

---

## CITY OF PORT LAVACA

---

**COUNCIL MEETING:** FEBRUARY 13, 2023

**AGENDA ITEM** \_\_

**DATE:** 02.08.2023  
**TO:** HONORABLE MAYOR AND CITY COUNCIL MEMBERS  
**FROM:** JODY WEAVER, INTERIM CITY MANAGER  
**SUBJECT:** MATAGORDA BAY MITIGATION TRUST \$200,000 GRANT AWARD

---

### **BACKGROUND:**

The Matagorda Bay Mitigation Trust issued Requests for Proposals on September 1, 2022 for their 2022-23 funding cycle. I prepared the attached application requesting \$200,000 for Phase 1 engineering costs for needed shoreline protection along approximately 1,800 linear feet of the east side of the former City Landfill at the Harbor of Refuge. Earlier in the year, we submitted this project for inclusion in the GLO 2023 Coastal Resiliency Master Plan and it was accepted. This Phase 1 engineering will accomplish 30% engineering design, the application for a GLO CEPR grant and submittal-ready Regulatory permitting. More information is available in the application document.

On January 4, 2023 I was notified that our project application entitled "Harbor of Refuge Old Landfill Shoreline Erosion Response and Protection – Phase 1 Engineering" was approved for funding. (*award letter attached*)

Attached is a copy of the contract with the Matagorda Mitigation Trust. Anne Marie made a few minor edits which were OK'd by the Trust.

### **PROJECT STATUS UPDATE:**

As you are aware, we are working with TCEQ on an immediate resolution to the erosion being seen on the northeast length of this shoreline. We have proposed a solution that involves cutting back the bank to a slope that is less susceptible to erosion. If approved, costs for this initial work will likely be paid for with CDBG-Mitigation appropriations. In our CEPR grant application, we are planning to apply to construct a concrete revetment mat that would provide long-term protection of this shoreline. If the CEPR grant application is approved, since the project is in the 2023 CRMP, GLO would use GOMESA funds to pay for 100% of the construction costs along with 60% of the engineering costs.

**RECOMMENDATION:** It is staff's recommendation to approve the contract with the Matagorda Mitigation Trust for \$200,000 in grant dollars.

### **ATTACHMENTS:**

- Submitted RPFP 2022-2023-1 application form
- Matagorda Bay Mitigation Trust award letter dated 1.4.2023
- Matagorda Bay Mitigation Trust contract

COVER SHEET

MATAGORDA BAY MITIGATION TRUST  
REQUEST FOR PROPOSALS (RFP)  
For  
2022-2023 Funding Cycle

**RFP # 2022-2023-1**

Due October 17, 2022 5:00 P.M. C.S.T.

Respondent:

**City of Port Lavaca**



**202 N. Virginia Street  
Port Lavaca, Texas 77979  
[www.portlavaca.org](http://www.portlavaca.org)**

prepared by

JoAnna P. Weaver, P.E.

Interim City Manager

Contact phone: 361-827-3601

Contact fax: 361-552-6062

Contact email: [jweaver@portlavaca.org](mailto:jweaver@portlavaca.org)

Matagorda Bay Mitigation Trust  
RFP for 2022-2023 Funding Cycle Projects

PART IV



MATAGORDA BAY MITIGATION TRUST

**Deadline:**  
**October 17, 2022**  
**At 5:00 PM**

Please contact Steven J. Raabe,  
with any questions.  
Trustee@mbmTrust.com

**APPLICATION FORM - 2022-2023 Funding Cycle**

*(Please address all questions. Include additional pages if necessary)*

1. Program/project contact information:

Name of Lead Investigator/Program Manager:

**JoAnna P. Weaver, P.E.**

Name of organization:

**City of Port Lavaca**

Physical address:

**202 N. Virginia Street, Port Lavaca, TX 77979**

Mailing address (include mail code if applicable):

