



**Section 2. Personnel**

2.1 Consultant represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Consultant shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Consultant who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

**Section 3. Compensation and Payment**

3.1 Consultant's fees shall be calculated at the rates set forth in the attached Attachment "A". The Maximum Compensation for the performance of Services within the Scope of Services described in Attachment "A" is sixty thousand, eight hundred dollars and no/100 (\$60,800.00) as set forth in Attachment "A". In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without a written agreement executed by the parties.

3.2 All performance of the Scope of Services by Consultant including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

3.3 County will pay Consultant based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Consultant shall submit to County staff person designated by the Community Development Director, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

**Section 4. Limit of Appropriation**

4.1 Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of sixty thousand, eight hundred dollars and no/100 (\$60,800.00) specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Consultant may become entitled to and the total maximum sum that County

may become liable to pay to Consultant shall not under any conditions, circumstances, or interpretations thereof exceed sixty thousand, eight hundred dollars and no/100 (\$60,800.00).

#### **Section 5. Time of Performance**

Time for performance of the Scope of Services under this Agreement shall begin with receipt of the Notice to Proceed and end no later than four (4) months thereafter. Consultant shall complete the tasks described in the Scope of Services, within this time or within such additional time as may be extended by the County.

#### **Section 6. Modifications and Waivers**

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

#### **Section 7. Termination**

7.1 Termination for Convenience – County may terminate this Agreement at any time upon forty-eight (48) hours written notice.

##### **7.2 Termination for Default**

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Consultant fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Consultant materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Consultant was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Consultant in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Consultant's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Consultant.

### **Section 8. Ownership and Reuse of Documents**

All documents, data, reports, research, graphic presentation materials, etc., developed by Consultant as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Consultant shall promptly furnish all such data and material to County on request.

### **Section 9. Inspection of Books and Records**

Consultant will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Consultant for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

### **Section 10. Insurance**

10.1 Prior to commencement of the Services, Consultant shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by County. Consultant shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Consultant shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional Liability insurance) from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

10.1.2 Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.3 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.4 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

10.1.5 Professional Liability insurance may be made on a Claims Made form with limits not less than \$1,000,000.

10.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability. All Liability policies including Workers' Compensation written on behalf of Consultant shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

10.3 If required coverage is written on a claims-made basis, Consultant warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

#### **Section 11. Indemnity**

**CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS COUNTY AGAINST LOSSES, LIABILITIES, CLAIMS, AND CAUSES OF ACTION, INCLUDING THE REIMBURSEMENT OF COUNTY'S REASONABLE ATTORNEYS FEES IN PROPORTION TO CONSULTANT'S LIABILITY, ARISING FROM ACTIVITIES OF CONSULTANT, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, INTENTIONAL TORT, ERROR, OR OMISSION OF CONSULTANT OR ANY OF CONSULTANT'S AGENTS, SERVANTS OR EMPLOYEES.**

#### **Section 12. Confidential and Proprietary Information**

12.1 Consultant acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Consultant or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Consultant shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Consultant) publicly known or is contained in a publicly available document; (b) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.

12.2 Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Consultant shall advise County immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Consultant against any such person. Consultant agrees that, except as directed by County, Consultant will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Consultant will promptly turn over to County all documents, papers, and other matter in Consultant's possession which embody Confidential Information.

12.3 Consultant acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

12.4 Consultant in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Consultant expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.

**Section 13. Independent Consultant**

13.1 In the performance of work or services hereunder, Consultant shall be deemed an independent Consultant, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Consultant or, where permitted, of its subcontractor.

13.2 Consultant and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

**Section 14. Notices**

14.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County Engineering Department  
Attn: County Engineer  
301 Jackson Street  
Richmond, Texas 77469

With a copy to: Fort Bend County  
Attn: County Judge  
401 Jackson Street, 1<sup>st</sup> Floor  
Richmond, Texas 77469

Consultant: Kaluza, Inc.  
Attn: Llarance L. Turner, R.P.L.S.  
President  
3014 Avenue I  
Rosenberg, Texas 77471

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

**Section 15. Compliance with Laws**

Consultant shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker’s Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Consultant shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**Section 16. Standard of Care**

Consultant represents shall perform the Services to be provided under this Agreement with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license. Further, Consultant shall perform the Services as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

**Section 17. Assignment**

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

**Section 18. Applicable Law**

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County’s sovereign immunity.

