



RFQ 2024-SL02

Professional Services for the Wind & Water Sports Venue

Statements of Qualifications must be received before:

2:00 P.M. Central on JULY 9, 2024

City of South Padre Island

ATTN: City Secretary

4601 Padre Boulevard South Padre Island, TX 78597

City of South Padre Island – City Secretary

4601 Padre Boulevard, South Padre Island, TX 78597

(956) 761-8109

www.myspi.org

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GENERAL

The City of South Padre Island seeks to enter into an agreement with a qualified Individual, Firm, or Corporation (Proposer) with substantial and relevant experience and expertise to provide **Professional Services for the Wind & Water Sports Venue**.

DEFINITIONS

The following definitions shall be used to identify terms throughout this Request for Qualifications:

A. AGREEMENT/CONTRACT

A mutually binding legal document obligating the Firm to furnish the professional services specified within this solicitation and obligating the City to pay for the professional services provided.

B. PROPOSAL/RESPONSE/OFFER

A complete, properly signed response to this solicitation that, if accepted, would bind the Respondent to perform the resulting contract.

C. PROPOSER/RESPONDENT/OFFERER

The **Individual, Firm, or Corporation (Proposer)** that considers themselves qualified to provide the services specified herein, and are interested in making an offer to provide the services to the City.

D. CITY

The City of South Padre Island, located in Cameron County, Texas.

E. CITY COUNCIL

The elected officials of the City of South Padre Island, Texas, given the authority to exercise such powers and jurisdiction of all City business as conferred by the City Charter and State Constitution and Laws.

F. FIRM

The successful Proposer of this request for proposal.

G. PURCHASE ORDER

A purchase order records the financial obligation of the City to pay for services properly received; therefore, a purchase order is also required for all contracts with an expenditure of funds entered into by the City Manager or City Council.

H. REQUEST FOR QUALIFICATIONS (RFQ)

This Solicitation document issued by the City containing terms, conditions and request for qualifications for the services to be procured.

I. STATEMENT OF QUALIFICATIONS (SOQ)

A Firm's response to this solicitation

J. VENDOR/CONTRACTOR

Person or business enterprise providing professional services to the City as fulfillment of obligations arising from an agreement pursuant to this request for qualifications.

NOTICE TO PROPOSERS

A. NOTICE

Statement of Qualifications are due at **2:00 p.m. on July 9, 2024**, after which time all qualified responses will be opened and acknowledged at 4601 Padre Blvd, South Padre Island, Texas 78597. Proposals received after the specified deadline will be returned unopened.

Sealed SOQs shall be clearly marked with the RFQ number and title and addressed to the City of South Padre Island – City Secretary. Proposals shall be delivered using one of the following:

Hand-deliver to:	Mail to:	Ship to (FedEx, UPS, DHL):
4601 Padre Blvd South Padre Island, TX 78597	4601 Padre Blvd. South Padre Island, TX 78597	4601 Padre Blvd. South Padre Island, TX 78597

Potential Respondents may receive notice of solicitations from the City of South Padre Island from a variety of channels. Approved methods of dissemination include: City of South Padre Island website or the City of South Padre Island City Secretary. The receipt of solicitations through any other means may result in the receipt of incomplete specifications or addenda which could ultimately render your proposal non-compliant. City of South Padre Island accepts no responsibility for the receipt or notification of solicitations through any other source.

B. QUESTIONS, INQUIRIES, AND ADDENDA

Questions and inquiries about this Solicitation shall be submitted in writing to the following individual:

Kristina Boburka
Shoreline Director
kboburka@myspi.org

The deadline for written questions is **July 1, 2024 by 3:00 p.m.** Central time. This deadline has been established to provide adequate time for City staff to prepare responses to questions from Proposers to the best of their ability.

Proposers shall not attempt to contact City Council members, City staff, or Management directly during the pre-proposal or post-proposal period. The City intends to respond to all appropriate questions or concerns; however, the City reserves the right to decline to respond to any question or concern. All material modifications, clarifications, or interpretations will be incorporated into an addendum, which will be posted publicly.

All addenda will be posted on the City’s website at www.myspi.org no later than **July 2, 2024 by 5:00 p.m.** Central time. All addenda issued prior to the due date and time for responses must be incorporated into the RFQ and must be acknowledged in the SOQ response. Only written information provided shall be binding. Oral or other interpretations shall not be binding and are held without legal effect.

C. SCHEDULE OF IMPORTANT DATES

The City will generally comply with the following schedule for the selection process, subject to changes necessary to ensure fairness and to accommodate unanticipated events:

Release RFQ	13 June 2024
Advertisement Dates	20 & 27 June 2024
Deadline for Questions & Inquiries	01 July 2024 by 3:00 p.m.
Latest Addendum Posting	02 July 2024 by 5:00 p.m.

SOQ Due Date & Time
City's Review of SOQs
Date for Finalist Interviews or Presentations (if any)
Earliest Award by City

09 July 2024 at 2:00 p.m.
10 – 12 July 2024
15 – 16 July 2024
17 July 2024

D. FINALIST INTERVIEWS and/or PRESENTATIONS

Proposers reasonably subject to being selected based on the criteria set forth in this RFQ may be given an opportunity to make a presentation and/or interview with the Selection Committee. **Finalists selected for interviews and/or presentations must be available during regular business hours on July 15 - 16, 2024.** Following any presentation and/or interview, SOQs will be ranked in order of the most highly qualified and recommended to City Council. Contract negotiations will begin with the top ranked Firm after City Council approval. Should negotiations with the highest ranked Firm fail to yield a contract, or if the Firm is unable to execute the City's contract, negotiations will be formally ended and then commence with the second highest ranked Firm, etc. However, the City, may, in its sole discretion, negotiate and award a contract without presentations or interviews, based solely on information supplied in the Statement of Qualifications submitted.

E. CERTIFICATION

This Solicitation includes a certification page. Respondent must:

1. Furnish complete name, mailing address, telephone number, and email of the individual duly authorized to execute contractual documents on behalf of the Respondent.
2. Furnish name of individual(s), along with respective telephone numbers and email addresses, who will be responsible for answering all questions.
3. Certify that they have not conspired with any other potential Respondents in any manner to attempt to control competitive pricing.
4. Certify that they are duly qualified, capable, and otherwise qualified business entity not in receivership or contemplating same, and has not filed bankruptcy.

F. EXCEPTIONS

Any deviations from terms, conditions, or requests for qualifications contained herein must be clearly indicated in the Response to this Solicitation in writing at or before the due date and time. Any deviations or exceptions are subject to review by the City and may deem the Response disqualified or non-responsive. If no exceptions are stated, it will be understood that all general terms and conditions and specific requirements will be complied with, without exception.

G. DISCLOSURE OF INTERESTED PARTIES

Contracting hereunder may require compliance with §2252.908 Texas Government Code/Disclosure of Interested Parties for contracts that (1) require an action or vote by the City Council before the contract may be signed; or (2) has a value of at least \$1 million. The law provides that a governmental entity may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the governmental entity or state agency.

The process as implemented by the Texas Ethics Commission ("TEC") is as follows:

1. The disclosure of interested parties must be performed using the [Texas Ethics Commission's electronic filing application](#) listing each interested party of which the business entity is aware on Form 1295, obtaining a certification of filing number for this form from the TEC, and printing a copy of it to submit to the City.

2. The copy of Form 1295 submitted to the City must contain the unique certification number from the TEC. The form must be filed with the City pursuant to §2252.908 Texas Government Code, “at the time the business entity submits the signed contract” to the City.

The City, in turn, will submit a copy of the disclosure form to the TEC not later than the 30th day after the date the City receives the disclosure of interested parties from the business entity.

The City makes no guarantees or representations that any award will be made and reserves the right to cancel this solicitation for any reason. The City may:

- Reject any and all SOQs received as a result of this RFQ.
- Waive or decline to waive any informality and any irregularities in any proposal or responses received.
- Negotiate changes in the Scope of Work or services to be provided.
- Withhold the award of contract(s).
- Select Proposer(s) it deems to be most qualified to fulfill the needs of the City.
- Terminate the RFQ process.

STANDARD TERMS AND CONDITIONS

A. ADDENDA

If it becomes necessary to revise any part of this Solicitation, prior to the due date and time, a written addendum will be provided on the City’s website at www.myspi.org for any clarification. The City is not bound by any oral representations, clarifications, or changes made in the Request for Qualifications by the City’s employees, unless such of change is provided to Respondents in written addendum form from the City. It shall be the sole responsibility of the Respondent to verify issuance of any addenda and to check all avenues of document availability prior to the opening date and time. Respondent shall provide written acknowledgment of all addenda.

B. BUSINESS PRACTICES

Minority business enterprises and/or historically underutilized businesses will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, or national origin in consideration for an award.

C. COLLUSION

Advanced disclosures of any information to any particular Respondent which gives that particular Respondent any advantage over any other interested Respondent in advance of the due date, whether in response to advertising or an informal request for proposals, made or permitted by a member of the governing body or an employee or representative thereof, will cause to void all responses to that particular solicitation or request.

D. COMMUNICATION

To insure the proper and fair evaluation of this Proposal, the City prohibits ex parte communication (e.g., unsolicited) initiated by the Respondent to the City Official or Employee evaluating or considering the Responses prior to the time an award has been made. Communication between Respondents and the City will be initiated by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the

Statement(s) of Qualification. Ex parte communication may be grounds for disqualifying the offending Respondent from consideration or award, or any future Solicitation.

Unless otherwise specified, all requests for clarification or questions regarding a Solicitation must be directed as provided herein.

M. DISCLOSURE

At the due date and time there will be no disclosure of contents of any Proposal to competing Proposers, and all Proposals will be kept confidential during the negotiation process. Except for trade secrets and confidential information which the Firm identifies as proprietary, all Proposals will be open for public inspection after the contract award.

N. DISCLOSURE OF PENDING LITIGATION:

Each Respondent shall include in its proposal a complete disclosure of any material civil or criminal litigation or pending investigation which involves the Respondent or in which the Respondent has been judged guilty.

O. PROHIBITED FIRMS

The City of South Padre Island prohibits conducting business with Firms under the following conditions:

1. Respondents who have failed to comply with their state contracts and have been debarred from doing business with the State of Texas.

P. PUBLIC INFORMATION

All Responses are subject to release as public information unless the Response or specific parts of the Response can be shown to be exempt from the Texas Public Information Act. Respondents are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The City assumes no obligation or responsibility for asserting legal arguments on behalf of potential Respondents.

If a Respondent believes that a Response or parts of a Response are confidential, then the Respondent shall so specify. The Respondent shall stamp in bold red letters the term "**CONFIDENTIAL**" on that part of the Response, which the Respondent believes to be confidential. Vague and general claims as to confidentiality shall not be accepted. All Responses and parts of Responses that are not marked as confidential will be automatically considered public information.

Q. REIMBURSEMENTS

There is no expressed or implied obligation for the City of South Padre Island to reimburse responding Firms for any expenses incurred in preparing SOQs in response to this Request for Qualification and the City will not reimburse responding Firms for these expenses, nor will the City pay any subsequent costs associated with the provision of additional information or presentation, or to procure a contract for these goods or services.

A. REPRESENTATIONS and RESPONSIBILITIES

By submitting an SOQ in response to this RFQ, Proposer represents that it has carefully read and understands all elements of this RFQ; has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations that in any manner may affect the cost, progress, or performance of the work; and has full knowledge of the scope, nature, quality and quantity of services to be performed.

The failure or omission of Proposer to receive or examine any form, instrument, addendum, or other documents or to acquaint itself with existing conditions or other details shall in no way relieve any Proposer from any obligations with respect to its proposal or to the contract.

R. RESERVATIONS

The City reserves the right to request clarification or additional information specific to any response after all Responses have been received and the solicitation due date has passed. Additionally, the City reserves the right to accept or reject all or part of any Response, waive any formalities or technical inconsistencies, delete any portion of the Scope of Work, or terminate the Solicitation when deemed to be in City's best interest.

S. RESPONSES BECOME PROPERTY OF THE CITY

Submissions received in response to this Request for Qualification become the sole property of the City.

T. RIGHT TO ASSURANCES

In the event the City, in good faith, has reason to question the intent of the Firm to perform, the City may demand written assurances of the intent to perform. In the event no written assurance is given within the time specified, the City may treat this failure as an anticipatory repudiation of the Agreement.

U. WITHDRAWAL

Respondents may request withdrawal of a sealed Statement of Qualifications prior to the scheduled opening time, provided the request for withdrawal is submitted to the City in writing.

BACKGROUND & CURRENT CIRCUMSTANCES

A. BACKGROUND

An election was held on November 8, 2016 where the voters authorized the City of South Padre Island (City) to provide for the planning, design, improvement, and development of a sports and community venue project. The City has a signed lease with a property owner to develop a Wind and Water Sports Venue (Venue) on the north end of the City. This Venue will increase access to the Laguna Madre for quiet water sports such as kiteboard and windsurfing, while decreasing wetland damages.

Over the past several years, the City has developed the design for the Venue and has been working on the permitting for the United States Army Corps of Engineers (USACE). Multiple biological assessment revisions have gone through the USACE Corpus Christi permitting office for review, with additional comments each round. In 2022, it was determined a formal mitigation area and plan would need to be submitted. The City purchased land in 2024 for mitigation use. The site purchased has the following legal description, with mitigation targeted for the western portion of that lot:

North Half of Tract 21, Abst 260, Kirksey-Grady including Lots 1-8 Blk 1, Lots 1-11 Blk 3, Lots 1-15 Blk 5 and Lots 1-14 Blk 7, South Padre Island, TX 78597

B. CURRENT CIRCUMSTANCES

A USACE permit application was submitted in 2020 (SWG-2018-00232). An alternative analysis was completed in 2022 for submission, work on the mitigation area has been ongoing, and the design layout has been amended to reduce impacts multiple times. In March 2024, the City received a letter

from the USACE notifying that the permit application has been withdrawn until the mitigation plan addresses their comments.

SCOPE OF WORK

The design of the Venue has been finalized; please reference the site plan overlay attached in **EXHIBIT A**. If needed, the City may request the design engineer stay involved throughout project completion. The designs have been modified and minimized to the maximum extent possible in previous plan iterations with the USACE.

The City is seeking professional services to complete all aspects of the permitting process and for construction and mitigation oversight. Services that fall under those tasks may include but are not limited to conducting a wetland delineation, compiling and finalizing the mitigation plan and biological assessment, resubmission of permit applications (USACE, GLO lease, GLO beach/dune), responding to any public and/or interagency review periods, coordination with the United States Fish and Wildlife Service (USFWS), and communication with any and all state and federal agencies. Finalizing all required permits will be crucial in the next steps of this project. Close communications with the USACE Corpus Christi office will be required to ensure permitting efforts are continuous.

The most recent various of the mitigation plan that was submitted to the USACE in December 2023 is attached in **Exhibit B**. The most recent comments from the USACE on that particular mitigation plan submission were received in March 2024 is also in **Exhibit B**.

Once permitting is approved and completed, the selected Firm will provide support for construction bidding and oversight for the project as well as mitigation implementation and monitoring, as per the approved permits.

SUBMISSION REQUIREMENTS

The City will not accept oral proposals, or proposals received by telephone or FAX machine. Proposals must be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet all requirements and specifications of this RFQ. Emphasis should be focused on completeness, clarity of content and responsiveness to all requirements of this RFQ.

The SOQ must be submitted in hard copy. The Proposer shall submit one original and two copies of the entire proposal, plus one digital copy (on CD, DVD, or thumb drive).

The City of South Padre Island requires comprehensive responses to every section within this RFQ. To facilitate the review of the responses, Respondents shall follow the described format. The intent of the proposal format is to expedite review and evaluation. It is not the intent to constrain Respondents with regard to content, but to assure that the specific requirements set forth in this RFQ are addressed in a uniform manner amenable to review.

Any SOQ that does not meet all of the minimum requirements contained herein will be considered non-responsive and will not be evaluated. These minimum requirements are considered pass or fail criteria and includes:

- 1. SOQ must be received by the due date and time;**
- 2. Certification must be signed and returned with SOQ; including acknowledgement of any addenda issued.**

SOQs that pass the minimum requirements listed above will be evaluated, rated, and ranked, in accordance with the criteria provided below. The City may request additional information, site visits, interviews, or presentations from the Firm as part of the evaluation process.

The proposal format shall be clearly identified in the responses and conform to the criteria as outlined in "A" through "H" of each the criteria listed below.

A. Firm Introduction (5 points)

Briefly introduce your firm, providing a summary of its administration, organization, and staffing, including multiple offices, if applicable. Provide an organizational chart indicating the positions and names of the core management team that will undertake this engagement.

B. Demonstrate the competence and qualifications of the individual who will be directly responsible for the management and delivery of the proposed work (15 points)

The City is interested in the individual's experience as a project manager on projects similar to that described in the solicitation. Only one individual should be designated and employed by the Firm, not by a sub-consultant. Information to include, but is not limited to:

1. Demonstrate previous project management experience related to USACE-permitted projects.
2. Descriptions of specific projects similar in nature to the solicitation that may have involved performing wetland delineations, completing mitigation plans and biological assessments, and coordination with related state and federal agencies.
3. Document the success rate of obtaining approved Galveston District USACE permits within the last three years. Descriptions and examples of specific projects or studies of a similar nature by the individual as described in the solicitation and their role in the work.
4. Educational background and related certificates or accreditations.

C. Demonstrate the technical adequacy of the personnel and any sub-consultants to be utilized for the proposed work (15 points)

The City is interested in the technical qualifications and experience of the individual project team members of the Firm or sub-consultant firms who will be performing work on this project. Information to include, but is not limited to:

1. Demonstrate the specialized experience and capabilities related to USACE-permitted projects and the previous roles each individual has played throughout that process.
2. Document each individual's success rate in obtaining approved Galveston District USACE-permitted projects within the last three years.
3. Descriptions of previous projects similar in nature that each individual has been a part of and their role in the work.
4. Educational Background and related certificates.