**same**

Email address: **jweaver@portlavaca.org**

Telephone number: **361-552-9793**

Fax number: **361-552-6062**

Name of Project Manager or Authorized Representative,

if appropriate: **JoAnna P. Weaver, P.E.**

Email address for Project Manager or

Authorized Representative:

**jweaver@portlavaca.org**

\*Note: Notifications will be sent electronically

Check the funding priority that  
applies to your proposed  
project:

**Priority:**

- ☐ Public Education
- ☐ Youth Camps
- ☐ Land for Pollution Prevention
- ☒ Public Access Improvement
- ☐ Environmental Research
- ☐ Environmental Advocacy
- ☐ Habitat Restoration

2. Applicants must be classified as a government or non-profit organization. Provide Federal Tax ID number or IRS Letter of Determination: **Federal Tax ID# 74-6001927**

Matagorda Bay Mitigation Trust  
RFP for 2022-2023 Funding Cycle Projects

3. Program/project name: **Harbor of Refuge Old Landfill Shoreline Erosion Response and Protection\* – Phase 1 Engineering** (30% design and COE permit application)
4. Implementation and conclusion dates of program/project: These proposed dates are based upon the best available information available at this time and may be different based upon actual funding available and timing of COE permit approval.

Phase 1 engineering:

- March 2023 – start of Phase 1 engineering
  - December 2023 – 30% design completion and COE permit application ready
- 

Future phases:

Phase 2 engineering:

- March 2024 – start of Phase 2 engineering
- October 2025 – Bid

Construction:

- December 2025 – Contract Award
- December 2026 - Construction Completion

\* This project is to be included in the 2023 GLO Coastal Resiliency Master Plan and as such GLO would pay 60% of eligible engineering costs and 100% of eligible construction dollars.

5. Amount requested: **\$200,000**
6. Proposed project summary (100 words or less): Land south and west of the City's Harbor of Refuge was used as the Municipal Landfill from 1948 to 1977.

**Land south and west of the City's Harbor of Refuge is a former Municipal Landfill, closed in 1979. Significant erosion has caused trash cells to become exposed along portions of the channel, posing a source of pollution into Lavaca Bay and creating an unsightly mess. The City proposes to construct approximately 1,800 linear feet of shoreline protection to address this issue. This project will be included in the 2023 GLO Coastal Resiliency Master Plan. Phase 1 engineering will provide 30% design, GLO CEPRA grant application and submittal-ready Regulatory permitting.**

7. Brief history and mission statement of the proposing organization (150 words or less):

**The City of Port Lavaca is the county seat of Calhoun County and part of the Victoria, Texas Metropolitan Statistical Area. It was incorporated in 1919 with a Home-Rule charter and a "council-manager" form of government. The 2020 census**



population count of the city is 11,557.

The mission of the City of Port Lavaca is to make Port Lavaca a desirable place to live through quality services, responsible use of public resources, and a progressive attitude toward community development. With enthusiasm, integrity and vision, we will maintain a safe environment and continually improve the quality of life for all citizens.

8. Describe the need for or value of the project and how it addresses the selected funding priority.

This project is needed to respond to significant shoreline erosion that has occurred in recent years which has resulted in the exposure of trash cells which were deposited between 1948 and 1977 when the site was used as the City of Port Lavaca Municipal Landfill. The project will provide protection of this area to eliminate this unsightly source of pollution into Lavaca Bay and thereby improve the experience and use of these waters by fisherman and recreational boaters in and around the Harbor of Refuge. See attached photographs. *- Attachment C*

9. List the goals and objectives of the proposed project:

Specifically, the goals and objectives of the Phase 1 engineering is to perform the engineering necessary to fully scope the elements of the construction project in order to then prepare an application to the United States Corps of Engineers for construction approval and make application for a GLO CEPRA grant.

