BEAUMONT
TEXAS

REGULAR MEETING OF THE CITY COUNCIL
COUNCIL CHAMBERS AUGUST 2, 2016 1:30 P.M.

CONSENT AGENDA

* Approval of minutes – July 26, 2016

* Confirmation of committee appointments

Margaret Adams would be appointed to the Small Business Revolving Loan Fund Board. The term would commence August 2, 2016 and expire September 30, 2017. (Councilmember Gethrel Williams-Wright)

A) Authorize the City Manager to accept maintenance and authorize final payment to Shirley & Sons Construction Co. of Cleveland for the Cattail Marsh Boardwalk Project

B) Authorize the City Manager to execute all documents necessary for an affiliation agreement between the City of Beaumont and Lamar University

C) Authorize the City Manager to enter into an agreement with the Texas Department of Transportation to contribute right-of-way clearing funds

D) Amend Resolution No. 16-080 adding language required for the grant application related to the Texas Automobile Burglary and Theft Prevention Authority Fund

RESOLUTION NO.

BE IT RESOLVED BY THE CITY COUNCIL

OF THE CITY OF BEAUMONT:

THAT the following appointment be made:

Appointment	Commission	Beginning of Term	Expiration of Term
Margaret Adams	Small Business Revolving Loan Fund Board	08/02/2016	09/30/2017

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 2nd day of August, 2016.

_____

- Mayor Becky Ames -

A

BEAUMONT
TEXAS

TO:	City Council
FROM:	Kyle Hayes, City Manager
PREPARED BY:	Dr. Joseph Majdalani, P.E., Public Works Director JM
MEETING DATE:	August 2, 2016
REQUESTED ACTION:	Council consider a resolution authorizing the City Manager to accept maintenance, and authorize final payment to Shirley & Sons Construction Co., Inc., in the amount of $88,877.62.

BACKGROUND

On April 12, 2016, by Resolution No. 16-066, City Council awarded Shirley & Sons Construction Co., Inc., of Cleveland, Texas the contract for the Cattail Marsh Boardwalk Project in the amount of $228,800. This project provided for the construction of a treated timber boardwalk and viewing platforms at the City of Beaumont's Cattail Marsh constructed wetland. The boardwalk was constructed in Cell 2, located at the northwest corner of Cattail Marsh and extends approximately 560 feet, from the west side levee, across Cell 2.

The project had two (2) change orders resulting in an increase of $3,600.00 making the new contract amount $232,400.00. A total of 90 calendar days were allotted for the completion of the project of which only 50 calendar days were used. The project has been inspected by the Engineering Division and found to be complete in accordance with the provisions and terms set forth in the contract. Acceptance of maintenance and approval of final payment in the amount of $88,877.62 is recommended.

FUNDING SOURCE

Capital Program.

RECOMMENDATION

Approval of resolution.

RESOLUTION NO. 16-066

BE IT RESOLVED BY THE CITY COUNCIL OF THE

CITY OF BEAUMONT:

THAT the City Council hereby approves the award of a contract to Shirley & Sons Construction Co., Inc., of Cleveland, Texas, in the amount of $228,800 for the Cattail Marsh Boardwalk Project for the construction of a treated timber boardwalk and viewing platforms at the City of Beaumont's Cattail Marsh constructed wetland; and,

BE IT FURTHER RESOLVED THAT the City Manager be and he is hereby authorized to execute a Contract with Shirley & Sons Construction Co., Inc., of Cleveland, Texas, for the purposes described herein.

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 12th day of April, 2016.

THE CITY OF BEAUMONT, JEFFERSON COUNTY, TEXAS
BEAUMONT, TEXAS

Becky Ames

- Mayor Becky Ames -

APPROVAL OF CONTRACT CHANGE

CHANGE ORDER No. One (1)
Date: 6/20/2016

PROJECT: City of Beaumont, Texas
Cattail Marsh Boardwalk
PW0316-10

OWNER: City of Beaumont, Texas
801 Main Street
Beaumont, Texas 77704

CONTRACTOR: Shirley & Sons Construction Co., Inc.
P.O. Box 429
Cleveland, Texas 77328-0429

TO THE OWNER: Approval of the following contract change is requested.

Reason for Change: To add a new bid Item; Item no. 5

ORIGINAL CONTRACT AMOUNT:	$	228,800.00
THIS CHANGE ORDER		
Item No. / Description:		Net Change
New Bid Items:		
5 Furnish and Install a "Blue Heron" weathervane on each viewing platform, ADD 1LS @ $1,600.00/LS	$	1,600.00
TOTAL AMOUNT OF THIS CHANGE ORDER	**$**	**1,600.00**
TOTAL REVISED CONTRACT AMOUNT INCLUDING THIS CHANGE ORDER:	**$**	**230,400.00**

CONTRACT TIME

Original Contract Time:	90	Calendar Days
Additional Time Requested:	0	Calendar Days
Revised Contract Time per this Change Order:	90	Calendar Days

CONDITION OF CHANGE:
"Contractor acknowledges and agrees that the adjustments in contract price and contract time stipulated in this Change Order represents full compensation for all increases and decreases in the cost of, and the time required to perform the entire work under the Contract arising directly or indirectly from this Change Order and all previous Change Orders. Acceptance of this waiver constitutes an agreement between Owner and Contractor that the Change Order represents an all inclusive, mutually agreed upon adjustment to the Contract, and that Contractor will waive all rights to file a claim on this Change Order after it is properly executed."

Recommended by:	Approved by:	Accepted by:
Schaumburg & Polk, Inc.	City of Beaumont	Shirley & Sons Construction Co., Inc.
Engineer	Owner	Contractor
Date: 6-22-16	Date: 6-27-16	Date: 6-20-16

APPROVAL OF CONTRACT CHANGE

CHANGE ORDER No. Two (2)
Date: 7/5/2016

PROJECT: City of Beaumont, Texas
Cattail Marsh Boardwalk
PW0316-10

OWNER: City of Beaumont, Texas
801 Main Street
Beaumont, Texas 77704

CONTRACTOR: Shirley & Sons Construction Co., Inc.
P.O. Box 429
Cleveland, Texas 77328-0429

TO THE OWNER: Approval of the following contract change is requested.

REASON FOR CHANGE: To add a new bid Item; Item no. 6

ORIGINAL CONTRACT AMOUNT:	$	228,800.00
PREVIOUSLY APPROVED CHANGE ORDER No. 1	$	1,600.00
THIS CHANGE ORDER		
Item No. / Description:		Net Change
New Bid Items:		
6 Furnish all labor, equipment and material to build two benches as specified by the City on the two viewing platforms for $1,000.00 per each	$	2,000.00
TOTAL AMOUNT OF THIS CHANGE ORDER	$	**2,000.00**
TOTAL REVISED CONTRACT AMOUNT INCLUDING THIS CHANGE ORDER:	$	**232,400.00**

CONTRACT TIME

Original Contract Time:	90	Calendar Days
Additional Time Requested:	0	Calendar Days
Revised Contract Time per this Change Order:	90	Calendar Days

CONDITION OF CHANGE:
"Contractor acknowledges and agrees that the adjustments in contract price and contract time stipulated in this Change Order represents full compensation for all increases and decreases in the cost of, and the time required to perform the entire work under the Contract arising directly or indirectly from this Change Order and all previous Change Orders. Acceptance of this waiver constitutes an agreement between Owner and Contractor that the Change Order represents an all inclusive, mutually agreed upon adjustment to the Contract, and that Contractor will waive all rights to file a claim on this Change Order after it is properly executed."

Recommended by:	Approved by:	Accepted by:
Schaumburg & Polk, Inc. Engineer	City of Beaumont Owner	Shirley & Sons Construction Co., Inc. Contractor
Date: 7-7-16	Date: 7-8-16	Date: 7-7-16

SCHAUMBURG & POLK, INC
BEAUMONT · HOUSTON · TYLER

July 11, 2016

Dr. Joseph Majdalani, P.E.
Public Works Director
City Of Beaumont
801 Main Street, Suite 200
Beaumont, Texas 77701

Re: City of Beaumont
Cattail Marsh Boardwalk
Project PW0316-10

Dear Dr. Majdalani,

Enclosed are three (3) partially executed copies of Estimate No. 2 & FINAL for the above referenced project. The Final Inspection was made Friday, July 8, 2016 and construction of the boardwalk is complete. Schaumburg & Polk, Inc. has reviewed the estimate and the work completed, and we recommend approval and payment. Please execute and return two copies to our office for distribution. Please make payment directly to Shirley & Sons Construction Co., Inc.

Sincerely,
SCHAUMBURG & POLK, INC.

Jeffrey G. Beaver, P.E.
President

Enclosures

Beaumont – Cattail Marsh Boardwalk
DF F:\BMT\2006 Cattail Marsh Boardwalk\Construction\Pay Requests\PR 2.docx

MONTHLY ESTIMATE FOR
City Of Beaumont
Cattail Marsh Boardwalk
Project PW0316-10

ESTIMATE NO.: 2 & FINAL

DATE: July 11, 2016

CALENDAR DAYS ALLOWED: 90

CALENDAR DAYS USED: 50

CALENDAR DAYS OVER:

CONTRACT TIME BEGAN: May 23, 2016

ORIGINAL CONTRACT AMOUNT	**$**	**228,800.00**
CONTRACT AMOUNT INCLUDING CHANGE ORDERS	**$**	**232,400.00**
TOTAL AMOUNT OF WORK DONE TO DATE	$	232,400.00
TOTAL MATERIALS ON HAND	$	-
TOTAL WORK AND MATERIALS	$	232,400.00
LESS: RETAINAGE ~~5%~~	$	-
PREVIOUS PAYMENTS	$	143,522.38
TOTAL DEDUCTIONS	$	143,522.38
AMOUNT DUE CONTRACTOR	**$**	**88,877.62**

Contract amount revised per Change Order No. 1 & 2

SUBMITTED BY:

See Contractor's signed Invoice #3009 attached

Shirley & Sons Construction Co., Inc.

