



Ms. Joanna “Jody” Weaver
Interim City Manager
City of Port Lavaca

Proposal for CDBG-MIT Grant Assistance

September 22, 2023

Ms. Weaver

Mott MacDonald
110 Wild Basin Dr
Suite 100
Austin
TX 78746

T (512) 342 9516
mottmac.com

Mott MacDonald, LLC (MM) is pleased to submit this agreement letter to provide professional engineering services to the City of Port Lavaca (the City). MM understands that the City needs technical information in order to submit grant applications to the Texas General Land Office for grant funding under the GLO Disaster Recovery Mitigation Program. MM will collaborate and support the City to develop a strategy to address funding resources and provide necessary engineering data and documentation until the grant application process is completed for the City of Port Lavaca Corporation Ditch Drainage Enhancement.

If the grant is successfully awarded, Mott MacDonald will negotiate an agreement with the City of Port Lavaca to provide professional engineering services to design this project.

Corporation Ditch Drainage Enhancement.

MM will render the following services in connection with the grant application for the proposed shoreline protection project, called “Corporation Ditch Drainage Enhancement”, under the Coastal Resiliency Program and for the proposed stormwater ditch-drainage project and shoreline stabilization and protection also under the CDBG-MIT Competitive program. Services to be provided include, but are not limited to:

- Review available data relevant to the project.
- Compile, analyze and prepare technical data to meet the grant application needs.
- Work with City staff to identify and prioritize goals and priorities for the project.
- Provide engineering support documentation, including location maps, diagrams and similar technical documentation requested by the grant administrator focused on the Corporation Ditch Drainage Enhancement.
- Provide a detailed project budget, signed by a professional engineer.



- Review the draft application and provide QA/QC reviews to the application.
- Attend telephone calls or meetings to assist City staff and the grant administrator in developing and finalizing the grant application.
- Review and approve the final documents and technical information in the final version of the grant application.

The estimated fee for these services are:

Grant Application, Corporation Ditch Drainage Enhancement Project:\$10,000

If the City agrees with these statements for the grant application needs, please sign and return a copy of this agreement. Please contact Josh Carter at 504-383-9785 or joshua.carter@mottmac.com if you have any questions or would like to discuss this proposal.

Thank you for the opportunity



Josh Carter, PE, D.CE
Vice President
504-383-9785
512-289-3857
joshua.carter@mottmac.com

General Terms and Conditions for Clients

Article 1 - Implementation of the Purchase Order: The City of Port Lavaca ("Client") hereby engages Mott MacDonald ("Consultant") and Consultant agrees, in accordance with the terms of Consultant's Proposal dated September 22, 2023 (hereinafter "the Proposal") and these General Terms and Conditions (hereinafter collectively referred to as "the Agreement") to perform professional consulting services ("Services") as specified herein.

Article 2 - Standard of Care Consultant shall perform its Services in accordance with that same standard of care practiced by reasonable and prudent professional engineers providing the same or similar services in the same geographic locality. Consultant does not guarantee the accuracy of any estimates of costs of construction that may be requested and shall not be responsible for any costs incurred exceeding any such estimates. Consultant shall be responsible for the safety of its own employees and those of its subcontractors, but shall not be responsible for safety of others on any project site.

Article 3 - Payment

- 3.1 Consultant may invoice the Client in accordance with the method set forth in Consultant's Proposal. The Client shall pay Consultant for each invoice within the time specified therein, or if no time is specified, within thirty (30) days of the date of the invoice.
- 3.2 If any item or part of an item of an invoice of Consultant is disputed or subject to question by the Client, the payment by the Client of that part of the invoice which is not contested shall not be withheld on those grounds and the provisions of section 3.1 shall apply to such part and also to the disputed or questioned item to the extent that it shall subsequently be agreed or determined to have been due to Consultant. The provisions of section 3.1 shall apply to all disputed amounts finally determined payable to Consultant.
- 3.3 In the event the Client fails to make any payments to Consultant when such payments are due pursuant to the provisions of this Agreement, interest shall accrue on such late payments from the date due to the date of payment at the then prime rate of Consultant's bank plus 1 1/2% per annum, or as otherwise agreed in writing, and Consultant may suspend the performance of the Services until such payment is received.

Article 4 - Warranties CONSULTANTS SERVICES SHALL NOT BE SUBJECT TO ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO FITNESS FOR A PARTICULAR PURPOSE OR THE WARRANTY OF MERCHANTABILITY.