The construction goals and objectives of the construction project are

- To stop any further erosion of the shoreline and thus stop this source of pollution into the bay
- To provide protection of the shoreline from future erosion/damage from severe weather events
- The protection is proposed to be a combination of revetment and bulkhead in order to provide some access to safe barge loading and offloading operations

10. Describe the methods to be used in the proposed project. Please provide a list of tasks, deliverables and milestones. Please indicate what permits or authorizations are needed to implement project, if any, and if those have been secured:

- March 2023 – start of Phase 1 engineering (Mott MacDonald - Engineer)
- June 2023 - Submit GLO CEPRA grant application\* for Phase 1 & Phase 2 Engineering (*showing in-kind match from the City and the Matagorda Bay Mitigation Trust (if awarded)*). (Mott MacDonald – Engineer)
- December 2023 – 30% design completion and COE permit application ready for submittal. The timing of the actual submittal of the COE permit application will be coordinated with the GLO CEPRA team and COE to

Matagorda Bay Mitigation Trust  
RFP for 2022-2023 Funding Cycle Projects

assure no gaps in funding that may be required if additional engineering is warranted to answer COE questions or concerns. It is anticipated that the COE permit application will be submitted in the spring of 2023 understanding there will be at least 12 months of review time.

\* This project is to be included in the 2023 GLO Coastal Resiliency Master Plan and as such GLO would pay 100% of eligible construction dollars. Assuming a CEPRA grant award, which is probable being that the project will be in the State Master Plan, it will take several months before a contract can be signed and Phase 2 engineering can begin. We have no reason to believe a CEPRA grant application will not be successful since again this project will be in the Coastal Resiliency Master Plan and fits will into the CEPRA funding objectives of shoreline stabilization and debris removal.

-----  
March 2024 – start of Phase 2 engineering / submittal of COE permit application  
June 2024 – Submit GLO CEPRA grant application for Construction  
June 2025 – Engineering Design substantially complete  
October 2025 – Bid  
December 2025 – Construction Contract Award  
December 2026 - Construction Completion

11. Describe the impact the project will have on the areas it benefits and the longevity of those benefits.

**It will remove the visible trash cells which have been exposed due to erosion and keep the plastic, debris and other trash out of Lavaca Bay. The expected design life of the shoreline protection construction would be 40-50 years.**

12. Attach vitae or resume of Lead Investigator/ Program Manager of the proposed project. *See attachment JoAnna P. Weaver, P.E. Interim City Manager Attachment D*

13. Financial information:

a) Total budget for this project: ( <u>Phase 1 Engineering</u> )	\$ 220,000.00
b) Matching funds (in-kind services or cash) ( <i>Not required but desirable</i> ):	\$ 20,000.00
c) Amount being requested from the Trust	\$ 200,000.00

14. Please provide a task and expense budget. Note: Indirect/overhead costs are limited to 15% of salaries charged to the project.

**Total Engineering cost estimate (excludes construction administration) is**

Matagorda Bay Mitigation Trust  
RFP for 2022-2023 Funding Cycle Projects

**\$440,000. The Phase 1 engineering is expected to be 50% of this total number and includes 30% design complete and submittal ready Corps of Engineers Permit Application for construction.**

**Tasks included in the \$440,00 full engineering budget include:**

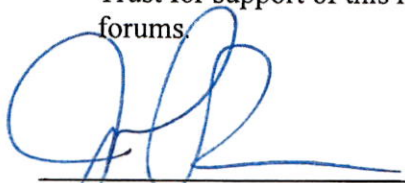
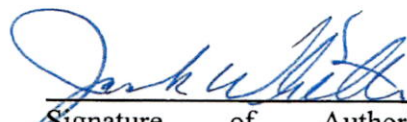
- **Project length of 1,800 LF**
- **Combination revetment and steel sheetpile wall/concrete cap with timber dead-man system**
- **Environmental Protection of in-water silt fencing and BMP's for excavation and stockpiling**
- **Data collection, regulatory permitting (COE) and design for construction.**



Matagorda Bay Mitigation Trust  
RFP for 2022-2023 Funding Cycle Projects

Should the Matagorda Bay Mitigation Trust fund this project, the undersigned agrees:

- a. To enter into a contract specifying the terms and conditions of the engagement.
- b. To designate where any dissertation or thesis can be accessed by the Matagorda Bay Mitigation Trust if applicable (e.g., website, publication source, etc.);
- c. To provide digital images of project activities; and
- d. To provide evidence of full and proper credit to the Matagorda Bay Mitigation Trust for support of this research/project in all publications and other appropriate forums.

