

MATAGORDA BAY MITIGATION TRUST

CONTRACT COVER/SIGNATURE PAGE

TITLE OF CONTRACT 081: Purchase of Kitchen Tract on Lavaca Bay for Conservation and Improve Public Access to the Waterfront

This Contract is entered into by the Matagorda Bay Mitigation Trust (herein referred to as “the Trust”) and the following named Recipient:

THE TRUST:

Matagorda Bay Mitigation Trust
P. O. Box 1269
Poth, Texas 78147-1269
Email: Trustee@mbmtrust.com
Contact Person: Steven J. Raabe, Trustee

RECIPIENT:

City of Port Lavaca
202 N. Virginia Street
Port Lavaca, TX 77979
EMAIL: jweaver@portlavaca.org
Contact Person: JoAnna P. Weaver, P.E.

The Recipient (“Recipient”) agrees to provide Mitigation Project Work and Services (“Mitigation Project”) in compliance with this contract (“Contract”) and all applicable federal and state laws, regulations, and rules. In accordance with the General Terms & Conditions, it is understood and agreed by both parties hereto that the Trust’s obligations under this Contract are contingent upon Recipient’s compliance with this Contract and federal and state law regulations and rules. This Contract, which constitutes promised performances by the Recipient, consists of the following documents:

- Contract (Cover Sheet/Signature Page)
- General Terms and Conditions
- Statement of Mitigation Project (Attachment A)
- Budget (Attachment B)
- Invoice Format (Attachment C)

The Recipient hereby acknowledges that it has read and understands this entire Contract. All oral or written agreements between the parties hereto relating to the subject matter of this Contract that were made prior to the execution of this Contract have been reduced to writing and are contained herein. The Recipient agrees to abide by all terms and conditions specified herein and certifies that the information provided to the Trust is true and correct in all respects to the best of its knowledge and belief.


CONTRACT PERIOD: FROM: February 1, 2025 **UNTIL:** May 31, 2027

FUNDING: This Contract may not exceed \$479,500.00 (“funds”).

APPROVED:

MATAGORDA BAY MITIGATION TRUST

CITY OF PORT LAVACA

BY: 

NAME: Steven J. Raabe
TITLE: Trustee
DATE: January 19, 2025

BY: _____
NAME: Jack Whitlow
TITLE: Mayor
DATE: _____

GENERAL TERMS AND CONDITIONS

I. PARTIES

- A. Trustee of the Matagorda Bay Mitigation Trust herein referred to as “Trustee” or “Trust” as applicable and “Recipient,” have made and entered into this Contract herein referred to as “Contract.”
- B. Recipient represents and guarantees that it possesses the legal authority to enter into this Contract, receive the funds authorized by this Contract, and to perform the work and services described on Attachment “A” comprising the Mitigation Project (“Mitigation Project”) the Recipient has obligated itself to perform under this Contract, including subsequent contract amendments or modifications. As may be applicable to Recipient, the Recipient shall comply with appropriate federal and state licensing or certification requirements.
- C. The persons signing this Contract on behalf of the parties hereto warrant that they are the duly representatives authorized to execute this Contract and to validly bind their respective parties to all terms, conditions, performances and provisions herein set forth.

II. PURPOSE

This Contract sets forth the terms and conditions upon which the Trust agrees to provide funds (“funds”) to the Recipient to perform the Mitigation Project.

III. INDEPENDENT CONTRACTOR

- A. It is understood and agreed by both parties that the Trust is contracting with Recipient as an independent contractor and that Recipient is and shall be liable to its own employees and is responsible for its own risk of loss.
- B. To the extent allowed by Texas law, the Recipient agrees to indemnify the Trustee and Trust against all disallowed cost or other claims which may be declared by the Trustee occurring in connection with the Mitigation Project to be performed or administered by the Recipient under this Contract.
- C. Employees of Recipient are not employees of the Trust. Employees of Recipient are subject to the exclusive control and supervision of Recipient and Recipient is solely responsible for employee payroll and claims arising therefrom.