Article 5 - Plans, Specifications and Designs

- 5.1 Reports and other services of Consultant shall be performed by Consultant on the assumption that information furnished by the Client or by any person on behalf of or with instructions from the Client is correct, and Consultant shall not be liable for any loss, damage or extra cost arising from any inaccuracy in such information.
- 5.2 If any information furnished by the Client is determined by Consultant to be inaccurate or incomplete, Consultant shall notify the Client of the information which is inaccurate or incomplete, as the case may be, and Consultant shall be entitled to make any necessary changes in any Reports, design documents or construction documents at the expense of the Client. If the Client becomes aware of any information which is inaccurate or incomplete the Client shall notify Consultant of such information.

Article 6 - Reports and Deliverables

- 6.1 Upon receipt of final payment any reports or deliverables will become the property of the Client whether the Project is to be proceeded with or not. The copyright of the Reports shall be and remain with Consultant. Consultant hereby grants a non-exclusive assignable license under such copyrights to the Client to construct the Project.
- 6.2 Reports, deliverables, or memoranda issued to Client or otherwise resulting from any assignment hereunder are not to be used in whole or in part outside of Client's organization or provided to third parties (including but not limited to being used or provided in connection with any sale or offering for sale of securities, including without limitation stock, bonds, notes or any other instruments or transactions which call for investments, loans or other transfers of money) without the prior written approval of Consultant.

Article 7 - Extra Services The Client shall have the right to request Consultant to perform services in connection with the Project that are in addition to the Services ("Extra Services") and Consultant may, subject to agreement on the payment for such Extra Services, agree to perform such Extra Services, such agreement not to be unreasonably withheld. Consultant shall be paid by the Client for the performance of Extra Services on the same basis and at the same times as Consultant is paid for the Services unless the basis of payment for the Services is a fixed fee in which case the parties shall agree to an equitable adjustment on the fixed fee.

Article 8 - Confidential Information

- 8.1 Consultant shall not disclose any confidential information of the Client relating to the Project communicated to or acquired by Consultant in the course of carrying out the Services which if known by others would have a material and adverse affect on the business and operations of the Client. Consultant shall use such confidential information only for purposes that relate to the performance of the Services and not for any other purpose without the consent of the Client. Similarly, the Client shall not disclose any confidential information of Consultant communicated to or acquired by the Client except as may be required by others who are performing work or services in connection with the Project and who have entered into a confidentiality agreement satisfactory to Consultant.
- 8.2 Confidential information shall not include any information which (a) was at the time of disclosure by the originating party (hereinafter the "Disclosing Party:") to the party to whom the Disclosing Party intended it (hereinafter the "Receiving Party" or thereafter became part of the public domain through no act or omission of the receiving party; or (b) became available to the Receiving Party from a third party who did not acquire such confidential information under an obligation of confidentiality either directly or indirectly from Receiving Party; or (c) was known to the Receiving Party at the time of disclosure thereof by the Disclosing Party; or (d) was required to be disclosed by law.

Article 9 - Insurance

- 9.1 Consultant shall obtain and maintain the following types and amounts of insurance coverage: workers compensation-statutory; commercial general liability \$1million per occurrence/aggregate; automobile liability \$1 million per occurrence/aggregate; professional errors and omissions \$1 million per claim/aggregate.
- 9.2 During the period in which the Services are being performed, the Client shall at its own expense obtain and maintain insurance to limits which are customary for a project of the nature of the Project, including, but not limited to, fire and extended coverage, all risks insurance against physical loss or damage to property included in the Project, general comprehensive liability insurance and automobile insurance. Consultant shall be an additional named insured in the policies maintained by the Client for the Project.

Article 10 - Limitation of Liability and Waiver of Damages

Notwithstanding anything else to the contrary herein, the liability of Consultant to Client under this Agreement (whether by reason of breach of contract, tort or otherwise, including under any applicable indemnification provisions) shall be limited to the lesser of: (a) the amount of service fees actually paid to Consultant under this Agreement; or (b) the sum of \$1,000,000.00. In addition, Client and Consultant hereby waive their respective rights to any and all claims against each other for special, indirect or consequential damages of any nature whatsoever, arising out of or in any way related to the services to be performed under this Agreement.

Article 11 – Indemnifications

Each Party hereby agrees to indemnify and hold harmless the other party against all claims, demands, suits, judgments, liabilities, costs and reasonable attorney fees, to the extent caused by the negligence, gross negligence or wrongful misconduct of the indemnifying Party. This obligation shall include, without limitation, all claims and liens by any and all of indemnifying Party's contractors, agents and employees. In addition, the indemnifying Party shall pay any and all attorneys' fees, expenses, and costs incurred by the other Party which relate to the enforcement of the indemnity conditions and obligations of the indemnifying Party, including without limitation the additional insured protection and other insurance obligations of indemnifying Party, under the Agreement.