  
\_\_\_\_\_  
Signature of Lead Investigator/  
Program Manager  
\_\_\_\_\_  
Signature of Authorized  
Organization Officer or Board  
Officer

Submittal Date: 10.17.2022

Submit completed applications to (PDF file size limit: 15MB):

<https://www.mbmtrust.com/rfps/>



**PART V - ATTACHMENTS**

All Attachments are to be returned with Submittal



**ATTACHMENT A - SUBMISSION EXCEPTIONS/CLARIFICATIONS**

Any exceptions taken or clarifications made to this RFP must be itemized on the lines below. Additional pages may be added as needed. If there are no exceptions or clarifications, please indicate "NONE" and sign where indicated at the bottom of the page.

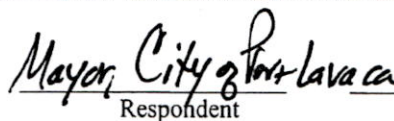
Item #      Description

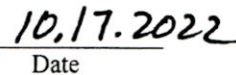
XXV DISPUTES

This section refers to a "Director of Dispute Resolution Center of Calhoun County". We suggest to change this to read "Administrative Judge of the Calhoun County District Courts.


The above exceptions and clarifications (and any additional pages identified) are the ONLY exceptions/clarifications to the specifications. I understand that the Trust may not accept additional exceptions produced after final submission of this response.

  
Signature

  
Respondent

  
Date

**No Exceptions are taken to this RFP.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Respondent

\_\_\_\_\_  
Date



Matagorda Bay Mitigation Trust  
RFP for 2022-2023 Funding Cycle Projects

**ATTACHMENT B -ACKNOWLEDGMENT**

The undersigned agrees this submission becomes the property of the Matagorda Bay Mitigation Trust (Trust) after the published submission deadline.

The undersigned affirms they have familiarized themselves with the specification, drawings, exhibits and other documents; the local conditions under which the work is to be performed; satisfied themselves of the conditions of delivery, handling and storage of materials and equipment; and all other matters that will be required for the work before submitting a response.

The undersigned agrees, if this submission is accepted, to furnish any and all items/services upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specification. The period for acceptance of this submission will be 120 calendar days from the filing deadline noted herein unless a different period is noted.

The undersigned affirms that they are duly authorized to execute this contract, that this submission has not been prepared in collusion with any other Respondent, nor any employee or representative of the Trust, and that the contents of this submission have not been communicated to any other Respondent or to any employee or representative of the Trust prior to this submission.

Respondent hereby assigns to the Trust any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.

The undersigned affirms that they have read and understand the specifications, all exhibits, and attachments contained in this RFP package.

The undersigned agrees that the RFP package posted on the website are the official specifications and shall not alter the electronic copy of the RFP package, without clearly identifying changes.

The undersigned understands they will be responsible for monitoring the Trust Website at: <https://www.mbmtrust.com/rfps/> to ensure they have downloaded and signed all addendum(s) required for submission with their response.

In submitting a response to the Trust, the Responder offers and agrees that if the response is accepted, the Responder will convey, sell, assign or transfer to the Trust all rights, titles and interest in and to all causes to action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Texas for price fixing relating to the particular commodities or services purchased or acquired by the Trust. At the Trust's discretion, such assignment shall be made and become effective at the time the Trust tenders final payment to the Responder.

Acknowledge receipt of following addenda to the RFP:

Addendum No 1 Dated _____	Received _____
Addendum No 2 Dated _____	Received _____
Addendum No 3 Dated _____	Received _____

I certify that I have made no willful misrepresentations in this submission, nor have I withheld information in my statements and answers to questions. I am aware that the information given by me in this submission will be investigated, with my full permission, and that any misrepresentations or omissions may cause my submission to be rejected.

