

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR
BRAZOS RIVER EROSION PROJECT
RFQ 22-089**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter the “County”), a body corporate and politic under the laws of the State of Texas, and Huitt-Zollars, Inc., (hereinafter “Consultant”), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, the County desires that Consultant provide engineering services for the Brazos River Erosion Project, pursuant to RFQ 22-089, (hereinafter “Services”); and

WHEREAS, County has determined Consultant is the most highly qualified provider of the desired Services on the basis of demonstrated competence and qualifications, and County and Consultant have negotiated to reach a fair and reasonable amount of compensation for the provision of such Services, as required under Chapter 2254 of the Texas Government Code; and

WHEREAS, Consultant represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

Consultant shall render Services to County as defined in relevant portions of Consultant’s response to RFQ 22-089 and Consultant’s Scope of Services attached hereto as Exhibit A and incorporated herein.

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 The Maximum Compensation for the performance of Services within the Proposal described in Exhibit A is an amount not to exceed twelve million four hundred fifty thousand dollars and no/100 (\$12,450,000.00), with an amount not to exceed three hundred thousand dollars and no/100 (\$300,000.00) allocated to fund Phase 1 of the Services to be provided and an amount not to exceed twelve million one hundred fifty thousand dollars and no/100 (\$12,150,000.00) allocated to fund Phase 2 of the Services to be provided under this Agreement as described in Exhibit A. In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without written amendment 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 designated by the County Engineer, one (1) electronic (pdf) and/or one (1) original invoice showing the amounts due for services performed in a form acceptable to County. Contractor may submit electronically via: apauditor@fortbendcountytexas.gov. County shall review such invoices and approve them within thirty (30) calendar days with such modifications as are consistent with this Agreement and forward same to the Fort Bend County 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 twelve million four hundred fifty thousand dollars and no/100 (\$12,450,000.00), 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 twelve million four hundred fifty thousand dollars and no/100 (\$12,450,000.00).

Section 5. Time of Performance

The time for performance of the Scope of Services by Consultant shall begin with receipt of the Notice to Proceed from County and end no later six (6) months thereafter for Phase 1 of the Services to be provided and three (3) years thereafter for Phase 2 of the Services to be provided. 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 thirty (30) days 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. If the County modifies and/or uses the documents for any reason other than their intended use, without Consultant's authorization, the Consultant shall be released from any liability as a result of such action.

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 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. For Commercial General Liability, the County shall be named as an Additional Insured on a Primary & Non-Contributory basis.

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

11.1 CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS COUNTY AGAINST LOSSES, LIABILITIES, CLAIMS, AND CAUSES OF ACTION, INCLUDING THE REIMBURSEMENT OF COUNTY'S REASONABLE ATTORNEY'S 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.

11.2 Consultant shall timely report all such matters to County and shall, upon the receipt of any such claim, demand, suit, action, proceeding, lien or judgment, not later than the fifteenth day of each month; provide County with a written report on each such matter, setting forth the status of each matter, the schedule or planned proceedings with respect to each matter and the cooperation or assistance, if any, of County required by Consultant in the defense of each matter.

11.3 Consultant's duty to defend indemnify and hold County harmless shall not abate or end by reason of the expiration or termination of the Agreement unless otherwise agreed by County in writing. The provisions of this section shall survive the termination of the Agreement and shall remain in full force and effect with respect to all such matters no matter when they arise.

11.4 In the event of any dispute between the parties as to whether a claim, demand, suit, action, proceeding, lien or judgment appears to have been caused by or appears to have arisen out of or in connection with acts or omissions of Consultant, Consultant shall never-the-less fully defend such claim, demand, suit, action, proceeding, lien or judgment until and unless there is a determination by a court of competent jurisdiction that the acts and omissions of Consultant are not at issue in the matter.

11.5 Consultant's indemnification shall cover, and Consultant agrees to indemnify County, in the event County is found to have been negligent for having selected County to perform the work described in this request.

11.6 The provision by Consultant of insurance shall limit the liability of Consultant to County.

11.7 Consultant shall cause all trade contractors and any other contractor who may have a contract to perform construction or installation work in the area where work will be performed under this request, to agree to indemnify County and to hold it harmless from all claims for bodily injury and property damage that may arise from said Consultant's operations. Such provisions shall be in form satisfactory to County.

11.8 Loss Deduction Clause - County shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of Consultant and/or trade contractor providing such insurance.

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, unless disclosure is required by law or court order, 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; provided however, that Consultant may retain one (1) copy of all work produced which incorporates Confidential Information for internal record-keeping purposes, subject to the terms of this Agreement.

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. The terms and conditions of the Agreement are not proprietary or confidential information.