IV. FUNDS

- A. Funds and Payment Disbursements

1. Trust agrees to pay Recipient in accordance with the approved budget structure set forth in Attachment B and other provisions of this Contract and such payment shall not exceed the amount specified in the Contract Cover/Signature Page.
2. Recipient agrees that it shall not utilize funds for administration or overhead expenses in an amount that exceeds fifteen percent (15%) of the approved budgeted project salaries of Recipient. Recipient shall ensure salary amounts charged to the project are reasonable and solely for the project(s) identified.
3. Funds will be disbursed to Recipient as follows:
 - a. Mitigation Project Work Plan. The work plan for the execution of the Mitigation Project is described in Attachment A and includes the following:
 - i. Details regarding the specific work and services to be performed;
 - ii. A schedule of estimated time to perform each stage of the Mitigation Project;
 - iii. A budget to perform the Mitigation Project as shown in Attachment B; and
 - iv. Such other information requested by Trustee.
 - b. Invoicing. Upon completion of each stage of the Mitigation Project or as otherwise agreed, the Recipient shall electronically submit an invoice to the Trust with details about the work and services performed, the date(s) performed and a list of all expenditures in the format shown on Attachment C and such other information requested by the Trust. Trustee may approve payment of the invoice or upon review request additional information the Trustee deems necessary for clarification or other purposes prior to payment. Trustee may withhold payment until satisfied that the invoice represents accurately the contents therein. Prior to, during, or subsequent to approval of payment of invoices to Recipient, the Trustee shall have the right to conduct an audit or investigation regarding such invoices or other information provided by Recipient.
 - c. Progress Reports. Recipient shall provide Trust with a progress report with each invoice detailing the Mitigation Project activities performed to date together with a list of all expenditures with supporting documentation such as paid invoices, copies of subcontracts, reports maintained internally by Recipient, such reports to include information regarding potential issues that affect the Mitigation Project and reports submitted to Recipient's governing body and such other information requested by Trustee.
 - d. Final Report. Recipient shall provide Trust with a final report detailing the Mitigation Project as completed which shall include copies of all reports

maintained internally by Recipient, such reports to include information regarding the resolution of issues that affected the Mitigation Project and reports submitted to Recipient's governing body reflecting the completion of the Mitigation Project and such other information requested by Trustee.

- e. Additional Reports. Recipient agrees to provide follow-up information and documentation to any report submitted to Trust as Trustee deems reasonable and necessary and such other information requested by Trustee from time to time.
4. Recipient agrees to return, refund, or repay to Trust any sum which Trustee determines represents an overpayment to Recipient or represents funds not used in accordance with the terms of this Contract. Trustee's determination of overpayment or funds not used in accordance with the terms of this Contract shall constitute an event of potential default more fully described in Section XIV hereinafter.
5. Trustee may withhold funds to Recipient if Trustee determines that Recipient has not complied with the terms Contract. Trustee's determination to withhold funds due to Recipient's failure to comply with the terms of the Contract shall constitute an event of potential default more fully described in Section XIV hereinafter.
6. Recipient agrees that it will not receive duplicate funds from another source for any of the items included in the budget set forth in Attachment B.
7. Following Trustee's approval of the Final Report, any portion of the funds not expended or obligated in accordance with this Contract shall be returned to the Trust by Recipient.
8. This Contract shall not be construed as creating any future financial obligation or debt of or on behalf of Trust. It is understood and agreed that funds may be provided to Recipient only from funds allocated for this Mitigation Project which shall be distributed subject to compliance with this Contract and upon such timing as deemed reasonable by the Trustee.

V. RECORDS MANAGEMENT

- A. Recipient shall maintain all books, records, documents, papers, and other evidence related to Mitigation Project implementation, including financial records, reports maintained internally by Recipient and reports submitted to Recipient's governing body, and Mitigation Project performance information, in accordance with generally accepted business and accounting practices, consistently applied. Recipient shall also maintain the financial data used in the preparation of support for any cost (direct and indirect) information or analysis for the Contract or for any negotiated subcontract. Recipient shall also maintain a copy of any negotiated

subcontract. Recipient shall also maintain a copy of any cost information or analysis submitted to Trustee. Recipient agrees to the disclosure and access of Trustee, or any authorized representative of Trustee to all such books, records, documents, papers, and other evidence for the purposes of review, inspection, audit, excerpts, transcriptions and copying during normal business hours.

