

**CITY COUNCIL
CITY OF JERSEY VILLAGE, TEXAS
AGENDA REQUEST**

AGENDA DATE: September 20, 2021

AGENDA ITEM: G9

AGENDA SUBJECT: Consider Resolution No. 2021-61, authorizing the City Manager to enter into a contract with Aguirre & Fields for the Preliminary Engineering Report and Permitting of the E127 Project.

Department/Prepared By: Austin Bless, CM **Date Submitted:** September 13, 2021

EXHIBITS: Resolution No. 2021-61
 EXA - Aguirre & Fields Agreement

BUDGETARY IMPACT:	Required Expenditure:	\$1,385,492.50
	Amount Budgeted:	\$3,000,000
	Appropriation Required:	\$

CITY MANAGER APPROVAL: AB

BACKGROUND INFORMATION:

The City is doing a cost share with Flood Control for the E127 Channel Improvements Project. As the project was estimated, by Flood Control, to be \$3 million, the City cost share is \$1,500,000. Back in 2018 the City applied for, and was awarded, a grant in the amount of \$100,000 to help cover the cost share of the City to design the project. We were recently informed that TWBD will cover \$500,000 of the costs for this design work.

I have negotiated with Aguirre & Fields and HCFCD a scope that will take us from today through the Preliminary Engineering Report and Permitting Process through the US Army Corps of Engineers (USACE). We would need to negotiate a new contract for the final design, bid documents, construction phase services, and construction engineering and inspection.

The total cost for these services will be \$1,385,492.50. Therefore, the total cost of this will be paid for with \$100,000 from FEMA Funding, \$500,000 from TWDB Funding, and the remaining \$785,492.50 will be paid by the City/HCFCD.

RECOMMENDED ACTION:

To approve Resolution No. 2021-61, authorizing the City Manager to enter into a contract with Aguirre & Fields for the Preliminary Engineering Report and Permitting of the E127 Project.

RECOMMENDED MOTION:

To approve Resolution No. 2021-61, authorizing the City Manager to enter into a contract with Aguirre & Fields for the Preliminary Engineering Report and Permitting of the E127 Project.

RESOLUTION NO. 2021-61

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JERSEY VILLAGE, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH AGUIRRE & FIELDS FOR THE PRELIMINARY ENGINEERING REPORT AND PERMITTING OF THE E127 PROJECT.

WHEREAS, the Jersey Village City Council desires to complete the E127 Channel Improvement Project; and

WHEREAS, the City has gone out for RFQ for design services, permitting, and construction management services; and

WHEREAS, the City has sought qualified contractors in accordance with 2 CFR Part 200 and State of Texas procurement standards;

WHEREAS, the City Council authorized the City Manager to negotiate a contract with Aguirre & Fields on July 19, 2021;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF JERSEY VILLAGE, TEXAS, THAT:

Section 1. The City Council authorizes the City Manager to enter into a contract with Aguirre & Fields for the Preliminary Engineering Report and Permitting of the E127 Project in substantially the form as presented in Exhibit A.

PASSED AND APPROVED this 20th day of **September**, A.D., 2021.

Bobby Warren, Mayor

ATTEST:

Lorri Coody, City Secretary



GENERAL SERVICES CONTRACT

This General Services Contract (the “Contract”) is made by and between the City of Jersey Village, a State of Texas home rule municipal corporation (the “City”), and Aguirre & Fields (the “Contractor”) (with each being a “Party”, and together, the “Parties”), and shall be in full force and effect on the date of execution by the authorized representatives of the Parties below (the “Effective Date”).

SECTION 1. Summary of the Services.

Description of Services:
Preliminary Engineering Report / Preliminary Design as more fully described in the Scope of Services.

Base Services:
 N/A

Work in addition to Base Services:
 N/A

Effective Date: Upon signing of contract

Termination Date: Upon completion of work

SECTION 2. Services and Payment.

Contractor will furnish the Services to the City in accordance with the terms and conditions specified in this Contract. The Contractor will bill the City for the Services provided at intervals of at least thirty (30) days, except for the final billing. The City shall pay the Contractor for the Services in accordance with the terms of this Contract, but all payments to be made by the City to Contractor, including the time of payment and the payment of interest on overdue amounts, are subject to the applicable provisions of Chapter 2251 of the Government Code.