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 subcontractors.

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 Attn: County Engineer 301 Jackson Street Richmond, Texas 77469
With a copy to:	Fort Bend County Attn: County Judge 401 Jackson Street Richmond, Texas 77469
Consultant:	Huitt-Zollars, Inc. 10350 Richmond Avenue, Suite 300 Houston, Texas 77042

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

16.1 All services of the Consultant and its independent professional associates, consultants and subcontractors will be performed in a professional, reasonable and prudent manner in accordance with generally accepted professional practice. The Consultant represents that it has the required skills and capacity to perform work and services to be provided under this Agreement.

16.2 The Consultant represents that services provided under this Agreement shall be performed within the limits prescribed by the County in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances.

16.3 Any deficiency in Consultant's work and services performed under this Agreement shall be subject to the provisions of applicable state and federal law. Any deficiency discovered shall be corrected upon notice from County and at the Consultant's expense if the deficiency is due to Consultant's negligence. The County shall notify the Consultant in writing of any such deficiency and provide an opportunity for mutual investigation and resolution of the problem prior to pursuit of any judicial remedy. In any case, this provision shall in no way limit the judicial remedies available to the County under applicable state or federal law.

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 exhibit, this Agreement controls.

Section 25. Certain State Law Requirements for Contracts

25.1 Agreement to Not Boycott Israel Chapter 2271 Texas Government Code: By signature below, Consultant verifies that if Consultant employs ten (10) or more full-time employees and this Agreement has a value of \$100,000 or more, Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

25.2 Texas Government Code Section 2251.152 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.

Section 26. Federal Funding Requirements – Consultant understands and acknowledges that this Agreement may be totally or partially funded with federal and/or state funds from the Federal Emergency Management Agency (FEMA). As a condition of receiving these funds, Consultant represents that it is and will remain in compliance with all federal and/or state terms as stated herein. The terms flow down to all third party contractors and their subcontractors at every tier that exceed the simplified acquisition threshold, unless a particular award term or condition specifically indicates otherwise. **Consultant shall require that these clauses shall be included in each covered transaction at any tier.**

26.1 Clean Air Act and Federal Water Pollution Control Act:

26.1.1 Clean Air Act: The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Consultant agrees to report each violation to the County and understands and agrees that the County, will in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

26.1.2 Federal Water Pollution Control Act: The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Consultant agrees to

report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

26.2 Energy Policy and Conservation Act: Consultant agrees to comply with Energy Policy and Conservation Act (42 U.S.C. § 6201).

26.3 Debarment and Suspension:

26.3.1 The Consultant certifies that they are in compliance with the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180 which states that a contract award in any tier must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders Nos. 12549 (3 C F R part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions 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 No. 12549. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount).

26.3.2 This certification is a material representation of fact relied upon by the County. If it is later determined that the Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to DHS and County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

26.3.3 Consultant agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

26.4 Byrd Anti-Lobbying Amendment: Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

26.5 Political Activities: Consultants are prohibited from using federal funds directly or indirectly for political purposes, including polling, lobbying or advocating for legislative programs or changes; campaigning for, endorsing, contributing to, or otherwise supporting political candidates or parties; and voter registration or get-out-the-vote campaigns. Generally, organizations or entities which receive federal funds by way of grants, contracts, or cooperative agreements do not lose their rights as organizations to use their own, private, non-federal resources for “political” activities because of or as a consequence of receiving such federal funds. These recipient organizations must thus use private or other non-federal money, receipts, contributions, or dues for their political activities, and may not charge off to or be reimbursed from federal contracts or grants for the costs of such activities.

26.6 Procurement of Recovered Materials: Consultant must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). (1) In the performance of this Agreement, the Consultant shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired: (i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements; or (iii) At a reasonable price. (2) Information about this requirement, along with the list of EPA designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

26.7 Access to Records:

26.7.1 The Consultant agrees to provide County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

26.7.2 The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

26.7.3 The Consultant agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

26.8 DHS Seal, Logo, and Flags: The Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.

26.9 Compliance with Federal Law, Regulations, and Executive Orders: The Consultant will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

26.10 No Obligation by Federal Government: The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the County, Consultant, or any other party pertaining to any matter resulting from the contract.

26.11 Program Fraud and False or Fraudulent Statements or Related Acts: The Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's actions pertaining to this Agreement.