- B. Recipient understands that acceptance of funds under this Contract acts as acceptance of the authority of the Trustee or his authorized representative, to conduct an audit or investigation in connection with those funds. Recipient further agrees to fully cooperate with the Trustee, or his authorized representative in the conduct of the audit or investigation, including providing all records requested. Recipient shall ensure that this clause concerning the audit of funds accepted under this Contract is included in any subcontract it awards.
- C. Recipient shall maintain such records and be subject to these audit requirements during the performance under this Contract for a period of five years after Trustee provides written approval of the Final Report. However, if Recipient is aware of any litigation, claim, negotiation, audit, cost recovery or other action, including actions concerning costs of items to which an audit exception has been taken, relating to the Mitigation Project that started before the expiration of the five-year record retention period, Recipient shall maintain all records and be subject to such audit requirements until completion of the action or resolution of all issues which arise from any litigation, claim, negotiation, audit, cost recovery or other action, or until the end of the five-year record retention period, whichever is later. The Trustee will have access to records at any reasonable time for as long as the records are maintained by Recipient. Recipient agrees to transfer records in its custody to Trustee upon his request. This paragraph survives termination of this Contract.
- D. Failure to comply with all records management and reporting requirements of this Contract shall constitute an event of potential default more fully described in Section XIV hereinafter.

VI. FINANCIAL MANAGEMENT

Recipient shall have a financial management or accounting system which accounts for costs in accordance with generally accepted accounting standards and principles. Recipient shall allow Trustee's review of the adequacy of the financial management system. Failure to maintain the financial accounting requirements shall constitute an event of potential default more fully described in Section XIV hereinafter. The accounting requirements shall include:

- A. Provide for the identification of costs in accordance with the approved project budget (Attachment B) and segregation of Mitigation Project costs between the budget categories;

- B. Maintain records which adequately identify the source and application of funds provided under this Contract. Such records must contain information pertaining to awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income;
- C. Provide internal control by maintaining effective control and accountability for all cash, real and personal property and other assets paid for under this Contract. All such property acquired with Project funds must be adequately safeguarded and used solely for authorized purposes;
- D. Provide budget control by comparing outlays and expenditures with budgeted amounts for the funds provided by the Trust both by category and by task as shown in Attachment C;
- E. Support accounting records with source documentation, including cancelled checks, paid invoices, payrolls, time and attendance records, and subcontract documents;
- F. Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of this Contract or applicable statutes; and
- G. Permit preparation of reports required by this Contract or requested by Trustee.

VII. SUBCONTRACTORS

- A. Recipient may subcontract any portion of the Mitigation Project for purposes of this Contract.
- B. Recipient shall be responsible for all acts and omissions of all subcontractors performing or furnishing any portion of the Mitigation Project under a direct or indirect contract with Recipient to the extent provided under applicable laws and regulations. Nothing in this Contract shall create for the benefit of any such subcontractor any contractual relationship between Trust and any such subcontractor, nor shall it create any obligation on the part of Trust to pay or to see to the payment of any money due to any such subcontractor.
- C. Recipient shall be solely responsible for scheduling and coordinating the work of subcontractors performing or furnishing any portion of the Project under a direct or indirect contract with Recipient. Recipient shall require all subcontractors performing or furnishing any portion of the Project who desire to communicate with Trustee to communicate through Recipient with Trustee.
- D. All work performed for Recipient by a subcontractor shall be pursuant to an appropriate written contract between Recipient and the subcontractor which is not inconsistent with the terms and conditions of this Contract. Each subcontractor

shall be provided a copy of this Contract prior to initiating any portion of the Project.