Article 12 - Termination

- 12.1 Either party hereto may, at its option, terminate this Agreement upon written notice in the event the other party becomes insolvent, or a receiver is appointed on account of its insolvency or it enters into an arrangement for the benefit of its creditors.
- 12.2 Either party shall be entitled to terminate this Agreement on 15 days written notice to the other party in the event the other party is in material default of its obligations pursuant to this Agreement and such default have not been cured within 15 days following receipt of written notice of such default.

Article 13 - Force Majeure

If either party is impacted in whole or in part by any event of force majeure including without limitation any act of God, war, riot, labor dispute, change in law, terrorism, civil commotion or unrest, flood, strike, fire, or any cause beyond the control of such party (except for financial inability), then such Party so impacted shall be relieved of its obligations herein. Any party so impacted in whole or in part by force majeure shall promptly give the other party notice of the force majeure event including reasonably full particulars in respect thereof. Any party so impacted shall also be entitled to an equitable adjustment of the Agreement, which may include an increase in price, extension of time or other equitable relief as in good faith is reasonable, appropriate and supportable.

Article 14 – Notice

Any notice, request, order, statement or other communication required or permitted to be given hereunder shall be in writing and may be given by delivery to an officer of the other party or by mailing the same by first class mail, postage prepaid, addressed to the other party, to the addresses shown on the Consultant's Proposal. Notice given by facsimile transmission or telex shall be deemed to have been given on the day of transmittal, if transmitted during normal business hours, or on the next business day if transmitted outside of normal business hours. Notice given by mail shall be deemed to have been given on the fifth business day after mailing.

Article 15 - General

- 15.1 This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, understandings or agreements either written or oral made or exchanged between the parties prior to the execution of this Agreement.
- 15.2 Consultant may not assign this Agreement except with the consent of the Client, which consent shall not be unreasonably withheld. Consultant shall not be liable or responsible for any means, methods, sequences, procedures or techniques of construction contractors or to ensure project site safety, such responsibilities and liabilities for construction and/or project site safety resting solely with the Client or parties other than Consultant.
- 15.3 This Agreement shall be governed by and construed in accordance with the laws of the state of the location of the project defined in the Proposal. Before submitting a dispute to the courts, the parties agree to submit such dispute to senior management to attempt to resolve the dispute. Unless otherwise prohibited by law, Client and Consultant waive their right to a jury trial in any litigation resulting from this Agreement.
- 15.4 Nothing in this Agreement shall create or shall be construed so as to create the relationship of principal and agent between the Client and Consultant, and for all purposes Consultant shall be an independent contractor in performing the Services.
- 15.5 No waiver by either party hereto of any breach of any of the covenants herein contained shall take effect or be binding upon that party unless the same be expressed in writing and any waiver so given shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any other future breach.
- 15.6 The invalidity of any provision or unenforceability thereof shall not affect the validity or enforceability of any other provisions hereof.
- 15.7 CLIENT agrees and acknowledges that any and all reports, studies, documents or other material prepared by ENGINEER under this Agreement ("Work Product") are prepared for the sole and exclusive benefit of CLIENT, and not for any third party, including but not limited to any potential investor, financing entity, or purchaser of any of CLIENT's projects ("Third Party"). CLIENT acknowledges and agrees that Work Product may not be provided to, assigned to, or relied upon by any Third Party for the purpose of raising finances or

making an investment decision, or enhancing or maintaining a credit rating, whether under a primary financing, secondary financing, re-financing, equity investment or similar financing. In the event that CLIENT desires to have a Third Party rely on Work Product, CLIENT acknowledges and agrees that such circumstances may require the execution of a modification to this Agreement or execution of a separate form of agreement meeting ENGINEER's required terms and conditions applicable to such circumstances. Any Work Product may also include a disclaimer providing notice of the limitations on the use and distribution of such Work Product.

15.8 The provisions of Articles 1, 2, 3, 6, 8 (Article 8 for a period of Five (5) years), 10, 14 and 15.7 shall survive the suspension or termination of this Agreement.


CLIENT

By: _____

Print or Type Name and Title

Dated: _____

MOTT MACDONALD, LLC

By:  _____

Josh Carter, PE, Vice President

Print or Type Name and Title

Dated: 9/22/2023