D. Demonstrate the experience of the Firm based upon previous work similar to that of the type considered (20 points)

The City is interested in the Firm's history with similar projects as described in the solicitation. **List no more than five projects which have been completed and permitted by the USACE within the last five**

years. Include the project description, name of the team leader, description of the Firm's role, cost of the project, year(s) of the work, and name and phone number of the agency contact who can respond to questions about the work.

E. Demonstrate the success of the Firm with obtaining USACE permits from the Galveston District within the last three years (25 points)

The City is interested in the Firm's success and performance record of obtaining approved permits from the USACE Galveston District. Please include the number of approved permits the Firm has received from the Galveston District within the last three years, the Firm's role in the permitting process, and the average time it took to receive approval once the application was submitted.

F. Proposed approach and estimated timeline for the project (15 points)

The City is interested in the Firm's proposed approach for the project, organizational structure, work plan to accomplish the work, and an estimated timeline with the information provided. Information to include, but not limited to:

1. Structure of the project team including the percentage of proposed work to be completed by sub-consultants.
2. Work plan indicating a detailed approach for accomplishment of the project, identified options, and proposed solutions.
3. Approach to project management.
4. Proposed and estimated project schedule identifying the beginning and ending of each phase of work proposed for this project.

G. Workload capacity and history of performing work within a specified schedule (5 points)

The City is interested in the ability of the Firm to dedicate the necessary resources to the work described in the Scope of Work. The City reserves the right to visit the location of the Firm to verify the capabilities and resources. Include projects listed in Consideration Item (D) or Consideration Item (E) to demonstrate the firm's ability to deliver projects within a specified schedule.

1. Capabilities of the proposed project team and approach for handling multiple projects simultaneously at various stages of development.
2. Demonstrate the Firm's ability to deliver projects within a specified schedule.
3. Contingency plan and ability of the Firm to sustain a loss of a key team member without compromising project quality, schedule, or budget considerations.

H. Comments/change requests to the City's standard form of agreement (attached in Exhibit C)

A copy of the City's Standard Form of Agreement is attached to the RFQ. Please provide any comments or change requests to the Agreement with the proposal submittal. Failure to submit requested changes will affirm that the Firm is willing to execute the Agreement without modification.

EVALUATION & SELECTION PROCESS

The City has attempted to provide a comprehensive Request for Qualifications through this solicitation for the work described herein. Written proposals must present Proposer's qualifications and understanding of the work to be performed. Respondents are asked to address each evaluation criteria and to be specific in presenting their qualifications. Proposals must be as thorough and detailed as possible so that the City may properly evaluate capabilities to provide the requested services.

The City will first select the most highly qualified provider for the services on the basis of demonstrated competence and qualifications; and then attempt to negotiate with that provider a contract at a fair and reasonable price. If a satisfactory contract cannot be negotiated with the most highly qualified provider for the services, the City will formally end negotiations with that provider; select the next most highly qualified provider; and attempt to negotiate a contract with that provider at a fair and reasonable price. The City will continue this process to select and negotiate with providers until a contract is entered into.

The City has established specific, weighted criteria for selection. This section presents the evaluation criteria, description, and relative weight assigned to each (100 points maximum). The City will evaluate each Proposer's responses to the requirements contained in this RFQ.

Clarity and Quality of Proposal

Pass/Fail

Firms must provide comprehensive responses to every section within this RFQ in the described format. It is not the intent of the City to constrain Firms with regard to content, but to assure that the specific requirements set forth in this RFQ are addressed in a uniform manner amenable to review and evaluation. Failure to do so may result in your Proposal being disqualified from further review and consideration.

- | | |
|---|-------------------|
| A. Firm Introduction | 5 points |
| B. Demonstrate the competence and qualifications of the individual who will be directly responsible for the management and delivery of the proposed work | 15 points |
| C. Demonstrate the technical adequacy of the personnel and any sub-consultants to be utilized for the proposed work | 15 points |
| D. Demonstrate the experience of the Firm based upon previous work similar to that of the type considered | 20 points |
| E. Demonstrate the success of the Firm with obtaining USACE permits from the Galveston District within the last three years | 25 points |
| F. Proposed approach and estimated timeline for the project | 15 points |
| G. Workload capacity and history of performing work within a specified schedule | 5 points |
| TOTAL POINTS AVAILABLE | 100 POINTS |

By submission of a proposal, Proposer acknowledges acceptance of the evaluation process, the evaluation criteria, scope of work, approach and methodology, and all other terms and conditions set forth in this RFQ. Further, Firms acknowledge that subjective judgements must be made by the City during this process.

CERTIFICATION & ACKNOWLEDGEMENT

The undersigned affirms that they are duly authorized to submit this Proposal, that this Proposal has not been prepared in collusion with any other Respondent, and that the contents of this Proposal have not been communicated to any other Respondent prior to the official opening. To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Respondent certifies that it: i) does not boycott Israel; and ii) will not boycott Israel during the term of the Agreement.

Signed By: _____ Title: _____

Typed Name: _____ Company Name: _____

Phone No.: _____ Fax No.: _____

Email: _____

Bid Address: _____

P.O. Box or Street City State Zip

Order Address: _____

P.O. Box or Street City State Zip

Remit Address: _____

P.O. Box or Street City State Zip

Federal Tax ID No.: _____

DUNS No.: _____

Date: _____

EXHIBIT A: SITE PLAN OVERLAY

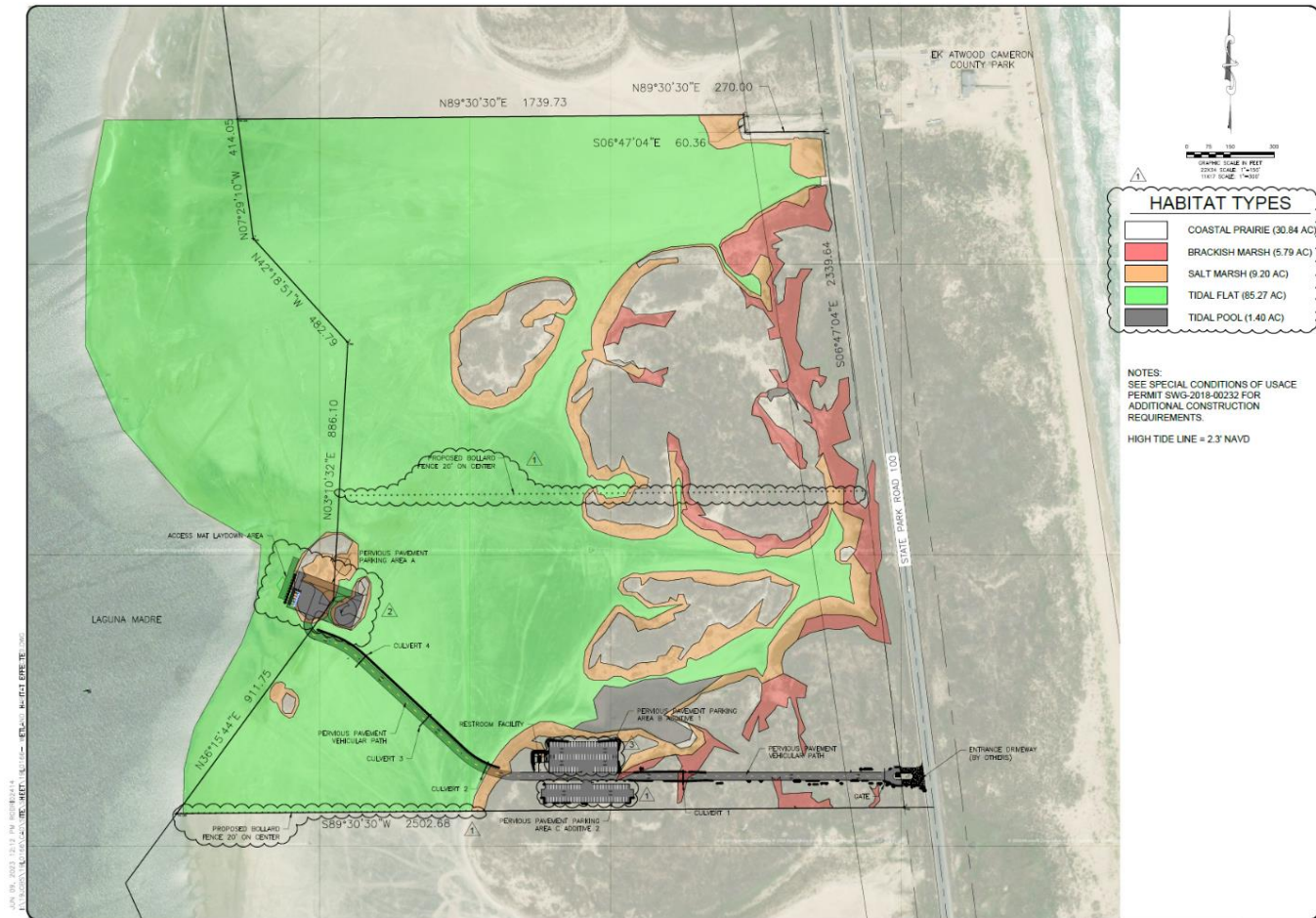


EXHIBIT B: 2023 MITIGATION PLAN & RELATED USACE COMMENTS

Mitigation Plan

South Padre Island Wind and Water Sport Venue

SWG-2018-00232

City of South Padre Island, Cameron County, Texas

Wednesday, December 13, 2023

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Table 2. Functional Capacity Units at Venue Location and Mitigation Site... **Error! Bookmark not defined.**

Appendix A: Draft Deed Restriction

Appendix B: Example No-trespassing Signage

Appendix C: GPS coordinates of Mitigation Site

Appendix D: iHGM Functional Capacity Worksheets

Appendix E: City Council Agenda

1.0 Objectives

The City of South Padre Island (Permittee) in Cameron County, Texas has proposed construction of a wind and water sports venue (WWSV) adjacent to Park Road 100 (Figure 1). The project area borders the Laguna Madre (Laguna) and is currently used as a launch location for recreational windsurfing and kiteboarding. The proposed venue is expected to permanently impact 1.58 acres of wetlands. The following wetland habitat types will be impacted: salt marsh (0.41 acre), brackish marsh (0.04 acre), tidal algal flat (1.13 acre).

To offset permanent impacts to 1.58 acres of wetlands at the venue location, the permittee proposes off-site, in-kind mitigation via the preservation and enhancement of brackish marsh, salt marsh, and tidal/algal flat wetlands within a 10-acre parcel on the island.

Compensatory mitigation regulations stipulate the following:

1) *Preservation may be used to provide compensatory mitigation for activities authorized by Department of the Army (DA) permits, provided the following criteria are met:*

i) *The resources to be preserved provide important physical, chemical, or biological functions for the watershed.*

The resources to be preserved include unvegetated algal flat and vegetated marsh wetland habitat. Algal flats are essential to the Laguna Madre ecosystem. Cyanobacteria found on the flats use photosynthesis to convert atmospheric carbon into organic matter at the base of the food chain and fix atmospheric nitrogen into organic forms used by vascular plants. The invertebrate community inhabiting the flats serves as a food source for several species of migratory birds, including the federally threatened red knot and piping plover. Similarly, marsh habitats provide essential functions for the watershed. Marshes filter nutrients and pollutants from water and convert nutrients into plant matter that provide food and habitat for wildlife.

ii) *The resources to be preserved contribute significantly to the ecological sustainability of the watershed.*

The 10-acre mitigation site will preserve and enhance high-quality waters of the United States (WOTUS) within the same subbasin watershed and with sufficient ecological benefit to offset permanent unavoidable impacts at the project site.

The Laguna Madre Estuary Program Environmental Strategic Plan Final Report identified population growth and development pressure in south Texas as a threat to the ecological sustainability of the watershed. Preserving in perpetuity the 10 acres of combined algal flat and marsh wetlands will prevent the area from future development and help to counteract the trend toward future development of the island.

iii) *Preservation is determined by the district engineer to be appropriate and practicable.*

Written and verbal communication with the Galveston District - USACE has indicated that preservation is a viable mitigation option, provided other criteria are met and the mitigation ratio is sufficient and presented with reasonable justification.

iv) *The resources are under threat of destruction or adverse modifications.*

Commercial and residential development has been attributed to the decline in algal flats on the island. While no known developments are planned in the vicinity of the mitigation site, preservation will protect the area from development in perpetuity. Proposed mitigation measures will also aim to eliminate destruction and adverse modification of the flats in the form of off-road vehicles. Reckless off-road driving (i.e., “donuts,” “fishtails,” “trenching”) has degraded wetland habitat within the proposed mitigation site. Preservation of the mitigation site will allow for the following ecological benefits:

- Protecting 10 acres of algal flat and marsh wetland from being developed,
- Enhancing continuity of algal crust, thereby improving biochemical cycling of the tidal flats,
- Decreasing vehicle-related harassment of wildlife by eliminating vehicles from the Mitigation Site,
- Decreasing vehicular damage to tidal wracks, an important foraging habitat used by shorebirds.

v) *The preserved site will be permanently protected through an appropriate real estate or other legal instrument.*

A deed restriction has been drafted for the mitigation site and is provided in Appendix A.

2) *Where preservation is used to provide compensatory mitigation, to the extent appropriate and practicable the preservation shall be done in conjunction with aquatic resource restoration, establishment, and/or enhancement activities.*

The mitigation site is currently comprised of wetlands (tidal/algal flat, salt marsh, brackish marsh) with a diminished ecosystem function. The algal crust that dominates the tidal flats has been fragmented by ruts and trenches from off-road vehicles. Enhancement of mitigation site wetlands is provided by excluding vehicles from an otherwise naturally functioning wetland. An anticipated additional benefit of the bollard system is the reduction of vehicle related harassment to federally protected species inhabiting the area. A series of wood bollards will be placed around the perimeter of the 10-acre mitigation site to exclude vehicles. Wood bollards will be 10 inches in diameter, extend above grade approximately 3 feet, and be connected by a 1-inch diameter nylon rope. “No trespassing” signage will be posted on bollards (see Appendix B – Example of No Trespassing Signage). Signage will be written in English and Spanish to reach a wider audience and posted at 60-foot intervals (every third bollard) around the perimeter of the mitigation site.

2.0 Site Selection

Permittee-responsible mitigation was required for the proposed project, as no mitigation banks or in-lieu fee programs exist for the Laguna Madre watershed. On-site and in-kind mitigation was considered, but because the permittee leases the proposed venue property, a site protection instrument was not practicable. Therefore, off-site and in-kind mitigation was selected as the approach most likely to successfully offset wetland impacts. A total of 28 South Padre Island properties, available for purchase, were considered as mitigation sites (Figure 2, Table 1). Properties were evaluated based on the following criteria contained in 33 CFR 332.3 (d):

- 1) *The compensatory mitigation project site must be ecologically suitable for providing the desired aquatic resource functions.*

The desired aquatic resource is algal flat and marsh wetland habitat. To provide the desired aquatic resource functions of algal flats and marsh wetlands, properties must currently contain wetland habitat. Seven (7) properties occurring wholly in upland habitat (as based on the National Wetlands Inventory map) were excluded based on this criterion.

- i) *Hydrological conditions, soil characteristics, and other physical and chemical characteristics.*

All properties considered were located on the Laguna Madre side of the island, in close proximity to the Laguna. Following exclusion of properties occurring wholly in upland, remaining properties were observed to have similar geomorphic position and distance from the Laguna Madre. All properties receive wind-driven water from the Laguna and were assumed to have similar hydrologic conditions. None of the remaining properties were eliminated based on the hydrologic conditions.

Similarly, a review of the Natural Resources Conservation Service's Web Soil Survey indicated that all remaining properties were comprised of mustang fine sand, Daggerhill fine sand, or a combination of the two. None of the remaining properties were eliminated based on the soil.

- ii) *Watershed-scale features, such as aquatic habitat diversity, habitat connectivity, and other landscape scale functions.*

Construction of the WWSV is anticipated to result in the loss of both unvegetated algal flat and vegetated marsh habitats. To meet the aquatic habitat diversity criterion, potential mitigation sites were required to have both algal flat and marsh habitat.

Sixteen (16) properties were observed to have only one wetland habitat type, based on a review of publicly available mapping, and were excluded as potential mitigation sites.

- iii) *The size and location of the compensatory mitigation site relative to hydrologic sources and other ecological features.*

The goal of mitigation was to preserve algal flat and marsh wetlands within a 10-acre parcel adjacent to the Laguna Madre. Of the five remaining potential mitigation sites, 3 were excluded because they did not provide the desired acreage.

- iv) *Other relevant factors including, but not limited to, development trends, anticipated land use changes, habitat status and trends, the relative locations of the impact and mitigation sites in the stream network, local or regional goals for the restoration or protection of particular habitat types or functions (e.g., re-establishment of habitat corridors or habitat for species of concern), water quality goals, floodplain management goals, and the relative potential for chemical contamination of the aquatic resources.*

Land use was considered when evaluating two remaining potential mitigation sites. Current land use is primarily recreational, with both sites being frequently visited for offroad driving. Off road driving has negatively impacted the continuity of the algal crust and likely contributes to harassment of listed species inhabiting the areas.

Based on a review of publicly available aerial imagery, Site 28 was determined to have a higher level of offroad traffic. Preserving Site 28 and eliminating vehicles was therefore determined to provide the greatest benefit to the watershed.

Table 1. Criteria for excluding potential Mitigation Sites.