**NAME AND ADDRESS OF RESPONDENT:**

City of Port Lavaca  
202 N. Virginia Street  
Port Lavaca, Texas  
77979

Tel. No. 361-552-9793

**AUTHORIZED REPRESENTATIVE:**

Signature 

Date 10.17.2022

Name Jack Whitlow

Title Mayor

Email. jwhitlow@portlavaca.org





- Exposed trash cells along the west bank of the North-south channel of the Harbor of Refuge



- Exposed trash cells along the west bank of the North-South channel of the Harbor of Refuge

*[Handwritten signature]*





- Comparison Aerial photo of North-South channel of the Harbor of Refuge:  
Left- taken probably in the 1960's when the landfill was active  
Right – Google Earth image 2022

2



# ATTACHMENT D

## JoAnna P. "Jody" Weaver, P.E.

Interim City Manager of the City of Port Lavaca, Texas  
202 N. Virginia Street  
Port Lavaca, Texas 77979  
361-827-3601 cell  
[jweaver@portlavaca.org](mailto:jweaver@portlavaca.org)

### Education

Bachelor of Science in Civil Engineering with Management, 1980  
Ohio Northern University, Ada Ohio

### Registration

Registered Professional Engineer, 1987  
State of Texas No. 61535

### Professional Awards and Honors

- Paul Harris Fellow Award, 2001, Port Lavaca Rotary Club
- Young Engineer of the Year Award, 1984, TSPE Victoria, TX

### Professional Training

- various TCEQ and TWDB training seminars over the past 40 years
- Continuing Education at TCEQ Annual Water Conference
- Continuing Education at Texas Municipal League Annual conferences

### Community Involvement

- Port Lavaca Rotary Club since 1997
- Co-Chairman/ Children's Director Port Lavaca Main Street since 1998
- Member of GLO Technical Advisory Council
- Past Member YMCA Board of Directors
- Past Calhoun County Library Board member
- Chairman of the Building Committee for the Calhoun County Library

### Community Awards and Honors

- Port Lavaca Chamber of Commerce Woman of the Year, 2009 + 2019
- Victoria Advocate "Advocate of the Month," February 2009
- United Methodist Church Victoria District Spirit of Discipleship Award, 2008
- Port Lavaca Chamber of Commerce Community Service Award, 2007
- United Methodist Church Victoria District Christian Witness and Service Award, 2007

### Employment History

April 2020 to present

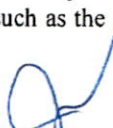
#### **Interim City Manager**

I was appointed Interim City Manager after the previous City Manager retired at the onset of COVID. I was selected based upon my 42 years of experience in and around the City and my love and long-term involvement in the community. Although I have lived and worked in and with the City for over 40 years, I must use the "Interim" title until I physically move into the City limits per the City Charter. As City Manager, I still am involved in managing the large Capital Improvement and Federally/State funded projects including a \$13.5M Living Shoreline project being funded by a CDBG-Mitigation grant; and a \$5.2M CDBG-Disaster Recovery grant project.

August 2017 – March 2020

#### **City Engineer/Economic and Community Development Coordinator** 202 N. Virginia Street, Port Lavaca, Texas 77979

Exactly 10 days after my start date with the City of Port Lavaca, Hurricane Harvey came ashore and cause millions of dollars of damage to the City's infrastructure and amenities. As City Engineer, I worked extensively with FEMA, insurance, engineers, contractors and City Council and staff to recover and rebuild. Projects I managed include the repair/reconstruction of two fishing piers, a boat ramp dock and Nautical Landings Marina docks, the restoration of the Formosa Wetlands Walkway, the City Harbor concrete docks, the Bauer Community Center and many other smaller projects throughout the City. I was also the Project Manager for several Capital Improvement projects including projects funded with State and Federal grant dollars such as the Texas Parks and Wildlife, Texas Department of Agriculture, and the U.S. Department of Commerce.