26.12 Civil Rights and Non-Discrimination: During the performance of this Agreement, Consultant agrees as follows:

26.12.1 Nondiscrimination on the Basis of Race, Color, and National Origin: Consultant will comply with state and federal anti-discrimination laws including Title VI of The Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), FEMA's implementing regulations at 44 C.F.R. Part 7 (Nondiscrimination in Federally Assisted Programs), and the Department's implementing regulations at 6 C.F.R. Part 21 (Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance) which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

26.12.2 Nondiscrimination on the Basis of Sex: Consultant will comply with Title IX of the Education Amendments of 1972 (codified as amended at 20 U.S.C. § 1681 et seq.), FEMA's implementing regulations at 44 C.F.R. Part 19 (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance), and the Department's implementing regulations at 6 C.F.R. Part 15 (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance) prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.

26.12.3 Nondiscrimination on the Basis of Disability: Consultant will comply with The Americans with Disability Act of 1990 (codified as amended at 42 U.S.C. §§ 12101-12213) prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Consultants must comply with the responsibilities under Titles I, II, III, IV, and V of the Americans with Disability Act of 1990 in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

26.12.4 Nondiscrimination on the Basis of Handicap: Consultant will comply with Section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. § 794) and FEMA's implementing regulations at 44 C.F.R. Part 16 (Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Emergency Management Agency) provide that no otherwise qualified handicapped individual in the United States will, solely by reason of handicap, be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving Federal financial assistance.

26.12.5 Nondiscrimination on the Basis of Age: Consultant will comply with the Age Discrimination Act of 1975 (codified as amended at 42 U.S.C. § 6101 et seq.), and Department of Health and Human Services implementing regulations at 45 C.F.R. Part 90 (Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance) prohibit discrimination against individuals on the basis of age in any program or activity receiving Federal financial assistance.

26.12.6 Nondiscrimination on the Basis of Limited English Proficiency:

26.12.6.1 Consultant will comply with Title VI of the Civil Rights Act of 1964 prohibition against discrimination on the basis of national origin which requires that recipients and subrecipients of FEMA assistance take reasonable steps to provide meaningful access to persons with limited English proficiency.

26.12.6.2 Consultant shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, English proficiency, or disability. Consultant shall not, on the grounds of race, color, creed, national origin, sex, age, English proficiency, or disability, exclude a person from participation in, deny him/her benefits, or subject him/her to discrimination. Consultant shall adhere to any Federal implementing regulations and other requirements that the Department and the FEMA have with respect to nondiscrimination.

26.13 Contracting with 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:

26.13.1 Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

26.13.2 Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

26.13.3 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;

26.13.4 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

26.13.5 Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

26.13.6 Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subsections 26.13.1 through 26.13.5.

26.14 Environmental and Historic Preservation Protections: Consultant shall abide by all environmental and historic preservation mitigation measures identified by FEMA when performing the scope of work including: a. National Environmental Policy Act of 1969, Pub. L. No. 91-190 (1969) (codified as amended at 42 U.S.C. §§ 4321-4347); the National Historic Preservation Act, Endangered Species Act Endangered Species Act of 1973, Pub. L. No. 93-205 (1973) (codified as amended at 16 U.S.C. §§ 1531-1544); Clean Water Act, other laws, and various executive orders.

26.15 Seismic Safety: Consultant must use appropriate seismic design and construction standards and practices pursuant to the Earthquake Hazard Reduction Act of 1977, Pub. L. No. 93-205 (1973) (codified as amended at 16 U.S.C. §§ 1531-1544); Clean Water Act, other laws, and various executive orders.

26.16 Disaster Reservists: Consultant may not in the performance of this Agreement utilize employees who are also Disaster Reservists. Disaster Reservists are personnel authorized by the special hiring authority in the Stafford Act that are not full-time employees, but rather work on an on-call, intermittent basis to perform disaster response and recovery activities.

26.17 False Statements Act: Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's actions pertaining to this Agreement. The Consultant understands that in the event County becomes aware of any allegation or a finding of fraud, waste, or misuse of funds received from FEMA or the Office of the Governor, the County is required to immediately notify OOG of said allegation or finding and to continue to inform OOG of the status of any such on-going investigations. The County must also promptly refer to OOG any credible evidence that a principal, employee, agent, Consultant, subcontractor, or other person has -- (1) submitted a claim for award funds that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving award funds. County must also immediately notify OOG in writing of any misappropriation of funds, fraud, theft, embezzlement, forgery, or any other serious irregularities indicating noncompliance with grant requirements. County must notify the local prosecutor's office of any possible criminal violations.

26.18 Prompt Payment: The Consultant is required to pay its subcontractors performing work related to the Underlying Agreement for satisfactory performance of that work no later than 30 days after the Consultant's receipt of payment for that work from County. In addition, the Consultant is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work is satisfactorily completed.