Site No.	Acreage	Habitat	Presence of wetland habitat	Hydrological suitability (similarity to venue)	Soil suitability (similarity to venue)	Habitat Diversity	Size (adequate acreage)	Likelihood of providing benefit
1	12.8	flats				X	--	--
2	4.7	flats, marsh, upland					X	--
3	4.7	upland	X	--	--	--	--	--
4	14.7	flats, marsh, upland						X
5	0.5	flats				X	--	--
6	0.3	flats				X	--	--
7	0.3	flats				X	--	--
8	0.3	flats				X	--	--
9	0.3	flats				X	--	--
10	0.3	flats				X	--	--
11	0.3	flats				X	--	--
12	0.3	flats				X	--	--
13	0.3	flats				X	--	--
14	0.3	flats				X	--	--
15	0.3	flats				X	--	--
16	0.3	flats				X	--	--
17	0.3	flats, marsh					X	--
18	0.3	flats, marsh					X	--
19	0.3	marsh				X	--	--
20	0.3	upland	X	--	--	--	--	--
21	0.3	upland	X	--	--	--	--	--
22	0.3	upland	X	--	--	--	--	--
23	0.3	marsh, upland				X	--	--
24	0.3	marsh				X	--	--
25	0.3	upland	X	--	--	--	--	--
26	0.3	upland	X	--	--	--	--	--
27	0.3	upland	X	--	--	--	--	--
28*	10.0	flats, marsh, upland						
Sites excluded based on criteria:			7	0	0	16	3	1

*Site 28 met all criteria and was selected as Mitigation Site

3.0 Site Protection Instrument

The 10-acre compensatory mitigation site will be secured with a deed restriction. The deed restriction will be enforceable by and against later owners or occupiers of the land. A copy of the deed restriction is included as Appendix A.

4.0 Baseline Information

4.1 Physical Setting

The mitigation site borders the Laguna Madre and is dominated by tidal flats, with salt marsh and brackish marsh also present. Wetland vegetation and tidal flat habitat continue to be impacted by the current access and use of the site.

Weather stations in Brownsville, Texas recorded an annual rainfall total of 21.2 inches during 2019, 6.3 inches less than the 27.5-inch average annual rainfall. Annual rainfall fluctuations can alter hydrology, but tidal water is the primary driver of hydrology.

A review of the Natural Resources Conservation Service (NRCS) Web Soil Survey database indicates soil is comprised entirely of Mustang fine sand, saline, frequently flooded (hydric rating of 100 percent).

4.2 Waters of the United States, Including Wetlands, Survey Results

Hanson biologists conducted a wetland determination on December 07, 2022, of the proposed project area using the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Regional Supplement* and the *1987 Corps Wetland Delineation Manual*.

Based on observations made during the site visit, the 10-acre mitigation site area offered 9.73 acres of wetland habitat. Habitat types observed during the delineation included: 7.57 acres algal flat (wetland), 0.73 acres of salt marsh (wetland), 1.42 acres of brackish marsh (wetland), and 0.27 acres of coastal prairie (upland). All wetland habitat types were observed to have a direct hydrologic connection to the Laguna Madre. GPS coordinates of the Mitigation Site are presented in Appendix C.

5.0 Determination of Credits

The City of South Padre Island cannot mitigate impacts to Waters of the United States through credit purchase based on the unavailability of credits. The City proposes preservation and enhancement of brackish marsh, salt marsh, and tidal/algal flat wetlands within a 10-acre parcel located approximately 1.5 miles north of the venue.

Mitigation is proposed at a slightly higher than 6 to 1 acreage ratio. To mitigate the loss of 1.58 acres of wetlands at the venue location, 9.73 acres of wetlands will be preserved and enhanced at the Mitigation Site. Preservation will be accomplished through a deed restriction and enhancement will be accomplished by installing a series of parking bollards around the Mitigation Site, thereby excluding vehicles from entering the site.

Wetland impacts at the venue location were quantified using the iHGM tidal fringe model. While the iHGM model is calibrated for use elsewhere in the the Galveston District, it relies on accepted parameters of tidal fringe wetlands (e.g., drainage network, hydrologic modification, nekton habitat), and is the best available tool for quantifying ecosystem function at the proposed venue location. Table 2 below provides a summary of pre- and post-project functional capacity units (FCU) of the venue location, as well as FCUs provided by the Mitigation Site. iHGM Functional Capacity Worksheets are provided in Appendix D. The FCUs provided by preservation of the Mitigation Site are intended to compensate for temporal losses after the completion of the project and to ensure mitigation would contribute to overall aquatic functions within the South Laguna Madre Watershed (HUC 12110208).

Table 2. Functional Capacity Units at Venue Location and Mitigation Site.

	<u>Venue Location</u>			<u>Mitigation Site</u>
	Pre-project	Post-project	Net change ¹	
Biota	19.12	14.70	-4.42	5.70
Botanical	4.54	4.38	-0.16	1.90
Physical	15.88	12.70	-3.18	5.20
Chemical	11.11	7.58	-3.53	4.40

¹ Changes between pre- and post-project conditions are the result of a conservative estimate that hydrological modifications may occur; all other input variables remained the same between pre- and post-project.

6.0 Mitigation Work Plan

6.1. Geographic Boundaries

Geographic boundaries of the mitigation site are presented in Figure 3.

6.2 Construction Methods

Because preservation of mitigation site wetlands is centered around excluding vehicles from an otherwise naturally functioning wetland, manipulation of existing topography and vegetation will be minimal. A series of wood bollards will be placed around the perimeter of the 10-acre mitigation site to exclude vehicles. Wood bollards will be 10 inches in diameter, extend above grade approximately 3 feet, and be connected by a 1-inch diameter nylon rope. “No trespassing” signage will be posted on bollards. Signage will be written in English and Spanish to reach a wider audience and posted at 60-foot intervals (every third bollard) around the perimeter of the mitigation site.

6.3 Timing and Sequence

Following District approval of the mitigation plan, the City will survey the boundary of the proposed mitigation site to officially record the easement. The deed restriction will be executed, and the mitigation site will be donated to Friends of Laguna Atascosa, a non-profit organization that acquires land for the Laguna Atascosa National Wildlife Refuge. The mitigation site will then be donated to and managed by the Refuge.

Installation of vehicle-restricting parking bollards will occur following execution of the deed restriction. Due to the nature of preservation, installation/removal of BMPs, site preparation, and site clean-up will not be required. To minimize potential impacts to the federally protected red knot and piping plover, establishment of the mitigation site will take place between May 15th and July 15th, when migratory bird abundance along the Texas Coast is lowest. It is anticipated that installation of bollards will take 1 – 3 weeks to complete.

7.0 Maintenance Plan

As previously discussed, the 10-acre mitigation site will be donated to and managed by the Laguna Atascosa National Wildlife Refuge. The City would therefore not be responsible for the ongoing maintenance of the property.

8.0 Performance Standards

Performance standards for the mitigation site will focus on completing a conservation easement that provides appropriate protection in perpetuity and incorporating the site as part of the Laguna Atascosa National Wildlife Refuge. No additional performance standards are proposed by the City.

9.0 Monitoring Requirements

As previously discussed, the mitigation site will be donated to and managed by the Laguna Atascosa National Wildlife Refuge. The City would therefore not be responsible for the ongoing monitoring of the property.

10.0 Long-Term Management

As previously discussed, the mitigation site will be donated to and managed by the Laguna Atascosa National Wildlife Refuge. The City would therefore not be responsible for long-term management of the property.

11.0 Adaptive Management

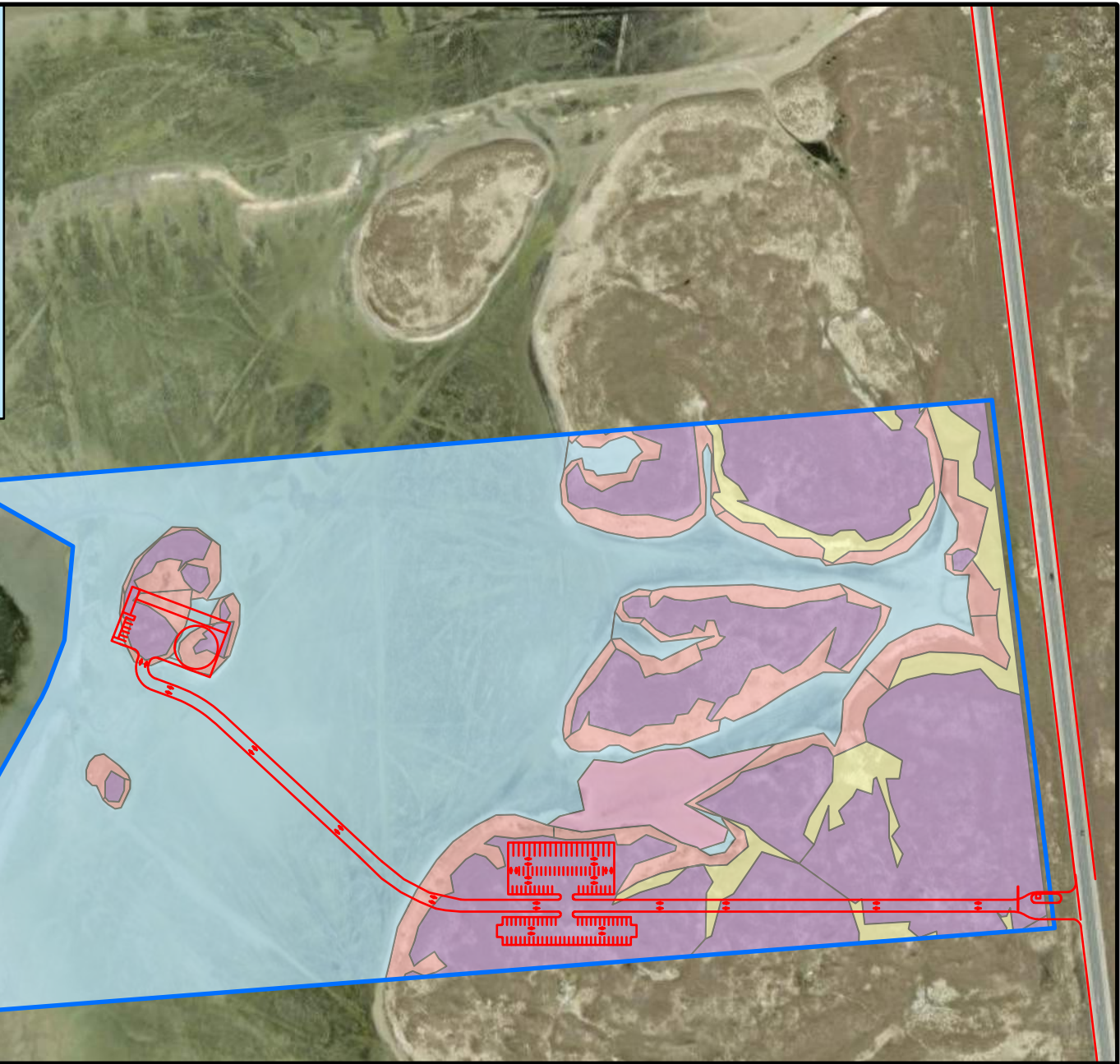
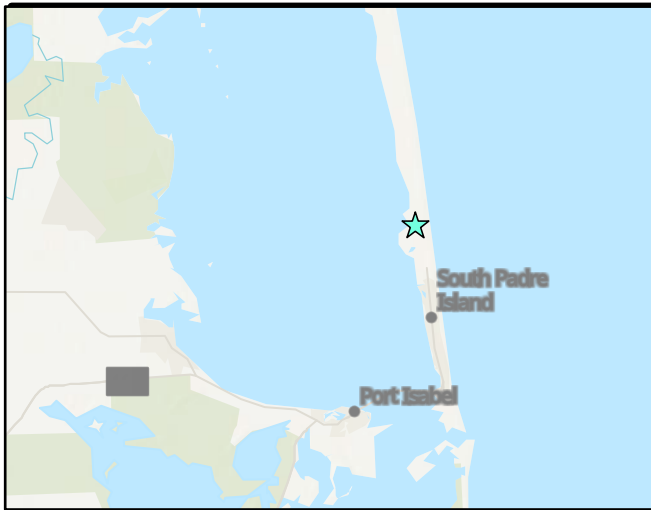
As previously discussed, the mitigation site will be donated to and managed by the Laguna Atascosa National Wildlife Refuge. The City would therefore not be responsible for adaptive management of the property.

12.0 Financial Assurances

The proposed mitigation site will be protected by a conservation easement executed pursuant to the timeframe outlined in the DA permit. The Mitigation Site will be donated to and managed by the Laguna Atascosa National Wildlife Refuge. Aside from purchase of the real property and installation of the parking bollard system, the City has not proposed short- or long-term financial assurances.

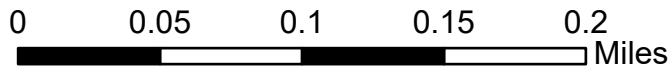
Expenses that may be required during the fiscal year are typically presented as a budget amendment to City Council at their twice-per-month public meetings to be incorporated into the City's budget. An agenda of the November 1, 2023 City Council public meeting is attached as Appendix E.

I:\19jobs\19L0166T03\CAD\GIS\Projects\Mitigation Plan Figures\Mitigation Plan Figures.aprx



- WWSV Features
- Venue Boundary

- Habitat Type**
- Coastal Prairie (upland)
 - Brackish Marsh
 - Salt Marsh
 - Tidal Flat
 - Tidal Pool



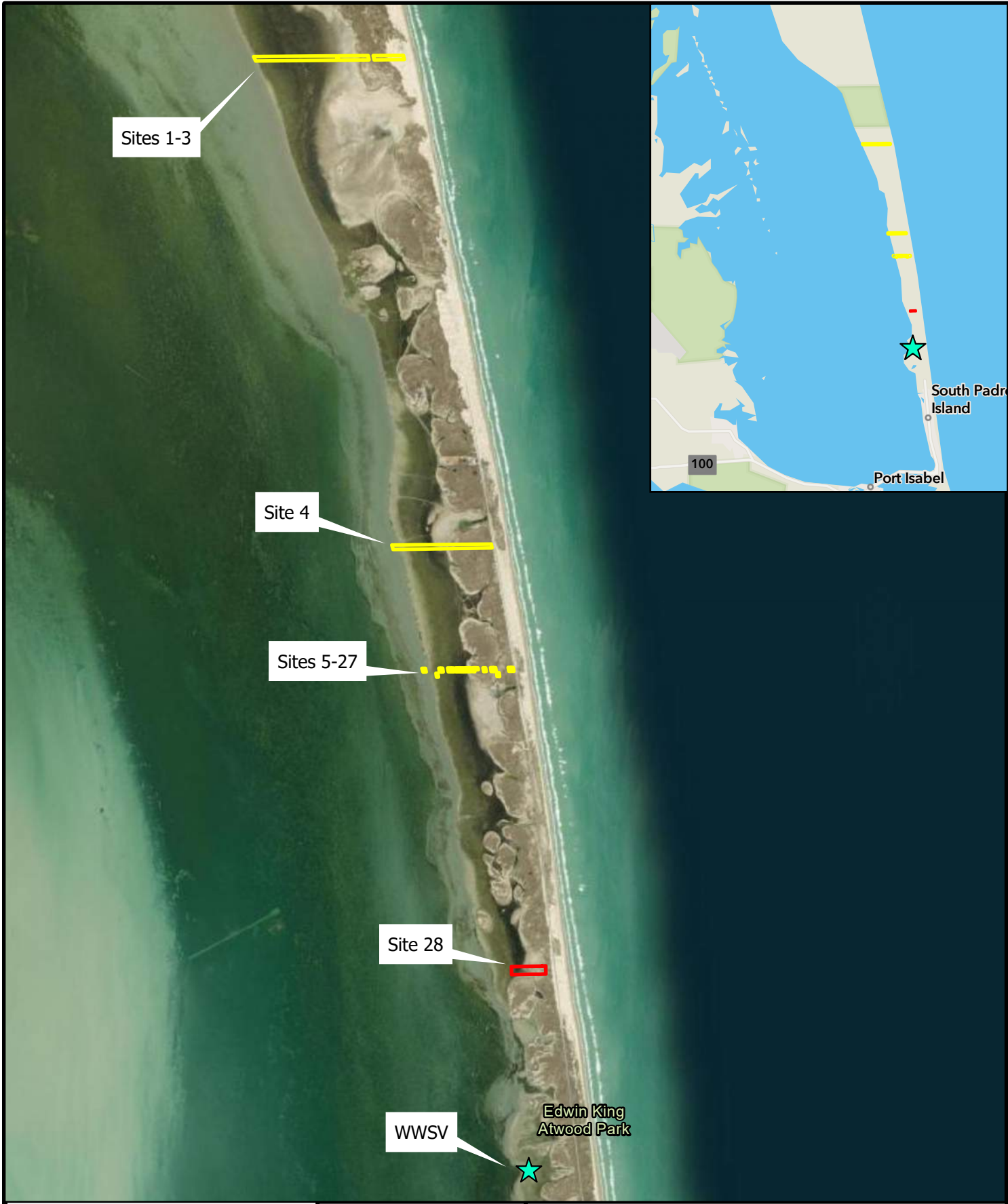
Venue Location

South Padre Island WWSV Mitigation Plan

Project No. 19L0166T03

FIGURE 1

I:\19\obs\19L0166T03\CAD\GIS\Projects\Mitigation_Property_Analysis\Mitigation_Property_Analysis.aprx



