

## AGREEMENT

**THE STATE OF TEXAS**                   §

**COUNTY OF FORT BEND**               §

This Agreement is by and between the City of Kendleton, a body corporate and politic under the laws of the State of Texas (hereinafter referred to as City) and Fort Bend County, a body corporate and politic under the laws of the State of Texas (hereinafter referred to as County).

### WITNESSETH:

WHEREAS, the County has submitted a Community Development Block Grant to the U. S. Government, application number B-15-UC-48-0004, which has been approved by the U. S. Government through the U. S. Department of Housing and Urban Development:

WHEREAS, the City did agree to cooperate to be included in the grant application; and,

WHEREAS, included in the approved grant application is the City of Kendleton wastewater collection system evaluation and rehabilitation evaluation and rehabilitation of sanitary sewer in the City of Kendleton in the H.B. Collins Subdivision, specifically along Collins, Elm View and Pecan Trail roads hereinafter referred to as the "Project"; and,

WHEREAS, the County is the grantee named in the grant charged with compliance of the federal laws, rules, and regulations relating to the expenditure of funds received from the U. S. Government pursuant to the approved Community Development Block Grant application; and,

WHEREAS, the City is not familiar with such federal laws, rules, and regulations relating to the expenditure of U. S. Government funds under the Community Development Block Grant application; and,

WHEREAS, the County desires to assure compliance with such laws, rules, and regulations relating to the expenditure of funds under the Community Development Block Grant application; and,

WHEREAS, the County and City mutually agree as to the need to expedite this project as quickly as possible;

NOW, THEREFORE, the County and City do mutually agree as follows:

I.

SCOPE OF AGREEMENT

1.01 The County and City agree to construct the Project in accordance with the guidelines, rules, and regulations required by the U. S. Department of Housing and Urban Development (hereinafter referred to as HUD).

1.02 This project involves an extensive and aggressive rehabilitation project throughout the City's sanitary sewer system. The project consists of investigating, locating and repairing the City-owned sanitary sewer system and investigating and identifying properties that are contributing to the infiltration and inflow into the sewer system.

II.

DUTIES OF THE COUNTY AND CITY

2.01 The County shall be responsible for the administration of the engineering and construction contracting processes. The County shall fund the Project as set forth in this Agreement.

2.02 Within forty-five (45) days after the Agreement is executed by both parties, the County will solicit statements of qualifications from engineering firms to perform design services for the project. The County will notify the City when a firm has been selected.

2.03 Upon selection of the firm, the County will proceed with plans and specifications.

2.04 Within thirty (30) days after approval of the plans and specifications by the County, the County will solicit bids for construction. The approval of the bids and construction process will follow County procurement and construction procedures.

2.05 The City and the County, through its Community Development Department Director, may by prior written agreement mutually agree to re-allocate the funds to new line items created in the budget.

2.06 The City shall be responsible for maintenance of the Project upon completion of construction by the County.

III.

TIME OF PERFORMANCE

3.01 The services performed under this Agreement shall begin upon execution of this Agreement and end June 30, 2017.

IV.

PROJECT COSTS

4.01 For and in consideration of the Project as herein set forth, the County agrees to fund project costs not to exceed the total sum Two Hundred Twenty Thousand Five Hundred Forty Two and no/100 (\$220,542.00) as set forth in the Budget for CDBG Funds, which shall be in full and total compensation for payment of all expenses allowed under this Agreement and the Grant Agreement with HUD.

CDBG Budget

Construction	\$180,900.00
Engineering Fees	\$39,642.00
Total CDBG Funds	<u>\$220,542.00</u>

City of Kendleton Funds

Contingency	<u>\$ 18,090.00</u>
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4.02 The County shall not be liable for the payment of expenses or costs, which are not allowable under the terms of this Agreement and the Grant Agreement with HUD.

V.

PAYMENT

5.01 It is expressly agreed and understood that the total amount to be paid by the County under this Agreement shall not exceed Two Hundred Twenty Thousand Five Hundred Forty Two and no/100 (\$220,542.00).

## VI.

### SOURCE OF FUNDING

6.01 The County has no County funds for the costs of goods and services to be rendered under this Agreement. It is expressly agreed and understood that this Agreement is predicated upon and conditioned on the County receiving funds for the purpose of paying the entire obligation of the County under this Agreement from funds to be received from the U. S. Department of Housing and Urban Development, by virtue of Grant B-15-UC-48-0004, entitled Community Development Block Grant. Accordingly, notwithstanding anything herein to the contrary, the maximum liability of the County under the terms and provisions of this Agreement shall not exceed \$220,542.00 or the amount actually received by the County from HUD pursuant to the Block Grant.