May 2007 – July 2017

**Sr. Project Engineer**  
**G&W Engineers, Inc.**  
205 W. Live Oak, Port Lavaca, Texas 77979

As a Sr. Project Civil Engineer, I have designed and managed the construction phase of various water, wastewater and development projects, as well as consulted with several regional cities and utility districts as District Engineer, including Port O'Connor Improvement District, Victoria County WCID No. 1 (Bloomington), City of Ganado and the City of La Ward. Development projects I have designed or oversaw the design of include a 20 acre fourplex development in Bay City, a commercial strip center and a Dollar General in Bay City, and the Texas Lakeside RV Resort in Port Lavaca. I have extensive experience working with grant writers to prepare applications for and design and administer the construction phase of various state and federally funded water, sewer and drainage improvement projects.

2002 to May 2007

**City Engineer**  
**City of Port Lavaca, Texas**  
202 N. Virginia, Port Lavaca, Texas 77979

As the City Engineer, I was responsible for the project management of all municipal capital improvements projects. I designed and prepared the construction plans and specifications for most projects of \$100,000 or less. For projects greater than \$100,000 I would oversee the design performed by consultant engineering firms. I consulted with the City Building Official and Planning Board with regard to planning and development issues of the City. I consulted with the Utility Director with regard to water and wastewater issues and compliance with TCEQ. I answered directly to the City Manager and consulted with him on various topics concerning the City. Typical projects I designed during my tenure as City Engineer include: the Animal Shelter on Stringham Road, Camper's Recreation Room and outdoor showers at Lighthouse Beach, Brookhollow Estates Butterfly Park (TPWL grant), New Restrooms at Tilley, George Adams, and Lighthouse Beach Parks; Lana Park street rehabilitation, Waterline replacement on El Camino Real; Village Road Lift Station Rehabilitation; New Tilley Street sidewalk; Pavilion and Master site plan at George Adams and Tilly Parks; Right Turn Lane on Tilley St.; Re-roof of City Hall; and the Courtesy Dock at Lighthouse Beach (TPWL grant). I gained extensive experience applying for and working with various grant-funded projects including TxCDBG, TCF, GLO-CMP, TPWL, and CLAP.

1993 to 2001

**Project Engineer/Public Works Division Manager**  
**Testengeer, Inc.**  
3777 Hwy 35 South, Port Lavaca, Texas

During my eight years with Testengeer, I was responsible for the commercial and public works projects brought into this predominantly industrial engineering firm. Between 1994 and 1998, I was the Manager of the Public Works Division, until the department was dissolved. I continued to work on such projects, but also in conjunction with civil projects in the area industrial plants. Projects I designed included the Calhoun County Little Chocolate Bayou Park (TPWL grant), Alamo Beach and Crestview Subdivision wastewater systems (TCDP grants), the renovation of the Memorial Medical Plaza, the Matagorda County Bird Sanctuary, and the restoration of the Matagorda Island Lighthouse.

1989 to 1992

**Technical Director**  
**Port Enterprises, Inc.**  
Port Lavaca, Texas

In addition to providing technical expertise on various construction projects for this large commercial roofing company, I was the Company Safety Director. I established and implemented a comprehensive safety policy, including employee training and random job-site safety inspections. I also prepared cost estimates for bid and shop drawings and product data for submittal. I was acting office manager during 1991.

1986 to 1989

**Public Works Director**  
**City of Port Lavaca**  
Port Lavaca, Texas 77979

As Public Works Director I was responsible for utilities, streets, building inspections, and planning. Under my immediate direction were the Utility Director, the Building Inspector, the Department Secretary, and the Street Superintendent. I performed administrative duties, reviewed construction plans, and advised the Planning Board and City Council. I completely revised the permit application and filing processes and rewrote the Subdivision Ordinance, much of which is still in use today. During my tenure, the Fire Station and Bauer Community Center were constructed, as well as the preliminary stages of the master drainage plan. I prepared drawings and assisted the City Manager in the preparation of the COE permit application for Lighthouse Beach. During my three years as Public Works Director, I prepared a periodic newsletter for the public works employees entitled "The Public Worker."