★ Venue Location

Mitigation properties

▭ Chosen

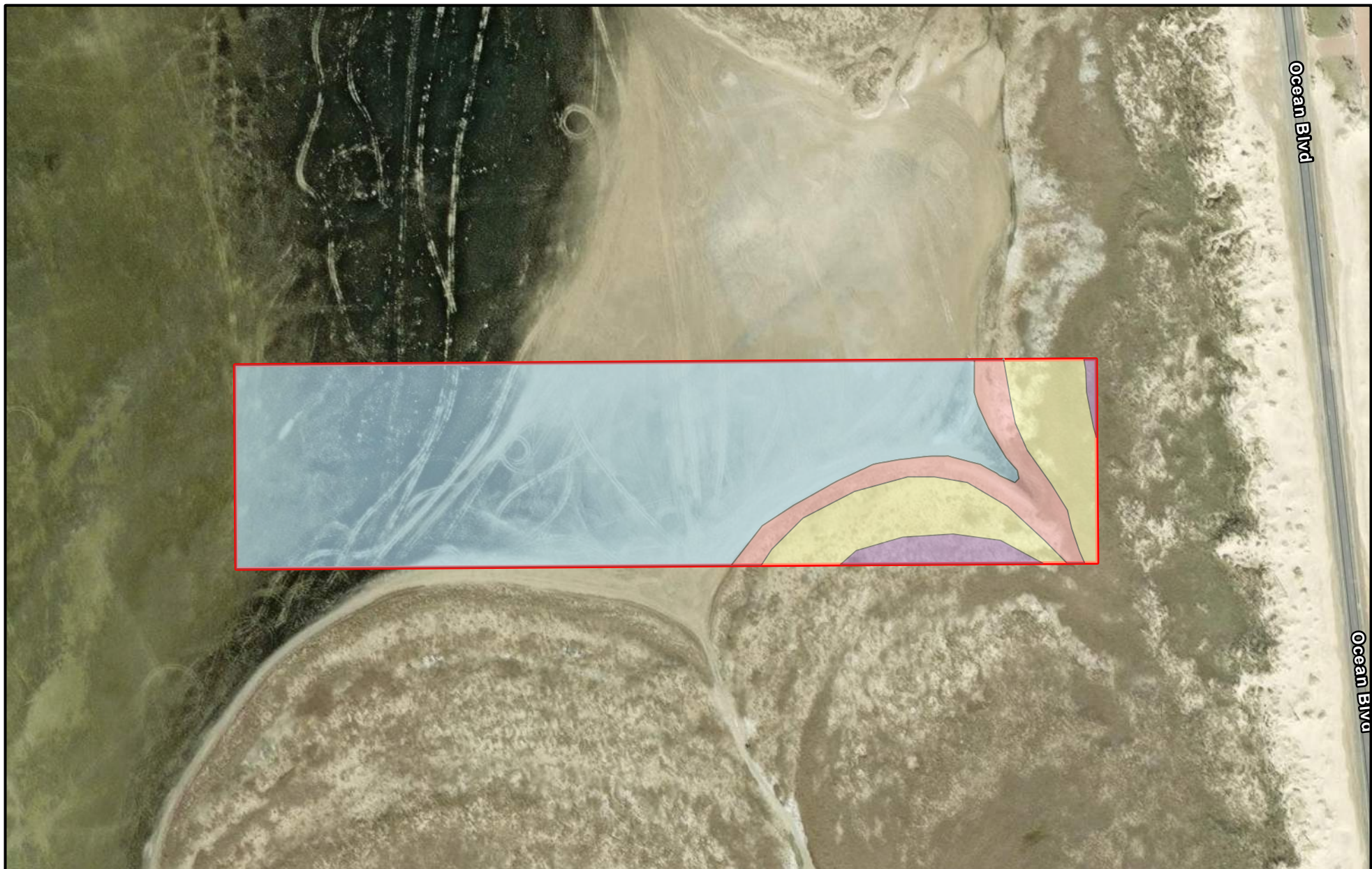
▭ Not Chosen

0 0.7 1.4 Miles



Potential Mitigation Sites

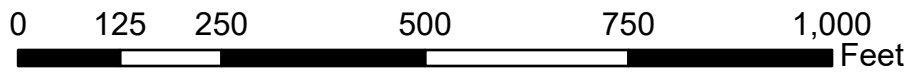
South Padre Island WWSV
Mitigation Plan



Mitigation Site

Habitat type

- Algal Flat (7.57 acres)
- Brackish Marsh (1.42 acres)
- Salt Marsh (0.73 acres)
- Coastal Prairie (0.27 acres)



Wetland Delineation Map

South Padre Island WWSV
Mitigation Plan

JOB NO. 19L0166T03

FIGURE 3

Appendix A: Draft Deed Restriction

DEED RESTRICTION

City of South Padre Island is the owner of the real property more particularly described and shown in Exhibit "A" (hereinafter the "Property") attached hereto and made a part hereof. The approximately [REDACTED]-acre Property is also referenced in "The Mitigation Plan for **the South Padre Island Wind and Water Sports Venue**". The Property is subject to the conditions of Department of the Army Section 404/Section 10 Permit Number [REDACTED], dated [REDACTED], or a revision thereof. One of the conditions of the referenced permit requires restrictions be placed on the deed for the Property for the purpose of providing compensation for adverse impacts to waters of the United States". The intent of this document is to assure that the Property will be retained and maintained forever predominantly in the natural vegetative and hydrologic condition described in success criteria of the "The Mitigation Plan for **the South Padre Island Wind and Water Sports Venue**". Activities, which may, in the future, be conducted within the Property that will affect the vegetative and or hydrologic conditions outlined in the success criteria of the Mitigation Plan, must be coordinated with and approved by the United States Army Corps of Engineers (USACE), Galveston District, Regulatory Branch, prior to initiation.

The parties to this agreement include the Property owner(s) who by their signature accept the third-party rights of enforcement herein and agree that the deed restrictions will be subject to the following conditions:

1) Property Description

(Applicant) will provide as Attachment A-1:

- a) On-site photographs taken at appropriate locations on the Protected Property including all major natural features; and
- b) A copy of the deed with an accurate legal description or a current survey certified by a Texas Registered Professional Land Surveyor (RPLS) of the Protected Property.
- c) A copy of a verified wetland survey map, which delineates all waters of the United States, including wetlands within the Property.

2) Term

These restrictions shall run with the land in perpetuity and be binding on all future owners, heirs, successors, administrators, assigns, lessees, or other occupiers and users. The owner must file this Deed Restriction of record with the County Clerk of **Cameron County**, Texas within 10 days of the date this document is signed and provide a copy of the recorded Deed Restriction to the USACE, Galveston District within 30 days of filing.

3) General

Except for such specific activities as authorized pursuant to DA Permit Number [REDACTED], the following activities are prohibited on the Property subject to this Deed Restriction:

- (a) There shall be no filling, excavation, mining or alteration of the Property that will affect the success criteria outlined in the Mitigation Plan unless approved in writing in advance by the USACE, Galveston District.

4) Rights of Access and Entry

The USACE shall have the right to enter and go upon the Property for purposes of inspection, and to take actions including but not limited to scientific or educational observations and studies, and collection of samples.

5) Enforcement

In the event of a breach of the restrictions by the Owner, or a third party working with the permission of or under the direction of the Owner, the USACE must be notified immediately. If the USACE becomes aware of a breach of this Agreement, the USACE will notify the Owner of the breach. The Owner shall have thirty (30) days after receipt of such notice to undertake actions that are reasonably calculated to swiftly correct the conditions constituting the breach. If the Owner corrects the conditions constituting the breach in a timely and reasonable manner, no further action is warranted or authorized. If the Owner fails to initiate such corrective action within thirty (30) days or fails to complete the necessary corrective action, the USACE may undertake such actions, including legal proceedings, as are necessary to effect such corrective action. Any forbearance on the part of the USACE to exercise its rights in the event of a breach of the restrictions shall not be deemed or construed to be a waiver of their rights hereunder in the event of any subsequent failure of the Property owner to comply.

Approved by City of South Padre Island

Signature

Date

Printed Name

Title

Approved by Applicant

Signature

Date

Printed Name

Title

Appendix B: Example No-trespassing Signage

**NO TRESPASSING
NO TRASPASAR**

**FEDERALLY PROTECTED
WETLAND**

**HUMEDAL PROTEGIDA
POR EL GOBIERNO
FEDERAL**

Appendix C: GPS coordinates of Mitigation Site

Appendix C. GPS Coordinates of Mitigation Site

Location	Latitude	Longitude
NE corner	26.1827164	-97.1773047
SE corner	26.1818356	-97.1772980
SW corner	26.1818100	-97.1814483
NW corner	26.1826908	-97.1814538

Appendix D: iHGM Functional Capacity Worksheets

WWSV
Tidal Fringe Worksheet (Interim HGM) For
Tidal fringe HGM - Pre.xlsx

1 Vedge: The amount of marsh-water meters/hectare

Site Description	Qualitative	Quantitative	Sub index	
Marsh shows deterioration due to subsidence, large amounts of open water	Very High	>800 m/ha (>1,062 ft/acre)	0.8	
Well developed tidal drainage network present OR Simple tidal network with isolated ponds & depression in the marsh interior OR Large amount of shallow shoreline in relation to the entire area	High	350 - 800 m/ha (465 - 1,062 ft/acre)	1.0	x
Simple tidal drainage network...isolated ponds and depressions are few & lacking	Moderate	200-350 m/ha (266 - 465 ft/acre)	0.7	
Marsh lacks both tidal creeks & isolated ponds & depressions, shoreline is linear or smooth...Marsh area is large relative to shoreline length. OR the WAA is a depression that is not affected by the daily tide (i.e. high marsh)	Low	Less than 200 m/ha (<266 ft/acre)	0.4	

Variable	Subindex
V _{edge}	1.00
V _{hydro}	0.60
V _{nhc}	0.80
V _{typical}	0.10
V _{slope}	0.50
V _{width}	0.25
V _{rough}	0.20
V _{soil}	0.20

2 Vhydro: Site hydroperiod or degree of hydrological modifications

Site Description	Sub index	
Site is open, no hydrologic restrictions	1.0	
Moderate hydrologic restriction (i.e. low-level berms overtopped frequently by waves, or has multi-breeches or large numerous culverts)	0.6	x
Severe hydrologic restriction (high elevation berm with infrequent over-top, small culverts, single opening or breach)	0.3	
Site receives water only during extreme storm events	0.1	
Site is cut off from tidal exchange	0.0	

3 Vnhc: Number of nekton habitat types present

Habitat types within 150 ft of the edge of the WAA

Low Marsh	High Marsh	Subtidal creeks	Intertidal creeks
ponds or depressions	SAVs	Oyster Reef	Unvegetative flats
Algal flats	Mangroves	Coarse woody debris	

Number of habitat types	Variable Subindex	
1	0.2	
2	0.3	
3	0.5	
4	0.7	
5	0.8	x
6	1.0	

4 Vtypical: Proportion of the site that is covered by vegetation typical of the regional subclss

Invasive species: tallow, alligator weeds, spiny aster, common reed, rattlebox, cattail, flat sedge

(*Sapium sabiferum*, *Alternanthera philoxeroides*, *Aster spinosus*, *Phragmites drummondii*, *Sesbania drummondii*, *Typha sp.*, *Cyperus entrarianus*)

Total % Cover by typical species	Variable Sub index	
10%	0.1	
20%	0.1	x
30%	0.2	
40%	0.4	
50%	0.5	
60%	0.6	
70%	0.7	
80%	0.9	
90%	1.0	
100%	1.0	

5 Vslope: Distance to water greater than or equal to 6 feet deep

Distance to Navigation Channel or water greater than or equal to 6 ft deep	Variable Sub index	
Less than 150 ft	0.10	

FCU
(*45.79 acres)

Biota:
$FCI = \{[(V_{edge} + 2 V_{hydro} + 0.5V_{nhc})/3.5] + V_{typical}\}/2$
FCI = 0.42

19.12

Botanical
$FCI = V_{typical}$
FCI = 0.10

4.54

Physical
$FCI = [(V_{slope} + V_{width} + V_{rough} + V_{soil} + V_{hydro})/5]$
FCI = 0.35

15.88

Chemical
$FCI = [V_{typical} \times V_{hydro}]^{1/2}$
FCI = 0.24

11.11

WWSV
Tidal Fringe Worksheet (Interim HGM) For
Tidal fringe HGM - Pre.xlsx

151-450 ft	0.50	x
Greater than 450 ft	1.00	

6 **Vwidth: Average marsh width**

Mean Width WAA Distance (ft)	Variable Sub index	
0 - 30 ft	0.1	
31 - 75 ft	0.25	x
76 - 150 ft	0.5	
151 - 225 ft	0.6	
226 - 300 ft	0.8	
301 - 375 ft	0.85	
376 - 450 ft	0.9	
451 - 525 ft	0.95	
526 - 600 ft	1.0	
Greater than 600 ft	1.0	

7 **Vrough: Manning's roughness coefficient**

$\Pi_{base} + \Pi_{topo} + \Pi_{veg} = \text{manning's end}$

(Π_{base}) = 0.025

Sediment surface	0.025	Base value for bare marsh soil	X
	0.030	More than 25% of the sediment surface covered with gravel or broken shell	

(Π_{topo}) = 0.001

Topographic relief	0.001	WAA is flat no microtopographic or macrotopographic relief	x
	0.005	WAA has 5-25% topographic relief	
	0.010	WAA has 26-50% topographic relief	
	0.20	WAA has greater than 50% topographic relief	

(Π_{veg}) = 0.025

Vegetation	Less 50% cover	50-75% cover	76-100% cover	Description of Conditions	
	0.025	0.030	0.035	Predominantly short flexible stem grass (i.e. <i>Spartina alterniflora</i> , <i>S. patens</i> , <i>Distichlis spicata</i>)	x
	0.035	0.040	0.05	Predominantly short stiff trailing stems (i.e. <i>Batis</i> & <i>Salicornia</i>)	
	0.050	0.060	0.07	Predominantly tall flexible grass (i.e. tall <i>Spartina alterniflora</i> , <i>S. cynosuroides</i> , <i>Scirpus</i> sp.)	
	0.070	0.100	0.16	Predominantly tall with stiff leaves or mixed with woody shrubs (i.e. <i>Juncus roemerianus</i> , Mangroves, etc.)	
	x				

Roughness (rounded down) = 0.05

Lookup
2
0.2

FCI variable sub index =

Roughness	Variable Sub index	"X" Automatically picked
0.04	0.1	
0.05	0.2	x
0.06	0.4	
0.07	0.6	
0.08	0.8	
0.09	1.0	
0.10	1.0	

8 **Vsoil**

Soil Texture	Variable Sub index	
Sandy	0.2	x
Sandy loam	0.40	
Loam	0.6	
Clay loam	0.8	
Clay	1.0	

WWSV
Tidal Fringe Worksheet (Interim HGM) For
Tidal fringe HGM - Post.xlsx

1 Vedge: The amount of marsh-water meters/hectare

Site Description	Qualitative	Quantitative	Sub index	
Marsh shows deterioration due to subsidence, large amounts of open water	Very High	>800 m/ha (x1,062 ft/acre)	0.8	
Well developed tidal drainage network present OR Simple tidal network with isolated ponds & depression in the marsh interior OR Large amount of shallow shoreline in relation to the entire area	High	350 - 800 m/ha (465 -1,062 ft/acre)	1.0	x
Simple tidal drainage network...isolated ponds and depressions are few & lacking	Moderate	200-350 m/ha (266 - 465 ft/acre)	0.7	
Marsh lacks both tidal creeks & isolated ponds & depressions, shoreline is linear or smooth ...Marsh area is large relative to shoreline length. OR the WAA is a depression that is not affected by the daily tide (i.e. high marsh)	Low	Less than 200 m/ha (<266 ft/acre)	0.4	

Variable	Subindex
V _{edge}	1.00
V _{hydro}	0.30
V _{nhc}	0.80
V _{typical}	0.10
V _{slope}	0.50
V _{width}	0.25
V _{rough}	0.20
V _{soil}	0.20

2 Vhydro: Site hydroperiod or degree of hydrological modifications

Site Description	Sub index	
Site is open, no hydrologic restrictions	1.0	
Moderate hydrologic restriction (i.e. low-level berms overtopped frequently by waves, or has multi-breaches or large numerous culverts)	0.6	
Severe hydrologic restriction (high elevation berm with infrequent over-top, small culverts, single opening or breach)	0.3	x
Site receives water only during extreme storm events	0.1	
Site is cut off from tidal exchange	0.0	

3 Vnhc: Number of nekton habitat types present

Habitat types within 150 ft of the edge of the WAA

Low Marsh	High Marsh	Subtidal creeks	Intertidal creeks
ponds or depressions	SAVs	Oyster Reef	Unvegetative flats
Algal flats	Mangroves	Coarse woody debris	

Number of habitat types	Variable Subindex	
1	0.2	
2	0.3	
3	0.5	
4	0.7	
5	0.8	x
6	1.0	

4 Vtypical: Proportion of the site that is covered by vegetation typical of the regional subclss

Invasive species: tallow, alligator weeds, spiny aster, common reed, rattlebox, cattail, flat sedge

(*Sapium sabiferum*, *Alternanthera philoxeroides*, *Aster spinosus*, *Phragmites drummondii*, *Sesbania drummondii*, *Typha sp.*, *Cyperus entrarianus*)

Total % Cover by typical species	Variable Sub index	
10%	0.1	
20%	0.1	x
30%	0.2	
40%	0.4	
50%	0.5	
60%	0.6	
70%	0.7	
80%	0.9	
90%	1.0	
100%	1.0	

5 Vslope: Distance to water greater than or equal to 6 feet deep

Distance to Navigation Channel or water greater than or equal to 6 ft deep	Variable Sub index	
Less than 150 ft	0.10	

FCU
(*45.37 acres)

Biota:	
$FCI = \{[(V_{edge} + 2 V_{hydro} + 0.5V_{nhc})/3.5] + V_{typical}\}/2$	14.70
FCI = 0.34	

Botanical	
$FCI = V_{typical}$	4.38
FCI = 0.10	

Physical	
$FCI = [(V_{slope} + V_{width} + V_{rough} + V_{soil} + V_{hydro})/5]$	12.70
FCI = 0.29	

Chemical	
$FCI = [V_{typical} \times V_{hydro}]^{1/2}$	7.58
FCI = 0.17	

WWSV
Tidal Fringe Worksheet (Interim HGM) For
Tidal fringe HGM - Post.xlsx

151-450 ft	0.50	x
Greater than 450 ft	1.00	

6 **Vwidth: Average marsh width**

Mean Width WAA Distance (ft)	Variable Sub index	
0 - 30 ft	0.1	
31 - 75 ft	0.25	x
76 - 150 ft	0.5	
151 - 225 ft	0.6	
226 - 300 ft	0.8	
301 - 375 ft	0.85	
376 - 450 ft	0.9	
451 - 525 ft	0.95	
526 - 600 ft	1.0	
Greater than 600 ft	1.0	