6.02 The City admits knowledge of the fact that the County's obligation hereunder for payment of compensation and costs, if any, is limited to Federal funds received pursuant to the Grant Agreement in connection with the Community Development Block Grant Program of the U. S. Department of Housing and Urban Development, and that unless and until adequate funds have been received by the County under the Grant Agreement to pay for the project, the County shall have no obligation to the City.

## VII.

### AGREEMENT DOCUMENTS

7.01 This Agreement includes the following exhibits and such exhibits are attached hereto and made a part hereof for all purposes:

Exhibit A - CDBG Program Requirements  
Exhibit B - Certification for Contracts, Grants,  
Loans and Cooperative Agreements

7.02 This Agreement and the attached exhibits represent the entire Agreement between the County and the City, and there are no other effective agreements, representations or warranties between the County and the City that are not contained in the Agreement Documents.

## VIII.

### NOTICE

8.01 Unless otherwise provided in this Agreement, any notice provided for or permitted to be given must be in writing and delivered in person or by depositing same in the United States mail,

postpaid and registered or certified, addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party. Notice deposited in the mail as described above shall be conclusively deemed to be effective, unless otherwise stated in this Agreement from and after the expiration of three (3) days after it is so deposited.

8.02 For the purpose of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the County, then to:

Honorable County Judge and Commissioners Court  
Fort Bend County  
301 Jackson, Suite 740  
Richmond, Texas 77469

If to the City, then to:

Honorable Mayor and City Council  
City of Kendleton  
P. O. Box 809  
Kendleton, Texas 77451

8.03 Each party shall have the right, from time to time at any time, to change its respective address and each shall have the right to specify as its new address, provided that at least fifteen (15) days written notice is given of such new address to the other party.

## IX.

### RIGHTS OF TERMINATION

9.01 The City or the County, by and through its Director of the Fort Bend County Community Development Department, may terminate this Agreement without cause at any time by giving thirty (30) days written notice to the other party.

IX.

EXECUTION

This Agreement shall become effective upon execution by County.

FORT BEND COUNTY:

\_\_\_\_\_  
Robert E. Hebert, County Judge

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Fort Bend County Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant County Attorney

\_\_\_\_\_  
Date

APPROVED: COUNTY PROJECT MANAGER

Marilynn Kindell

Marilynn Kindell, Director  
Fort Bend County Community Development Department

CITY OF KENDLETON:

By R. L. Smith  
Mayor

5-5-2016  
Date

ATTEST:

Quonica Harris  
City Secretary

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$220,542.00 to accomplish and pay the obligation of the Fort Bend County under this contract.

\_\_\_\_\_  
Robert E. Sturdivant, County Auditor

## **EXHIBIT A**

### **COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM REQUIREMENTS**

#### **I.**

##### **TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and Title 24 Code of Federal Regulations Part 1. In accordance with the Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the Contractor receives Federal financial assistance. The Contractor will immediately take any measures necessary to comply with Title VI. If any real property or structure is thereon provided or improved with the aid of Federal financial assistance, this clause shall obligate the owner, or in the case of any transfer of such property, any transferee, to comply with the requirements and restrictions contained in this clause for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. The Contractor will further comply with federal regulations, 24 CFR Part 1, which implement the act.

#### **II.**

##### **FAIR HOUSING REQUIREMENTS**

The Contractor shall comply with the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR Part 100, Part 109, and Part 110. No person in the United States shall, on the basis of race, color, religion, sex, national origin, handicap or familial status, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with CDBG funds.

#### **III.**

##### **EXECUTIVE ORDER 11063**

The Contractor shall comply with Executive Order 11063 as amended by Executive Order 12259 and as contained in 24 CFR Part 107. Contractor will take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such

property and related facilities area, among other things, provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Federal Government.

#### **IV.**

### **SECTION 109 OF THE COMMUNITY DEVELOPMENT ACT OF 1974**

The Contractor shall comply with Section 109 of the Community Development Act of 1974, in that no person in the United States shall on the ground of race, color, religion, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with CDBG funds.

#### **V.**

### **EXECUTIVE ORDER 11246**

The Contractor shall comply with Executive Order 11246, as amended by Executive Order 12086, and the regulations issued pursuant thereto (451 CFR Chapter 60) which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or federally-assisted construction contracts.

Contractor agrees that contractors and subcontractors on Federal or federally-assisted construction contracts shall take affirmative action to ensure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.

#### **VI.**

### **RELOCATION, ACQUISITION & DISPLACEMENT**

The Contractor agrees to comply with 24 CFR 570.606 relating to the acquisition and disposition of all real property utilizing grant funds, and to the displacement of persons, businesses, nonprofit organizations and farms occurring as a direct result of any acquisition of real property utilizing grant funds. The Contractor agrees to comply with applicable Grantee Ordinances, Resolutions, and Policies concerning displacement of individuals from their residences.