VIII. PUBLICATIONS, NEWS RELEASES, AND OTHER PUBLIC ANNOUNCEMENTS

All public reports, news releases, other publicity, and other materials prepared for publication pursuant to or as a result of this Contract shall acknowledge the Matagorda Bay Mitigation Trust as the funding source. Public reports or other publications, news releases, and other publicity issued by Recipient about the Mitigation Project shall be provided to Trustee.

IX. RIGHTS IN DATA AND OTHER MATERIALS

- A. Recipient and the Trust agree that any data collected as a result of this Contract shall be jointly owned by Recipient and the Trust. Recipient and Trust agree that each shall have complete and unlimited access and use to all data collected as a result of this Contract. Further, at the termination of the Trust, or at such other time deemed appropriate by Trustee, the Trustee has the right, but not the obligation to transfer any interest in the data to Recipient.
- B. Recipient shall act to ensure all subcontractors used for this Mitigation Project are advised of the rights in data and other materials described herein and that the subcontractors are prohibited from asserting any rights at common law or in equity or otherwise seeking to establish any claim to statutory copyright in any data, material or information developed under this Contract.
- C. Recipient and the Trust agree that in addition to the joint ownership by Recipient and the Trust of any data collected as a result of this Contract, that in the event any invention or intellectual property is created as a result of this Contract in which the Recipient retains title, Trust shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced the subject invention throughout the world. Materials developed as a result of this Contract will be made available to the Trustee in written and electronic formats upon request.
- D. The Recipient has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Recipient's obligations to the Trust under this Contract. If a subcontractor refuses to accept terms affording the Trust's such rights, the Recipient shall promptly bring such refusal to the attention of the Trustee.
- E. Recipient shall place a section in all subcontractor contracts that complies with Section IX.

X. AGREEMENT TO HOLD HARMLESS AND INDEMNIFICATION

A. TO THE EXTENT PERMITTED BY APPLICABLE TEXAS LAW, RECIPIENT AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE TRUST, TRUSTEE AND AGENTS, EMPLOYEES, CONSULTANTS, ACCOUNTANTS, ATTORNEYS AND OTHER PROFESSIONALS AND REPRESENTATIVES ENGAGED OR EMPLOYED BY THE TRUST TO THE FULL EXTENT PERMITTED UNDER FEDERAL AND STATE LAW FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION TO THE EXTENT ARISING FROM THE MISCONDUCT, NEGLIGENCE, OMISSIONS, OR RECKLESS ACTS OF RECIPIENT OR ITS EMPLOYEES, OFFICERS, OFFICIALS OR AGENTS OR ITS SUBCONTRACTORS IN CONNECTION WITH THE PERFORMANCE OF SERVICES OR WORK BY RECIPIENT UNDER THIS CONTRACT. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS CONTRACT.

B. TO THE EXTENT PERMITTED BY APPLICABLE TEXAS LAW, THE RECIPIENT AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE TRUST, TRUSTEE AND AGENTS, EMPLOYEES, CONSULTANTS, ACCOUNTANTS, ATTORNEYS AND OTHER PROFESSIONALS AND REPRESENTATIVES ENGAGED OR EMPLOYED BY THE TRUST TO THE FULL EXTENT PERMITTED UNDER FEDERAL AND STATE LAW FROM ANY AND ALL CLAIMS AND LOSSES ACCRUING OR RESULTING TO RECIPIENT AND TO ANY AND ALL SUBCONTRACTS, MATERIALS, PERSONS, LABORERS AND AN OTHER PERSONS, FIRMS OR CORPORATION, FURNISHING OR SUPPLYING WORK, SERVICES, MATERIALS, OR SUPPLIES IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT.