7 **Vrough: Manning's roughness coefficient**

$\Pi_{base} + \Pi_{topo} + \Pi_{veg} = \text{manning's end}$

(Π_{base}) = 0.025

Sediment surface	0.025	Base value for bare marsh soil	X
	0.030	More than 25% of the sediment surface covered with gravel or broken shell	

(Π_{topo}) = 0.001

Topographic relief	0.001	WAA is flat no microtopographic or macrotopographic relief	x
	0.005	WAA has 5-25% topographic relief	
	0.010	WAA has 26-50% topographic relief	
	0.20	WAA has greater than 50% topographic relief	

(Π_{veg}) = 0.025

Vegetation	Less 50% cover	50-75% cover	76-100% cover	Description of Conditions	
	0.025	0.030	0.035	Predominantly short flexible stem grass (i.e. <i>Spartina alterniflora</i> , <i>S. patens</i> , <i>Distichlis spicata</i>)	x
	0.035	0.040	0.05	Predominantly short stiff trailing stems (i.e. <i>Batis</i> & <i>Salicornia</i>)	
	0.050	0.060	0.07	Predominantly tall flexible grass (i.e. tall <i>Spartina alterniflora</i> , <i>S. cynosuroides</i> , <i>Scirpus</i> sp.)	
	0.070	0.100	0.16	Predominantly tall with stiff leaves or mixed with woody shrubs (i.e. <i>Juncus roemerianus</i> , Mangroves, etc.)	
	x				

Roughness (rounded down) = 0.05

Lookup
2
0.2

FCI variable sub index =

Roughness	Variable Sub index	"X" Automatically picked
0.04	0.1	
0.05	0.2	x
0.06	0.4	
0.07	0.6	
0.08	0.8	
0.09	1.0	
0.10	1.0	

8 **Vsoil**

Soil Texture	Variable Sub index	
Sandy	0.2	x
Sandy loam	0.40	
Loam	0.6	
Clay loam	0.8	
Clay	1.0	

WWSV
Tidal Fringe Worksheet (Interim HGM) For
Tidal fringe HGM - Mitigation Site.xlsx

1 Vedge: The amount of marsh-water meters/hectare

Site Description	Qualitative	Quantitative	Sub index	
Marsh shows deterioration due to subsidence, large amounts of open water	Very High	>800 m/ha (>1,062 ft/acre)	0.8	
Well developed tidal drainage network present OR Simple tidal network with isolated ponds & depression in the marsh interior OR Large amount of shallow shoreline in relation to the entire area	High	350 - 800 m/ha (465 - 1,062 ft/acre)	1.0	x
Simple tidal drainage network...isolated ponds and depressions are few & lacking	Moderate	200-350 m/ha (266 - 465 ft/acre)	0.7	
Marsh lacks both tidal creeks & isolated ponds & depressions, shoreline is linear or smooth ...Marsh area is large relative to shoreline length. OR the WAA is a depression that is not affected by the daily tide (i.e. high marsh)	Low	Less than 200 m/ha (<266 ft/acre)	0.4	

Variable	Subindex
V _{edge}	1.00
V _{hydro}	1.00
V _{nhc}	0.80
V _{typical}	0.20
V _{slope}	1.00
V _{width}	0.25
V _{rough}	0.20
V _{soil}	0.20

2 Vhydro: Site hydroperiod or degree of hydrological modifications

Site Description	Sub index	
Site is open, no hydrologic restrictions	1.0	x
Moderate hydrologic restriction (i.e. low-level berms overtopped frequently by waves, or has multi-breeches or large numerous culverts)	0.6	
Severe hydrologic restriction (high elevation berm with infrequent over-top, small culverts, single opening or breach)	0.3	
Site receives water only during extreme storm events	0.1	
Site is cut off from tidal exchange	0.0	

3 Vnhc: Number of nekton habitat types present

Habitat types within 150 ft of the edge of the WAA

Low Marsh	High Marsh	Subtidal creeks	Intertidal creeks
ponds or depressions	SAVs	Oyster Reef	Unvegetative flats
Algal flats	Mangroves	Coarse woody debris	

Number of habitat types	Variable Subindex	
1	0.2	
2	0.3	
3	0.5	
4	0.7	
5	0.8	x
6	1.0	

4 Vtypical: Proportion of the site that is covered by vegetation typical of the regional subclass

Invasive species: tallow, alligator weeds, spiny aster, common reed, rattlebox, cattail, flat sedge

(*Sapium sabiniferum*, *Alternanthera philoxeroides*, *Aster spinosus*, *Phragmites drummondii*, *Sesbania drummondii*, *Typha sp.*, *Cyperus entrarianus*)

Total % Cover by typical species	Variable Sub index	
10%	0.1	
20%	0.1	
30%	0.2	x
40%	0.4	
50%	0.5	
60%	0.6	
70%	0.7	
80%	0.9	
90%	1.0	
100%	1.0	

5 Vslope: Distance to water greater than or equal to 6 feet deep

Distance to Navigation Channel or water greater than or equal to 6 ft deep	Variable Sub index	
Less than 150 ft	0.10	

FCU
(*9.73 acres)

Biota:
$FCI = \{[(V_{edge} + 2 V_{hydro} + 0.5V_{nhc})/3.5] + V_{typical}\}/2$
FCI = 0.59

14.70

Botanical
$FCI = V_{typical}$
FCI = 0.20

4.38

Physical
$FCI = [(V_{slope} + V_{width} + V_{rough} + V_{soil} + V_{hydro})/5]$
FCI = 0.53

12.70

Chemical
$FCI = [V_{typical} \times V_{hydro}]^{1/2}$
FCI = 0.45

7.58

WWSV
Tidal Fringe Worksheet (Interim HGM) For
Tidal fringe HGM - Mitigation Site.xlsx

151-450 ft	0.50	
Greater than 450 ft	1.00	x

6 **Wwidth: Average marsh width**

Mean Width WAA Distance (ft)	Variable Sub index	
0 - 30 ft	0.1	
31 - 75 ft	0.25	x
76 - 150 ft	0.5	
151 - 225 ft	0.6	
226 - 300 ft	0.8	
301 - 375 ft	0.85	
376 - 450 ft	0.9	
451 - 525 ft	0.95	
526 - 600 ft	1.0	
Greater than 600 ft	1.0	

7 **Vrough: Manning's roughness coefficient**

$\Pi_{base} + \Pi_{topo} + \Pi_{veg} = \text{manning's end}$

(Π_{base}) = 0.025

Sediment surface	0.025	Base value for bare marsh soil	X
	0.030	More than 25% of the sediment surface covered with gravel or broken shell	

(Π_{topo}) = 0.001

Topographic relief	0.001	WAA is flat no microtopographic or macrotopographic relief	x
	0.005	WAA has 5-25% topographic relief	
	0.010	WAA has 26-50% topographic relief	
	0.20	WAA has greater than 50% topographic relief	

(Π_{veg}) = 0.025

Vegetation	Less 50% cover	50-75% cover	76-100% cover	Description of Conditions	
	0.025	0.030	0.035	Predominantly short flexible stem grass (i.e. <i>Spartina alterniflora</i> , <i>S. patens</i> , <i>Distichlis spicata</i>)	x
	0.035	0.040	0.05	Predominantly short stiff trailing stems (i.e. <i>Batis</i> & <i>Salicornia</i>)	
	0.050	0.060	0.07	Predominantly tall flexible grass (i.e. tall <i>Spartina alterniflora</i> , <i>S. cynosuroides</i> , <i>Scirpus</i> sp.)	
	0.070	0.100	0.16	Predominantly tall with stiff leaves or mixed with woody shrubs (i.e. <i>Juncus roemerianus</i> , Mangroves, etc.)	
	x				

Roughness (rounded down) = 0.05

Lookup
2
0.2

FCI variable sub index =

Roughness	Variable Sub index	"X" Automatically picked
0.04	0.1	
0.05	0.2	x
0.06	0.4	
0.07	0.6	
0.08	0.8	
0.09	1.0	
0.10	1.0	

8 **Vsoil**

Soil Texture	Variable Sub index	
Sandy	0.2	x
Sandy loam	0.40	
Loam	0.6	
Clay loam	0.8	
Clay	1.0	

Appendix E: City Council Agenda

**NOTICE OF CITY COUNCIL REGULAR MEETING
CITY OF SOUTH PADRE ISLAND**

WEDNESDAY, NOVEMBER 1, 2023

5:30 PM AT THE MUNICIPAL BUILDING,
CITY COUNCIL CHAMBERS, 2ND FLOOR
4601 PADRE BOULEVARD, SOUTH PADRE ISLAND, TEXAS

1. Call to order

2. Pledge of Allegiance and Texas Pledge

3. Public Comments and Announcements:

This is an opportunity for citizens to speak to Council relating to agenda or non-agenda items. Speakers are required to address Council at the podium and give their name before addressing their concerns. [Note: State law will not permit the City Council to discuss, debate or consider items that are not on the agenda. Citizen comments may be referred to City Staff or may be placed on the agenda of a future City Council meeting]

4. Approve Consent Agenda:

- 4.1. Adopt Ordinance No. 23-12 amending the City's fiscal year 2022-23 operating budget to incorporate prior budget amendments from the months of October 2022 through September 2023. (Gimenez)
- 4.2. Approve a budget amendment to rollover funding in FY 2023-24 for outstanding balances of current projects and contracts with an original allocation approved during last fiscal year. (Gimenez)
- 4.3. Approval of an excused absence for Council Member Kerry Schwartz from the September 6, 2023 Regular City Council Meeting. (Schwartz)
- 4.4. Approve amendments to the City of South Padre Island Drug and Alcohol policy for transportation employees as per DOT Rule 49 CFR, Part 40. (Saldana)
- 4.5. Approve invoices for payment. (Gimenez)
- 4.6. Approve an excused absence for Council Member Eva Jean Dalton from the Special City Council Meeting on October 2, 2023 and Regular City Council Meeting on October 18, 2023. (Dalton)



- 4.7. Approval of the October 18, 2023 Regular City Council meeting minutes. (Soto)
- 4.8. Approve budget amendment in the amount of \$4,854 for additional cost related to Cameron County Appraisal District fees. (Gimenez)

5. Regular Agenda

- 5.1. Discussion and possible action on the appeal by Yehuda Azoulay of the decision by the Development Standards Review Task Force denying a request for a variance from Chapter 15 Signs, Section 15-2, Definitions, and 15-2.1 Rules and procedures governing Art in Public Spaces for an oversized Art at the property located at 6000 Padre Blvd. (Lot 1A Block 202, Fiesta Isles Subdivision (Padre Beach, Section XII)) (Sanchez)
- 5.2. Discussion and possible action to approve Resolution No. 2023-24 consenting to the addition of 87.29 acres in the City of South Padre Island, Cameron County, Texas, by the Laguna Madre Water District to the District's boundaries, said 87.29 acres being as described in an application for annexation from The Shores Islands Development. (Laguna Madre Water District)
- 5.3. Discussion and possible action to approve and accept the CDM LIFESTYLES, LLC as a tenant in the Robert N. Pinkerton, Jr. Building, also known as Island Metro Multimodal Facility, and authorize the City Manager to approve the lease agreement. (Arriaga)
- 5.4. Discussion and action to approve a budget amendment in the amount of \$256,469 for the lighted bollards selected by the City Council at the October 18th City Council meeting. (Sanchez)
- 5.5. Discussion and action to select the style of removable bollards on Laguna Blvd. (Sanchez)
- 5.6. Discussion and possible action to approve the marketing plan for media placement and creative content for the fiscal year 23/24. (Henry)
- 5.7. Discussion and possible action to direct the Planning & Zoning Commission and the Development Standards Review Task Force to possibly designate the an area Arts And Entertainment District, being Blocks 36, 39, 43 Lots 1-6 31-32, Blk 42, Lots 1 & 3, Block 40, Lots 1&2, Block 35 Padre Beach Section IV, and Blocks 28 & 31, Lots 1&2, Block 32, and lot 1, 4&5, Block 27 Padre Beach Section III. (Ricco/Langston)



5.8. Discussion and possible action to approve a contract to purchase real property located at North Half of Tract 21, Abst 260, Kirksey-Grady including Lots 1-8 Blk 1 , Lots 1-11 Blk 3, Lots 1-15 Blk 5 and Lots 1-14Blk 7, South Padre Island, TX, 78597, with contingencies. (City Council)

5.9. Discussion and possible action to cancel the January 3, 2024 Regular City Council Meeting. (Soto)

6. Adjourn.

WE RESERVE THE RIGHT TO GO INTO EXECUTIVE SESSION REGARDING ANY OF THE ITEMS POSTED ON THIS AGENDA, PURSUANT TO SECTIONS 551.071, CONSULTATION WITH ATTORNEY; 551.072, DELIBERATIONS ABOUT REAL PROPERTY; 551.073, DELIBERATIONS ABOUT GIFTS & DONATIONS; 551.074, PERSONNEL MATTERS; 551.076, DELIBERATIONS ABOUT SECURITY DEVICES; AND/OR 551.087, DISCUSS (1) COMMERCIAL OR FINANCIAL INFORMATION RECEIVED FROM A BUSINESS PROSPECT WITH WHICH THE CITY IS CONDUCTING NEGOTIATIONS, OR (2) FINANCIAL OR OTHER INCENTIVES TO THE BUSINESS PROJECT.

DATED THIS THE 27TH DAY OF OCTOBER 2023


Angelique Soto, City Secretary

I, THE UNDERSIGNED AUTHORITY, DO HEREBY CERTIFY THAT THE ABOVE NOTICE OF MEETING OF THE CITY COUNCIL OF THE CITY OF SOUTH PADRE ISLAND, TEXAS IS A TRUE AND CORRECT COPY OF SAID NOTICE AND THAT I POSTED A TRUE AND CORRECT COPY OF SAID NOTICE ON THE BULLETIN BOARD AT CITY HALL/MUNICIPAL BUILDING AND THE CITY'S WEBSITE WWW.MYSPI.ORG ON FRIDAY, OCTOBER 27, 2023, AT/OR BEFORE 5:30 PM AND REMAINED SO POSTED CONTINUOUSLY FOR AT LEAST 72 HOURS PRECEDING THE SCHEDULED TIME OF SAID MEETING.


Angelique Soto, City Secretary

THIS FACILITY IS WHEELCHAIR ACCESSIBLE, AND ACCESSIBLE PARKING SPACES ARE AVAILABLE. REQUESTS FOR ACCOMMODATIONS OR INTERPRETIVE SERVICES MUST BE MADE 48 HOURS PRIOR TO THIS MEETING. PLEASE CONTACT BUILDING OFFICIAL, GEORGE MARTINEZ AT (956)761-8103.



**CITY OF SOUTH PADRE ISLAND
CITY COUNCIL
AGENDA REQUEST FORM**

MEETING DATE: November 1, 2023

NAME & TITLE: Nikki Soto, City Secretary

DEPARTMENT: City Council

ITEM

Discussion and possible action to approve a contract to purchase real property located at North Half of Tract 21, Abst 260, Kirksey-Grady including Lots 1-8 Blk 1 , Lots 1-11 Blk 3, Lots 1-15 Blk 5 and Lots 1-14Blk 7, South Padre Island, TX, 78597, with contingencies. (City Council)

ITEM BACKGROUND

Land is one of South Padre Island’s most precious assets, a fact exemplified by the Island’s limited geography. Bounded by the Gulf of Mexico on one side and by the Laguna Madre on the other, the corporate limits of South Padre Island encompass 3.73 square miles. This requires careful consideration of the uses on the small, urbanized tracts that extend towards each body of water from Padre Boulevard.

BUDGET/FINANCIAL SUMMARY

PENDING

COMPREHENSIVE PLAN GOAL

Island Way 2022

LEGAL REVIEW

Sent to Legal:

Approved by Legal:

RECOMMENDATIONS/COMMENTS:

**NOTICE OF CITY COUNCIL REGULAR MEETING
CITY OF SOUTH PADRE ISLAND**

WEDNESDAY, NOVEMBER 15, 2023

5:30 PM AT THE MUNICIPAL BUILDING,
CITY COUNCIL CHAMBERS, 2ND FLOOR
4601 PADRE BOULEVARD, SOUTH PADRE ISLAND, TEXAS

1.Call to order

2.Pledge of Allegiance and Texas Pledge

3.Public Comments and Announcements:

This is an opportunity for citizens to speak to Council relating to agenda or non-agenda items. Speakers are required to address Council at the podium and give their name before addressing their concerns. [Note: State law will not permit the City Council to discuss, debate or consider items that are not on the agenda. Citizen comments may be referred to City Staff or may be placed on the agenda of a future City Council meeting]

4.Presentations and Proclamations:

4.1. Presentation of Proclamation for Municipal Courts Week. (Vasquez)

5.Approve Consent Agenda:

5.1. Approve invoices for payment. (Gimenez)

5.2. Update regarding the comparison of October 2022 to October 2023 Building Permit activity. (Medders)

5.3. Acknowledgement of monthly financial reports. (Gimenez)

5.4. Approve an excused absence for Council Member Ken Medders from the November 1, 2023 Regular City Council Meeting. (Medders)

5.5. Approval of the November 1, 2023 Regular City Council Meeting Minutes. (Soto)

5.6. Acknowledgment of the South Padre Island Chamber of Commerce's notice to terminate a rental lease at 321 Padre Blvd. Ste. A-103, South Padre Island, Texas 78597. (SPI Chamber)

6.Regular Agenda

Agenda: NOVEMBER 15, 2023



- 6.1. Discussion and possible action to approve the first reading of Ordinance 23-13 by enacting a new Chapter 10, Article II Sections 10-10 through 10-37, with Exhibits A and B, related to Food Services and Mobile Food Units, and repealing current Sections 10-10 through 10-33 of Chapter 10, Article II of the City of South Padre Island City Codes. (City Council)
- 6.2. Discussion and possible action to change the name from South Padre Island Convention and Visitors Bureau to Visit South Padre Island. (Henry)
- 6.3. Discussion and action to authorize the City Manager to enter into a contract with the best qualified firm for the Tompkins Channel maintenance dredging and a budget amendment in an amount up to \$1,480,505.19 from Beach Maintenance Excess Reserves Fund. (Boburka)
- 6.4. Discussion and action for approval of HDR's Tompkins Channel Phase IV services, to authorize the City Manager to execute the contract and a budget amendment in an amount up to \$241,900 from Beach Maintenance Excess Reserve Fund. (Boburka)
- 6.5. Discussion and action to approve Resolution No. 2023-25 canvassing the returns and declaring the results of the November 7, 2023 General Election. (Soto)


7. Adjourn.

WE RESERVE THE RIGHT TO GO INTO EXECUTIVE SESSION REGARDING ANY OF THE ITEMS POSTED ON THIS AGENDA, PURSUANT TO SECTIONS 551.071, CONSULTATION WITH ATTORNEY; 551.072, DELIBERATIONS ABOUT REAL PROPERTY; 551.073, DELIBERATIONS ABOUT GIFTS & DONATIONS; 551.074, PERSONNEL MATTERS; 551.076, DELIBERATIONS ABOUT SECURITY DEVICES; AND/OR 551.087, DISCUSS (1) COMMERCIAL OR FINANCIAL INFORMATION RECEIVED FROM A BUSINESS PROSPECT WITH WHICH THE CITY IS CONDUCTING NEGOTIATIONS, OR (2) FINANCIAL OR OTHER INCENTIVES TO THE BUSINESS PROJECT.