SECTION 3. Termination for Convenience.

The City may terminate this Contract during at any time for the City’s own convenience, where the Contractor is not in default, by giving written notice to Contractor. If the City terminated this Contract under this paragraph, then the City will pay the Contractor for the portion of the Services rendered in accordance with this Contract up to the date of termination.

SECTION 4. Termination for Default.

Either Party may terminate this Contract as provided in this paragraph if the other Party is in default to any term of this Contract. The Party alleging the default will give the other Party notice of the default in writing citing the terms of the Contract that have been breached and what action the

defaulting Party must take to cure the default. If the Party in default fails to cure the default as specified in the notice within thirty (30) days, then the Party giving the notice of the default may terminate this Contract by written notice to the other Party, specifying the date of termination. Termination of the Contract under this paragraph does not affect the right of either Party to seek remedies for breach of the Contract as allowed by law, including any damages or costs suffered by either Party.

SECTION 5. Multi-Year Contracts and Funding.

If this Contract extends beyond the City's fiscal year in which it becomes effective, or provides for the City to make any payment during any of the City's fiscal years following the City's fiscal year in which this Contract becomes effective, and the City fails to appropriate funds to make any required Contract payment for that successive fiscal year, and there are no funds from the City's sale of debt instruments to make the required payment, then this Contract automatically terminates at the beginning of the first (1st) day of the City's successive fiscal year of the Contract for which the City has not appropriated funds or otherwise provided for funds to make a required payment under this Contract.

SECTION 6. Liability and Indemnity.

TO THE EXTENT ALLOWED BY LAW, ANY PROVISION OF ANY ATTACHED DOCUMENT THAT IS MADE A PART OF THIS CONTRACT THAT LIMITS THE CONTRACTOR'S LIABILITY TO THE CITY OR RELEASES THE CONTRACTOR FROM LIABILITY TO THE CITY FOR ACTUAL OR COMPENSATORY DAMAGES, LOSS, OR COSTS ARISING FROM THE PERFORMANCE OF THIS CONTRACT, OR THAT PROVIDES FOR CONTRACTUAL INDEMNITY OF EITHER PARTY, IS NOT APPLICABLE OR EFFECTIVE UNDER THIS CONTRACT. EXCEPT WHERE ANY ATTACHED DOCUMENT THAT IS MADE A PART OF THIS CONTRACT PROVIDED BY THE CITY PROVIDES OTHERWISE, EACH PARTY IS RESPONSIBLE FOR DEFENDING AGAINST, AND LIABLE FOR, PAYING ANY CLAIM, SUIT, OR JUDGMENT FOR DAMAGES, LOSS, OR COSTS ARISING FROM THAT PARTY'S NEGLIGENT ACTS OR OMISSIONS IN THE PERFORMANCE OF THIS CONTRACT IN ACCORDANCE WITH APPLICABLE LAW. THIS PROVISION DOES NOT AFFECT THE RIGHT OF EITHER PARTY WHO IS SUED BY A THIRD PARTY OF ACTS OR OMISSIONS ARISING FROM THIS CONTRACT TO BRING IN THE OTHER PARTY AS A THIRD-PARTY DEFENDANT AS ALLOWED BY LAW.

SECTION 7. Assignment.

The Contractor shall not assign this Contract without the prior written consent of the City.

SECTION 8. Law Governing and Venue.

This Contract is governed by the law of the State of Texas and a lawsuit may only be prosecuted on this Contract in a court of competent jurisdiction located in, or having jurisdiction in, Harris County, Texas.

SECTION 9. Entire Contract.

This Contract represents the entire Contract between the Parties and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may be amended only by written instrument signed by the Parties.

SECTION 10. Independent Contractor.

The Contractor shall perform the work under this Contract as an independent contractor and not as an employee of the City. The City has no right to supervise, direct, or control the Contractor or

the Contractor's officers or employees in the means, methods, or details of the Services The Parties agree that the work performed under this Contract is not inherently dangerous, that the Contractor will perform the work in a workmanlike manner, and that the Contractor will take proper care and precautions to insure the safety of the Contractor's officers and employees.