XI. CONFLICT OF INTEREST

A. Recipient shall maintain an internal policy regarding conflicts of interest and shall adhere to said policy with respect to any potential or actual organizational or personal conflict of interest between Recipient and its employees or any

subcontractor with respect to this Contract. Further, such internal policy shall include a prohibition that funds received by Recipient from the Trust shall not be used to pay, reimburse or otherwise give in any manner or for any purpose to the Plaintiffs and Defendants in Cause No. 6-17-CV-00047, In San Antonio Bay Estuarine Waterkeeper and S. Diane Wilson vs. Formosa Plastics Corp., Texas, and Formosa Plastics, Corp., U.S.A., in the United States District Court for the Southern District of Texas, Victoria Division.

- B. Recipient shall notify Trustee regarding any potential or actual organization or personal conflict of interest involving Recipient's employees or subcontractors and shall keep the Trustee informed regarding any actions taken or decisions made in connection with such employee or subcontractor. In the event that the organizational or personal conflicts of interest does not become known until after performance on the Contract begins, Recipient shall notify Trustee of the conflict and any action taken as soon as Recipient becomes aware of the conflict.
- C. Trustee has sole discretion to make the final determination as to whether an organizational or personal conflict of interest exists, and if the conflict of interest requires action beyond the action taken by Recipient, whatever action that may be. Trustee may request Recipient to terminate any subcontractor in whole or in part, if Trustee deems such termination necessary to avoid an organizational or personal conflict of interest.
- D. If Recipient was aware of an actual organizational or personal conflict of interest prior to award or discovered an actual conflict afterward and did not disclose it or misrepresented relevant information to Trust, Trustee, at his sole discretion, may terminate this Contract for default or pursue such other remedies as may be permitted by law or this Contract.
- E. Recipient shall place a section in all subcontractor contracts that complies with Section XI.

XII. VENUE

Recipient acknowledges and agrees that this Contract is being performed in Calhoun County, Texas. Recipient agrees that any permissible cause of action involving this Contract arises solely in Calhoun County.

XIII. ENTIRE AGREEMENT

This Contract constitutes the entire and full agreement between the Recipient and the Trust, and all previous oral or written agreements relating to the subject matter of this Contract between the Trust and Recipient have been superseded, reduced to written form, and are incorporated herein.

Recipient and Trust expressly agree and understand that all future, oral agreements, representations or modifications shall not have any legal binding effect unless and until reduced to writing and executed by both Recipient and Trustee, except for amendments by operation of law as provided in Section XVII in this Contract.

XIV. DEFAULT AND REMEDIES

- A. Recipient shall be considered in default under this Contract if any one or more of the following events occur, provided that Recipient has received written notice of such potential default from Trustee and has failed to cure the potential default within thirty days from the date of said notice. If Recipient has begun a good faith effort to cure the potential default within the thirty-day period, Recipient may be allowed additional time, if deemed reasonable by Trustee in his sole discretion, as needed to cure the potential default.
- B. Event of Potential Default. Trustee will, in his sole discretion, determine if an Event of Potential Default exists. Each of the following shall constitute an Event of Potential Default under this Contract:
1. If Recipient makes an assignment for the benefit of creditors or takes any similar action for the protection or benefit of creditors.
 2. If at any time Recipient knowingly, negligently, or intentionally makes any representation to Trustee which is incorrect in any material respect.
 3. If Recipient knowingly, negligently, or intentionally submits any request for payment to Trust which is incorrect in any material respect.
 4. If Recipient knowingly, negligently, or intentionally submits any report or certification to Trust related to the Mitigation Project which is incorrect in any material respect.
 5. If Recipient utilizes funds which Trustee determines represents an overpayment to Recipient or represents funds not used in strict accordance with the terms of this Contract.
 6. If Recipient fails to perform the Mitigation Project described on Attachment A in any material aspect.
 7. If Recipient fails to comply with the reporting and invoicing requirements under this Contract.
 8. If Recipient fails to maintain the records management requirements under this Contract.

9. If Recipient fails to maintain the financial accounting requirements under this Contract.
10. If Recipient fails to maintain the insurance requirements under this Contract.
11. If Recipient fails to comply with any term or provision contained in this Contract.