26.19 Retention of Records: The Consultant agrees to maintain fiscal records and supporting documentation for all expenditures related to this Agreement pursuant to 2 CFR 200.333, UGMS, and state law. Consultant must retain, and will require its subcontractors of all tiers to retain, these records and any supporting documentation for a minimum period of not less than seven (7) years after the date of termination or expiration of the Agreement or any litigation, dispute, or audit arising from the performance of the Agreement. Records related to real property and equipment acquired with grant funds shall be retained for seven (7) years after final disposition.

26.20 Dispute Resolution: Consultant understands that for all subcontracts of \$250,000 or more, the Consultant must include terms to address dispute resolution between the parties who shall attempt in good faith to resolve promptly any dispute arising out of or relating to the Agreement by negotiation between the parties.

26.21 Termination for Cause and Termination for Convenience – Consultant understands that all contract in excess of \$10,000, including subcontracts, must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.

26.22 Prohibited Telecommunications and Video Surveillance Services and Equipment – In the performance of this Agreement, Consultant certifies that they are in compliance with the **John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA)**, Pub. L. No. 115-232 (2018) and that no part equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system will include any covered equipment or services as defined by section 889(f)(2)-(3) of the FY 2019 NDAA. "Covered equipment or services" shall include:

26.22.1 Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

26.22.2 For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

26.22.3 Telecommunications or video surveillance services provided by such entities or using such equipment; or

26.22.4 Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to the People’s Republic of China.

26.23 Whistleblower Protections – Consultant must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C. Section 2409, 41 U.S.C. 4712, and 10 U.S.C. Sections 2324, 41 U.S.C. Sections 4304 and 4310.

Section 27. Human Trafficking

BY ACCEPTANCE OF AGREEMENT, CONSULTANT ACKNOWLEDGES THAT THE 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.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

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

Huitt-Zollars, Inc.

KP George, County Judge



Authorized Agent – Signature

Date

Gregory R. Wine, PE, LEED AP
Authorized Agent – Printed Name

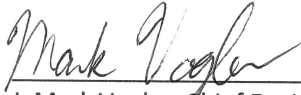
ATTEST:

Executive Vice President
Title

Laura Richard, County Clerk

August 30, 2022
Date

APPROVED:



J. Mark Vogler, Chief Engineer,
Drainage District

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

EXHIBIT A

SCOPE OF SERVICES

Huitt-Zollars, Inc. (Firm) shall render the following professional engineering and surveying services to Fort Bend County (County) necessary for Texas General Land Office's Community Development Block Grant – Mitigation Program funded projects to address erosion on the Brazos River and its tributaries in Fort Bend County, Texas.

SCOPE OF SERVICES

1. Attend preliminary conferences with the County regarding the requirements of the project.
 2. Determine necessity for acquisition of any additional real property/easements/right-of-ways (ROWs) for the CDBG-MIT project and, if applicable, furnish to the County:
 - a. Name and address of property owners;
 - b. Legal description of parcels to be acquired; and
 - c. Map showing entire tract with designation of part to be acquired.
 3. Make any necessary surveys of existing rights-of-way, topography, utilities, or other field data required for proper design of the project. Provide consultation and advice as to the necessity of the County providing or obtaining other services such as auger borings, core borings, soil tests, or other subsurface explorations; laboratory testing and inspecting of samples or materials; other special consultations. The Firm will review any tests required and act as the County's representative in connection with any such services.
 4. Prepare railroad/highway permits.
 5. Prepare a preliminary engineering study and report on the project in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the County, to include preliminary layouts, sketches and cost estimates for the project, and to set forth clearly the Firm's recommendations; to be completed within 60 days of execution of this Agreement.
 6. Furnish the County copies of the preliminary report, if applicable (additional copies will be furnished to the County at direct cost of reproduction).
 7. Submit detailed drawings and plans/specifications to appropriate regulatory agency(ies) and assist County with obtaining clearance(s).
 8. Prepare bid packet/contract documents/advertisement for bids. At the time the bid packet is completed, the Firm shall also furnish to the County an updated written Estimate of Probable Costs for the Project.
 9. Make 10-day call to confirm prevailing wage decision.
 10. Incorporate any and all wage rate modifications or supersedes via bid addendum (if applicable).
 11. Conduct bid opening and prepare minutes.
 12. Tabulate, analyze, and review bids for completeness and accuracy.
 13. Accomplish construction contractor's eligibility verification through www.SAM.gov.
 14. Conduct pre-construction conference and prepare copy of report/minutes.
 15. Issue Notice to Proceed to construction contractor.
 16. Provide in all proposed construction contracts deductive alternatives where feasible, so that should the lowest responsive base bid for construction exceed the funds available, deductive alternatives can be taken to reduce the bid price.
 17. Design for access by persons with disabilities for those facilities to be used by the public in accordance with Public Law 504.
 18. Use GLO-approved forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond.
 19. Consult with and advise the County during construction; issue to contractors all instructions requested by the County; and prepare routine change orders if required, at no charge for
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engineering services to the County when the change order is required to correct errors or omissions by the Firm; provide price analysis for change orders; process change orders approved by County and the Firm and submit to GLO for approval prior to execution with the construction contractor.