**Section 19. Successors and Assigns**

County and Consultant bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

**Section 20. Third Party Beneficiaries**

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

**Section 21. Severability**

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

**Section 22. Publicity**

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Consultant release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

**Section 23. Captions**

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

**Section 24. Conflict**

In the event there is a conflict between this Agreement and the attached exhibits, this Agreement controls.

**Section 25. Certain State Law Requirements for Contracts**

25.1 Agreement to Not Boycott Israel Chapter 2270 Texas Government Code: By signature below, Consultant verifies Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

25.2 Texas Government Code Section 2252.152 Acknowledgment: By signature below, Consultant represents pursuant to Section 2252.152 of the Texas Government Code, that Consultant is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

25.3 Human Trafficking. BY ACCEPTANCE OF CONTRACT, CONSULTANT ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

## **Section 26. Compliance with Federal Law, Regulations, and Executive Orders**

Consultant understands and acknowledges that this Agreement is being funded totally or partially with federal funds from the Department of Housing and Urban Affairs. As a condition of receiving these funds, Consultant represents that it is and will remain in compliance with all federal terms as stated below. These terms flow down to all third party contractors and their subcontracts at every tier that exceed the simplified acquisition threshold, unless a particular award term or condition specifically indicates otherwise. **The Consultant shall include the following clauses in every Agreement or subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each subcontractor or vendor.**

### **26.1 CIVIL RIGHTS**

#### **26.1.1 Compliance**

The Consultant agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063 as amended by Executive Order 12259.

#### **26.1.2 Nondiscrimination**

The Consultant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The Consultant will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County setting forth the provisions of this nondiscrimination clause.

#### **26.1.3 Land Covenants**

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570, Part I. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Consultant shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected

or to be erected thereon, providing that the County and the United States are beneficiaries of and entitled to enforce such covenants. The Consultant, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

#### 26.1.4 Section 504

The Consultant agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 706) which prohibits discrimination against the handicapped in any federally assisted program. The County shall provide the Consultant with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

#### 26.1.5 Fair Housing Act

Consultant will not violate the Fair Housing Act which prohibits discrimination in housing practices on the basis of race, color, religion, sex, and national origin and provides protections from discrimination in any aspect of the sale or rental of housing for families with children and persons with disabilities. Consultant will abide by all requirements as set by the Fair Housing Act for the design and construction of new rental or for-sale multi-family housing to ensure a minimum level of accessibility for persons with disabilities.

### 26.2 **AFFIRMATIVE ACTION**

#### 26.2.1 Approved Plan

The Consultant agrees that it shall be committed to carry out pursuant to the County's specifications, an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, if applicable by law. To the extent required by law, the County shall provide Affirmative Action guidelines to the Consultant to assist in the formulation of such program. The Consultant shall submit a plan for an Affirmative Action program for approval prior to the award of funds.

#### 26.2.2 Small, Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms

Consultant will take all necessary affirmative steps to assure that qualified small, minority firms, women's business enterprises, and labor surplus area firms are used when possible by (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business

enterprises; (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (i) through (v) of this section.

#### 26.2.3 Access to Records

The Consultant shall furnish all information and reports required hereunder and will permit access to its books, records and accounts by the County, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

In addition, Records Retention, all records in the possession of the Consultant pertaining to this contract will be retained by the Consultant for a period of three (3) years from closeout of the grant by the State. (See 24 CFR 85.36(i)(11)).

#### 26.2.4 Notifications

The Consultant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other Agreement or understanding, a notice, to be provided by the County's Contracting officer, advising the labor union or worker's representative of the Consultant's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

#### 26.2.5 EEO/AA Statement

The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that it is an Equal Opportunity or Affirmative Action employer.

### **26.3 EMPLOYMENT RESTRICTIONS**

#### 26.3.1 Prohibited Activity

Consultant hereby certifies, as reflected in Attachment "B", that Consultant shall not use funds provided herein or personnel employed in the administration of the program for political activities; sectarian, or religious activities; lobbying, political patronage, and nepotism activities.