DATED THIS THE 10TH DAY OF NOVEMBER 2023.


Angelique Soto, City Secretary

I, THE UNDERSIGNED AUTHORITY, DO HEREBY CERTIFY THAT THE ABOVE NOTICE OF MEETING OF THE CITY COUNCIL OF THE CITY OF SOUTH PADRE ISLAND, TEXAS IS A TRUE AND CORRECT COPY OF SAID NOTICE AND THAT I POSTED A TRUE AND CORRECT COPY OF SAID NOTICE ON THE BULLETIN BOARD AT CITY HALL/MUNICIPAL BUILDING AND THE CITY'S WEBSITE WWW.MYSPI.ORG ON FRIDAY, NOVEMBER 10, 2023, AT/OR BEFORE 6:30 PM AND REMAINED SO POSTED CONTINUOUSLY FOR AT LEAST 72 HOURS PRECEDING THE SCHEDULED TIME OF SAID MEETING.


Angelique Soto, City Secretary

THIS FACILITY IS WHEELCHAIR ACCESSIBLE, AND ACCESSIBLE PARKING SPACES ARE AVAILABLE. REQUESTS FOR ACCOMMODATIONS OR INTERPRETIVE SERVICES MUST BE MADE 48 HOURS PRIOR TO THIS MEETING. PLEASE CONTACT BUILDING OFFICIAL, GEORGE MARTINEZ AT (956)761-8103.



**CITY OF SOUTH PADRE ISLAND
CITY COUNCIL
AGENDA REQUEST FORM**

MEETING DATE: November 15, 2023

NAME & TITLE: Nikki Soto, City Secretary

DEPARTMENT: City Managers Office

ITEM

Approval of the November 1, 2023 Regular City Council Meeting Minutes. (Soto)

ITEM BACKGROUND

Draft minutes of the November 1, 2023 Regular City Council Meeting.

BUDGET/FINANCIAL SUMMARY

Zero

COMPREHENSIVE PLAN GOAL

Island Way 2022

LEGAL REVIEW

Sent to Legal:

Approved by Legal:

RECOMMENDATIONS/COMMENTS:

**MINUTES OF CITY COUNCIL REGULAR MEETING
CITY OF SOUTH PADRE ISLAND**

WEDNESDAY, NOVEMBER 1, 2023

1. CALL TO ORDER

The City Council Members of the City of South Padre Island, Texas held a Regular City Council Meeting on Wednesday, November 1, 2023 at the Municipal Complex Building, 2 Floor, 4601 Padre Boulevard, South Padre Island, Texas. Mayor McNulty called the meeting to order at 5:30 p.m. A quorum was present: Mayor Patrick McNulty, Council Members Joe Ricco, Kerry Schwartz, Eva Jean Dalton, and Rees Langston.

City staff members present were City Manager Randy Smith, Director of Operations Wendi Delgado, Police Chief Claudine O’Carroll, Public Works Director Alex Sanchez, Assistant Public Works Director Jon Wilson, CVB Director Blake Henry, Shoreline Director Kristina Boburka, Human Resource Manager Wendy Saldana, EMS Lieutenant Emilio Hinojosa, Environmental Health Director Victor Baldovinos Administration Coordinator Hilda Delgado, and City Secretary Angelique Soto.

2. PLEDGE OF ALLEGIANCE AND TEXAS PLEDGE

Mayor McNulty led the Pledge of Allegiance and the Texas Pledge.

3. PUBLIC COMMENTS AND ANNOUNCEMENTS:

Public comments and announcements were given at this time.

4. APPROVE CONSENT AGENDA:

Mayor McNulty moved Consent Agenda Item 4.1 to Regular Agenda.

Council Member Ricco made a motion, seconded by Council Member Langston to approve Consent Agenda Items 4.2 through 4.8. Motion passed unanimously.

4.1. ADOPT ORDINANCE NO. 23-12 AMENDING THE CITY’S FISCAL YEAR 2022-23 OPERATING BUDGET TO INCORPORATE PRIOR BUDGET AMENDMENTS FROM THE MONTHS OF OCTOBER 2022 THROUGH SEPTEMBER 2023. (GIMENEZ)

Council Member Schwartz made a motion, seconded by Council Member Ricco to approve Ordinance No. 23-12 amending the City’s Fiscal Year 2022-23 Operating Budget to incorporate prior budget amendments from the months of October 2022 through September 2023. Motion passed unanimously.

A true and correct copy of said Ordinance was placed in the City's Ordinance Book and entitled Ordinance No. 23-12 and, by reference hereto, included in these Minutes as if fully set out and spread upon the pages of the Minutes Book.

- 4.2. APPROVE A BUDGET AMENDMENT TO ROLLOVER FUNDING IN FY 2023-24 FOR OUTSTANDING BALANCES OF CURRENT PROJECTS AND CONTRACTS WITH AN ORIGINAL ALLOCATION APPROVED DURING LAST FISCAL YEAR. (GIMENEZ)**
- 4.3. APPROVAL OF AN EXCUSED ABSENCE FOR COUNCIL MEMBER KERRY SCHWARTZ FROM THE SEPTEMBER 6, 2023 REGULAR CITY COUNCIL MEETING. (SCHWARTZ)**
- 4.4. APPROVE AMENDMENTS TO THE CITY OF SOUTH PADRE ISLAND DRUG AND ALCOHOL POLICY FOR TRANSPORTATION EMPLOYEES AS PER DOT RULE 49 CFR, PART 40. (SALDANA)**
- 4.5. APPROVE INVOICES FOR PAYMENT. (GIMENEZ)**
- 4.6. APPROVE AN EXCUSED ABSENCE FOR COUNCIL MEMBER EVA JEAN DALTON FROM THE SPECIAL CITY COUNCIL MEETING ON OCTOBER 2, 2023 AND REGULAR CITY COUNCIL MEETING ON OCTOBER 18, 2023. (DALTON)**
- 4.7. APPROVAL OF THE OCTOBER 18, 2023 REGULAR CITY COUNCIL MEETING MINUTES. (SOTO)**
- 4.8. APPROVE BUDGET AMENDMENT IN THE AMOUNT OF \$4,854 FOR ADDITIONAL COST RELATED TO CAMERON COUNTY APPRAISAL DISTRICT FEES. (GIMENEZ)**

5.REGULAR AGENDA

- 5.1. DISCUSSION AND POSSIBLE ACTION ON THE APPEAL BY YEHUDA AZOULAY OF THE DECISION BY THE DEVELOPMENT STANDARDS REVIEW TASK FORCE DENYING A REQUEST FOR A VARIANCE FROM CHAPTER 15 SIGNS, SECTION 15-2, DEFINITIONS, AND 15-2.1 RULES AND PROCEDURES GOVERNING ART IN PUBLIC SPACES FOR AN OVERSIZED ART AT THE PROPERTY LOCATED AT 6000 PADRE BLVD. (LOT 1A BLOCK**

**202, FIESTA ISLES SUBDIVISION (PADRE BEACH, SECTION XII))
(SANCHEZ)**

Council Member Schwartz made a motion, seconded by Council Member Dalton to approve the appeal by Yehuda Azoulay of the decision by the Development Standards Review Task Force denying a request for a variance from Chapter 15 signs, section 15-2, definition, and 15-2.1 Rules and Procedures governing art in public spaces for an oversized art at the property located at 6000 Padre Blvd. (Lot 1A Block 202, Fiesta Isles Subdivision (Padre Beach, Section XII)), and must follow the landscape requirement ordinance. Motion passed unanimously.

5.2. DISCUSSION AND POSSIBLE ACTION TO APPROVE RESOLUTION NO. 2023-24 CONSENTING TO THE ADDITION OF 87.29 ACRES IN THE CITY OF SOUTH PADRE ISLAND, CAMERON COUNTY, TEXAS, BY THE LAGUNA MADRE WATER DISTRICT TO THE DISTRICT'S BOUNDARIES, SAID 87.29 ACRES BEING AS DESCRIBED IN AN APPLICATION FOR ANNEXATION FROM THE SHORES ISLANDS DEVELOPMENT. (LAGUNA MADRE WATER DISTRICT)

Council Member Schwartz made a motion, seconded by Council Member Langston to approve Resolution No. 2023-24 consenting to the addition of 87.29 acres in the City of South Padre Island, Cameron County, Texas, by the Laguna Madre Water District to the District's Boundaries, said 87.29 acres being as described in an application for annexation from The Shores Islands Development. Motion passed on a 5 to 0 vote with a record vote taken as a roll call vote as followed:

Mayor McNulty: Aye
Council Member Ricco: Aye
Council Member Dalton: Aye
Council Member Schwartz: Aye
Council Member Langston: Aye

A true and correct copy of said Reslution was placed in the City's Resolution Book and entitled Resolution No. 2023-24 and, by reference hereto, included in these Minutes as if fully set out and spread upon the pages of the Minutes Book.

5.3. DISCUSSION AND POSSIBLE ACTION TO APPROVE AND ACCEPT THE CDM LIFESTYLES, LLC AS A TENANT IN THE ROBERT N. PINKERTON, JR. BUILDING, ALSO KNOWN AS ISLAND METRO MULTIMODAL FACILITY, AND AUTHORIZE THE CITY MANAGER TO APPROVE THE LEASE AGREEMENT. (ARRIAGA)

Council Member Dalton made a motion, seconded by Council Member Langston to approve and accept the CDM LIFESTYLES, LLC as a tenant in the Robert N. Pinkerton,

Jr, Building also known as Island Metro Multimodal Facility, and authorized the City Manager to approve the lease agreement. Motion passed unanimously.

5.4. DISCUSSION AND ACTION TO APPROVE A BUDGET AMENDMENT IN THE AMOUNT OF \$256,469 FOR THE LIGHTED BOLLARDS SELECTED BY THE CITY COUNCIL AT THE OCTOBER 18TH CITY COUNCIL MEETING. (SANCHEZ)

Council Member Ricco made a motion, seconded by Council Member Schwartz to approve a budget amendment in the amount of \$256,469 for the lighted bollards selected by the City Council at the October 18th City Council Meeting. Motion passed on a 4 to 1 vote with Council Member Dalton casting a nay vote.

5.5. DISCUSSION AND ACTION TO SELECT THE STYLE OF REMOVABLE BOLLARDS ON LAGUNA BLVD. (SANCHEZ)

Council Member Ricco made a motion, seconded by Council Member Langston to select Option 1 with the 23 Lumen. Motion passed on a 4 to 1 vote with Council Member Langston casting a nay vote.

5.6. DISCUSSION AND POSSIBLE ACTION TO APPROVE THE MARKETING PLAN FOR MEDIA PLACEMENT AND CREATIVE CONTENT FOR THE FISCAL YEAR 23/24. (HENRY)

Council Member Ricco made a motion, seconded by Council Member Schwartz to approve the marketing plan for media placement and creative content for the fiscal year 23/24. Motion passed unanimously.

5.7. DISCUSSION AND POSSIBLE ACTION TO DIRECT THE PLANNING & ZONING COMMISSION AND THE DEVELOPMENT STANDARDS REVIEW TASK FORCE TO POSSIBLY DESIGNATE THE AN AREA ARTS AND ENTERTAINMENT DISTRICT, BEING BLOCKS 36, 39, 43 LOTS 1-6 31-32, BLK 42, LOTS 1 & 3, BLOCK 40, LOTS 1&2, BLOCK 35 PADRE BEACH SECTION IV, AND BLOCKS 28 & 31, LOTS 1&2, BLOCK 32, AND LOT 1, 4&5, BLOCK 27 PADRE BEACH SECTION III. (RICCO/LANGSTON)

Council Member Ricco made a motion, seconded by Council Member Langston to direct the Planning & Zoning Commission And The Development Standards Review Task Force to possibly designate an area Arts And Entertainment District, being Blocks 36, 39, 43 Lots 1-6 31-32, Blk 42, Lots 1 & 3, Block 40, Lots 1&2, Block 35 Padre Beach Section IV, And Blocks 28 & 31, Lots 1&2, Block 32, And Lot 1, 4&5, Block 27 Padre Beach Section III. Motion passed unanimously.

5.8. DISCUSSION AND POSSIBLE ACTION TO APPROVE A CONTRACT TO PURCHASE REAL PROPERTY LOCATED AT NORTH HALF OF TRACT 21, ABST 260, KIRKSEY-GRADY INCLUDING LOTS 1-8 BLK 1 , LOTS 1-11 BLK 3, LOTS 1-15 BLK 5 AND LOTS 1-14BLK 7, SOUTH PADRE ISLAND, TX, 78597, WITH CONTINGENCIES. (CITY COUNCIL)

Council Member Ricco made a motion, seconded by Council Member Langston to approve a contract to purchase real property located at North Half of Tract 21, ABST 260, Kirksey-Grady including lots 1-8 Blk. 1, Lots 1-11 Blk. 3, Lots 1-15 Blk. 5 and Lots 1-14 Blk. 7, South Padre Island, Texas 78597. Motion passed unanimously.

5.9. DISCUSSION AND POSSIBLE ACTION TO CANCEL THE JANUARY 3, 2024 REGULAR CITY COUNCIL MEETING. (SOTO)

Council Member Dalton made a motion, seconded by Council Member Schwartz to cancel the January 3, 2024 Regular City Council Meeting and scheduling Special City Council Meetings on January 10, 2024 and January 24, 2024. Motion passed on a 4 to 1 vote with Council Member Ricco casting a nay vote.

6.ADJOURN.

There being no further business, Mayor McNulty adjourned the meeting at 6:03 p.m.

Angelique Soto, City Secretary

APPROVED

Patrick McNulty, Mayor



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
5151 FLYNN PARKWAY, SUITE 306
CORPUS CHRISTI, TEXAS 78411-4318

March 5, 2024

Corpus Christi Field Office

SUBJECT: Withdrawal of Department of the Army Permit Application SWG-2018-00232

Mr. Randy Smith
City of South Padre Island
460 Padre Boulevard
South Padre Island, Texas 78597-7325

Dear Mr. Smith:

This is in reference to your permit application originally submitted on June 5, 2020, with the most recent revision of plans received June 9, 2023. The proposed project would result in permanent impacts to 1.62 acres of special aquatic sites in order to construct a permeable vehicular path from Park Road 100 to the Laguna Madre for recreational access associated with non-motorized wind and water-based activities (wind surfing, kayaking, fishing, etc.). The proposed project is located on a 107-acre parcel of land consisting of wind tidal flats, and salt marsh contiguous with the Laguna Madre, approximately 0.32 mile north of Beach Access Road 4 along Ocean Boulevard (Park Road 100), South Padre Island, Cameron County, Texas.

In a letter, dated November 14, 2023, the United States Army Corps of Engineers (Corps) requested additional information including, but not limited to specific issues that needed to be addressed for revision of the most recent draft compensatory mitigation plan submitted on June 9, 2023, to continue our review of your proposed project. The Corps advised you that if we did not receive all of the requested information within 30 days, your permit application would be withdrawn. On December 14, 2023 the Corps received a revised mitigation plan. After review of the revised plan, the following issues remain unaddressed:

In 1.0 Objectives, the proposed plan remains not strictly preservation, but also includes proposed restoration and enhancement efforts. In order for the Corps to accept preservation only, the following parameters are required:

- (1) Preservation may be used to provide compensatory mitigation for activities authorized by DA permits when all the following criteria are met:
 - (i) The resources to be preserved provide important physical, chemical, or biological functions for the watershed
 - (ii) The resources to be preserved contribute significantly to the ecological sustainability of the watershed. In determining the contribution of those resources to the ecological sustainability of the watershed, the district engineer must use appropriate quantitative assessment tools, where available;

- (iii) Preservation is determined by the district engineer to be appropriate and practicable;
- (iv) The resources are under threat of destruction or adverse modifications; and
- (v) The preserved site will be permanently protected through an appropriate real estate or other legal instrument (e.g., easement, title transfer to state resource agency or land trust).

(2) Where preservation is used to provide compensatory mitigation, to the extent appropriate and practicable the preservation shall be done in conjunction with aquatic resource restoration, establishment, and/or enhancement activities. This requirement may be waived by the district engineer where preservation has been identified as a high priority using a watershed approach, but compensation ratios shall be higher.

The revised proposed mitigation demonstrates an increase of preserved land to 10 acres of preservation and enhancement from the previously proposed approximately 1.70 acres of brackish marsh, salt marsh, and tidal/algal flat wetlands. However, there remains the discussion regarding whether the mitigation is preservation only, and whether there is a threat of destruction of the mitigation site specifically. There remains a lack of an immediate threat of development, with a general lack of permitted and/or construction activities for the area of South Padre Island north of Beach Access Road 4.