- C. Remedies. Upon the occurrence of any such Event of Potential Default and failure of Recipient to cure such potential default as provided above, Trustee may declare Recipient in default in writing and may, as Trustee determines appropriate, withhold payments to Recipient or require Recipient to return, refund or repay any payments received prior or subsequent to the event of default. In addition, Trustee may terminate this Contract and avail himself of any appropriate legal remedies, including recovery of attorney's fees and expenses incurred in enforcing any such legal remedies.
- D. No Waiver. A waiver of any Event of Potential Default shall not be considered a waiver of any other or subsequent Event of Potential Default, and any delay or omission in the exercise or enforcement of the rights and powers of Trust shall not be construed as a waiver of any rights or powers.

XV. USE OF FUNDS AND LIMITATIONS ON EXPENDITURES

Funds distributed or allocated to Recipient under this Contract, or any modification thereto, shall not be used to support other programs operated by the Recipient under a different contract. Nor can such funds be carried over to a new contract or amended contract without the written permission of the Trustee.

XVI. LIMITATION ON LIABILITY

The Recipient understands and agrees that the Trust shall not be liable for expenditures made in violation of terms of this Contract, any laws, regulations, rules, or policies, or any other laws or regulations applicable to the Mitigation Project performed under this Contract. The Recipient also agrees that the Trust shall not be liable for any cost incurred by Recipient which exceeds the funding amount provided hereinabove. The Recipient shall be liable for such funds and shall repay such funds even if the improper expenditure, if any, was made by a subcontractor of the Recipient.

XVII. AMENDMENTS BY OPERATION OF LAW

Any alterations, additions, or deletions to the terms of this Contract which are required by changes in Federal law, State law, by regulations, are automatically incorporated into this Contract as if set forth fully, without written amendment hereto, and shall become effective on the effective date designated by such law, regulation, or policy.

XVIII. COMPLIANCE WITH LAW.

Recipient covenants and agrees to comply with all applicable Federal, State and local laws, and all applicable Federal and State regulations. Recipient shall also be responsible to ensure that its' subcontractors shall comply with applicable Federal, State and local laws, and all applicable Federal and State regulations.

XIX.PATENT INDEMNITY

To the extent allowed by Texas law, the Recipient shall indemnify the Trustee, the Trust and its consultants, agents, attorneys, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. §181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under this Contract, or out of the use or disposal by or for the account of the Trust of such supplies or construction work.

XX. DISCLOSURE OF INTEREST

Recipient represents and warrants that the Trustee, the Trust or its' consultants, agents or attorneys have no ownership in Recipient or Recipient's subcontractors. Further, Recipient shall ensure subcontractor's compliance with Section XX.

XXI. SEVERABILITY

If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this Contract shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this Contract for it is the definite intent of the parties that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose, so long as the invalidated matter does not substantially deprive a party of the benefit of this Contract.

XXII. INSURANCE

Recipient shall maintain during the term of this Contract and shall provide Trustee with proof of the following:

1. General liability insurance which includes bodily injury, property damage, personal and advertising injury, and products and completed operations is required by the Recipient and those working on their behalf. The required minimum coverage limit shall be \$1,000,000 per occurrence with \$2,000,000

aggregate. General Liability must provide Additional Insured, Primary and Non-Contributory, and Waiver of Our Right to Recover from Others status in favor of The Trust.

2. Automobile liability for all Owned, Hired and Non-Owned vehicles of the Recipient and those working on their behalf in conducting its performance under this Contract is required. Such automobile insurance must provide at a minimum \$1,000,000 Combined Single Limit. A reasonable deductible is allowable. The Automobile policy must provide Additional Insured, Primary and Non-Contributory, and Waiver of Our Right to Recover from Others status in favor of The Trust.
3. Recipient shall secure Errors and Omissions insurance coverage in the amount of \$2,000,000.
4. Workers Compensation Insurance providing Statutory Limits and Employers Liability Insurance with limits of \$1,000,000 Each Accident; \$1,000,000 by Disease – Each Employee; and \$1,000,000 by Disease – Policy Limit or similar insurance acceptable by The Trust shall be required for all of the Recipient’s employees and any other entity working for or participating on behalf of the Recipient. All Worker’s Compensation insurance or similar insurance provided by the Recipient or any other entity working for or participating on behalf of the Recipient must include a Wavier of Our Right to Recover from Others in favor of The Trust.
5. The Trust shall not be responsible for the payment of premiums or assessments on such policies.
6. Certificates of insurance showing such coverages as required herein shall be submitted to Trustee within 20 days of contract execution.
7. In the event any insurance policy as specified herein is cancelled or in the event Recipient fails to maintain the minimum insurance limits as specified herein or in the event recipient fails to provide certificates of insurance, such event shall constitute an event of potential default more fully described in Section XIV hereinabove.