SECTION 11. Dispute Resolution Procedures.

The Parties desire an expeditious means to resolve any disputes that may arise between them regarding this Contract. If either Party disputes any matter relating to this Contract, then the Parties agree to try in good faith, before bringing any legal action, to settle the dispute by submitting the matter to mediation before a third party who will be selected by agreement of the Parties. The Parties will each pay one-half (½) of the mediator's fees.

SECTION 12. Attorney's Fees.

Should the City bring suit against the Contractor for breach of contract or for any other cause relating to this Contract, then the City shall be entitled to seek an award of attorney's fees or other costs relating to the suit.

SECTION 13. Severability.

If a court finds or rules that any part of this Contract is invalid or unlawful, then the remainder of this Contract continues to be binding on the Parties.

SECTION 14. Work Product.

Any work product generated as a result of this Contract shall be the property of the City.

SECTION 15. Compliance with SWMP.

The Contractor acknowledges that it is aware of the Storm Water Management Program (the "SWMP") developed by the City in compliance with the Texas Pollutant Discharge Elimination System General Permit No. TXR040000 (the "General Permit") issued by the Texas Commission on Environmental Quality. For all maintenance and construction activities, such as but not limited to, mowing, painting, general upkeep, and other maintenance-related activities on City-owned facilities which include buildings, amenities, parks, golf courses, detention ponds, and City-owned and operated public infrastructure such as water distribution, treatment, wastewater collection, and storm sewer systems, the Contractor will comply with all SWMP requirements. The Contractor agrees to comply with all applicable stormwater control measures, good housekeeping practices, and facility-specific stormwater management operating procedures described in Part II, Section B.5.(b)(2)-(6) of the General Permit, a copy of which is on file with the City. These procedures include: i) informing or training appropriate employees in implementing pollution prevention and good housekeeping practices; ii) waste disposal removed in accordance with 30 TAC Chapters 330 and 335; iii) identifying pollutants of concern that could be discharged from operation and maintenance activities and, if needed, developing and implementing pollution prevention measures to reduce these potential pollutants; iv) performing visual inspection of pollution prevention measures, as applicable; and, v) maintaining structural controls during the Contractor's work, as warranted.

SECTION 16. Disclosure of Interested Parties.

As required by Section 2252.908, Texas Government Code, if this Contract requires an action or vote by the City before the Contract may be signed, or has a value of at least one million dollars

(\$1,000,000), then the City may not enter into such Contract unless the Contractor submits a disclosure of interested parties to the City at the time the Contractor submits the signed Contract to the City. The Contractor agrees to submit such disclosure as required by Section 2252.908 of the Texas Government Code on the form 1295, prescribed by the Texas Ethics Commission, unless the Contractor is a publicly traded entity or a wholly owned subsidiary of same, in which case no disclosure is required. The Contractor agrees to access the Texas Ethics Commission website and complete the form 1295, receive a confirmation number and a PDF version of the completed form 1295, execute and notarize a hard copy version of the completed form 1295, and submit it, along with the confirmation number, to the City.

SECTION 17. No Boycott of Israel.

As required by Chapter 2270, Texas Government Code, the Contractor hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Contract. For purposes of this verification, “Boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli controlled territory, but does not include an action made for ordinary business purposes. This Section 16 applies only to contracts with a value of one hundred thousand dollars (\$100,000) or more that are to be paid wholly or partly from public funds of the City, between the City and any company with ten (10) or more full time employees. Furthermore, this Section 16 does not apply if the Contractor is a sole proprietorship

SECTION 18. No Business with Foreign Terrorist Organization.

Pursuant to Chapter 2252, Texas Government Code, the Contractor represents and certifies that, at the time of execution of this Contract, neither the Contractor, nor any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the same: (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapter 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code; or, (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term “foreign terrorist organization” in this paragraph has the meaning assigned by Section 2252.151 of the Texas Government Code.

SECTION 19. Additional Contract Documents.

The following specified documents attached to this Contract are hereby made a part of this Contract. Any provision contained in any of the Contractor’s Additional Contract Documents specified below that conflicts with this Contract or the General Services Contract Rider (the “Rider”) is not applicable, and the terms of this Contract and the Rider shall govern.