REVIEWED BY:

Schaumburg & Polk

DATE: 7-11-16

APPROVED BY:

City Of Beaumont

DATE: 7/11/16

MONTHLY ESTIMATE FOR
City OF Beaumont
Cattail Marsh Boardwalk
Project PW0316-10

ESTIMATE NO: 1

DATE: July 11, 2016

BID ITEM	DESCRIPTION	CONTRACT			QUANTITY THIS ESTIMATE	QUANTITY TO DATE	TOTAL COST TO DATE
		UNIT	QUANTITY	UNIT PRICE			
1	Mobilization	LS	1	$6,800.00	1	1	$ 6,800.00
2	8 FT Wide Boardwalk	LF	260	$360.00	260 @ 45.94%	260	$ 93,600.00
3	6 FT Wide Boardwalk	LF	260	$340.00	260 @ 42.99%	260	$ 88,400.00
4	Viewing Platform	EA	2	$20,000.00	2 @ 67.50%	2	$ 40,000.00
5	"Blue Herron" weathervanes	EA	2	$800.00	2 @ 32.50%	2	$ 1,600.00
6	Benches	EA	2	$1,000.00	2 @ 32.50%	2	$ 2,000.00
						TOTAL AMOUNT OF WORK PERFORMED TO DATE:	$ 232,400.00

Note: **See Contractor's Invoice #3009 attached for a breakdown of the work completed**

Pay Estimate No. 2 Final **Invoice #3009**

Project Name:	**Owner:**	Contract Amount:	$228,800.00
	City of Beaumont	Contract Change Orders:	$3,600.00
Cattail Marsh Boardwalk	801 Main Street Room 125	Total Contract Amount:	$232,400.00
Project # PW0316-10	Beaumont TX 77701	Covering Period:	5/31/16-7/11/2016
	Contractor:	Total Done To Date:	$232,400.00
	Shirley & Sons Construction Co., Inc	Amount Retained:	$0.00
	P.O. Box 429	Previous Payments:	$143,522.38
	Cleveland, Texas 77328-0429	Total Deductions:	$143,522.38
		Amount Due For Payment:	$88,877.62

Certificate of the Contractor or His Duly Authorized Representative

To the best of my knowledge, I certify that all items, quantities and prices of work and materials shown on the face of this estimate are correct; that all work has been performed and materials supplied in full accordance with the terms and the conditions of the corresponding construction contractual documents between the Owner and the Contractor, all changes authorized thereto; that the foregoing is a true and correct statement and of the contract account up to and including the last day of the period covered by this estimate and that no part of the "AMOUNT DUE FOR PAYMENT" has been received. I further certify that all just and lawful bills against the below named Contractor for labor, material and expendable equipment employed in the performance of said contract have been paid in full accordance with the contract documents.

Date: 7/11/2016
Shirley & Sons Construction Co., Inc.
By: _____
Ronald R. Shirley, President

Certificate of Owners Construction Supervisor

By: _____

Owner: City of Beaumont

Contractor: Shirley & Sons Construction Co., Inc.

Date: 7/11/16

Item	Description	Unit	Contract Quantity	Total Work Done This Estimate	Total Work Done Previous Estimate	Total Work To Date Quantity	Contract Unit Price	Amount
1	Mobilization	LS	1	0	1	1	$6,800.00	$6,800.00
2	Furnish and Install piling 8' BW	LS	1	0	1	1	$24,600.00	$24,600.00
3	Furnish and install headers 8' BW	LS	1	0	1	1	$14,000.00	$14,000.00
4	Furnish and install stringers 8' BW	LS	1	1	0	1	$17,000.00	$17,000.00
5	Furnish and install decking 8' BW	LS	1	1	0	1	$16,000.00	$16,000.00
6	Furnish and install handrail posts 8' BW	LS	1	0	1	1	$12,000.00	$12,000.00
7	Furnish and install handrail railing 8' BW	LS	1	1	0	1	$10,000.00	$10,000.00
8	Furnish and Install piling 6' BW	LS	1	0	1	1	$24,400.00	$24,400.00
9	Furnish and install headers 6' BW	LS	1	0	1	1	$14,000.00	$14,000.00
10	Furnish and install stringers 6' BW	LS	1	1	0	1	$17,000.00	$17,000.00
11	Furnish and install decking 6' BW	LS	1	1	0	1	$11,000.00	$11,000.00

Owner: City of Beaumont
Contractor: Shirley & Sons Construction Co., Inc.

Item	Description	Unit	Contract Quantity	Total Work Done This Estimate	Total Work Done Previous Estimate	Total Work To Date Quantity	Contract Unit Price	Amount
12	Furnish and install handrail posts 6'BW	LS	1	1	0	1	$12,000.00	$12,000.00
13	Furnish and install handrail railing 6' BW	LS	1	1	0	1	$10,000.00	$10,000.00
14	Furnish and Install piling VP	LS	1	1	0	1	$8,000.00	$8,000.00
15	Furnish and install headers VP	LS	1	1	0	1	$5,000.00	$5,000.00
16	Furnish and install stringers	LS	1	1	0	1	$6,000.00	$6,000.00
17	Furnish and install decking	LS	1	1	0	1	$8,000.00	$8,000.00
18	Furnish and install handrail	LS	1	1	0	1	$4,000.00	$4,000.00
19	Furnish and install roof	LS	1	1	0	1	$9,000.00	$9,000.00
20	Change Order #1 Weather Vains	LS	1	1	0	1	1,600.00	$1,600.00
21	Change Order #2 Benches	LS	1	1	0	1	2,000.00	$2,000.00
22	Total Project	LS						$232,400.00

RESOLUTION NO.

WHEREAS, on April 12, 2016, the City Council of the City of Beaumont, Texas adopted Resolution No. 16-066 approving the award of a contract to Shirley & Sons Construction Co., Inc., of Cleveland, Texas, in the amount of $228,800.00 for the Cattail Marsh Boardwalk Project for the construction of a treated timber boardwalk and viewing platforms at the City of Beaumont's Cattail Marsh constructed wetland; and,

WHEREAS, on June 27, 2016, the City Manager executed Change Order No. 1, in the amount of $1,600.00, to furnish and install a weathervane on each viewing platform, thereby increasing the contract amount to $230,400.00; and,

WHEREAS, on July 8, 2016, the City Manager executed Change Order No. 2, in the amount of $2,000.00, to furnish all labor, equipment and materials to build two benches on the two viewing platforms, thereby increasing the contract amount to 232,400.00; and,

WHEREAS, the project has been inspected by the Engineering Division and found to be complete in accordance with the provisions and terms set forth in the contract;

NOW, THEREFORE, BE IT RESOLVED BY THE

CITY COUNCIL OF THE CITY OF BEAUMONT:

THAT the statements and findings set out in the preamble to this resolution are hereby, in all things, approved and adopted; and,

THAT the Cattail Marsh Boardwalk Project be and the same is hereby accepted; and,

BE IT FURTHER RESOLVED THAT the City Manager is hereby authorized to make final payment in the amount of $88,877.62 to Shirley & Sons Construction Co., Inc., of Cleveland, Texas.

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 2nd day of August, 2016.

_____

- Mayor Becky Ames -

B

BEAUMONT
TEXAS

TO:	City Council
FROM:	Kyle Hayes, City Manager
PREPARED BY:	Sherry Ulmer, Public Health Director
MEETING DATE:	August 2, 2016
REQUESTED ACTION:	Council consider a resolution authorizing the City Manager to execute all documents necessary for the affiliation agreement between the City of Beaumont and Lamar University.

BACKGROUND
Lamar University is requesting an agreement with the City of Beaumont allowing its nursing students access to clinical experience at the City's Health Department.

Lamar University shall:

a. Appoint a Program Liaison and timely inform the Beaumont Health Department of the name, address, e-mail address and phone number of said Program Liaison who will be able to assist students and Beaumont Public Health Department Personnel. The Program Liaison will be responsible for maintaining ongoing contact with the Beaumont Public Health Department designated representative.

The Beaumont Public Health Department shall:

a. Designate a qualified facility Liaison and timely inform Lamar University of the name, address, e-mail address and to assist University personnel and students of the program. The Facility Liaison will be responsible for maintaining ongoing contact with the University's designated representative and providing instruction and supervision of the students in facility.

FUNDING SOURCE
Not applicable.

RECOMMENDATION
Approval of the resolution.

RESOLUTION NO.

BE IT RESOLVED BY THE CITY COUNCIL OF THE

CITY OF BEAUMONT:

THAT the City Manager be and he is hereby authorized to execute all documents necessary to enter into an Affiliation Agreement between the City of Beaumont Public Health Department and Lamar University for clinical experience and educational purposes under the supervision of the Public Health Department. The Affiliation Agreement is substantially in the form attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 2nd day of August, 2016.

_____

- Mayor Becky Ames -

LAMAR UNIVERSITY
MEMBER THE TEXAS STATE UNIVERSITY SYSTEM™

MASTER CLINICAL AFFILIATION AGREEMENT
BETWEEN
LAMAR UNIVERSITY
AND
City of Beaumont

This Affiliation Agreement ("this Agreement") is made and entered into this 15 day of August, 20 16 (the "Effective Date"), between Lamar University, an institution of higher education in the State of Texas and a component of The Texas State University System, ("University'), which is located at 4400 MLK Parkway, Beaumont, Texas 77710 and City of Beaumont Public Health Department ("Facility"), which is located at 3040 College Street, Beaumont, Texas 77701. University and Facility shall be known collectively as "the Parties" and singularly as "a Party" or "the Party." This Agreement incorporates by reference the attached Program Addendum ("Program Addendum") and expressly includes any additional terms and conditions stated in the Program Addendum, as if set out herein. In case of a conflict between this Agreement and any Program Addendum, this Agreement shall control. Each Program Addendum shall constitute a separate and independent contract between the parties and may have a term shorter than this Agreement.

WHEREAS, Facility owns and operates a business and has a commitment to training students.

WHEREAS, University has established and sponsors certain accredited programs for students and seeks to educate students by providing and coordinating educational and clinical practice sites for qualified students ("Students") and,

WHEREAS, the Parties recognize that they have certain objectives in common to educate and train students in particular fields as identified in the Program Addendum and seek to provide clinical and educational experiences for Students enrolled in the University's undergraduate and graduate programs by utilizing the Facility for said purposes.

NOW THEREFORE, the Parties agree as follows:

ARTICLE 1 – TERM AND TERMINATION

(1) This Agreement shall commence on the Effective Date and shall be in full force and effect for three (3) years, unless sooner terminated by mutual consent of the Parties, or by any Party hereto giving the other Party written notice of termination in accordance with the Terms of this Agreement. This Agreement shall automatically renew for two successive one (1) year periods, unless earlier terminated by either Party.

(2) Either Party may terminate this Agreement without cause at any time upon sixty (60) days written notice to the other Party.

(3) Notwithstanding any automatic renewal, this Agreement shall automatically terminate five (5) years from its Effective Date.