XXIII. ASSIGNMENT

This Contract shall be binding on and inure to the benefit of the Trust and Recipient and their respective successors and permitted assigns. This Contract may not be assigned by Recipient without the prior written consent of the Trustee.

XXIV. NOTICES/COMMUNICATIONS

All notices, communications, and requests given to or made upon the Trust and Recipient hereto shall, except as otherwise specified herein, be in writing and shall be delivered or mailed to such party at the notice addresses specified on the Contract Cover/Signature Page. The Trust and Recipient may change their notice addresses but shall provide immediate notice to the other and shall provide such notice in writing to the other party.

XXV. DISPUTES

In the event a Recipient has a dispute with the Trust or in the event any Recipient seeks to file a claim or lawsuit, the Recipient's sole recourse shall be by informal dispute resolution between the Recipient and the Trust and if such informal dispute resolution is not resolved, then the Recipient may seek the alternative dispute resolution as provided herein. The alternative dispute resolution process shall consist of a Mediated Settlement Conference in Calhoun County, to be conducted with the Recipient and the Trust and their legal counsel. The mediator shall be selected by agreement of the Recipient and the Trustee. Should the parties fail to agree on a mediator, an attorney mediator shall be selected by the Administrative Judge of the Calhoun County District Courts. The decision made by a Mediator shall be binding on the Recipient and the Trust, and there shall be no further appeal but the decision shall be enforced, if necessary, by the District Court of Calhoun County. The Recipient agrees to submit to such binding alternative dispute resolution as provided herein. Further, Recipient's sole remedy under the informal dispute resolution and under the binding alternative dispute resolution shall be limited to all, none or part of the remaining balance, if any, of Funds allocated to it under the terms of this Contract with the Trust; however, the Trust may recoup any Funds distributed to the Recipient through the same alternative dispute resolution procedure described herein. Any remedy under the mediation shall be sole province of the Mediator unless the Recipient and Trustee agree otherwise. In no event shall a Recipient be entitled to any other remedy; including, but not limited to, actual damages, compensatory damages, punitive damages, exemplary damages, interest, costs of court, actual expenses and attorneys' fees. These procedures shall be binding on Recipients notwithstanding any conflict with any law or regulation.

XXVI. PERIOD OF CONTRACT

This Contract will remain in effect until the completion of the five-year record retention period after the Trustee provides written approval of the Final Report, unless extended, modified, or terminated by written agreement of the Parties or terminated as provided herein. This provision shall survive termination of this Contract.

END OF TERMS AND CONDITIONS

Matagorda Bay Mitigation Trust (“Trust”)
ATTACHMENT A
STATEMENT OF MITIGATION PROJECT

City of Port Lavaca (“Recipient”)
202 N. Virginia Street
Port Lavaca, TX 77979

Purchase of Kitchen Tract on Lavaca Bay for Conservation and Improve Public Access to the Waterfront

The City of Port Lavaca will use grant dollars from the MBMT to purchase a waterfront property on the bluff of Lavaca Bay known as the “Kitchen Tract” for conservation purposes and to provide a new public access point to Lavaca Bay. The City will contract with a coastal engineer to perform required data collection and engineering to make application to the USACE for a permit to construct a shoreline protection project. With approval of a USACE permit, the City will at that point seek grant funding to construct the permitted shoreline improvements and establish the tract as a designated public park.

