDER, TEXAS, THAT:

Section 1. That all matters in the preamble are found to be true and correct and are incorporated into the body of this Resolution.

Section 2. The Town Council hereby approves and ratifies the Town Staff's decision to make additional expenses to address the defective and incomplete work of Fryer Construction and to contract with a new contractor for the completion of the emergency repair work on the Wastewater Treatment Plant. These approvals are deemed necessary to preserve and protect the public health or safety of the Town's residents.

Section 3. That Town Staff is authorized and directed to enter into an agreement for the completion of the Wastewater Treatment Plant in the amount not to exceed \$_____.

Section 4. This Resolution shall take effect from and after its approval.

APPROVED the 8th day of March, 2021.

Attest:

Approved:

Town Secretary
Sheri Clearman

Mayor
Matthew Poole

Approved as to Form:

Town Attorney
Matthew C.G. Boyle