(4) In the event that either Party terminates this Agreement, the Parties agree that no termination shall be effective with regard to Students currently participating or enrolled in an ongoing clinical education experience until such Students are allowed to complete any previously scheduled clinical assignments then in progress at Facility. In such an event, all applicable provisions of this Agreement shall remain in force until the end of the clinical education experience.

(5) The University may terminate this Agreement effective upon delivery of written notice to the Facility, or at such later date as may be stated in the notice, if any license, permit, certificate or accreditation required of Facility by law, rule or regulation, or by the terms of this Agreement, is for any reason denied, removed, suspended, or not renewed.

ARTICLE 2 – RESPONSIBILITIES OF UNIVERSITY

University shall:

(1) Appoint a Program Liaison and timely inform Facility of the name, address, email address and phone number of said Program Liaison who will be available to assist Students and Facility personnel. The Program Liaison will be responsible for maintaining ongoing contact with Facility's designated representative.

(2) Provide the educational direction of the Program as well as the placement and basic preparation of Students through classroom instruction and identification of educational and clinical objectives. University shall further direct the Program in accordance with all guidelines established by local, state or national associations, as well as develop, organize, and assist Facility in implementing and operating a Program that is suitable to each Student, including Students with disabilities.

(3) Obtain from Facility the name, address, email address and phone number of Facility's designated representative and acquaint Facility's designated representative with methods, objectives, goals, and specifics of the Program as outlined in the Program Addendum.

(4) Ensure that each Student assigned to Facility pursuant to this Agreement is enrolled in the Program with the University.

(5) Recruit, screen, evaluate, select and assign to Facility only Students who have fulfilled all prerequisites for training or clinical educational experience and provide Facility with information requested by Facility about the Student, to the extent not prohibited by the Family Educational Rights and Privacy Act (FERPA), U.S.C. § 1232g; 34 CFR Part 99, or other applicable state or federal law. Facility is not authorized to redisclose any FERPA or other protected information.

(6) If required by Facility, University shall notify students of Facility's requirements to obtain the necessary criminal background check prior to assignment, but University shall not be required to conduct drug testing or criminal background checks for students. The University shall instruct students to either Facility's approved vendor(s) or to a third party vendor at Student's sole cost and expense for the purposes of performing drug testing, health care and criminal background checks. All results will be submitted by the vendor to the Facility without involvement by the University.

(7) Coordinate with Facility to determine the number of Students to be placed at Facility, the duration of such placement/assignment; the number of hours the Facilities will be available and assign only the number of Students mutually agreed upon by Facility and University. University will notify Facility as soon as possible of the names and arrival dates of Students.

(8) To the extent applicable to the Program Addendum and required by Facility, require that Students and faculty who participate in the Program obtain and provide proof of professional liability insurance coverage in reasonable minimum amounts that are acceptable to Facility as outlined in the Program Addendum attached hereto.

(9) To the extent applicable to the program, inform Students of Facility's immunization and vaccination requirements, Occupational Safety and Health Administration ("OSHA") blood borne pathogen and tuberculosis training, prevention, and post-exposure treatment.

(10) Inform Students of their obligation to provide transportation, appropriate supplies, uniforms and health insurance, as applicable.

(11) Inform Students of their responsibility to adhere to all applicable administrative policies, rules, standards, schedules, and practices of Facility and University, and attend orientation as applicable.

(12) Inform Students and Faculty members who are supervising Students about their obligation to maintain confidentiality of all Facility matters, proceedings, and information to the extent required by law, including, but not limited to client records and information. This confidentiality provision shall survive termination of this Agreement.

(13) Upon notice, inform Facility of any adverse circumstances to which Facility may be exposed because of the activities or health status, including the mental health status, of a Student.

(14) Upon notice, notify Facility of any complaint, claim, investigation, involving a Student, faculty or Facility representative or employee that is related to the educational or clinical experiences provided under this Agreement, to the extent permitted by law.

(15) Accept the overall responsibility for the education, evaluation, qualifications, and competency development of each Student and be solely responsible for the determination of a grade representative of the Student's performance in the placement using the evaluation and observation of the Facility Liaison as well as other objectives identified by the University.

ARTICLE 3 – RESPONSIBILITIES OF FACILITY

Facility shall:

(1) Designate a qualified Facility Liaison and timely inform University of the name, address, email address and phone number of said Facility Liaison who will be available to assist University personnel and Students of the Program. The Facility Liaison will be responsible for maintaining ongoing contact with University's designated representative and providing instruction and supervision of the Students based in the Facility.

(2) Provide facilities necessary to support the Program(s) for the training and qualifying of Students in the Program as identified in the Program Addendum; provide a supervised learning experience for Students in accordance with agreed upon learning objectives, skill development areas, learning experiences, and intended learning outcomes.

(3) Provide University's Program Liaison (or other designee) and Students, as necessary, with periodic performance information and tender a end-of-semester evaluation for Students.

(4) Immediately report any unsatisfactory conduct or performance of a Student to the University's Program Liaison.

(5) Permit designated faculty members the right to visit with Students and Facility liaisons/supervisors at Facility regarding the progress of Students participating in the Program at Facility.

(6) Provide Students with essential conditions and materials for their work (including safety equipment as necessary), including direct supervision, space, privacy, participation in appropriate activities, access to conference rooms for student education, office space for Program Liaisons, locker rooms or other secure space for faculty and students to store materials while on assignment, access to libraries and cafeteria (subject to any applicable fees or charges as are customarily charged to any other person), technological supports and, reimbursements for work-related expenses, where applicable.

(7) Provide an atmosphere for learning that is supportive and free of discrimination based, on race, color, national origin, religion, gender, age, disability, gender identity or sexual preference.

(8) Provide Students with information regarding policies and procedures of Facility, and with orientation experiences to ensure that Students will be able to meet the requirement of Facility.

(9) To the extent possible, provide Students with initial emergency care in case of accidents.

(10) Timely notify University of any complaint, claim, investigation, involving a Student, faculty or Facility representative or employee that is related to the educational or clinical experiences provided under this Agreement. Facility shall further have the right to request immediate removal of any student from its premises upon a determination by the administrator in charge that the Student poses a threat to the health, safety or welfare of Facility's patients, clients or personnel or to the orderly business function of the Facility. Facility has no authority to remove a student from a Program.

(11) Notify University timely if Facility's license, permit or accreditation is revoked or in jeopardy to allow for students to be timely placed in other facilities.

ARTICLE 4 – RESPONSIBILITIES OF THE PARTIES

The Parties mutually agree that:

(1) University and Facility will work together to select and assign learning experiences for Students, and will further provide for teaching, evaluation, overall supervision, and record keeping of Students.

(2) University and Facility will consult as necessary to ensure that the Program meets acceptable standards of care and provides Students participating in the Program with the necessary clinical and educational training to successfully meet the requirements for the degree program for which the Students are enrolled.

(3) University and Facility will meet as necessary to discuss issues of mutual concern and to make such suggestions and changes as are needed to achieve the objectives of the program.

(4) Neither Party's Students nor personnel shall be considered employees, agents, borrowed servants, partners, or joint ventures of the other Party. Nothing herein shall be construed to create a joint venture, partnership, association or like relationship between the parties. Neither Party will assume any liability under any law relating to Workers' Compensation for the other Party's employees or students performing under this Agreement. Students and faculty of University shall not be entitled to any monetary or other remuneration for services performed by them at the Facility arising out of their participation under this Agreement, nor will Facility or University have a monetary obligation to one another by virtue of this Agreement. Nothing in this Agreement is to be construed as transferring responsibility from on Party to another.

(5) Facility is not responsible for wages, social security taxes, medical insurance, hospitalization insurance, or workers' compensation insurance for Students. In the event a Student should, independent of this Agreement, be employed by Facility, this section and the preceding section shall not apply during the hours in which such Student is performing services as an employee of Facility.

(6) In the event of any dispute arising under or relating to this Agreement, the Parties shall make a good faith attempt to resolve such dispute by mediation on such terms as the Parties find acceptable. Each Party shall bear the costs of its own legal fees and expenses.

(7) If any situation arises that may threaten a Student's successful completion of the placement, the parties will discuss and attempt to reach a mutual agreement with the Student regarding options for completing, rescheduling or cancelling the placement.

~~(8) Facility agrees to indemnify University, its affiliates, and their respective officers, directors, employees and agents against and hold the same harmless from any claims, demands, causes of action, liabilities, costs, damages, expenses, and attorneys' fees asserted or adjudged against or incurred by University resulting from breach by the Facility of any provisions of this Agreement, including negligence in performing its obligations under this Agreement arising directly or indirectly, in contract or tort, out of the acts or omissions of its employees, directors, officers, subcontractors or agents.~~

~~(9) To the extent authorized by the Constitution and the laws of the State of Texas, University agrees to indemnify Facility, its affiliates, and their respective officers, directors, employees and agents against and hold the same harmless from any claims, demands, causes of action, liabilities, costs, damages, asserted or adjudged against or incurred by Facility resulting from breach by the University of any provisions of this Agreement, including negligence in performing its obligations under this Agreement arising directly or indirectly, out of the acts or omissions of staff or faculty. Nothing in this Agreement extends the University's liability beyond the liability or authority provided in the Constitution and laws of the State of Texas. The Parties understand that there are constitutional and statutory limitations on the authority of University to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions related to liens on University's property, disclaimers and limitations on warranties, disclaimers and limitations of liability for damages, waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal actions/ granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on University except to the extent authorized by the Constitution and laws of the State of Texas.~~

(10) There shall be no unlawful discrimination in either the selection of Students for the Program or as to any aspect of their training or clinical educational experience on the basis of race, color, national origin, religion, gender, age, veteran status, gender identity, sexual orientation, political affiliation or disability. In their execution of this agreement, all contractors, subcontractors, their respective employees, and others acting by or through them shall comply with all federal and state policies and laws prohibiting discrimination, harassment, and sexual misconduct. Any breach of this covenant may result in termination of this agreement.

ARTICLE 5 – GENERAL PROVISIONS

(1) The Parties agree that this Agreement will be construed by the laws of the State of Texas.