1985 to 1986

**Estimator**  
**Port Enterprises, Inc.**  
Port Lavaca, Texas 77979

As an estimator for this large commercial roofing company, I attended pre-bid conferences, took field measurements, calculated quantities, estimated labor, and prepared and submitted competitive bids.

1980 to 1985

**Civil Engineer**  
**ITG Construction and Engineering, Inc.**  
Port Lavaca, Texas 77979

I was involved in the design and/or construction of various residential and light commercial construction projects. I designed an 80-acre subdivision, including street lay-out and water, wastewater, lift station and storm sewer design in Port Lavaca. The development, however, was never constructed.

Personal

Married to Larry Weaver, a retired employee of Calhoun County Precinct 4; mother of 3 young women ages 38, 35, and 32; grandmother of 5; born in Columbus, Ohio and has called Port Lavaca/Calhoun County home since 1980.

References

---

Russell Cain	Russell Cain Real Estate	361-552-6313
Richard Meyer	County Judge	Richard.meyer@calhouncotx.org
Tania French	Something More Media	361-552-9788
Anne Marie Odefey	ROWW, Attorneys	361-552-2971
Ken Lester	Lester Contracting, Inc.	361-552-3024

Other references available upon request.



#### D. SPECIAL DOCUMENTS

Mott McDonald was selected as the engineer for the City of Port Lavaca's GLO Coastal Resiliency CDBG-MIT grant project which will construct a living shoreline breakwater to protect the shoreline of Port Lavaca from City Harbor, south to Fisher Harbor. The "Harbor of Refuge Old Landfill Shoreline Erosion Response and Protection project" is also a shoreline protection project and Mott McDonald is an approved engineer by the General Land Office to work on their projects and as such will be the engineering for this project as well.

The Engineering Firm Registration number issued by the Teas Board of Professional Engineers for Mott MacDonald is **FIRM #7429**.

A handwritten signature in blue ink, consisting of a stylized, cursive 'M' followed by a vertical line.





**MATAGORDA BAY MITIGATION TRUST**

**Steven J. Raabe, P.E., Trustee**

**P.O. Box 1269**

**Poth, Texas 78147-1269**

**[Trustee@mbmTrust.com](mailto:Trustee@mbmTrust.com)**

January 4, 2023

JoAnna P. Weaver, P.E.  
City of Port Lavaca  
202 N. Virginia Street  
Port Lavaca, TX 77979  
Email: [jweaver@portlavaca.org](mailto:jweaver@portlavaca.org)

Re: Harbor of Refuge Old Landfill Shoreline Erosion Response and Protection – Phase 1 Engineering

Dear Ms. Weaver,

The Matagorda Bay Mitigation Trust (Trust) is pleased to inform you that your proposal titled "Harbor of Refuge Old Landfill Shoreline Erosion Response and Protection – Phase 1 Engineering" has been selected for award.

The Trust received 26 proposals in response to the Request for Proposals issued on September 1, 2022 from 19 entities, totaling \$10.5 million. The Trust has selected fifteen projects totaling \$5.8 million for award.

I look forward to working with you and your organization on this exciting project.

This award is contingent on executing a contract between your organization and the Trust. I will be reaching out to you in the near future to finalize your contract.

Please let me know if you have any questions.