In 2.0 Site Selection, a description of the factors should be considered during the site selection process. This should include consideration of watershed needs, onsite alternatives, where applicable, and the practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the compensatory mitigation project site. In determining the ecological suitability of the compensatory mitigation project site, consideration must be given to the factors listed in 33 CFR 332.3 (d)(1).

The revised proposed mitigation plan provides some discussion of the above-listed factors but is lacking in discussion regarding the practicability of accomplishing *ecologically self-sustaining* aquatic resource restoration, establishment, enhancement, and/or preservation at the proposed mitigation site.

In 3.0 Site Protection Instrument, long-term protection is an important element of every compensatory mitigation plan. The created, restored, and rehabilitated sites should be preserved in perpetuity, along with an appropriate buffer, to ensure the long-term viability of these compensatory mitigation sites. There are numerous mechanisms that are deemed appropriate for providing long-term protection for mitigation sites. These include fee transfer to another entity such as a non-profit conservation

organization or public agency with a conservation mandate, an easement held by a non-profit conservation organization or public agency with a conservation mandate, deed restriction, or restrictive covenant.

A proposed deed restriction draft was provided but does not include information regarding how access to the site is limited. These measures should include these access restrictions from all sides of the mitigation site, including prohibition of vehicles from driving onto the site from the adjacent flats. In addition, the draft site protection instrument does not provide a copy of the referred-to Attachment A-1, nor does it include any mention of the intended site recipients (Friends of Laguna Atascosa or Laguna Atascosa National Wildlife Refuge (LANWR)).

In 4.0 Baseline Information, this information should be provided for the project site, proposed mitigation site, and the reference site. The baseline information for the proposed mitigation site must be sufficient to support the development of the mitigation work plan. The baseline information gathered for the reference site is used to identify the mitigation site potential and to assist in the development of appropriate performance standards. Therefore, a similar level of effort is required to describe the existing condition of the reference site as was made for the project site (e.g. delineation of aquatic resources). The reference site should be located within the same watershed as the mitigation site. Since the reference site will be monitored throughout the life of the proposed project, it must be located in an area that will not be affected by the proposed restoration activities or future development of adjacent or nearby properties.

You provided rudimentary baseline information for the proposed mitigation site but did not provide the baseline conditions of the project site or any information at all regarding the mitigation reference site. Also lacking is a comparison between the mitigation site and any reference site.

In Section 5.0 – Determination of credits, this should include an explanation of how the mitigation project will provide the required compensation for unavoidable impacts to aquatic resources resulting from the permitted activity.

You stated that to mitigate for the loss of 1.58 acres of wetlands at the venue location, 9.73 acres of wetlands will be preserved and enhanced at the Mitigation Site. Preservation will be accomplished through a deed restriction and enhancement will be accomplished by installing a series of parking bollards around the Mitigation Site, thereby excluding vehicles from entering the site. It is not clear how credits will be determined for the enhancement portion of the mitigation plan. There is minimal discussion of the initial state of the wetlands to be enhanced in the mitigation area (only

that vehicle ruts are present), and no determination of how credits will be measured from enhancement (ecological uplift) of these wetlands.

In 6.0 Mitigation Work Plan, we asked that you include a more thorough plan for restriction of vehicular access on the site. There is evidence that this site and the reference site are being accessed by vehicles travelling up and down the flats from other locations, and not just the gate at Park Road 100. This will likely require a more detailed map.

In Section 6.23 – Timing and Sequence, you stated that the mitigation site will be donated to Friends of Laguna Atascosa, a non-profit organization that acquires land for LANWR. The mitigation site will then be donated to and managed by the Refuge. There is no input from the Friends of Laguna Atascosa, nor from LANWR, regarding their acceptance of this land donation proposal, or whether these organizations are in a position to accept and manage this property. In addition, while LANWR is designated as the future owner/custodian of the proposed mitigation site, it remains the responsibility of the City to ensure that a plan is formulated by LANWR for the management of the property, as well as assurances that mitigation performance standards are met regarding determination of success for the mitigation site in terms of meeting project goals. The plan formulated by LANWR must be incorporated into the proposed mitigation plan, as presented to the Corps for review.

In Section 6.5 of an earlier mitigation plan submittal, you stated that if a vegetation dieback is documented during a site monitoring event, salt and brackish marsh communities will be supplemented through transplanting. The most recent submittal of the proposed mitigation plan lacks Section 6.5 altogether; as such, no trigger criteria were proposed that specifies when and where re-planting will occur following a die-back, nor criteria for ensuring these assets are maintained. In addition, no discussion was provided regarding an “acceptable level” of invasive species cover within the proposed mitigation site prior to or after herbicide treatment of these species, or whether the site would be compliant with expected conditions if these species are present at all.

In Section 7.0 – Maintenance Plan, the Corps requested information regarding the plan for how long monthly inspections are to continue. Is this to be expected for the duration of the five-year monitoring effort? Longer? What will these inspections entail? If the mitigation plan is preservation only, there may not be a maintenance plan necessary. Under preservation, the resource should already be in satisfactory productive condition and a work plan would not be necessary. Once the site is established, it should go into long-term management. If the mitigation plan is requiring

restoration/enhancement/establishment, the maintenance plan should reflect activities required to maintain the activities completed under the work plan.

You stated that the 10-acre mitigation site will be donated to and managed by LANWR, and the City would therefore not be responsible for the ongoing maintenance of the property. No input was provided by LANWR regarding how the property is to be managed and maintained. The plan formulated by LANWR must be incorporated into the proposed mitigation plan, as presented to the Corps for review.

In Section 8.0 – Performance Standards, the Corps stated that this section needs to be quantifiable. How will the mitigation site be measured for success? Percent vegetative coverage? A decrease in percent exotic species? Other quantifiable measures? Again, this all depends on what type of mitigation plan is proposed. If it is preservation only, then no performance standards are required. If it is restoration/enhancement, then there should be quantifiable, measurable, and scientifically based performance standards. “Preservation will be accomplished through the exclusion of vehicles and smoothing of old ruts, trenches, and tire tracks, thereby increasing the ecosystem function of tidal/algal flats, salt marsh, and brackish marsh habitats.” How will these efforts be quantified? What “measuring stick” will we use to determine success for mitigation of the loss of 1.58 acres of wetlands on the venue location? Is there a particular focus on success criteria? Possibly focus on habitat lift most effective for use by the piping plover and/or red knot?

You stated that performance standards for the mitigation site will focus on completing a conservation easement that provides appropriate protection in perpetuity and incorporating the site as part of the LANWR. No additional performance standards are proposed by the City. No input was provided by LANWR regarding performance standards. The plan formulated by LANWR must be incorporated into the proposed mitigation plan, as presented to the Corps for review.

In Section 9.0 – Monitoring Requirements, the Corps stated that this all depends on what type of mitigation plan is proposed. If it is preservation only, then no monitoring requirements are required. If it is restoration/enhancement, then these should be quantifiable, measurable, and scientifically based. Section 7.0 stated a monthly site visit, which is different from this section. Please clarify the discrepancy. Also establish goals for each monitoring effort regarding recording of environmental lift. Under hydrology - “Loss of algal crust due to desiccation, unintentional vegetation of algal flats, and/or a decline in native hydrophytic vegetation within marsh habitats will be interpreted as a failure to achieve performance standards.” Is this interpreted as any loss that occurs at all? Please provide triggers on when these corrective actions are to

be initiated. Also, please provide triggers regarding amounts or percentages of vegetation cover in the marsh areas.

You stated that performance standards for the mitigation site will focus on completing a conservation easement that provides appropriate protection in perpetuity and incorporating the site as part of the LANWR. No additional performance standards are proposed by the City. No input was provided by LANWR regarding monitoring requirements. The plan formulated by LANWR must be incorporated into the proposed mitigation plan, as presented to the Corps for review.

In Section 10.0 – Long-Term Management, the Corps stated that this section requires a more definitive description of how the mitigation site will be managed after performance standards have been achieved to ensure the long-term sustainability of the resource, including long-term financing mechanisms and the party responsible for long-term management. Please provide this specific information.

You stated that the mitigation site will be donated to and managed by LANWR. The City would therefore not be responsible for long-term management of the property. No input was provided by LANWR regarding long-term management of the proposed mitigation site. The plan formulated by LANWR must be incorporated into the proposed mitigation plan, as presented to the Corps for review.

In Section 11.0 – Adaptive Management, the Corps stated that this section requires a management strategy to address unforeseen changes in site conditions or other components of the mitigation project, including the party or parties responsible for implementing adaptive management measures. Once the prior identified shortcomings are addressed in the proposed mitigation plan, this may need to be adjusted to ensure the long-term adaptive management strategy is met.

You stated that the mitigation site will be donated to and managed by LANWR. The City would therefore not be responsible for long-term management of the property. No input was provided by LANWR regarding adaptive management of the proposed mitigation site. The plan formulated by LANWR must be incorporated into the proposed mitigation plan, as presented to the Corps for review.

In Section 12.0 - Financial Assurances, the Corps stated that this section requires a description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the mitigation project will be successfully completed, in accordance with its performance standards. Financial assurances may be in the form of performance bonds, escrow accounts, casualty insurance, letters of credit, legislative appropriations for government sponsored projects, or other appropriate

instruments, subject to the approval of the district engineer. The rationale for determining the amount of the required financial assurances must be documented in the administrative record for either the DA permit or the instrument. In determining the assurance amount, consider the cost of providing replacement mitigation, including costs for land acquisition, planning and engineering, legal fees, mobilization, construction, and monitoring. Please provide meeting minutes, proof of escrow, or similar legal document demonstrating the city's commitment to this requirement.

You stated that the proposed mitigation site will be protected by a conservation easement executed pursuant to the timeframe outlined in the DA permit. The Mitigation Site will be donated to and managed by LANWR. Aside from purchase of the real property and installation of the parking bollard system, the City has not proposed short- or long-term financial assurances. There is no input from LANWR regarding their acceptance of this land donation proposal, or whether LANWR is in a position to accept and manage this property. In addition, while LANWR is designated as the future owner/custodian of the proposed mitigation site, it remains the responsibility of the City to ensure that financial assurances are in place by (or for) LANWR for the fiscal management of the property, to ensure that mitigation performance standards are met regarding determination of success for the mitigation site in terms of meeting project goals.

As of the date of this letter, the Corps has not received all of the information requested in our November 14, 2023, letter. Therefore, your Department of Army Permit application SWG-2018-00232 is hereby withdrawn. This withdrawal is without prejudice to your right to reapply at a later date.

If you have questions or require additional information, please contact me at Matthew.L.Kimmel@usace.army.mil or by telephone at 361-814-5847 x1002. To assist us in improving our service to you, please complete the survey found at <https://regulatory.ops.usace.army.mil/customer-service-survey/>.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew Kimmel', written in a cursive style.

Matthew Kimmel
Regulatory Project Manager

Copy to:
Mr. Nate Badgett, Hanson Professional Services, Inc.

EXHIBIT C: STANDARD FORM OF AGREEMENT

**PROFESSIONAL SERVICES CONTRACT
ARCHITECTS & ENGINEERING**

This Contract is between the **City of South Padre Island**, a Texas home-rule municipal corporation (the “City”) and _____, a _____ corporation (the “Consultant”), whereby the Consultant agrees to provide the City with certain professional services as described herein and the City agrees to pay the Consultant for those services.

**ARTICLE I
Scope of Services**

1.01 In consideration of the compensation stated in paragraph 2.01 below, the Consultant agrees to provide the City with the professional services as described in **Exhibit “A”**, the Scope of Services, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows: _____

_____ (the “Project”).

**ARTICLE II
Payment**

2.01 In consideration of the Consultant’s provision of the professional services in compliance with all terms and conditions of this Contract, the City shall pay the Consultant according to the terms set forth in **Exhibit “B”**. Except in the event of a duly authorized change order, approved by the City as provided in this Contract, the total cost of all professional services provided under this Contract may not exceed _____ and ___/100 Dollars (\$_____).

**ARTICLE III
Time of Performance and Construction Cost**

3.01 The Consultant shall complete the professional services within the times set forth below and in Section 3.02. Consultant expressly agrees that such times are as expeditious as is prudent considering the ordinary professional skill and care of a competent engineer or architect. Furthermore, the Consultant shall perform with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license.

[Conceptual Design: **calendar days** after the authorization to commence planning]

[Preliminary Design: **calendar days** after authorization to commence PPD]

[Final Design: **calendar days** after authorization to commence final design]

- 3.02 All design work and other professional services provided under this Contract must be completed by the following date: _____.
- 3.03 **Time is of the essence of this Contract.** The Consultant shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the times specified. Promptly after the execution of this Contract, the Consultant shall prepare and submit for the City to approve in writing, a detailed schedule for the performance of the Consultant's services to meet the City's project milestone dates which are included in this Contract. The Consultant's schedule shall include allowances for periods of time required for the City's review and for approval of submissions by authorities having jurisdiction over the Project. The time limits established by this schedule over which Consultant has control shall not be exceeded without written approval from the City.
- 3.04 The Consultant's services consist of all of the services required to be performed by Consultant, Consultant's employees and Consultant's sub-consultants under the terms of this Contract. Such services include normal civil, structural, mechanical and electrical engineering services, plumbing, food service, acoustical and landscape services, and any other design services that are normally or customarily furnished and reasonably necessary for the Project. The Consultant shall contract and employ at its expense sub-consultants necessary for the design of the Project, and such sub-consultants shall be licensed as required by the State of Texas and approved in writing by the City.
- 3.05 The Consultant shall designate a principal of the firm reasonably satisfactory to the City who shall, for so long as acceptable to the City, be in charge of Consultant's services to be performed hereunder through to completion, and who shall be available for general consultation throughout the Project. Any replacement of that principal shall be approved in writing (which shall not be unreasonably withheld) by the City, prior to replacement.
- 3.06 Consultant shall be responsible for the coordination of all drawings and design documents relating to Consultant's design and used on the Project, regardless of whether such drawings and documents are prepared by Consultant. Consultant shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through Consultant and for its compliance with all applicable codes, ordinances, regulations, laws and statutes.
- 3.07 Consultant's evaluations of the City's project budget and the preliminary estimates of construction cost and detailed estimates of construction cost, represent the Consultant's best judgment as a design professional familiar with the construction industry.

- 3.08 The construction budget for this Project, which is established as a condition of this Contract is \$_____. This construction budget shall not be exceeded unless the amount is changed in writing by the City.

ARTICLE IV
Conceptual Design

- 4.01 Upon the Consultant's receipt from the City of a letter of authorization to commence planning, the Consultant shall meet with the City for the purpose of determining the nature of the Project. The Consultant shall inquire in writing as to the information it believes the City may have in its possession that is necessary for the Consultant's performance. The City shall provide the information within its possession that it can make available to the Consultant. The City shall designate a representative to act as the contact person on behalf of the City.
- 4.02 The Consultant shall determine the City's needs with regard to the Project, including, but not limited to, tests, analyses, reports, site evaluations, needs surveys, comparisons with other municipal projects, review of budgetary constraints and other preliminary investigations necessary for the Project. Consultant shall verify the observable existing conditions of the Project and verify any existing as-built drawings. Consultant shall confirm that the Project can be designed and constructed within the time limits outlined in this Contract. Consultant shall prepare a detailed design phase schedule which includes all review and approval periods during the schematic design, design development and construction document phases. Consultant shall confirm that the Project can be designed and constructed for the dollar amount of the Project budget, if applicable.
- 4.03 The Consultant shall prepare a Conceptual Design that shall include schematic layouts, surveys, sketches and exhibits demonstrating the considerations involved in the Project. The Conceptual Design shall contemplate compliance with all applicable laws, statutes, ordinances, codes and regulations. Upon the City's request, the Consultant shall meet with City staff and the City Council to make a presentation of its report.

ARTICLE V
Preliminary Design

- 5.01 The City shall direct the Consultant to commence work on the Preliminary Design by sending to the Consultant a letter of authorization to begin work on the Preliminary Design pursuant to this Contract. Upon receipt of the letter of authorization to commence Preliminary Design, the Consultant shall meet with the City for the purpose of determining the extent of any revisions to the Conceptual Design.
- 5.02 The Consultant shall prepare the Preliminary Design of the Project, including, but not limited to, the preliminary drawings and specifications and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical

and electrical systems, materials and such other elements as may be appropriate. The Consultant shall submit to the City a detailed estimate of the construction costs of the Project, based on current area, volume, or other unit costs. This estimate shall also indicate both the cost of each category of work involved in constructing the Project and the time required for construction of the Project from commencement to final completion.

- 5.03 Upon completion of the Preliminary Design of the Project, the Consultant shall so notify the City. Upon request the Consultant shall meet with the City staff and City Council to make a presentation of its Preliminary Design of the Project. The Consultant shall provide an explanation of the Preliminary Design and cost estimate and shall verify that, to the best of Consultant's belief, the Project requirements and construction can be completed within the Project budget and schedule.

ARTICLE VI

Final Design

- 6.01 The City shall direct the Consultant to commence work on the Final Design of the Project by sending to the Consultant a letter of authorization to begin work on the Final Design phase of the Project. Upon receipt of the Letter of Authorization to proceed with Final Design of the Project, the Consultant shall immediately prepare the Final Design, including, but not limited to, the bid documents, contract, drawings, and specifications, to fix and describe the size and character of the Project as to structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate. The Final Design of the Project shall comply with all applicable laws, statutes, ordinances, codes and regulations.
- 6.02 Notwithstanding the City's approval of the Final Design, the Consultant warrants that the Final Design will be sufficient and adequate to fulfill the purposes of the Project.
- 6.03 The Consultant shall prepare and separately seal the special provisions, the technical specifications, and bid proposal form(s) in conformance with the City's current pre-approved, "Standard Form of Construction Agreement" for the construction contract between the City and the construction contractor. The Consultant hereby agrees that no changes, modifications, supplementations, alterations, or deletions will be made to the City's standard form without the prior written approval of the City.
- 6.04 The Consultant shall provide the City with complete contract documents sufficient to be advertised for bids by the City. The contract documents shall include the design and specifications and other changes that are required to fulfill the purpose of the Project. Upon completion of the Final Design of the Project, with the submission of the complete contract documents, and upon request of the City, the Consultant shall meet with City

staff and the City Council to present the Final Design of the Project. The Consultant shall provide an explanation of the Final Design and cost estimate.