(2) In the event that legislation is enacted or regulations are promulgated or a decision of a court or administrative tribunal is rendered which affects or may affect the legality of this Agreement or adversely affect the ability of either Party to perform its obligations or receive the benefits intended hereunder, then, within thirty (30) days following notice, each party will negotiate in good faith an amendment to this Agreement which will carry out the original intention of the Parties to the extent possible in light of such legislation, regulation or decision, and each Party will execute such amendment. In the event that the parties cannot reach agreement on the terms and provisions of any such amendment within sixty (60) days following notice provided in this paragraph, this Agreement may be terminated upon not lets than thirty (30) days' prior written notice of termination.

(3) The Parties agree not to use the other Party's name, likeness, images in any advertising, promotional material, press release, publication, public announcement or other media, oral or written, without the written consent of the other Party.

(4) The terms and conditions of this Agreement may be modified only upon mutual written consent of the Parties at any time.

(5) Any notice required or permitted under this Agreement shall be considered effective as of the date sent by certified mail, return receipt requested, as follows:

FACILITY:	**UNIVERSITY:**
Public Health Director	Lamar University
Beaumont Public Health Dept.	Dean, College of Arts & Sciences
3040 College Street	4400 MLK Parkway
Beaumont, TX 77701	Beaumont, Texas 77710
	Email: stacie.granger@lamar.edu

(6) Neither Party may assign any rights or obligations under this Agreement without prior written consent of the other Party. However, nothing herein prevents any Party from entering into other agreements and affiliations.

(7) Each Party represents that the execution of this Agreement has been duly authorized.

(8) If any part of this Agreement should be determined to be invalid, illegal, inoperative, or contrary to applicable law, statute, regulation, or University or Facility policies, that part of this Agreement shall be reformed, if reasonably possible, to comply with the applicable policies, provisions of law, statute, or regulation, and, in any event, the remaining parts of this Agreement shall be fully effective and operative insofar as reasonable possible.

(9) No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any other provision, unless in writing. No delay in acting with regard to any breach of any provision shall be construed to be a waiver of such breach.

(10) Neither Party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement or other interruption of service deemed resulting, directly or indirectly, from acts of God, acts of public enemy, war, accidents, fires, explosions, hurricanes, floods, failure of transportation, strikes, or other work interruptions by either Party's employees, or any similar cause beyond the reasonable control of either Party.

(11) This Agreement is entered into by and between the Parties hereto and for their benefit. Unless explicitly provided in this Agreement, there is no intent by either Party to create or establish third Party beneficiary status or rights in any third Party, and no such third Party shall have any right to enforce any right or enjoy any benefit created or established under this Agreement.

(12) This Agreement shall bind and benefit the respective Parties and their legal successors.

(13) This Agreement shall constitute the complete understanding of the Parties related to the subject matter contained herein and supersedes all prior agreements, proposals, or understandings, whether written or oral.

IN WITNESS THEREOF, this Agreement, in multiple originals, each of equal force, has been executed on behalf of the Parties hereto as follows:

FACILITY:

Signature Date
Printed Name: Kyle Hayes
Title: City Manager

Sherry Ulmer 7/27/16
Signature Date
Printed Name: SHERRY ULMER
Title: Health Director

LAMAR UNIVERSITY:

7/11/16
Signature Date
Printed Name: Dr. James Marquart
Title: Provost and Vice President

7/11/16
Signature Date
Printed Name: Ashley Scott
Title: Assistant Director of Contract Management

Note: Modification of This Form Requires Written Approval of the Office of General Counsel

LAMAR UNIVERSITY
MEMBER THE TEXAS STATE UNIVERSITY SYSTEM™

PROGRAM ADDENDUM
to
MASTER CLINICAL AFFILIATION AGREEMENT
BETWEEN
LAMAR UNIVERSITY
AND
City of Beaumont Public Health Department

WHEREAS, Lamar University, an institution of higher education in the State of Texas and a component of The Texas State University System, ("University"), which is located at 4400 S. MLK Parkway, Beaumont, Texas 77710 and City of Beaumont Public Health Department ("Facility"), which is located at 3040 College Street, Beaumont, Texas 77701, executed an Affiliation Agreement effective on August 15, 2016. University and Facility shall be known collectively as "the Parties" and singularly as "a Party" or "the Party."

WHEREAS, University and Facility desire to implement the provisions of such Affiliation Agreement by providing students enrolled in University's Nursing Programs
With educational and clinical experience utilizing the personnel, equipment and facilities of Facility.

NOW THEREFORE, subject to the terms, conditions and provisions of such Affiliation Agreement, the Parties agree as follows:

PROGRAM

Facility is a business engaged in public health services.

University has established and sponsors a Nursing program for students and seeks to educate students by providing and coordinating educational and clinical practice sites for qualified students for the completion of the training offered by the University, subject to applicable accreditation standards and regulations.

The University's Nursing program is a (choose one below):
2-3 -year program _____ -month program
designed to provide quality nursing education relevant to a changing profression, society and healthcare environment, educating students to become qualified, competent, professional nurses who are prepared for practice.
Standards for the Nursing program include a spirit of caring, continual inquiry, creativity and integrity promoted through teaching, scholarship, leadership and service.

ADDITIONAL REQUIREMENTS FOR THE PROGRAM

Insurance: The University will require its Students and faculty involved in the performance of the Affiliation Agreement to maintain professional liability insurance or self-insurance covering their activities under this Agreement. Prior to each Student's assignment to Facility, the University will furnish Facility with evidence that each Student and faculty member/representative has in effect professional liability insurance coverage of not less than $1,000,000 per incident and $3,000,000 in the aggregate. The University will issue the Facility certificates of insurance as evidence that Students and faculty have current professional liability insurance and will be kept current while such person is assigned to the Facility. University will inform Facility immediately of each renewal, cancellation or change in the content or amount of such coverage.

☐ This section regarding insurance is not applicable to the Program identified above.

Immunizations: The University will inform Students of Facility's immunization and vaccination requirements and notify all Students participating in clinical education experiences involving patient contact or exposure to patient their obligation to comply with immunization requirements.

☐ This section regarding immunizations is not applicable to the Program identified above.

Protected Health Information and the Health Insurance Portability and Accountability Act: The University shall advise faculty and Students of the requirement to sign a Health Insurance Portability and Accountability Act ("HIPPA") agreement for the Facility. Students and faculty agree not to use or disclose Protected Health Information of Facility's clients (hereinafter referred to as "PHI") obtained during the course of its work, other than for purposes of (a) performing duties under this agreement, (b) management and administration of University, but only when such would not violate HIPAA or any other federal or state law, or (c) carrying out legal responsibilities of University. University represents to Facility that it has implemented what it considers to be appropriate safeguards to protect such PHI and that such safeguards comply with HIPAA and any other similar law intended to protect the confidentiality of PHI. University will immediately report to Facility any use or disclosure of such PHI not authorized by this Agreement and assist in mitigating any harmful effects cause by violations of these provisions of which University has knowledge. University agrees that any material violation of these confidentiality provisions entitles Facility to terminate this Agreement immediately upon written or other notice.

☐ This section regarding PHI/HIPAA is not applicable to the Program identified above.

Infection Control: The University shall provide to Facility evidence of current tuberculosis screening prior to any representative or Student providing services to Facility under the terms of the Affiliation Agreement. University shall be responsible for notifying all employees or Students performing under the Affiliation Agreement of any on-going screening requirements for tuberculosis and maintain adequate records of current tuberculosis screens pursuant to guidelines established by law. If Facility suspects that faculty or Students providing services under this Agreement have been exposed to or have a positive screening for a communicable disease, Facility must respond according to the current CDC guidelines and keep documentation of the action taken. Facility will conduct and document a reassessment of the risk classification. Facility will conduct and document subsequent screening based upon the reassessed risk classification.

☐ This section regarding infection control is not applicable to the Program identified above.

Criminal Background Check/Drug Testing: University will inform Students and faculty of Facility's requirements to obtain the necessary criminal background check/drug testing prior to assignment, but University shall not be required to conduct drug testing or criminal background checks for students. The University shall instruct students to either Facility's approved vendor(s) or to a third party vendor at Student's sole cost and expense for the purposes of performing drug testing, health care and criminal background checks. All results will be submitted by the vendor to the Facility without involvement by the University.

☐ This section regarding background checks is not applicable to the Program identified above.

Screening: The University shall screen its faculty and Students performing under the Affiliation Agreement to ensure that none are ineligible to participate in federal or state healthcare programs. If during the term of the Affiliation Agreement anyone becomes an Ineligible Person, University will immediately notify Facility.

☐ This section regarding screening is not applicable to the Program identified above.

Other: _____

_____

_____

_____

_____

_____

_____.

C

BEAUMONT
TEXAS

TO:	City Council
FROM:	Kyle Hayes, City Manager
PREPARED BY:	Dr. Joseph Majdalani, P.E., Public Works Director JM
MEETING DATE:	August 2, 2016
REQUESTED ACTION:	Council consider a resolution authorizing the City Manager to enter into an agreement with the Texas Department of Transportation to contribute right-of-way clearing funds.

BACKGROUND
On August 3, 2015, the Texas Department of Transportation (TxDOT) awarded a $29.9 million contract to reconstruct the I-10 / FM 364 (Major Drive) intersection. Major Drive near the intersection will be widened from the current two-lane configuration to four lanes with center turning lane.

The right-of-way clearing cost for this project is $178,158.81. The City's required match funding participation in the amount of 5.6% is $9,976.89.

FUNDING SOURCE
Capital Program.

RECOMMENDATION
Approval of resolution.

Texas Department of Transportation

8350 Eastex Freeway | Beaumont, Texas 77708 | (409) 892-7311 | WWW.TXDOT.GOV

June 20, 2016

Kyle Hayes
801 Main St. Rm 300
Beaumont, TX 77706

RE: Agreement to Contribute Right of Way Funds
Jefferson, County
ROW 0786-01-084
FM 364 From: 900 Ft S. of IH-10 to SH124

Mr. Hayes,

Attached is the agreement regarding the above project. Please review for approval and execution. Please sign two originals and return to my attention. Also please attach the minutes of your meeting for exhibit "A", city ordinance or resolution.

Should you have any questions please contact me at 409-898-5717.

Sincerely,

Kathy Potts

Kathy Potts
Project Manager

RESOLUTION NO.

BE IT RESOLVED BY THE CITY COUNCIL

OF THE CITY OF BEAUMONT:

THAT the City Manager is hereby authorized to execute an Agreement with the State of Texas, through the Texas Department of Transportation, for the contribution of right-of-way funds for the reconstruction of the I-10/FM 364 (Major Drive) intersection. The Agreement is substantially in the form attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 2nd day of August, 2016.