Sincerely,

Steven J. Raabe, P.E.  
Trustee, Matagorda Bay Mitigation Trust

**MATAGORDA BAY MITIGATION TRUST**

**CONTRACT COVER/SIGNATURE PAGE**

**TITLE OF CONTRACT 043:** Harbor of Refuge Old Landfill Shoreline Erosion Response and Protection - Phase 1 Engineering

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:** March 1, 2023     **UNTIL:** December 31, 2023

**FUNDING:** This Contract may not exceed \$200,000.00 ("funds").

**APPROVED:**

**MATAGORDA BAY MITIGATION TRUST**

**CITY OF PORT LAVACA**

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**NAME:** Steven J. Raabe

**NAME:** Jack Whitlow

**TITLE:** Trustee

**TITLE:** Mayor

**DATE:** \_\_\_\_\_

**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**

**Harbor of Refuge Old Landfill Shoreline Erosion Response and Protection - Phase 1  
Engineering**

Land south and west of the City's Harbor of Refuge is a former Municipal Landfill, closed in 1979. Significant erosion has caused trash cells to become exposed along portions of the channel, posing a source of pollution into Lavaca Bay and creating an unsightly mess. The City proposes to construct approximately 1,800 linear feet of shoreline protection to address this issue. This project will be included in the 2023 GLO Coastal Resiliency Master Plan. Phase 1 engineering will provide 30% design, GLO CEPRAs grant application and submittal-ready Regulatory permitting.

Specifically, the goals and objectives of the Phase 1 engineering is to perform the engineering necessary to fully scope the elements of the construction project in order to then prepare an application to the United States Corps of Engineers for construction approval and make application for a GLO CEPRAs grant. This project is to be included in the 2023 GLO Coastal Resiliency Master Plan and as such GLO would pay 100% of eligible construction dollars. Assuming a CEPRAs grant award, which is probable being that the project will be in the State Master Plan, it will take several months before a contract can be signed and Phase 2 engineering can begin. We have no reason to believe a CEPRAs grant application will not be successful since again this project will be in the Coastal Resiliency Master Plan and fits well into the CEPRAs funding objectives of shoreline stabilization and debris removal.

**A. The construction goals and objectives of the construction project are:**

- To stop any further erosion of the shoreline and thus stop this source of pollution into the bay
- To provide protection of the shoreline from future erosion/damage from severe weather events
- The protection is proposed to be a combination of revetment and bulkhead in order to provide some access to safe barge loading and offloading operations

**B. Project Details:**

- Project length of 1,800 LF
- Combination revetment and steel sheetpile wall/concrete cap with timber dead-man system

- Environmental Protection of in-water silt fencing and BMP's for excavation and stockpiling
- Data collection, regulatory permitting (COE) and design for construction.

**C. Schedule:**

- March 2023 - start of Phase 1 engineering (Mott MacDonald - Engineer)
- June 2023- Submit GLO CEPRA grant application\* for Phase 1 & Phase 2 Engineering (showing in-kind match from the City and the Matagorda Bay Mitigation Trust. (Mott MacDonald - Engineer)
- December 2023 - 30% design completion and COE permit application ready for submittal. The timing of the actual submittal of the COE permit application will be coordinated with the GLO CEPRA team and COE to assure no gaps in funding that may be required if additional engineering is warranted to answer COE questions or concerns. It is anticipated that the COE permit application will be submitted in the spring of 2024 understanding there will be at least 12 months of review time.

**Matagorda Bay Mitigation Trust ("Trust")**  
**ATTACHMENT B**  
**BUDGET**

**City of Port Lavaca ("Recipient")**  
**202 N. Virginia Street**  
**Port Lavaca, TX 77979**

**Contract Budget**

Consultants/Contractual -     \$200,000.00

Total Contract Budget -       \$200,000.00

**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](mailto: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](mailto:Administrator@mbmTrust.com).

Effective Date: June 1, 2020



**Invoice to Matagorda Bay Mitigation Trust**  
**Date of Invoice:**

Recipient Name: City of Port Lavaca

Contract #: 043

Contract Amount: \$ 200,000.00

Payment Request No:

Billing Period This Invoice:

From                      To

Invoice Amount: \$

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
Consultants/Contractual			\$200,000.00	Phase 1 Engineering Design			\$200,000.00
<b>Total</b>			<b>\$200,000.00</b>				
<b>*Please see invoicing instructions</b>				<b>Total</b>			<b>\$200,000.00</b>

Remittance Address:

Name of Payment Contact Person and contact information:

**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
---------------------