20. Make periodic visits, no less than once every 30 days during the construction period, to the construction site to observe the progress and quality of the work, to ensure that the work conforms with the approved plans and specifications, and to determine if the work is proceeding in accordance with the Agreement.
21. Furnish the County a written monthly status report at least seven (7) days prior to the regularly scheduled council/commissioner's court meeting until the project is closed by GLO.
22. Review shop and working drawings furnished by contractors for compliance with design concept and with information given in contract documents (contractors will be responsible for dimensions to be confirmed and correlated at job site).
23. Resolve all payment requests within 14 days of receipt of signed pay request from the construction contractor.
24. Based on the Firm's on-site observations and review of the contractor's applications for payment, determine the amount owed to the contractor in such amounts; such approvals of payment to constitute a representation to the County, based on such observations and review, that the work has progressed to the point indicated and that the quality of work is in accordance with the plans, specifications and contract documents.
25. Recommend that a 10% retainage is withheld from all payments on construction contracts until final acceptance by the County and approval by GLO, unless State or local law provides otherwise.
26. Prepare Certificate of Construction Completion and Clean Lien Certificate. A Clean Lien Certificate may be prepared for each of the Prime Contractor(s) and each of the subcontractor(s).
27. Conduct substantial completion and final inspections.
28. Revise contract drawings to show the work as actually constructed, and furnish the County with a set of "record drawings" plans.
29. The Firm will provide a copy of the final project record drawing(s) engineering schematic(s), as constructed using funds under this contract. These maps shall be provided in digital format containing the source map data (original vector data) and the graphic data in files on machine readable media, such as compact disc (CD), which are compatible with computer systems owned or readily available to the owner. The digital copy provided shall not include a digital representation of the engineer's seal but the accompanying documentation from the Firm shall include a signed statement of when the map was authorized, that the digital map is a true representation of the original sealed document, and that a printed version with the seal has been provided to the County. In addition, complete documentation as to the content and layout of the data files and the name of the software package(s) used to generate the data and maps shall be provided to the owner in written form.

SUBCONTRACTS

1. No work under this Agreement shall be subcontracted by the Firm without prior approval, in writing, from the County.
 2. The Firm shall, prior to proceeding with the work, notify the County in writing of the name of any subcontractors proposed for the work, including the extent and character of the work to be done by each.
 3. If any time during progress of the work, the County determines that any subcontractor is incompetent or undesirable, the County will notify the Firm who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing
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contained in this Agreement shall create any contractual relation between any subcontractor and the County.

4. The Firm will include in all contracts and subcontracts in excess of \$150,000 a provision which requires compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). The provisions shall require reporting of violations to GLO and to the Regional Office of the Environmental Protection Agency (EPA).
 5. The Firm will include in all contracts and subcontracts in excess of \$150,000 provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
 6. The Firm will include in all contracts and subcontracts in excess of \$10,000 provisions addressing termination for cause and for convenience by the County including the manner by which it will be effected and the basis for settlement.
 7. The Firm will include in all contracts and subcontracts provisions requiring compliance with the following, if applicable:
 - a. Prime construction contracts in excess of \$2,000, compliance with the Davis-Bacon Act, as amended (40 U.S.C.3141-3144, 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5);
 - b. Prime construction contracts in excess of \$2,000, compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3)
 - c. Contracts greater than \$10,000, the inclusion of the Equal Opportunity clause provided under 41 CFR 60-1.4(b) (Executive Order 11246);
 - d. Section 3 of the Housing and Urban Development Act of 1968;
 - e. Contracts exceeding \$100,000, compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
 - f. For contracts in excess of \$100,000 that involve the employment of mechanics or laborers, compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), including work week requirements and safety conditions for workers, as supplemented by Department of Labor regulations (29 CFR Part 5); and
 8. The Firm will include in all negotiated contracts and subcontracts a provision which indicates that funds will not be awarded under this contract to any party which is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 2 CFR Part 2424. A certification shall be provided and received from each proposed subcontractor under this contract and its principals.
 9. The Firm will include in all negotiated contracts and subcontracts a provision to the effect that the County, GLO, the Texas Comptroller of Public Accounts, the Comptroller General of the United States, the U.S. Department of Housing and Urban Development (HUD), or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.
 10. The Firm will include in all contracts and subcontracts a requirement that the contractor maintain all relevant project records for three (3) years after the County has made final payment to the contractor and all other pending matters are closed.
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PAYMENT SCHEDULE

County shall compensate Firm for professional services provided upon completion of the following project milestones as specified below:

BASIC SERVICES

Phase 1 – Will be paid based on attached Hourly Rate Sheet in PART V for work performed as authorized by Fort Bend County. \$300,000 (Hourly not to exceed amount)

Phase 2 - will be paid based on the Texas GLO Funded CDBG-MIT projects and completion of project milestones as shown below.