### 26.3.2 OSHA

Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participant's health or safety.

### 26.3.3 Labor Standards

The Consultant agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Agreement Work Hours, the Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276, 327-333) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Consultant shall maintain documentation, which demonstrates compliance with hour, and wage requirements of this part. Such documentation shall be made available to the County for review upon request.

#### *(a)* Davis-Bacon Act.

The Consultant agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Consultant agrees to comply with the Copeland AntiKick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Consultant shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the County for review upon request.

The Consultant agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by US HUD pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Consultant

of its obligation, if any, to require payment of the higher wage. The Consultant shall cause or require to be inserted in full, in all subcontracts, provisions meeting the requirements of this paragraph. The Consultant shall also comply with 24 CFR Part 70, which sets out the circumstances under which individuals who volunteer their services, may be used.

*(b) Work Hours and Safety.*

Where applicable, all contracts awarded by the non- Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

*(c) Unlawful Employment of Aliens.*

Pursuant to 8 U.S.C Section 1324a, the Consultant shall meet the following requirements prior to signing this Agreement and for the duration thereof. By execution of this Agreement, the Consultant certifies that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that the Consultant will participate in either the federal E-Verify Program (which is jointly administered by the U.S. Department of Homeland Security and the U.S. Social Security Administration) (the "E-Verify Program"), or examine such other documents as allowed by law in order to confirm the eligibility of all employees who are newly hired for employment to perform work under this Agreement.

**26.3.4 "SECTION 3" CLAUSE**

*(a) Compliance*

Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the federal financial assistance provided under this Agreement and

binding upon Consultant. Failure to fulfill these requirements shall subject the Consultant, their successors and assigns, to those sanctions specified. Consultant certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

The Consultant further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and Agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the areas of the project."

The Consultant certifies and agrees that no contractual or other disability exists which would prevent compliance with the requirements.

*(b)*     Notifications

The Consultant agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other Agreement or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

*(c)*     Subcontracts

The Consultant will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by County. The Consultant will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

### 26.3.5 Drug-free Workplace

The Consultant shall include the following clauses in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each subcontractor or vendor.

The Consultant will or will continue to provide a drug-free workplace by maintaining a Zero Tolerance Drug Policy which shall include:

1. Posting in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Consultant's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Stating in all solicitations or advertisements for employees or subcontractors placed by or on behalf of the Consultant that the Consultant maintains a drug-free workplace;
3. Establishing an ongoing drug-free awareness program to inform employees about: the dangers of drug abuse in the workplace; The Consultant's policy of maintaining a drug-free workplace; any available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
4. Including the provisions of the foregoing clauses in all third party contracts, subcontracts, and purchase orders that exceed ten thousand dollars (\$10,000.00), so that the provisions will be binding upon each subcontractor or vendor.

## **26.4 ADDITIONAL FEDERAL REQUIREMENTS**

### 26.4.1 Hatch Act.

The Consultant agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

#### 26.4.2 Conflict of Interest.

The Consultant agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no persons who exercise or have exercised any functions or responsibilities 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 such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

#### 26.4.3 Debarment and Suspension (Executive Orders 12549 and 12689).

Consultant hereby certifies, as reflected in Attachment “B”, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any governmental department or agency.

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

In addition, the Consultant shall comply with all OMB Standards unless specified otherwise within this agreement, and shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40–48.

#### 26.4.4 Architectural Barriers Act and the Americans with Disabilities Act

The Consultant 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 Consultant 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 County shall provide

the Consultant with any guidelines necessary for compliance with that portion of the regulation in force during the term of this Agreement.

#### 26.4.5 Religious Organization

The Consultant agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the federal regulations specified in 24 CFR 570.200(j).

### 26.5 **ENVIRONMENTAL CONDITIONS**

#### 26.5.1 Air and Water

The Consultant agrees to comply with the following regulations insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C., 1857, et seq.
- Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR, Part 50, as amended.
- National Environmental Policy Act of 1969.
- HUD Environmental Review Procedures (24 CFR, Part 58)

#### 26.5.2 Energy Conservation

The Consultant agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products. Energy Policy and Conservation Act: Consultant agrees to comply with Energy Policy and Conservation Act (42 U.S.C. § 6201).