A. Contractor’s Additional Contract Documents:

- Scope of Services;
- Fee Schedule
- _____

B. City’s Additional Contract Documents:

- General Services Contract Rider;
- FEMA Required Contract Clauses
- TWDB Required Contract Clauses

SIGNATURES

For: CITY

For: CONTRACTOR

Name [Signature]

Name [Signature]

Austin Bless
Name [Printed]

Name [Printed]

City Manager
Title

September 21, 2021
Date

Title

Date

CITY OF JERSEY VILLAGE – GENERAL SERVICES CONTRACT RIDER

SECTION 1. Application.

This General Services Contract Rider applies to, is a part of, and takes precedence over any conflicting provision in or attachment to the Contract (the “Contract”) between the City of Jersey Village, Texas (the “City”) and Aguirre & Fields (the “Vendor”) (with the City and the Vendor being the “Parties”, and each a “Party”), which is attached and described as follows:

Contract for Preliminary Engineering Report / Preliminary Design as more fully described in the Scope of Services.

SECTION 2. Payment Provisions.

The City’s payments under the Contract, including the time of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code.

SECTION 3. Multiyear Contracts.

If the City Council of the City (the “Council”) does not appropriate funds to make any payment for a fiscal year after the City’s fiscal year in which the Contract becomes effective, and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Contract automatically terminates at the beginning of the first (1st) day of the successive fiscal year. (Section 5, Article XI, Texas Constitution)

SECTION 4. Liability and Indemnity.

Any provision of the Contract is void and unenforceable if it: (i) limits or releases either party from liability that would exist by law in the absence of the provision; (ii) creates liability for either Party that would not exist by law in the absence of the provision; or, (iii) waives or limits either Party’s rights, defenses, remedies, or immunities that would exist by law in the absence of the provision. (Section 5, Article XI, Texas Constitution)

SECTION 5. Confidentiality.

Any provision in the Contract that attempts to prevent the City’s disclosure of information that is subject to public disclosure under Federal or Texas law, applicable regulation, or court or administrative decision or ruling, is invalid. (Chapter 552, Texas Government Code)

SECTION 6. Tax Exemption.

The City is not liable to the Vendor for any Federal, State, or local taxes for which the City is not liable by law, including State and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code) and Federal excise tax (Subtitle D of the Internal Revenue Code). Accordingly, those taxes may not be added to any item.

SECTION 7. Contractual Limitations Period.

Any limitations period in the Contract that does not run against the City by law or that is shorter than two (2) years is void. (Sections 16.061 and 16.070, Texas Civil Practice and Remedies Code)

SECTION 8. Governing Law and Venue.

Texas law governs the Contract and any lawsuit on the Contract must be filed in a court that has jurisdiction in Harris County, Texas.

SECTION 9. Special Conditions.

A. As required by Section 2252.908, Texas Government Code, if the Contract requires an action or vote by the Council before the Contract may be signed, or has a value of at least one million dollars (\$1,000,000), then the City may not enter into the Contract unless the Vendor submits a disclosure of interested parties to the City at the time the Vendor submits the signed Contract to the City. The Vendor agrees to submit such disclosure as required by Section 2252.908 of the Texas Government Code on the form 1295, prescribed by the Texas Ethics Commission, unless the Vendor is a publicly traded entity or a wholly owned subsidiary of same, in which case no disclosure is required.

B. As required by Chapter 2270, Texas Government Code, the Vendor hereby verifies that it does not boycott Israel and will not boycott Israel through the term of the Contract. For purposes of this verification, “Boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli controlled territory, but does not include an action made for ordinary business purposes. This Section 9B applies only to contracts with a value of one hundred thousand dollars (\$100,000) or more that are to be paid wholly or partly from public funds of the City, between the City and any company with ten (10) or more full time employees.

C. As required by Chapter 2252, Texas Government Code, the Vendor certifies that, at the time of execution of the Contract neither the Vendor, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same: (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapter 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code; or, (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term “foreign terrorist organization” in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

FOR THE CITY OF JERSEY VILLAGE:

FOR THE VENDOR:

Name [Signature]

Name [Signature]

Austin Bless, City Manager

Name [Printed]

Name [Printed]

September 21, 2021

Date

Date