Milestone	Basic Services Fee (Lump Sum)
• Engineering Contract Execution (30%)	\$3,645,000
• 100% Design Approval (30%)	\$3,645,000
• Bid Advertisement (10%)	\$1,215,000
• Construction Notice to Proceed (15%)	\$1,822,500
• As-Built Plans/COCC/FWCR (15%)	\$1,822,500
Total	<hr/> \$12,150,000

PROJECT SCHEDULE

It is anticipated that Phase 1 will be completed within six (6) months of Notice to Proceed. Phase 2 is anticipated to be completed within three (3) years of Notice to Proceed based on when the Texas GLO approves County's CDBG-MIT Application.

TERMS AND CONDITIONS

1. Termination of Agreement for Cause. If the Firm fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Firm violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the County shall have the right to terminate this Agreement by giving written notice to the Firm of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Firm pursuant to this Agreement shall, at the option of the County, be turned over to the County / County and become the property of the County / County. In the event of termination for cause, the Firm shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

Notwithstanding the above, the Firm shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement by the Firm, and the County may set-off the damages it incurred as a result of the Firm's breach of the contract from any amounts it might otherwise owe the Firm.

2. Termination for Convenience of the County.

County may at any time and for any reason terminate Contractor's services and work at County's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Upon such termination, Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Contractor as are permitted by the prime contract and approved by County; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against County for any additional compensation or damages in the event of such termination and payment.

3. Changes. The County may, from time to time, request changes in the services the Firm will perform under this Agreement. Such changes, including any increase or decrease in the amount of the Firm's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Agreement.
 4. Resolution of Program Non-Compliance and Disallowed Costs. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or CDBG-MIT program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Amendment and choose a
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mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. [*This section may also provide for the qualifications of the mediator(s), the locale of meetings, time limits, or any other item of concern to the parties.*] If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.

5. Personnel.

- a. The Firm represents that he/she/it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the County.
- b. All of the services required hereunder will be performed by the Firm or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
- c. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the County. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

6. Assignability. The Firm shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the County thereto; Provided, however, that claims for money by the Firm from the County under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the County.

7. Reports and Information. The Firm, at such times and in such forms as the County may require, shall furnish the County such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

8. Records and Audits. The Firm shall insure that the County maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, 24 CFR 570.490, and this Agreement. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. The Firm and the County shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.

9. Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Firm under this contract are confidential and the Firm agrees that they shall not be made available to any individual or organization without the prior written approval of the County.

10. Copyright. No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Firm.

11. Compliance with Local Laws. The Firm shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Firm shall save the County harmless with

respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.

12. Conflicts of interest.

- a. Governing Body. No member of the governing body of the County and no other officer, employee, or agent of the County, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of CDBG-MIT award between GLO and the County / County, shall have any personal financial interest, direct or indirect, in the Firm or this Agreement; and the Firm shall take appropriate steps to assure compliance.
- b. Other Local Public Officials. No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the CDBG-MIT award between GLO and the County, shall have any personal financial interest, direct or indirect, in the Firm or this Agreement; and the Firm shall take appropriate steps to assure compliance.
- a. The Firm and Employees. The Firm warrants and represents that it has no conflict of interest associated with the CDBG-MIT award between GLO and the County or this Agreement. The Firm further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the CDBG-MIT award between GLO and the County or in any business, entity, organization or person that may benefit from the award. The Firm further agrees that it will not employ an individual with a conflict of interest as described herein.

13. Debarment and Suspension (Executive Orders 12549 and 12689)

The Firm certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (1986) and 12689 (1989). The term "principal" for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Firm. The Firm understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

Federal Civil Rights Compliance.