_____

- Mayor Becky Ames -

County Jefferson
District Beaumont
ROW CSJ #0786-01-084
CCSJ #0786-01-083
Federal Project #:N/A
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

STATE OF TEXAS §

COUNTY OF TRAVIS §

AGREEMENT TO CONTRIBUTE RIGHT OF WAY FUNDS (FIXED PRICE)

THIS AGREEMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, (the "**State**"), and City of Beaumont, Texas, acting through its duly authorized officials (the "**Local Government**").

WITNESSETH

WHEREAS, Texas Transportation Code §§ 201.103 and 222.052 establish that the State shall design, construct, and operate a system of highways in cooperation with local governments; and

WHEREAS, Texas Transportation Code, §§ 201.209 authorizes the State and a Local Government to enter into agreements in accordance with Texas Government Code, Chapter 791; and

WHEREAS, the State has deemed it necessary to make certain highway improvements on Highway No. 364 from 900 Ft. S of IH-10 to SH 124, and this section of highway improvements will necessitate the acquisition of certain right of way and the relocating and adjusting of utilities (the "**Project**"); and

WHEREAS, the Local Government requests that the State assume responsibility for acquisition of all necessary right of way and adjustment of utilities for this highway project; and

WHEREAS, the Local Government desires to enter into a fixed price joint participation agreement pursuant to 43 TAC §15.52 to contribute to the State funding participation as defined in 43 TAC §15.55 for the cost of acquiring the right of way and relocating or adjusting utilities for the proper improvement of the State Highway System;

WHEREAS, the Governing Body of the Local Government has approved entering into this agreement by resolution or ordinance dated _____, 2016, which is attached to and made a part of this agreement as Attachment A. A map showing the Project location appears in Attachment B, which is attached to and made a part of this agreement.

NOW THEREFORE, the State and the Local Government do agree as follows:

County Jefferson
District Beaumont
ROW CSJ #0786-01-084
CCSJ #0786-01-083
Federal Project #:N/A
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

AGREEMENT

1. **Agreement Period**
   This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed. This agreement shall remain in effect until the Project is completed or unless terminated as provided below.

2. **Termination**
   This agreement shall remain in effect until the Project is completed and accepted by all parties, unless:
   A. The agreement is terminated in writing with the mutual consent of the parties;
   B. The agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party; or
   C. The Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this agreement.

3. **Local Project Sources and Uses of Funds**
   A. The total estimated cost of the Project is shown in Attachment C, Project Budget Estimate and Payment Schedule, which is attached to and made a part of this agreement. The expected cash contributions from the Federal or State government, the Local Government, or other parties is shown in Attachment C. The Local Government shall pay to the State the amount shown in Attachment C as its required contribution of the total cost of the Project and shall transmit to the State with the return of this agreement, duly executed by the Local Government, a warrant or check for the amount and according to the payment schedule shown in Attachment C.
   B. The Local Government's fixed price contribution set forth in Attachment C is not subject to adjustment unless:
      1. site conditions change;
      2. work requested by the Local Government is ineligible for federal participation; or
      3. the adjustment is mutually agreed on by the State and the Local Government.
   C. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local

Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

D. Whenever funds are paid by the Local Government to the State under this agreement, the Local Government shall remit a warrant or check made payable to the "Texas Department of Transportation Trust Fund." The warrant or check shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to this highway project.

E. Notwithstanding that this is a fixed price agreement, the Local Government agrees that in the event any existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive, including, but not limited to, outdoor advertising or storm water drainage facility requirements, is more restrictive than State or federal regulations, or any other locally proposed change, including, but not limited to, plats or re-plats, results in any increased costs to the State, then the Local Government will pay one hundred percent (100%) of all those increased costs, even if the applicable county qualifies as an Economically Disadvantaged County (EDC). The amount of the increased costs associated with the existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive will be determined by the State at its sole discretion.

F. If the Local Government is an EDC and if the State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.

G. If the Project has been approved for an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the incremental payment schedule.

4. Real Property in Lieu of Monetary Payment

A. Contributions of real property may be credited to the Local Government's funding obligation for the cost of right of way to be acquired for this project. Credit for all real property, other than property which is already dedicated or in use as a public road, contributed by the Local Government to the State shall be based on the property's fair market value established as of the effective date of this agreement. The fair market value shall not include increases or decreases in value caused by the project and should include the value of the land and improvements being conveyed, excluding any damages to the remainder. The amount of any credit for real property contributed for this project is clearly shown in Attachment C.

B. The Local Government will provide to the State all documentation to support the determined fair market value of the donated property. This documentation shall include an appraisal of the property by a licensed appraiser approved by the State. The cost of appraisal will be the responsibility of the State. The State will review the submitted documentation and make a final determination of value; provided however, the State may perform any additional investigation deemed necessary, including supplemental appraisal work by State employees or employment of fee appraisers.

C. Credit shall be given only for property transferred at no cost to the State after the effective date of this agreement and the issuance of spending authority, and only for property which is necessary to complete this project, has title acceptable to the State, and is not contaminated with hazardous materials. Credit shall be in lieu of monetary contributions required to be paid to the State for the Local Government's funding share of the right of way to be acquired for this project. The total credit cannot exceed the Local Government's matching share of the right of way obligation under this agreement, and credits cannot be reimbursed in cash to the Local Government, applied to project phases other than right of way, nor used for other projects.

D. In the event the Local Government's monetary contributions to the State for acquisition of right of way, when added to its real property credits, exceed the Local Government's matching share of the right of way obligation, there will be no refund to the Local Government of any portion of its contributed money.

5. Amendments

Amendments to this agreement due to changes in the character of the work, terms of the agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written supplemental agreement.

6. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, to the following addresses:

Local Government:	State:
Kyle Hayes	Director of Right of Way Division
City of Beaumont	Texas Department of Transportation
801 Main, Suite 300	125 E. 11th Street
Beaumont, Texas 77704	Austin, Texas 78701

All notices shall be deemed given on the date delivered or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail and that request shall be honored and carried out by the other party.

7. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this agreement and shall be cumulative.

8. Legal Construction

If one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

9. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

10. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

11. Sole Agreement

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the subject matter of this agreement.

12. Ownership of Documents

Upon completion or termination of this agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

13. Inspection of Books and Records

The Local Government shall maintain all books, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the State and, if federally funded, the Federal Highway

Administration (FHWA) or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this agreement or until any impending litigation, or claims are resolved. Additionally, the State and FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

14. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

15. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

16. Civil Rights Compliance

The parties to this agreement shall comply with the regulations of the U.S. Department of Transportation as they relate to nondiscrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

17. Applicability of Federal Provisions

Articles 18 through 23 only apply if Federal funding is used in the acquisition of right of way or the adjustment of utilities.

18. Office of Management and Budget (OMB) Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

19. Disadvantaged Business Enterprise (DBE) Program Requirements

A. The parties shall comply with the DBE Program requirements established in 49 CFR Part 26.

B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.

C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.

D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally -Approved Disadvantaged Business Enterprise by Entity and attachments found at web address http://txdot.gov/business/business_outreach/mou.htm.

E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

20. Debarment Certification

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this

contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

21. Lobbying Certification

In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 USC §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.

22. Federal Funding Accountability and Transparency Act Requirements

A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf and http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf.

B. The Local Government agrees that it shall:

1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than $25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: https://www.sam.gov/portal/public/SAM/

2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows Federal government to track the

distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website http://fedgov.dnb.com/webform; and

3. Report the total compensation and names of its top five (5) executives to the State if:

i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than $25,000,000; and

ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

23. Single Audit Report

A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

B. If threshold expenditures of $750,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at http://txdot.gov/inside-txdot/office/audit/contact.html

C. If expenditures are less than $750,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the $750,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."

D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

24. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

County Jefferson
District Beaumont
ROW CSJ #0786-01-084
CCSJ #0786-01-083
Federal Project #:N/A
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

_____
Signature

Kyle Hayes
Typed or Printed Name

City Manager
Title

_____
Date

THE STATE OF TEXAS

_____
Gus E. Cannon, CTCM
Director, Right of Way Division
Texas Department of Transportation

_____
Date

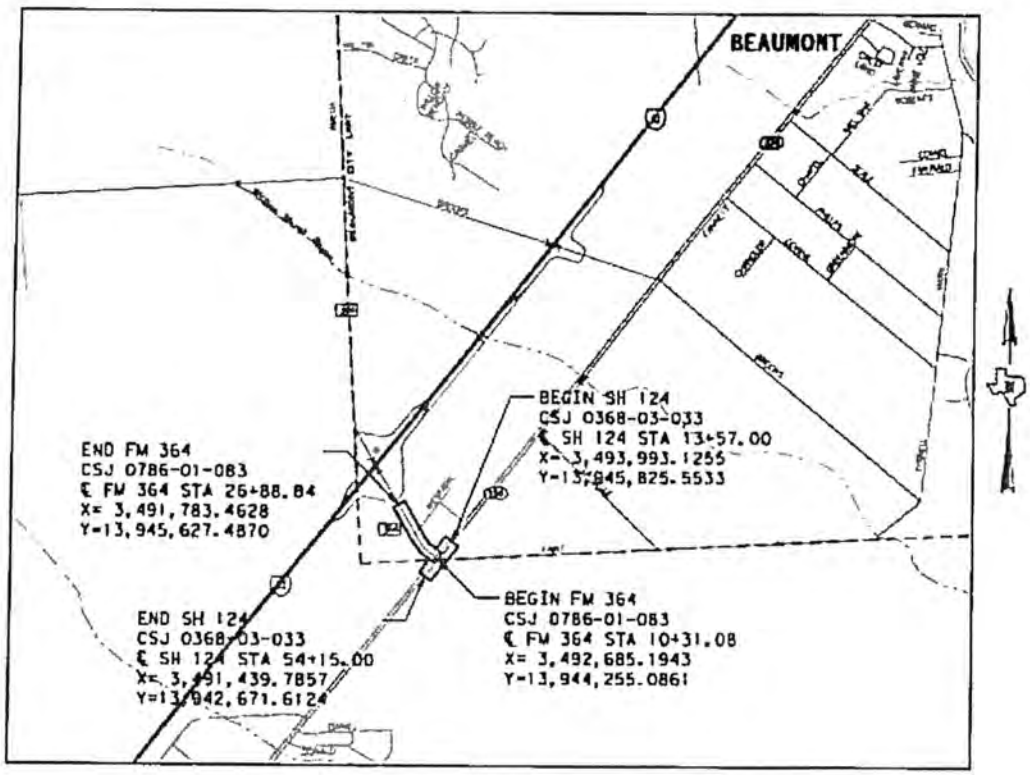
County Jefferson
District Beaumont
ROW CSJ #0786-01-084
CCSJ #0786-01-083
Federal Project #:N/A
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