### 26.5.3 Lead-Based Paint

The Consultant 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.

### 26.6 Compliance with Federal Law, Regulations, and Executive Orders

Consultant's attention is called to the fact that this Agreement between County and Consultant will be subject to financial assistance contracts between the County and various State or Federal agencies. The Agreement to be awarded, therefore, is subject to the terms of these agreements and will not proceed without these agreements having been duly executed. The Consultant will be required to comply with, in addition to other provisions of the agreement, the conditions required by applicable federal regulations. Consultant will comply will all applicable federal law, regulations, executive orders, policies, procedures, and directives.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date signed by the last party hereto.

FORT BEND COUNTY

KALUZA, INC.

\_\_\_\_\_  
KP George, County Judge

*Llarance L. Turner*  
\_\_\_\_\_  
Llarance L. Turner, R.P.L.S., President

\_\_\_\_\_  
Date

*6-17-2020*  
\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Laura Richard, County Clerk

APPROVED:

*Marilynn Kindell*  
\_\_\_\_\_  
Marilynn Kindell, Director

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Huma Ahmed, Assistant County Attorney

**AUDITOR'S CERTIFICATE**

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

\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

I:\AGREEMENTS\2020 Agreements\Community Development\Kendleton Sanitary Sewer Force Main Project\20-ComDev-100877\Agreement - Kaluza.Kendleton.Sanitary Sewer Force Main Improvement Project (RFP 20-065).docx (LSL 6.16.20)

# ATTACHMENT A

**ATTACHMENT "A"**

**COUNTY OF FORT BEND  
DESIGN FOR THE CONSTRUCTION OF  
FORT BEND COUNTY CDBG PROJECT  
FARM MARKET 2919 SANITARY SEWER FORCE MAIN REPLACEMENT  
ACROSS STATE HIGHWAY 59  
CITY OF KENDLETON  
FORT BEND COUNTY, TEXAS**

**SCOPE OF WORK FOR PROFESSIONAL ENGINEERING AND SURVEYING SERVICES  
FOR FORT BEND COUNTY, TEXAS**

The following scope of work consists of the Professional Engineering and Surveying Services to be provided to Fort Bend County, hereinafter called "COUNTY" and by Kaluza, Inc., hereinafter called "ENGINEER".

**Project Description:**

The City of Kendleton wastewater project is an extensive and aggressive rehabilitation project to replace a major 6" sanitary sewer force main. The segment of sanitary sewer force main to be replaced is along FM 2919 from Willie Melton Boulevard to Charlie Roberts Lane. The location of the force main provides service to a major portion of the City. The approach is to investigate the horizontal and vertical location of the existing force main. Once that information is obtained, prepare construction plans that address the routing of the new force main to avoid any conflicts. Historically, a portion of the sanitary sewer force main has failed and has been patched.

**Scope of Work:**

Engineering and surveying services and for the project is summarized as follows:

**I. Preliminary Engineering Design Phase Services**

- (1) Preliminary engineering design phase. The expected work tasks are as follows:
  - Establish a typical cross section
  - Determine if any additional right-of-way acquisition is required
  - Determine potential conflicts with existing facilities and utilities
  - Identify critical path items
  - Identify problem areas and potential resolutions
  - Prepare a construction cost estimate
  - Prepare 30% plans
- (2) 30% plan sets will be prepared, consisting of all existing features (seen and unseen) shown in plan and profile, and proposed improvements in plan only with minor annotation. 30% plans will be prepared on 11" x 17" paper.
- (3) Research to determine the presence and location of underground utilities (pipelines, duct banks, etc.). A reasonable amount of research will be conducted, including contact with companies identified on above-ground marker, and map requests from prominent companies (CenterPoint, AT&T, etc.). CenterPoint Energy and AT&T I.D. numbers will be obtained. An appropriate attempt will be made to depict underground utilities accurately in the plan and profile drawings, and potential conflicts between existing utilities and proposed features shall be identified. Contact utility companies (both overhead and underground) to coordinate the adjustment of existing utilities.