14. Equal Opportunity Clause (applicable to federally assisted construction contracts and subcontracts over \$10,000).

During the performance of this contract, the Firm agrees as follows:

- a. The Firm will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Firm will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Firm agrees to post in conspicuous places, available to
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employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- b. The Firm will, in all solicitations or advertisements for employees placed by or on behalf of the Firm, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - c. The Firm will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
 - d. The Firm will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Firm's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - e. The Firm will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity," and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - f. The Firm will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - g. In the event of the Firm's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Firm may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - h. The Firm will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Firm will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Firm becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Firm may request the United States to enter into such litigation to protect the interests of the United States.
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15. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
 16. Section 109 of the Housing and Community Development Act of 1974. The Firm shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the ground of race, color, national origin, religion, 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 funds made available under this title.
 17. Section 504 of the Rehabilitation Act of 1973, as amended. The Firm agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.
 18. Age Discrimination Act of 1975. The Firm shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
 19. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) (if contract greater than or equal to \$100,000) The Firm certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining this contract. The Firm shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
 20. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.
 - a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
 - b. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
 - c. The Firm agrees to send to each labor organization or representative of workers with which the Firm has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Firm's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
-

d. The Firm agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Firm will not subcontract with any subcontractor where the Firm has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

e. The Firm will certify that any vacant employment positions, including training positions, that are filled (1) after the Firm is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Firm's obligations under 24 CFR part 135.

f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

PART V
HOURLY RATE SCHEDULE



HUITT-ZOLIARS

Houston

2022

HOURLY RATE SHEET

Engineering/Architecture

Principal	\$ 260.00
Design Principal	\$ 240.00
Sr. Project Manager	\$ 240.00
QA Manager	\$ 230.00
Project Manager	\$ 210.00
Sr. Civil Engineer	\$ 215.00
Sr. Structural Engineer	\$ 205.00
Sr. Mechanical Engineer	\$ 195.00
Sr. Electrical Engineer	\$ 195.00
Civil Engineer	\$ 195.00
Structural Engineer	\$ 195.00
Mechanical Engineer	\$ 160.00
Electrical Engineer	\$ 160.00
Plumbing Engineer	\$ 160.00
Engineer Intern	\$ 150.00
Sr. Architect	\$ 205.00
Architect	\$ 165.00
Architect Intern 1	\$ 105.00
Architect Intern 2	\$ 125.00
Architect Intern 3	\$ 155.00
Sr. Landscape Architect	\$ 195.00
Landscape Architect	\$ 155.00
Landscape Architect Intern	\$ 115.00
Sr. Planner	\$ 255.00
Planner	\$ 165.00
Planner Intern	\$ 115.00
Sr. Designer	\$ 160.00
Designer	\$ 140.00
Sr. CADD Technician	\$ 140.00
CADD Technician	\$ 110.00

Interior Design

Sr. Interior Designer	\$ 155.00
Interior Designer	\$ 125.00
Interior Designer Intern	\$ 100.00

Survey

Survey Manager	\$ 210.00
Sr. Project Surveyor	\$ 200.00
Project Surveyor	\$ 150.00
Survey Technician	\$ 120.00

Survey Crews

1-Person Survey Crew	\$ 120.00
2-Person Survey Crew	\$ 170.00
3-Person Survey Crew	\$ 200.00

Construction

Construction Manager	\$ 195.00
Resident Engineer	\$ 185.00
Sr. Project Representative	\$ 140.00
Resident Project Representative	\$ 110.00

Administrative

Sr. Project Support	\$ 110.00
Project Support	\$ 90.00

Reimbursable Expenses

Consultants	Cost + 10%
Other Direct Costs	Cost + 10%
Mileage	IRS Standard Business Mileage Rate

NONEXCLUSIVE LIST OF APPLICABLE LAWS, RULES, AND REGULATIONS

If applicable to the Project, Provider must be in compliance with the following laws, rules, and regulations; and any other state, federal, or local laws, rules, and regulations as may become applicable throughout the term of the Contract, and Provider acknowledges that this list may not include all such applicable laws, rules, and regulations.

Provider and is deemed to have read and understands the requirements of each of the following, if applicable to the Project under this Contract:

GENERALLY

The Acts and Regulations specified in this Contract;

Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56);

The Housing and Community Development Act of 1974 (12 U.S.C. § 5301 *et seq.*);

The United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f(o)(13) (2016) and related provisions governing Public Housing Authority project-based assistance, and implementing regulations at 24 C.F.R. Part 983 (2016);

Cash Management Improvement Act regulations (31 C.F.R. Part 205);

Community Development Block Grants (24 C.F.R. Part 570);

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Disaster Recovery Implementation Manual; and

State of Texas Plan for Disaster Recovery: Hurricane Harvey – Round 1, dated April 6, 2018, as amended.