ATTACHMENT A
RESOLUTION OR ORDINANCE

County Jefferson
District Beaumont
ROW CSJ #0786-01-084
CCSJ #0786-01-083
Federal Project #:N/A
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

ATTACHMENT B
LOCATION MAP SHOWING PROJECT

TOTAL PROJECT LIMITS: 900 FT S OF IH-10 TO SH 124, ETC
TOTAL PROJECT LENGTH: 1,536.48 FT - 0.291 MI



County Jefferson
District Beaumont
ROW CSJ # 0786-01-084
CCSJ # 0786-01-083
Federal Project # N/A
CFDA Title: Highway Planning & Construction
FHWA CFDA # 20.205
Federal Highway Administration
Not Research and Development

Standard Agreement to Contribute
State Performs Work
EDC Adjustment
Attachment C

Description	Total Estimated Cost	State Participation			Local Participation		
		% Before EDC Adj.	% After EDC Adj.	Cost After EDC Adj.	% Before EDC Adj.	% After EDC Adj.	Cost After EDC Adj.
Right of Way Acquisition	$0	0%	0%	$0	0%	0%	$0
Reimbursable Utility Adjustments	$178,158.81	90%	94.4%	$168,181.92	10%	5.6%	$9,976.89
Joint Bid Reimbursable Utility Adjustments	$0	0%	0%	$0	0%	0%	$0
	$0	0%	0%	$0	0%	0%	$0
	$0	0%	0%	$0	0%	0%	$0
TOTAL	$178,158.81	90%	94.4%	$168,181.92	10%	5.6%	$9,976.89

Except as otherwise provided in the Agreement, the fixed amount of Local Government participation will be that amount provided above.

Local Government requested and has been granted an Economically Disadvantaged County Adjustment from the Texas Transportation Commission on September 24, 2015 by virtue of attached Minute Order No. 114381, and approved a 44 percent adjustment to the required 10 percent local participation for this project. Also attached are completed Affidavit and EDC Program Information Sheet.

D

BEAUMONT
TEXAS

TO:	City Council
FROM:	Kyle Hayes, City Manager
PREPARED BY:	Tyrone E. Cooper, City Attorney
MEETING DATE:	August 2, 2016
REQUESTED ACTION:	Council consider amending Resolution No. 16-080 adding language required for the grant application; specifically the Texas Automobile Burglary and Theft Prevention Authority Fund.

BACKGROUND
The City adopted Resolution No. 16-080 on May 3, 2016. The Resolution allowed the City Manager to apply for and accept funding from the Texas Automobile Burglary and Theft Prevention Authority. The organization has added language that must be included in the Resolution for governing bodies seeking funding. The proposed language would require that the City return the grant funds in the event of loss or misuse; and also to designate an agent to administer the grant if awarded.

The change to the resolution would allow for compliance when applying for funding.

FUNDING SOURCE
Not applicable.

RECOMMENDATION
Approval of ordinance.

RESOLUTION NO.

WHEREAS, on May 3, 2016, the City Council of the City of Beaumont, Texas adopted Resolution No. 16-080 authorizing the City Manager to apply for and accept funding in the amount of $528,714 through the Texas Automobile Burglary and Theft Prevention Authority Fund for the Southeast Texas Auto Theft Task Force to provide vehicle burglary and theft investigations and crime prevention education; and,

WHEREAS, the Automobile Burglary and Theft Prevention Authority has requested an amendment to the resolution to address the loss or misuse of the grant funds and to designate the Authorized Official, Program Director, and Financial Officer for the grant;

NOW, THEREFORE, BE IT RESOLVED BY THE

CITY COUNCIL OF THE CITY OF BEAUMONT:

THAT the statements and findings set out in the preamble to this resolution are hereby, in all things, approved and adopted; and,

THAT the City of Beaumont has agreed that in the event of loss or misuse of the grand funds, the City of Beaumont assures that the Southeast Texas Auto Theft Task Force grant funds will be returned in full to the Texas Automobile Burglary and Theft Prevention Authority; and,

BE IT FURTHER RESOLVED THAT the City Manager is designated as the Authorized Official to apply for, accept, decline, modify, or cancel the grant application for the Automobile Burglary and Theft Prevention Authority Grant Program and other necessary documents to accept said grant; and,

BE IT ALSO RESOLVED THAT Lt. Bryan Skinner is designated as the Program Director and Laura Clark, CFO, is designated as the Financial Officer for this grant.

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 2nd day of August, 2016.

_____

- Mayor Becky Ames -

BEAUMONT
TEXAS

REGULAR MEETING OF THE CITY COUNCIL
COUNCIL CHAMBERS AUGUST 2, 2016 1:30 P.M.

AGENDA

CALL TO ORDER

* Invocation Pledge Roll Call
* Presentations and Recognition-The Texas Forest Service will have a signing ceremony with the City Council related to the Community Wildfire Protection Plan
* Public Comment: Persons may speak on scheduled agenda items 1-2/Consent Agenda
* Consent Agenda

GENERAL BUSINESS

1. Consider an ordinance amending the FY 2016 Budget

2. Consider a resolution authorizing the City Manager to execute Change Order No. 1, accept maintenance, and authorize final payment to LD Kemp Excavating, Inc. for the Cell 2 Construction Project

WORK SESSION

* Review and discuss reallocating a $1,000,000 earmark for the Washington (Langham to Major) Project towards four street rehabilitation projects, specifically the Tyrrell Park Loop; 11th Street between IH-10 and Delaware; 7th Street between IH-10 and Dollinger; and Washington between Langham and Major Drive

* Review and discuss the spending of two earmarks for the Washington (Langham to Major) Project and the Dowlen Road (College to Walden) Project

* Review and discuss allowing the rental of paddle boats or boards and other water craft at the Event Centre Lake

* Review and discuss the City's Weed Abatement Program

COMMENTS

* Councilmembers/City Manager comment on various matters
* Public Comment (Persons are limited to 3 minutes)

EXECUTIVE SESSION

* Consider matters related to contemplated or pending litigation in accordance with Section 551.071 of the Government Code:

  Architectural Alliance, Inc. as it relates to the Fire Station No. 2 and Fire Station No. 11 Projects

  Claim of City of Beaumont vs. Allco, LLC; Beaumont Tennis Center

  Potential Claim against APAC-Texas, Inc.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact Mitchell Normand at 880-3777.

1

August 2, 2016

Consider an ordinance amending the FY 2016 Budget

BEAUMONT
TEXAS

TO: City Council

FROM: Kyle Hayes, City Manager

PREPARED BY: Laura Clark, Chief Financial Officer

MEETING DATE: August 2, 2016

REQUESTED ACTION: Council consider an ordinance amending the FY 2016 Budget.

BACKGROUND

In accordance with Article VI of the City Charter, the City Manager shall strictly enforce the provisions of the budget as specified in the ordinance adopting the budget. He shall not authorize or approve any expenditure unless an appropriation has been made in the budget ordinance adopting the budget, and there is an available unencumbered balance of the appropriation sufficient to pay the liability to be incurred. Approving the proposed amendments will ensure that expenditures are within the approved budget.

The details of the proposed amendments are as follows:

The General Liability Fund is an internal service fund that accounts for all of the payments related to claims, settlements and lawsuits brought against the City. The City has settled several lawsuits this fiscal year amounting to more than was anticipated in the current year's budget. An amendment to the budget is necessary in order to appropriate additional funds for such settlements. Internal service funds are funded through transfers from the departments that they support. There have been no transfers to the General Liability Fund since FY 2014; however transfers from the General Fund $700,000, Water Fund $200,000 and Solid Waste Fund $200,000, totaling $1,100,000 are being proposed this fiscal year to reinforce the fund for FY 2017.

General Liability Fund	Original Budget	Proposed Amendment	Amended Budget
Total Expenditures	$939,200	$460,800	$1,400,000
Total Revenues	$5,000	$1,100,000	$1,105,000

The Fleet Fund is another internal service fund used by the City. It accounts for maintenance and repairs of vehicles and equipment used by all city departments. User fees for parts, labor, and fuel, for example, are charged to the respective departments through a markup of the cost incurred. Historically the revenue generated from the markup charged to the departments for the cost of fuel has offset where the markup for the parts and labor may have fallen short. FY 2016 is the second year of very low fuel prices which has led to less revenue to offset other operations. It is proposed that $700,000 be transferred into the Fleet Fund from the General Fund $300,000, Water Fund $150,000 and Solid Waste Fund $250,000 to make up the shortfall in revenue for FY 2016 and in lieu of a transfer in FY 2017.

Fleet Fund	Original Budget	Proposed Amendment	Amended Budget
Total Revenues	$9,071,200	$700,000	$9,771,200

The Henry Homberg Golf Course Fund is expected to fall short of budgeted revenues by over $63,000 in FY 2016 due to an extremely wet winter and spring season. In addition, the budget for FY 2017 anticipates expenditures in excess of revenues. For these two reasons, a transfer from the General Fund is proposed in FY 2016.

Henry Homberg Golf Course Fund	Original Budget	Proposed Amendment	Amended Budget
Total Revenues	$601,200	$150,000	$751,200

The General Fund is being amended in order to appropriate transfers of $700,000 to the General Liability Fund, $300,000 to the Fleet Fund and $150,000 to the Henry Homberg Golf Course Fund for a total of $1,150,000.

General Fund	Original Budget	Proposed Amendment	Amended Budget
Total Expenditures	$118,538,300	$1,150,000	$119,688,300

The Water Fund is being amended in order to appropriate transfers of $200,000 to the General Liability Fund and $150,000 to the Fleet Fund.

Water Fund	Original Budget	Proposed Amendment	Amended Budget
Total Expenditures	$48,319,900	$350,000	$48,669,900

The Solid Waste Fund is being amended in order to appropriate transfers of $200,000 to the General Liability Fund and $250,000 to the Fleet Fund.

Solid Waste Fund	Original Budget	Proposed Amendment	Amended Budget
Total Expenditures	$10,667,400	$450,000	$11,117,400

The Henry Homberg Golf Course Fund is expected to fall short of budgeted revenues by over $63,000 in FY 2016 due to an extremely wet winter and spring season. In addition, the budget for FY 2017 anticipates expenditures in excess of revenues. For these two reasons, a transfer from the General Fund is proposed in FY 2016.