**I. Fee for Preliminary  
Engineering Design Services = \$ 6,400.00**

**II. Final Engineering Design Phase Services**

The expected work tasks are as follows: Prepare interim submittals of 70% and 95% completion, and include drawings, a specification table of contents, and a construction cost estimate. Applicable design criteria include, in order of priority, (1) City of Kendleton design criteria, (2) Texas Commission on Environmental Quality, (3) Fort Bend County Environmental Health Criteria and (4) Applicable Texas Department of Transportation design criteria (all County-maintained items as applicable).

(1) 70% Submittal: The 70% submittal shall include the following:

- Cover sheet (Fort Bend County name and seal, project name with limits, vicinity and location maps, names of County Judge and Commissioners, signature line for County Engineer, ENGINEER firm name and registration number)
- Typical cross sections
- Overall project layout
- Plan and profile sheets (1" = 20' plan scale but printed half-size for a 1" = 40' scale; all existing and proposed facilities correctly shown in plan and profile)
- Traffic control plan (phasing and traffic control)
- Storm Water Pollution Prevention Plan
- Specification table of contents
- Bid form with estimated unit and total costs

Three (3) copies of the 70% submittal will be submitted for County review and drawings will be submitted on 11" x 17" sheets.

(2) 95% Submittal: The 95% submittal will be considered bid ready but not sealed, and will include all of the 70% requirements plus the following:

- General notes sheet
- Signage and pavement marking plans
- Standard construction details
- Project manual (bid form, specification table of contents, and special specifications or conditions; contract documents excluded)
- Responses to 70% comments

Three (3) copies of the 95% submittal will be submitted for County review, and drawings will be submitted on 24" x 36" sheets.

Final design efforts will be considered complete when comments to the 95% submittal have been addressed.

All final design efforts will be paid in a single lump-sum fee, to be billed monthly on a percent complete basis.

**II. Fee for Final  
Engineering Design Services = \$ 38,800.00**

**III. Bidding and Construction Phase Services**

(1) Bidding Phase Services will include:

- Upon completion of final design services, the COUNTY will determine an advertisement and bid opening schedule. All administrative project manual documents (cover page, Notice to Bidders, etc.) will be prepared by the COUNTY and provided to the ENGINEER in Adobe Acrobat (pdf) format. The ENGINEER will prepare a single project manual file in Adobe Acrobat format, consisting of:
  - Administrative documents

- The bid form (prepared by ENGINEER)
- A sealed specification table of contents
- Applicable specifications and documents
- Attend a pre-bid meeting at the County Purchasing Office.
- ENGINEER will prepare a bid tabulation and provide a copy to the COUNTY.

(2) Construction Phase Services will include:

- Attend a pre-construction meeting with the COUNTY, general contractor, and construction materials testing contractor.
- The ENGINEER will review contractor submittals and respond to Requests for Information.
- Make periodic visits to the Project to observe progress and quality of the work being performed. Construction observation reports to accompany monthly invoices.
- Issue all instructions to the Contractor.
- Prepare and issue routine Change Orders to the Contractor upon review and approval by the CITY.
- Review and respond to Contractor RFI's.
- Interpret drawings and specifications.
- Review project submittals.
- Review material and equipment tests.
- Review monthly and final estimate for payment by the CITY.
- Conduct a final inspection of the Project with the City of Kendleton and Fort Bend County and submit recommendations regarding the Project status.
- Prepare record drawings based on contractor as-built mark ups.
- Coordinate 1-year warranty inspection and any required corrective items.

All bidding and construction phase efforts will be paid in a single lump-sum fee, to be billed monthly on a percent complete basis.

**III. Fee for Bidding and  
Construction Phase Services = \$ 8,700.00**

**IV. Surveying Services:**

(1) Farm Market 2919 - Topographic Surveying Services

- Research subdivision plats, right-of-ways, easements and other available survey elements, which may affect the physical boundaries of the Project. Research Fort Bend County Official Records for current deeds and plats for properties affected by the Project.
- Project meetings and administration
- Establish GPS/project control points
- Control traverse/locate property corners
- Cross sections at 50' intervals
- Locate utility lines and public infrastructure
- Process fieldwork and establish control/base line
- Prepare control, tbm, plan view and right-of-way map

**IV. Fee for Surveying Services = \$ 6,900.00**

**TOTAL ENGINEERING & SURVEYING FEES = \$60,800.00**

**Additional Services**

If authorized by COUNTY, ENGINEER will furnish the following Additional Services that are not considered a normal or customary part of the Scope of Work. Additional Services shall be paid for on an hourly basis at the rate shown in the Schedule of Hourly Rates by Personnel Classification (Attachment "B"). Separate budgets will be established for any Additional Services authorized by the COUNTY.