#### **VII.**

### **SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968**

The Contractor shall comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).



- A. The Contractor shall, to the greatest extent feasible, give opportunities for training and employment to lower-income residents of the County and shall award contracts for work in connection with the Project to business concerns that are located in or owned in substantial part by persons residing in the County.
- B. The Contractor shall include the phrase in paragraph A in all contracts for work in connection with this project.

## **VIII.**

### **LEAD-BASED PAINT**

The Contractor agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, and in particular Sub-Part B thereof. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants or properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning.

## **IX.**

### **USE OF DEBARRED, SUSPENDED OR INELIGIBLE CONTRACTORS**

The Contractor shall not use assistance to directly or indirectly employ, award contracts to, or otherwise engage the services of, or fund any contractor or subcontractor during any period of debarment, suspension or placement in ineligibility status under provisions of 24 CFR Part 24.

## **X.**

### **UNIFORM ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPALS**

The City and its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of 2 CFR 200 as applicable, as they relate to the acceptance and use of Federal funds under this part.

## **XI.**

### **CONFLICT OF INTEREST**

- A. No member of or delegate to the Congress of the United States, and no resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit direct or indirect which arises from the Agreement.
- B. In accordance with 24 CFR Part 570.611, no persons described in paragraph C who exercise or have exercised any functions with respect to CDBG activities or who are in a position to participate in a decision making process or gain inside information with regard to CDBG activities, may obtain a personal or financial interest or benefit from, or have any interest in any contract, subcontract, or agreement or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
- C. The requirements of paragraph B apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the County, Contractor, and of any designated public agency, or subrecipient under 24 CFR Section 570.20 which receives funds under the CDBG grant agreement with HUD.

## **XII.**

### **ELIGIBILITY RESTRICTIONS FOR CERTAIN RESIDENT ALIENS**

The Contractor agrees to abide by the provisions of 24 CFR 570.613 with respect to the eligibility restrictions for certain resident aliens. Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in this part of the regulation. The Grantee shall provide the Contractor with any guidelines necessary for compliance with that portion of the regulation.

## **XIII.**

### **ARCHITECTURAL BARRIERS ACT AND AMERICANS WITH DISABILITIES ACT**

The Contractor agrees to comply with any federal regulations issued pursuant to compliance with the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) which requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with the standards that insure accessibility to, and use by, physically handicapped people. The Contractor also agrees to comply with any federal regulations issued pursuant to compliance with the Americans with Disabilities Act (42 U.S.C. 12131 U.S.C. 155, 201, 218 and 225) which provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and

telecommunications. The Grantee shall provide the Contractor with any guidelines necessary for compliance with that portion of the regulation in force during the term of this Agreement.

#### **XIV.**

##### **MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

The Contractor shall comply with Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the Contractor must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

#### **XV.**

##### **DISCRIMINATION ON THE BASIS OF AGE OR HANDICAP**

The Contractor shall not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 61-1-07) and implementing regulations at 24 CFR part 146. The Contractor shall not discriminate against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

#### **XVI.**

##### **RECORDS FOR AUDIT PURPOSES**

Without limitation to any other provision of this Agreement, the Contractor shall maintain all records concerning the Project that will facilitate an effective audit to determine compliance with program requirements. Records shall be kept for three (3) years from the expiration date of the Agreement. The Contractor will give the County, HUD, and the Comptroller General of the United States, the General Accounting Office or any of their authorized representatives access to and the right to examine, copy or reproduce all records pertaining to the acquisition and construction of the Project and the operation of the Project. The right to access shall continue as long as the records are required to be maintained.

#### **XVII.**

##### **DRUG FREE WORKPLACE ACT OF 1988**

The Contractor shall comply with the Drug Free Workplace Act of 1988 and certify that it will maintain a drug-free workplace in accordance with the requirements of 24 CFR part 24, subpart F.

## **XVIII.**

### **REVERSION OF ASSETS**

The City shall ensure that any real property under the City's control that was acquired or improved in whole or in part with CDBG funds will be used to meet one of the national objectives in 24 CFR 570.208 until five years after expiration of this agreement.

## EXHIBIT B

### Certification for Contracts, Grants, Loans And Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making for entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this 5<sup>th</sup> date of April, 2016.

By

(Signature)

Darryl Humphrey Sr.

(Typed or printed name)

Mayor

(Title, if any)

Covered Action: COMMUNITY DEVELOPMENT BLOCK GRANT

(Type and identity of program, project or activity)