ARTICLE VII
Bid Preparations & Evaluation

- 7.01 The Consultant shall assist the City in advertising for and obtaining bids or negotiating proposals for the construction of the Project. Upon request, the Consultant shall meet with City staff and the City Council to present, and make recommendations on, the bids submitted for the construction of the Project.
- 7.02 The Consultant shall review the construction contractors' bids, including subcontractors, suppliers, and other persons required for completion of the Project. The Consultant shall evaluate each bid and provide these evaluations to the City along with a recommendation on each bid. If the lowest bid for the construction of the Project exceeds the final cost estimate set forth in the Final Design of the Project, then the Consultant, at its sole cost and expense, shall revise the construction documents so that the total construction costs of the Project will not exceed the final cost estimate contained in the Final Design of the Project.
- 7.03 Where substitutions are requested by a construction contractor, the Consultant shall review the substitution requested and shall recommend approval or disapproval of such substitutions.

ARTICLE VIII
Construction

- 8.01 The Consultant shall be a representative of, and shall advise and consult with, the City (1) during construction, and (2) at the City's direction from time to time during the correction, or warranty, period described in the construction contract. The Consultant shall have authority to act on behalf of the City only to the extent provided in this Contract unless modified by written instrument.
- 8.02 The Consultant shall make visits to the site, with a frequency appropriate to the scope of the Project, to inspect the progress and quality of the executed work of the construction contractor and its subcontractors and to determine if such work is proceeding in accordance with the contract documents. Consultant shall periodically review the as-built drawings for accuracy and completeness, and shall report its findings to the City.
- 8.03 The Consultant shall keep the City informed of the progress and quality of the work. The Consultant shall employ the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license in discovering and promptly reporting to

the City any defects or deficiencies in such work and shall disapprove or reject any work failing to conform to the contract documents.

- 8.04 The Consultant shall review and approve shop drawings and samples, the results of tests and inspections, and other data that each construction contractor or subcontractor is required to provide. The Consultant's review and approval shall include a determination of whether the work complies with all applicable laws, statutes, ordinances and codes and a determination of whether the work, when completed, will be in compliance with the requirements of the contract documents.
- 8.05 The Consultant shall determine the acceptability of substitute materials and equipment that may be proposed by construction contractors or subcontractors. The Consultant shall also receive and review maintenance and operating instruction manuals, schedules, guarantees, and certificates of inspection, which are to be assembled by the construction contractor in accordance with the contract documents.
- 8.06 The Consultant shall issue all instructions of the City to the construction contractor as well as interpretations and clarifications of the contract documents pertaining to the performance of the work. Consultant shall interpret the contract documents and judge the performance thereunder by the contractor constructing the Project, and Consultant shall, within a reasonable time, render such interpretations and clarifications as it may deem necessary for the proper execution and progress of the work. Consultant shall receive no additional compensation for providing clarification of the drawings and specifications.
- 8.07 The Consultant shall review the amounts owing to the construction contractor and recommend to the City, in writing, payments to the construction contractor of such amounts. The Consultant's recommendation of payment, being based upon the Consultant's on-site inspections and its experience and qualifications as a design professional, shall constitute a recommendation by the Consultant to the City that the quality of such work is in accordance with the contract documents and that the work has progressed to the point reflected in Consultant's recommendation for payment.
- 8.08 Upon notification from the construction contractor that the Project is substantially complete, the Consultant shall conduct an inspection of the site to determine if the Project is substantially complete. The Consultant shall prepare a checklist of items that shall be completed prior to final acceptance. Upon notification by the construction contractor that the checklist items designated by the Consultant for completion have been completed, the Consultant shall inspect the Project to verify final completion.
- 8.09 The Consultant shall not be responsible for the work of the construction contractor or any of its subcontractors, except that the Consultant shall be responsible for the construction contractor's schedules or failure to carry out the work in accordance with the contract documents if such failures result from the Consultant's negligent acts or omissions. This

provision shall not alter the Consultant's duties to the City arising from the performance of the Consultant's obligations under this Contract.

- 8.10 The Consultant shall conduct at least one on-site inspection during the warranty period and shall report to the City as to the continued acceptability of the work.
- 8.11 The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project without an advance, written authorization from the City.
- 8.12 The Consultant shall perform all of its duties under this Article VIII so as to not cause any delay in the progress of construction of the Project.
- 8.13 The Consultant shall assist the construction contractor and City in obtaining a Certificate of Occupancy by accompanying governing officials during inspections of the Project if requested to do so by the City.

ARTICLE IX

Change Orders & Documents & Materials

- 9.01 No changes shall be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid except upon the prior written order from authorized personnel of the City. The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project.
- 9.02
 - a. When the original contract amount plus all change orders is less than \$50,000, the City Manager or his delegate may approve the written change order provided the change order does not increase the total amount set forth in the contract to more than \$50,000. For such contracts, when a change order results in a total contract amount that exceeds \$50,000, the City Council must approve such change order prior to commencement of the services or work.
 - b. When the original contract amount plus all change orders is equal to or greater than \$50,000, the City Manager or his delegate may approve the written change order provided the change order does not exceed \$50,000, and provided the sum of all change orders does not exceed 25% of the original contract amount. For such contracts, when a change order exceeds \$50,000 or when the sum of all change orders exceeds 25% of the original contract, the City Council must approve such change order prior to commencement of the services or work.
 - c. **Any request by the Consultant for an increase in the Scope of Services and an increase in the amount listed in paragraph two of this Contract shall be made and approved by the City prior to the Consultant providing such services or the right to payment for such additional services shall be waived.** If there is a dispute between the Consultant and the City respecting any service provided or to be provided hereunder by the Consultant, including a dispute as to whether such service is additional to the Scope of Services

included in this Contract, the Consultant agrees to continue providing on a timely basis all services to be provided by the Consultant hereunder, including any service as to which there is a dispute.

- 9.03 The Consultant shall furnish the City _____ () sets of plans and specifications. It is hereby agreed that additional copies shall be provided to the City at the City's expense. The Consultant shall provide the City _____ () sets of reproducible, mylar record drawings that clearly show all the changes made during the construction process, based upon the marked-up prints, drawings, and other data furnished by the construction contractor to the Consultant. The Consultant shall provide copies of documents, computer files if available, surveys, notes, and tracings used or prepared by the Consultant. The foregoing documentation, the Consultant's work product, and other information in the Consultant's possession concerning the Project shall be the property of the City from the time of preparation. The Consultant shall furnish one set of digital files representing the final record drawings.

ARTICLE X

Warranty, Indemnification & Release

- 10.01 As an experienced and qualified design professional, the Consultant warrants that the information provided by the Consultant reflects the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license. The Consultant warrants the design preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, and the performance of all other services under this Contract are performed with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Consultant, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their designs, information, plans, specifications or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the Consultant, its employees, associates, agents, or subcontractors.
- 10.02 The Consultant shall promptly correct any defective designs or specifications furnished by the Consultant at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Consultant's services hereunder or of the Project itself shall in no way alter the Consultant's obligations or the City's rights hereunder.
- 10.03 In all activities or services performed hereunder, the Consultant is an independent contractor and not an agent or employee of the City. The Consultant and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Consultant shall be responsible for the professional services and the final work product

contemplated under this Contract. Except for materials furnished by the City, the Consultant shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The Consultant shall have ultimate control over the execution of the services it is to provide under this Contract. The Consultant shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Consultant or any of the Consultant's subcontractors.

- 10.04 The Consultant must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as its personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Consultant, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.
- 10.05 Indemnity. To the fullest extent permitted by law, the Consultant agrees to indemnify, defend, and hold harmless the City, Consultant agrees to indemnify and hold harmless the City, its Council members, officers, agents, employees and volunteers (separately and collectively referred to in this paragraph as "Indemnatee") from and against all claims, damages, losses and expenses including but not limited to attorneys' fees arising out of or resulting from any negligent act, error, omission, intentional tort or willful misconduct, intellectual property infringement or including failure to pay a subconsultant, subcontractor, or supplier pursuant to the agreement by Consultant, its employees, subcontractors, subconsultants, or others for whom Consultant may be legally liable ("Consultant Parties"), but only to the extent caused in whole or in part by the Consultant Parties. IF THE CLAIMS, ETC. ARE CAUSE IN PART BY CONSULTANT PARTIES, AND ALSO IN PART BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OR ALL OF THE INDEMNITEES OR ANY OTHER THIRD PARTY, THEN CONSULTANT SHALL ONLY INDEMNIFY ON A COMPARITIVE BASES, AND ONLY FOR THE AMOUNT FOR WHICH THE CONSULTANT PARTIES ARE FOUND LIABLE AND NOT FOR ANY AMOUNT FOR WHICH ANY OR ALL INDEMNITEES OR OTHER THIRD PARTIES ARE LIABLE.**
- 10.06 Release. The Consultant releases, relinquishes, and discharges the City, its Council members, officials, officers, agents, employees and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Consultant or its employees and any loss of or damage to any property of the Consultant or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Consultant's work to be performed hereunder. Both the City and the Consultant expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are**

covered, in whole or in part, by insurance and in the event of injury, sickness, death, loss, or damage suffered by the Consultant or its employees, but not otherwise, this release shall apply regardless of whether such loss, damage, injury, or death was caused in whole or in part by the City, any other party released hereunder, the Consultant, or any third party.

- 10.07 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Paragraph 10.05 and Paragraph 10.06, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

ARTICLE XI

Insurance

- 11.01 The Consultant shall procure and maintain at its sole cost and expense for the duration of this Contract insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, volunteers, employees or subcontractors. The policies, limits and endorsements required are as set forth on **Exhibit C**.

ARTICLE XII

Use of Drawings, Specifications and Other Documents

- 12.01 The drawings, specifications and other documents prepared by the Consultant and Consultant's sub-consultants for this Project shall become the property of the City whether the Project is completed or not. The City shall be furnished and permitted to retain reproducible copies and electronic versions of Consultant's drawings, specifications and other documents.
- 12.02 The documents prepared by Consultant may be used as a prototype for other facilities by the City. The City may elect to use the Consultant to perform the site adaptation and other architectural or engineering services involved in reuse of the prototype. If so, the Consultant is obligated to perform the work for an additional compensation that will fairly compensate the Consultant and its sub-consultants only for the additional work involved. It is reasonable to expect that the fair additional compensation will be significantly less than the fee provided for under this Contract. If the City elects to employ a different architect or engineer to perform the site adaptation and other architectural or engineering services involved in reuse of the prototype, that architect or engineer will be entitled to use Consultant's sub-consultants on the same basis that Consultant would have been entitled to use them for the work on the reuse of the prototype, and such architect or engineer will be entitled, to the extent allowed by law, to duplicate the design

and review and refer to the construction documents, approved shop drawings and calculations, and change order drawings in performing its work. The Consultant will not be responsible for errors and omissions of a subsequent architect or engineer. The Consultant shall commit its sub-consultants to the terms of this subparagraph. The provisions of this section shall survive termination of this Contract.

- 12.03 In the event of termination of this Contract for any reason, the City shall receive all original documents prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.
- 12.04 Only the details of the drawings relating to this Project may be used by the Consultant on other projects, but they shall not be used as a whole without written authorization by the City. The City-furnished forms, conditions, and other written documents shall not be used on other projects by the Consultant.

ARTICLE XIII Termination

- 13.01 The City may terminate this Contract at any time upon **thirty (30)** calendar days written notice. Upon the Consultant's receipt of such notice, the Consultant shall cease work immediately. The Consultant shall be compensated for the services satisfactorily performed prior to the termination date.
- 13.02 If, through any cause, the Consultant fails to fulfill its obligations under this Contract, or if the Consultant violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Consultant **five (5)** calendar days written notice to the Consultant. The Consultant will be compensated for the services satisfactorily performed prior to the termination date.
- 13.03 No term or provision of this Contract shall be construed to relieve the Consultant of liability to the City for damages sustained by the City because of any breach of contract and/or negligence by the Consultant. The City may withhold payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined and paid.

ARTICLE XIV Miscellaneous Terms

- 14.01 This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.
- 14.02 Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

City of South Padre Island
Attn: City Manager
4601 Padre Blvd.
South Padre Island, Texas 78597

Consultant
Attn: _____
ADDRESS
ADDRESS

- 14.03 No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.
- 14.04 This Contract represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.
- 14.05 This Contract and all rights and obligations contained herein may not be assigned by the Consultant without the prior written approval of the City.
- 14.06 If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- 14.07 The Consultant, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of South Padre Island, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Consultant must obtain all necessary permits and licenses required in completing the work and providing the services required by this Contract.
- 14.08 The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract. If there is a conflict between a provision in any documents provided by Consultant made a part of this Contract and any other provision in this Contract, the latter controls.
- 14.09 This Contract will be effective when signed by the last party whose signing makes the Contract fully executed.
- 14.10 **Notice of Indemnification. City and Consultant hereby acknowledge and agree that this Contract contains certain indemnification obligations and covenants.**

[INSERT NAME OF CONTRACTOR]

Signature: _____

Name: _____

Title: _____

Date: _____

CITY OF SOUTH PADRE ISLAND

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A: SCOPE OF SERVICES

EXHIBIT B: PAYMENT TERMS

SELECT ONE:

Compensation is based on **actual** hours of work/time devoted to providing the described professional services. The Consultant will be paid at a rate of \$ _____ per hour, or at the rates per service or employee shown below. The City will reimburse the Consultant for **actual**, non-salary expenses at the rate of _____ percent (____%) above the Consultant's actual costs, or at the rates set forth below. Unless amended by a duly authorized written change order, the total payment for all invoices on this job, including both salary and non-salary expenses, shall not exceed the amount set forth in paragraph 2.01 of this Contract (\$ _____).

The Consultant must submit **monthly** invoices to the City, accompanied by an explanation of charges, professional fees, services, and expenses. The City will pay such invoices according to its normal payment procedures.

-OR-

Payment is a fixed fee in the amount listed in paragraph 2.01 of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and written acceptance by the City.

Schedule of Payment for each phase:

EXHIBIT C: INSURANCE REQUIREMENTS

During the term of this Contract all Consultant’s insurance policies shall meet the following requirements:

- I. Standard Insurance Policies Required:
 - A. Commercial General Liability
 - B. Business Automobile Liability
 - C. Workers' Compensation
 - D. Professional Liability

- II. For each of these policies, the Consultant’s insurance coverage shall be primary insurance with respect to the City, its officials, agents, employees and volunteers. Any self-insurance or insurance policies maintained by the City, its officials, agents, employees or volunteers, shall be considered in excess of the Consultant’s insurance and shall not contribute to it. No term or provision of the indemnification provided by the Consultant to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Contract, attached hereto as **Exhibit D**, and approved by the City before any letter of authorization to commence planning will issue or any work on the Project commences.

- III. General Requirements Applicable to All Policies
 - A. Only insurance carriers licensed and authorized to do business in the State of Texas will be accepted.
 - B. Deductibles shall be listed on the Certificate of Insurance.
 - C. “Claims made” policies will not be accepted, except for Professional Liability insurance.
 - D. Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of South Padre Island.
 - E. The Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent on the most current State of Texas Department of Insurance-approved forms.

- IV. Commercial (General) Liability requirements:
 - A. Coverage shall be written by a carrier rated “A:VIII” or better in accordance with the current A. M. Best Key Rating Guide.
 - B. Minimum Limit of \$1,000,000 per occurrence for bodily injury and property damage with a \$2,000,000 annual aggregate.
 - C. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.

- D. The coverage shall not exclude premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), and where exposures exist, Explosion Collapse and Underground coverage.
 - E. The City shall be included as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.
- V. Business Automobile Liability requirements:
- A. Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current. A. M. Best Key Rating Guide.
 - B. Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.
 - C. The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
 - D. The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- VI. Workers' Compensation Insurance requirements:
- A. Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Consultant, the Consultant, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Consultant's, or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, Consultants and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.
 - B. The workers' compensation insurance shall include the following terms:
 - 1. Employer's Liability limits of \$1,000,000 for each accident is required.
 - 2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 - 3. Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
 - C. Pursuant to the explicit terms of Title 28, Section 110.110(c)(7) of the Texas Administrative Code, this Contract, the bid specifications, this Contract, and all subcontracts on this Project must include the terms and conditions set forth below, without any additional words or changes, except those required to

accommodate the specific document in which they are contained or to impose stricter standards of documentation:

“A. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.*
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.*
- D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.*
- E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:*

- (1) *a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and*
 - (2) *no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.*
- F. *The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.*
- G. *The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.*
- H. *The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.*
- I. *The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:*
- (1) *provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;*
 - (2) *provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project for the duration of the project;*
 - (3) *provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
 - (4) *obtain from each other person with whom it contracts, and provide to the Contractor:*
 - (a) *a certificate of coverage, prior to the other person beginning work on the project; and*
 - (b) *a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the*

coverage period shown on the current certificate of coverage ends during the duration of the project;

- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
- (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and*
- (7) contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.*

J. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity."

VII. Professional Liability requirements:

- A. Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A.M. Best Key Rating Guide.
- B. Minimum of \$1,000,000 per claim and \$2,000,000 aggregate, with a maximum deductible of \$100,000.00. Financial statements shall be furnished to the City of South Padre Island when requested.
- C. Policy must include availability of a two-year extended reporting period.
- D. Retroactive date must be shown on certificate.

EXHIBIT D: CERTIFICATE(S) OF INSURANCE