CIVIL RIGHTS

Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d *et seq.*); 24 C.F.R. Part 1, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, *et seq.*);

Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, *et seq.*), as amended;

Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or refusal of Provider to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;

The Age Discrimination Act of 1975 (42 U.S.C. § 6101, *et seq.*); and

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8. By signing this Contract, Provider understands and agrees that the activities funded shall be performed in accordance with

24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, *et seq.*), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

LABOR STANDARDS

The Davis-Bacon Act, as amended (originally, 40 U.S.C. §§ 276a-276a-5 and re-codified at 40 U.S.C. §§ 3141-3148); 29 C.F.R. Part 5;

The Copeland "Anti-Kickback" Act (originally, 18 U.S.C. § 874 and re-codified at 40 U.S.C. § 3145); 29 C.F.R. Part 3;

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (originally, 40 U.S.C. §§ 327A and 330 and re-codified at 40 U.S.C. §§ 3701-3708);

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act) (29 C.F.R. Part 5); and

Federal Executive Order 11246, as amended.

EMPLOYMENT OPPORTUNITIES

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u); 24 C.F.R. §§ 135.3(a)(2) and (a)(3);

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. § 4212);

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688); and

Federal Executive Order 11246, as amended.

GRANT AND AUDIT STANDARDS

Single Audit Act Amendments of 1996, 31 U.S.C. § 7501;

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Uniform Grant and Contract Management Act (Texas Government Code Chapter 783) and the Uniform Grant Management Standards, issued by Governor's Office of Budget and Planning; and

Title 1 Texas Administrative Code § 5.167(c).

LEAD-BASED PAINT

Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831(b)).

HISTORIC PROPERTIES

The National Historic Preservation Act of 1966 as amended (16 U.S.C. § 470, *et seq.*), particularly sections 106 and 110 (16 U.S.C. §§ 470 and 470h-2), except as provided in §58.17 for Section 17 projects;

Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 C.F.R., 1971-1975 Comp., p. 559, particularly section 2(c);

Federal historic preservation regulations as follows: 36 C.F.R. Part 800 with respect to

HUD programs; and

The Reservoir Salvage Act of 1960, as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. § 469, *et seq.*), particularly section 3 (16 U.S.C. § 469a-1).

ENVIRONMENTAL LAW AND AUTHORITIES

Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities (24 C.F.R. Part 58, as amended);

National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347); and
Council for Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508).

FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION

Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 C.F.R., 1977 Comp., p. 117, as interpreted in HUD regulations at 24 C.F.R. Part 55, particularly Section 2(a) of the Order (For an explanation of the relationship between the decision-making process in 24 C.F.R. Part 55 and this part, see § 55.10.); and

Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 C.F.R., 1977 Comp., p. 121 particularly Sections 2 and 5.

COASTAL ZONE MANAGEMENT

The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451, *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. § 1456(c) and (d)).

SOLE SOURCE AQUIFERS

The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f), *et seq.*, and 21 U.S.C. § 349) as amended; particularly section 1424(e)(42 U.S.C. § 300h-3(e)); and

Sole Source Aquifers (Environmental Protection Agency-40 C.F.R. part 149.).

ENDANGERED SPECIES

The Endangered Species Act of 1973 (16 U.S.C. § 1531, *et seq.*) as amended, particularly section 7 (16 U.S.C. § 1536).

WILD AND SCENIC RIVERS

The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271, *et seq.*) as amended, particularly sections 7(b) and (c) (16 U.S.C. § 1278(b) and (c)).

AIR QUALITY

The Clean Air Act (42 U.S.C. § 7401, *et seq.*) as amended, particularly sections 176(c) and (d) (42 U.S.C. § 7506(c) and (d)).

Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-40 C.F.R. Parts 6, 51, and 93).

FARMLAND PROTECTION

Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201, *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. §§ 4201(b) and 4202); and

Farmland Protection Policy (Department of Agriculture-7 C.F.R. part 658).

HUD ENVIRONMENTAL STANDARDS

Applicable criteria and standards specified in HUD environmental regulations (24 C.F.R. Part 51)(other than the runway clear zone and clear zone notification requirement in 24 C.F.R. § 51.303(a)(3); and

HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979.

ENVIRONMENTAL JUSTICE

Executive Order 12898 of February 11, 1994—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629), 3 C.F.R., 1994 Comp. p. 859.

SUSPENSION AND DEBARMENT

Use of debarred, suspended, or ineligible contractors or subrecipients (24 C.F.R. § 570.609);

General HUD Program Requirements; Waivers (24 C.F.R. Part 5); and

Nonprocurement Suspension and Debarment (2 C.F.R. Part 2424).

OTHER REQUIREMENTS

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

ACQUISITION / RELOCATION

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601, *et seq.*), 24 C.F.R. Part 42, and 24 C.F.R. § 570.606.

FAITH-BASED ACTIVITIES

Executive Order 13279 of December 12, 2002 - Equal Protection of the Laws for Faith-Based and Community Organizations, (67 FR 77141).

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