Henry Homberg Golf Course Fund	Original Budget	Proposed Amendment	Amended Budget
Total Revenues	$601,200	$150,000	$751,200

The Tyrrell Historical Library Fund received a large donation for a project to mitigate water intrusion in the building. An amendment to this fund will be necessary in order to appropriate the expenditures for the project and to recognize the donation received to pay for this project.

Tyrrell Historical Fund	Original Budget	Proposed Amendment	Amended Budget
Total Revenues	$20,500	$179,500	$200,000
Total Expenditures	$20,500	$179,500	$200,000

In June 2016, the City issued 2016 General Obligation Refunding Bonds. The refunding was not appropriated in the FY 2016 Budget because the timeline and amount were not known at the time the budget was prepared. The amendment is needed to reflect the bond refunding.

Debt Service Fund	Original Budget	Proposed Amendment	Amended Budget
Total Expenditures	$16,553,800	$49,700,000	$66,253,800
Total Revenues	$15,737,000	$49,700,000	$65,437,000

The Hotel Occupancy Tax Fund accounts for the operations of the Conventions and Visitors Bureau funded by hotel occupancy taxes. The proposed amendment in the Hotel Occupancy Tax Fund is to appropriate the fund's commitment of $150,000 for the cattail marsh boardwalk project.

Hotel Occupancy Tax Fund	Original Budget	Proposed Amendment	Amended Budget
Total Expenditures	$ 2,668,800	$150,000	$ 2,818,800

FUNDING SOURCE
Not applicable.

RECOMMENDATION
Approval of ordinance.

ORDINANCE NO.

ENTITLED AN ORDINANCE AMENDING THE FISCAL BUDGET OF THE CITY OF BEAUMONT FOR THE FISCAL YEAR 2016 TO APPROPRIATE ADDITIONAL EXPENDITURES AND REVENUES IN THE GENERAL LIABILITY, TYRRELL HISTORICAL AND DEBT SERVICE FUNDS; TO APPROPRIATE ADDITIONAL EXPENDITURES IN THE GENERAL, WATER, SOLID WASTE AND HOTEL OCCUPANCY TAX FUNDS; AND TO APPROPRIATE ADDITIONAL REVENUES TO THE FLEET AND HENRY HOMBERG GOLF COURSE FUNDS; AND; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR REPEAL.

WHEREAS, the City Charter of the City of Beaumont requires the City Manager to strictly enforce the provisions of the budget and not authorize or approve any expenditure unless an appropriation has been made in the budget ordinance adopting the budget and there is an available unencumbered balance of the appropriation sufficient to pay the liability to be incurred; and,

WHEREAS, it is necessary to amend the FY 2016 budget to ensure that appropriations are sufficient to ensure that expenditures are authorized within the approved budget;

NOW, THEREFORE, BE IT ORDAINED

BY THE CITY OF BEAUMONT:

Section 1.

THAT the Fiscal Budget of the City of Beaumont for the period commencing October 1, 2015 through September 30, 2016, be and the same is hereby amended to appropriate additional expenditures and revenues in the General Liability Fund as shown below:

General Liability Fund	Original Budget	Proposed Amendment	Amended Budget
Total Expenditures	$939,200	$460,800	$1,400,000
Total Revenues	$5,000	$1,100,000	$1,105,000

Section 2.

THAT the Fiscal Budget of the City of Beaumont for the period commencing October 1, 2015 through September 30, 2016, be and the same is hereby amended to appropriate additional revenues in the Fleet Fund as shown below:

Fleet Fund	Original Budget	Proposed Amendment	Amended Budget
Total Revenues	$9,071,200	$700,000	$9,771,200

Section 3.

THAT the Fiscal Budget of the City of Beaumont for the period commencing October 1, 2015 through September 30, 2016, be and the same is hereby amended to appropriate additional expenditures in the General Fund as shown below:

General Fund	Original Budget	Proposed Amendment	Amended Budget
Total Expenditures	$118,538,300	$1,150,000	$119,688,300

Section 4.

THAT the Fiscal Budget of the City of Beaumont for the period commencing October 1, 2015 through September 30, 2016, be and the same is hereby amended to appropriate additional expenditures in the Water Fund as shown below:

Water Fund	Original Budget	Proposed Amendment	Amended Budget
Total Expenditures	$48,319,900	$350,000	$48,669,900

Section 5.

THAT the Fiscal Budget of the City of Beaumont for the period commencing October 1, 2015 through September 30, 2016, be and the same is hereby amended to appropriate additional expenditures in the Solid Waste Fund as shown below:

Solid Waste Fund	Original Budget	Proposed Amendment	Amended Budget
Total Expenditures	$10,667,400	$450,000	$11,117,400

Section 6.

THAT the Fiscal Budget of the City of Beaumont for the period commencing October 1, 2015 through September 30, 2016, be and the same is hereby amended to appropriate additional revenues in the Henry Homberg Golf Course Fund as shown below:

Henry Homberg Golf Course Fund	Original Budget	Proposed Amendment	Amended Budget
Total Revenues	$601,200	$150,000	$751,200

Section 7.

THAT the Fiscal Budget of the City of Beaumont for the period commencing October 1, 2015 through September 30, 2016, be and the same is hereby amended to appropriate additional revenues and expenditures in the Tyrrell Historical Fund as shown below:

Tyrrell Historical Fund	Original Budget	Proposed Amendment	Amended Budget
Total Revenues	$20,500	$179,500	$200,000
Total Expenditures	$20,500	$179,500	$200,000

Section 8.

THAT the Fiscal Budget of the City of Beaumont for the period commencing October 1, 2015 through September 30, 2016, be and the same is hereby amended to appropriate additional expenditures and revenues in the Debt Service Fund as shown below:

Debt Service Fund	**Original Budget**	**Proposed Amendment**	**Amended Budget**
Total Expenditures	$16,553,800	$49,700,000	$66,253,800
Total Revenues	$15,737,000	$49,700,000	$65,437,000

Section 9.

THAT the Fiscal Budget of the City of Beaumont for the period commencing October 1, 2015 through September 30, 2016, be and the same is hereby amended to appropriate additional expenditures in the Hotel Occupancy Tax Fund as shown below:

Hotel Occupancy Tax Fund	**Original Budget**	**Proposed Amendment**	**Amended Budget**
Total Expenditures	$ 2,668,800	$150,000	$ 2,818,800

Section 10.

That if any section, subsection, sentence, clause or phrase of this ordinance or the application of same to a particular set of persons or circumstances should for any reason be held to be invalid, such invalidity shall not affect the remaining portions of this ordinance and, to such end, the various portions and provisions of this ordinance are declared to be severable.

Section 11.

That all ordinances or parts of ordinances in conflict herewith are repealed to the extent of the conflict only.

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 2nd day of August, 2016.

_____

- Mayor Becky Ames -

2

August 2, 2016

Consider a resolution authorizing the City Manager to execute Change Order No. 1, accept maintenance, and authorize final payment to LD Kemp Excavating, Inc. for the Cell 2 Construction Project

---

BEAUMONT
TEXAS

TO:	City Council
FROM:	Kyle Hayes, City Manager
PREPARED BY:	Dr. Joseph Majdalani, P.E., Public Works Director JM
MEETING DATE:	August 2, 2016
REQUESTED ACTION:	Council consider a resolution authorizing the City Manager to execute Change Order No. 1, accept maintenance, and authorize final payment to LD Kemp Excavating, Inc. for the Cell 2 Construction Project in the amount of $237,202.79.

BACKGROUND
On December 8, 2015, by Resolution No. 15-277, City Council awarded LD Kemp Excavating, Inc. of Fort Worth, Texas the contract for the Cell 2 Construction Project in the amount of $1,411,638.40.

Change Order No. 1, is required to adjust the estimated quantities in the contract to reflect the actual quantities used in the completion of the project. The adjustment in quantities results in an overall decrease of $110,416.23 (-7.82%) and a final contract value of $1,301,222.17. The project has been inspected and found to be complete in accordance with the provisions and terms set forth in the contract. Acceptance of maintenance, approval of Change Order No. 1, and final payment in the amount of $237,202.79 is recommended.

FUNDING SOURCE
Capital Program.

RECOMMENDATION
Approval of resolution.

RESOLUTION NO. 15-277

BE IT RESOLVED BY THE CITY COUNCIL OF THE

CITY OF BEAUMONT:

THAT the City Council hereby approves the award of a contract to L.D. Kemp Excavating, Inc., of Fort Worth, Texas, in the amount of $1,411,638.40 for the Solid Waste Landfill Cell 2 Construction Project as described in the bid tabulation attached hereto as Exhibit "A."

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 8th day of December, 2015.

THE CITY OF BEAUMONT, JEFFERSON COUNTY, TEXAS
BEAUMONT TEXAS

Becky Ames

- Mayor Becky Ames -

CITY OF BEAUMONT

DATE : JULY 21, 2016
PROJECT : CITY OF BEAUMONT CELL 2 CONSTRUCTION
OWNER : CITY OF BEAUMONT
CONTRACTOR : LD KEMP EXCAVATING, INC.
CHANGE ORDER : 1 AND FINAL

THE FOLLOWING CHANGES IN THE PLANS AND/OR SPECIFICATIONS ARE HEREBY MADE:

Adjust the estimated Bid Quantities to reflect the Actual Quantities used in the completion of the project.