Timeline

- October 7, 2024 - Signed a Letter of Intent to purchase contingent upon grant award
- Feb 3, 2025 - sign sales contract with Kitchen heirs, with a 90-day max. due diligence period and pay \$5,000 Earnest money
- April 2025 - close on purchase of property
- May 2025 - award Task Order to Coast & Harbor Engineering to perform data collection and preliminary design necessary for USACE permit application for shoreline protection (bathy, habitat, cultural resources).
- January 2026 - submit USACE permit application

Tasks

- Purchase of property including estimated closing costs - \$255,000
- Data collection and preliminary engineering for USACE Permitting of a shoreline protection project - \$224,500

Matagorda Bay Mitigation Trust ("Trust")

ATTACHMENT B

BUDGET

City of Port Lavaca ("Recipient")

202 N. Virginia Street

Port Lavaca, TX 77979

Contract Budget

Real Estate - \$ 255,000.00

Contractual/Consultants - 224,500.00

Total Contract Budget - \$479,500.00

RECIPIENT WILL SUBMIT INVOICES TO TRUST (mark appropriate option):

Monthly

OR

Quarterly

Matagorda Bay Mitigation Trust (“Trust”)

ATTACHMENT C

INVOICING INSTRUCTIONS

Below are the instructions on how to complete and submit your invoice. All invoices must be submitted electronically. You do not need to submit a hard copy unless specifically requested to do so. Invoices that don’t balance or that lack proper supporting documentation will be delayed, so please ensure that your invoice is in order prior to submission.

The Recipient’s Contract includes the budget and invoice form (Attachment C). The Contract’s budget is tracked in two ways: Budget by Contract Category and Budget by Task.

Each invoice submitted for payment must track the project costs in compliance with the Recipient’s Contract as outlined in Attachment C.

Each field at the top and bottom of the Invoice form must be completed and the invoice must be signed and dated by the person authorize to certify that the invoice is true, correct and complete and in accordance with the Contract.

Each invoice should have the amounts being billed for the current billing period (“This Invoice” columns) and the accumulated amount billed for this Contract to-date, including the current billing period (“Contract To-Date” columns). Please take special note that the two budgets – Budget by Contract Category and Budget by Task – must always equal.

Supporting documentation must be attached to the invoice for each line item being billed in the sequence such items appear in the Budget by Contract Category section. Each supporting document must be clearly labeled *and in the proper budget sequence* in order allow our audit of the invoice and its approval for payment. Failure to properly label or sequence the supporting documentation will cause a rejection of the invoice, so this is very important.

All invoices are to be submitted electronically (email) to: Trustee@mbmTrust.com.

If a Recipient has any questions whatsoever about invoicing procedures please feel free to contact the Trust office at 361-200-1456 or write to Administrator@mbmTrust.com.

Effective Date: June 1, 2020

Invoice to Matagorda Bay Mitigation Trust

Date of Invoice:

Recipient Name: City of Port Lavaca

Billing Period This Invoice:

Contract #: 081

From To

Contract Amount: \$ 479,500.00

Invoice Amount: \$

Payment Request No:

Is this a final payment application?

Y N

INVOICE RECAP*

BUDGET BY CONTRACT CATEGORY				BUDGET BY TASK			
Category	This Invoice	Contract To-Date	Total Budget	Task	This Invoice	Contract To-Date	Total Budget
Real Estate			\$255,000.00	Task 1 - Property Purchase			\$255,000.00
Contractual/Consultants			224,500.00	Task 2 – Permitting			\$224,500.00
Total			\$479,500.00				
*Please see invoicing instructions							
				Total			\$479,500.00

Remittance Address: City of Port Lavaca, 202 N. Virginia Street, Port Lavaca, TX 77979

Name of Payment Contact Person and contact information: JoAnna P. Weaver, P.E., Interim City Manager

Certification: I certify that the amounts being invoiced are true, correct, and complete in every material respect.

Signature and Title of Authorized Representative

Date Signed

Print Name and Title of Authorized Representative

For Office Use Only