NO ADDITIONAL SERVICES ARE ANTICIPATED FOR THIS PROJECT AT THIS TIME.

1. Services resulting from significant changes in the general scope of the project.
2. Revisions to previously approved plans, reports, traffic studies, or other project documents.
3. New and/or additional acquisition activities resulting from unknown needs prior to project initiation, site changes, and/or condemnation proceedings.
4. Assistance to COUNTY as an expert witness in any litigation with third parties, arising from the development or construction of the project, including preparation of engineering data and reports.
5. Services after issuance of Certificate of Completion, and any other special or miscellaneous assignments specifically authorized by the COUNTY.

**Schedule**

Preparation of the plans and specifications for the project is anticipated to take two (2) months.

Bid and contract phase activities are estimated to take two (2) months, once approval to proceed with bid advertisement is received.

Schedule for Construction Phase activities will be dictated by the construction contractor's schedule.

**Summary of Compensation**

Engineering and surveying services to be provided under this contract shall be compensated as outlined below.

I.	Preliminary Engineering Design Phase Services -	\$ 6,400.00
II.	Final Engineering Design Phase Services -	\$ 38,800.00
III.	Bidding and Construction Phase Services -	\$ 8,700.00
IV.	Surveying Services -	\$ <u>6,900.00</u>
	<b>Total Engineering and Surveying Fees =</b>	<b>\$ <u>60,800.00</u></b>

ENGINEER will invoice COUNTY on a monthly basis for services rendered during the preceding month. Invoices will be based on the ENGINEER's estimate of percentage completion to date of invoice.

COUNTY agrees to remit ENGINEER's invoices in full within thirty (30) days of receipt of billing.



# ATTACHMENT B

**Attachment "B"**

**SCHEDULE OF HOURLY CHARGES BY PERSONNEL CLASSIFICATION**  
Effective June, 2013

**KALUZA, INC.**  
**CONSULTING ENGINEERS, SURVEYORS, AND PLANNERS**

The charges for professional Engineering, Surveying, and Drafting services are based on the following daily or hourly rates:

**ENGINEERING, SURVEYING, AND DRAFTING**

Principal.....	\$ 175.00/Hour
Sr. Project Manager.....	\$ 150.00/Hour
Project Manager.....	\$ 145.00/Hour
Survey Manager.....	\$ 140.00/Hour
Project Engineer.....	\$ 110.00/Hour
Project Surveyor.....	\$ 90.00/Hour
Sr. Designer.....	\$ 90.00/Hour
Designer.....	\$ 80.00/Hour
CAD Technician.....	\$ 70.00/Hour
Contract Coordinator.....	\$ 65.00/Hour
Secretarial.....	\$ 60.00/Hour
Field Party (2 Men).....	\$ 120.00/Hour
Field Party (3 Men).....	\$ 140.00/Hour
Field Party (4 Men).....	\$ 150.00/Hour
Construction Observation.....	\$ 750.00/Day

**ADDITIONAL EXPENSES**

1. Reproduction Work - At prevailing commercial rate.
2. Field Note Descriptions - \$70.00/Set.
3. ATV Rental - \$115.00/Day.
4. Other Consultants at actual cost.
5. All Other Expenses at actual cost.
6. Global Positioning System (GPS) Surveying an additional charge of \$25.00 per hour will be charged for equipment.

**Charges are due and payable within thirty (30) days after receipt of invoice.**  
**Interest will be charged at the rate of 1.5% per month for late payments.**



*Consulting Engineers & Surveyors*

**Engineering Firm No. F-1339 Surveying Firm No. 10010000**

**3014 Avenue I, Rosenberg, Texas 77471**

**Phone: (281) 341-0808**

**Fax: (281) 341-6333**

*Rates Subject to Change*

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