Add/Delete Construction Items and/or Quantities to the Contract:

ITEM NO.	DESCRIPTION	UNIT	BID QUANTITY	ACTUAL QUANTITY	UNIT PRICE	CHANGE ORDER AMOUNT
4	Excavation - Cell 2 Liner Subgrade	CY	78,000	82,150	$ 2.30	$ 9,545.00
6	Engineered Fill – Cell 2 Base Grade	CY	5,000	4,598	$ 3.30	$ (1,326.60)
7	2-foot Protective Cover	SY	46,645	46,584	$ 2.00	$ (122.00)
10	2-foot Compacted Clay Liner	SY	46,645	46,584	$ 2.84	$ (173.24)
11	60-mil HDPE Geomembrane (Smooth)	SF	339,075	339,786	$ 0.47	$ 334.17
12	60-mil HDPE Geomembrane (Textured Both-Sides)	SF	80,730	79,467	$ 0.59	$ (745.17)
13	250-mil Geocomposite (Single-Sided)	SF	349,625	346,662	$ 0.45	$ (1,333.35)
14	250-mil Geocomposite (Double-Sided)	SF	77,460	72,574	$ 0.64	$ (3,127.04)
20	Temporary Underdrain Dewatering Trenches and Sump	LF	2,200	1,500	$ 19.24	$ (13,468.00)
NA	Allowance	-	1	-	$ 100,000.00	$ (100,000.00)
		TOTAL AMOUNT SUBTRACTED FROM THE CONTRACT				**$ (110,416.23)**

NO WORKING DAYS HAVE BEEN ADDED TO THE CONTRACT BY THIS CHANGE ORDER

ORIGINAL CONTRACT AMOUNT :	$ 1,411,638.40
NET FROM PREVIOUS CHANGE ORDERS :	$ -
TOTAL AMOUNT OF THIS CHANGE ORDER :	$ (110,416.23)
PERCENT OF THIS CHANGE ORDER :	-7.82%
TOTAL PERCENT CHANGE ORDERS TO DATE :	-7.82%
NEW CONTRACT AMOUNT :	$ 1,301,222.17

ACCEPTED BY: _____
LD KEMP EXCAVATING, INC.

PREPARED BY: _____
CHACE MANN - PROJECT MANAGER

RECOMMENDED BY: _____
ZHENG TAN, P.E. - CITY ENGINEER

_____
DR. JOSEPH MAJDALANI, P.E. - PUBLIC WORKS DIRECTOR

APPROVED BY: _____
KYLE HAYES - CITY MANAGER

ATTESTED BY: _____
TINA BROUSSARD, CITY CLERK

Contractor's Application for Payment No. 5

	Application Period: 6/1/16 through 6/30/16	Application Date: 7/22/2016
To (Owner): City of Beaumont, Texas	From (Contractor): LD Kemp Excavating, Inc.	Via (Engineer): SCS Engineers
Project City of Beaumont Landfill, MSW-1486B Cell 2 Construction	Contract:	
Owner's Contract No.: 26464	Contractor's Project No.:	Engineer's Project No.: 16214142

Application For Payment

Change Order Summary

Approved Change Orders		
Number	Additions	Deductions
1 - Remaining Unspent Budget (see Page 2)		-$110,416.23
TOTALS		-$110,416.23
NET CHANGE BY CHANGE ORDERS	-$110,416.23	

1. **ORIGINAL CONTRACT PRICE** ..... $ $1,411,638.40
2. **Net change by Change Orders** ..... $ -$110,416.23
3. **Current Contract Price (Line 1 ± 2)** ..... $ $1,301,222.17
4. **TOTAL COMPLETED AND STORED TO DATE (Column F on Progress Estimate)** ..... $ $1,301,222.17
5. **RETAINAGE:**
   - a. X 5% Work Completed ..... $
   - b. X 5% Stored Material ..... $
   - c. Total Retainage (Line 5a + Line 5b) ..... $
6. **AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c)** ..... $ $1,301,222.17
7. **LESS PREVIOUS PAYMENTS (Line 6 from prior Application)** ..... $ $1,064,019.38
8. **AMOUNT DUE THIS APPLICATION** ..... $ $237,202.79
9. **BALANCE TO FINISH, PLUS RETAINAGE (Column G on Progress Estimate + Line 5 above)** ..... $

Contractor's Certification

The undersigned Contractor certifies that to the best of its knowledge: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

By: [signature] July 22, 2016

Payment of: $ $237,202.79
(Line 8 or other - attach explanation of the other amount)

is recommended by [signature] (Engineer) 7/22/2016 (Date)

Payment of: $ 237,202.79
(Line 8 or other - attach explanation of the other amount)

CM is approved by: Joseph [signature] (Owner) 7/27/16 (Date)

Approved by: _____ Funding Agency (if applicable) _____ (Date)

Progress Estimate - Unit Price Work

Contractor's Application

For (Contract): City of Beaumont Landfill, MSW-1486B
Cell 2 Construction

Application Number: 5

Application Period: 6/1/16 through 6/30/16

Application Date: 7/22/2016

A					B	C	D	E	F		G
Item											
Bid Item No.	Description	Bid Item Quantity	Unit	Unit Price	Bid Item Value ($)	Actual Quantity Installed	Value of Work Installed to Date	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (F / B)	Difference (Bid vs. Actual) (F - B)
1	Mobilization and Demobilization	1	LS	$71,053.00	$71,053.00	1.00	$71,053.00		$71,053.00	100.0%	$0.00
2	Layout of Work and Surveys	1	LS	$38,000.00	$38,000.00	1.00	$38,000.00		$38,000.00	100.0%	$0.00
3	Clearing and Grubbing	1	LS	$19,525.00	$19,525.00	1.00	$19,525.00		$19,525.00	100.0%	$0.00
4	Excavation - Cell 2 Liner Subgrade	78,000	CY	$2.30	$179,400.00	82,150	$188,945.00		$188,945.00	105.3%	$9,545.00
5	Excavation - Liner Tie-in (Cell 3A)	600	LF	$22.80	$13,680.00	600	$13,680.00		$13,680.00	100.0%	$0.00
6	Engineered Fill – Cell 2 Base Grade	5,000	CY	$3.30	$16,500.00	4,598	$15,173.40		$15,173.40	92.0%	($1,326.60)
7	2-foot Protective Cover	46,645	SY	$2.00	$93,290.00	46,584	$93,168.00		$93,168.00	99.9%	($122.00)
8	Drainage Aggregate (Leachate Collection Trench and Sump)	1,450	CY	$90.36	$131,022.00	1,450	$131,022.00		$131,022.00	100.0%	$0.00
9	12 oz Non-Woven Geotextile (Leachate Collection Trench and Sump)	80,600	SF	$0.26	$20,956.00	80,600	$20,956.00		$20,956.00	100.0%	$0.00
10	2-foot Compacted Clay Liner	46,645	SY	$2.84	$132,471.80	46,584	$132,298.56		$132,298.56	99.9%	($173.24)
11	60-mil HDPE Geomembrane (Smooth)	339,075	SF	$0.47	$159,365.25	339,786	$159,699.42	$0.00	$159,699.42	100.2%	$334.17
12	60-mil HDPE Geomembrane (Textured Both-Sides)	80,730	SF	$0.59	$47,630.70	79,467	$46,885.53	$0.00	$46,885.53	98.4%	($745.17)
13	250-mil Geocomposite (Single-Sided)	349,625	SF	$0.45	$157,331.25	346,662	$155,997.90	$0.00	$155,997.90	99.2%	($1,333.35)
14	250-mil Geocomposite (Double-Sided)	77,460	SF	$0.64	$49,574.40	72,574	$46,447.36	$0.00	$46,447.36	93.7%	($3,127.04)
15	6-inch HDPE SDR 11 Perforated Pipe (leachate collection trenches)	2,500	LF	$19.00	$47,500.00	2,500	$47,500.00		$47,500.00	100.0%	$0.00
16	6-inch HDPE SDR 11 Solid Pipe (clean-out risers)	200	LF	$19.00	$3,800.00	200	$3,800.00		$3,800.00	100.0%	$0.00
17	18-inch HDPE SDR 17 Perforated and Solid Pipe	75	LF	$72.68	$5,451.00	75	$5,451.00		$5,451.00	100.0%	$0.00
18	Leachate Pump, Controls, and Connection to Existing Leachate Transfer Pipe	1	LS	$42,020.00	$42,020.00	1	$42,020.00		$42,020.00	100.0%	$0.00
19	Concrete Sump/Clean-out Riser Pipe Retaining Wall	1	LS	$18,740.00	$18,740.00	1	$18,740.00		$18,740.00	100.0%	$0.00
20	Temporary Underdrain Dewatering Trenches and Sump	2,200	LF	$19.24	$42,328.00	1,500	$28,860.00		$28,860.00	68.2%	($13,468.00)
21	Landfill Berm (External Sideslope), Seed, Fertilizer & ECB	1	LS	$22,000.00	$22,000.00	1	$22,000.00		$22,000.00	100.0%	$0.00
NA	Allowance	1	LS	$100,000.00	$100,000.00	0	$0.00		$0.00	0	($100,000.00)
	Totals				**$1,411,638.40**		**$1,301,222.17**	**$0.00**	**$1,301,222.17**	**92.2%**	**($110,416.23)**

RESOLUTION NO.

WHEREAS, on December 8, 2015, the City Council of the City of Beaumont, Texas adopted Resolution No. 15-277 approving the award of a contract to L.D. Kemp Excavating, Inc., of Fort Worth, Texas, in the amount of $1,411,638.40 for the Solid Waste Landfill Cell 2 Construction Project; and,

WHEREAS, Change Order No. 1, in the amount of ($110,416.23), is required to adjust the estimated quantities in the contract to reflect the actual quantities used in the completion of the project, thereby reducing the contract amount to $1,301,222.17; and,

WHEREAS, the project has been inspected by the Engineering Division and found to be complete in accordance with the provisions and terms set forth in the contract;

NOW, THEREFORE, BE IT RESOLVED BY THE

CITY COUNCIL OF THE CITY OF BEAUMONT:

THAT the statements and findings set out in the preamble to this resolution are hereby, in all things, approved and adopted; and,

THAT the City Manager be and he is hereby authorized to execute Change Order No. 1 for additional work described above, thereby decreasing the contract amount by ($110,416.23) for a total contract amount of $1,301,222.17 for the Solid Waste Landfill Cell 2 Construction Project; and,

BE IT FURTHER RESOLVED THAT the Solid Waste Landfill Cell 2 Construction Project be and the same is hereby accepted; and,

BE IT ALSO RESOLVED THAT the City Manager is hereby authorized to make final payment in the amount of $237,202.79 to L.D. Kemp Excavating, Inc., of Fort Worth, Texas.

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 2nd day of August, 2016.

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- Mayor Becky Ames -

WORK SESSION

* Review and discuss reallocating a $1,000,000 earmark for the Washington (Langham to Major) Project towards four street rehabilitation projects, specifically the Tyrrell Park Loop; 11th Street between IH-10 and Delaware; 7th Street between IH-10 and Dollinger; and Washington between Langham and Major Drive

WORK SESSION

* Review and discuss the spending of two earmarks for the Washington (Langham to Major) Project and the Dowlen Road (College to Walden) Project

WORK SESSION

* Review and discuss allowing the rental of paddle boats or boards and other water craft at the Event Centre Lake

WORK SESSION

* Review and discuss the City's Weed Abatement Program