

WHEREAS, the attached Attachments I, II, and III are incorporated into each other and constitutes part of this agreement, and when read together, shall constitute one integrated document (the "Agreement").

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

AGREEMENT

Section 1. Scope of Services

1.1 Consultant shall provide to County, on behalf of the Fort Bend County Drainage District ("Drainage District"), Administrative Services only, including but not limited to the development of the project scope and completion of the CDBG-MIT application, and the administration and completion of the proposed infrastructure project approved under the U.S. Department of Housing and Urban Development Community Development Block Grant Mitigation ("CDBG-MIT") program (hereinafter "Services"), as described in more detail in the Scope of Services attached hereto as Attachment I, incorporated fully by reference.

1.2 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 in writing and authorized by County.

1.3 Execution of this Agreement does not predicate Notice to Proceed. No work shall be performed without receipt of a written Notice to Proceed from the County, the Drainage District Director or an authorized representative of the Drainage District.

Section 2. Personnel and Equipment

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 Drainage District, 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 Drainage District, is incompetent or by his conduct becomes detrimental to the project shall, upon request of Drainage District, immediately be removed from association with the project.

2.3 Consultant shall provide all equipment, tools, materials, and other items necessary to perform the services as described herein.

Section 3. Maximum Compensation and Payment

3.1 Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that the fee is based on the County's final grant award amount. The County anticipates having available the total maximum sum of Two Million Three Hundred Seventy-five dollars and 00/100 cents (\$2,375,000.00), payable solely from grant funds and specifically allocated to fully discharge any and all liabilities County may incur. In no event shall the amount paid by the County for all services under this Agreement exceed this maximum compensation amount without an amendment executed by the parties. Any products provided, or services rendered, in excess of Two Million Three Hundred Seventy-five dollars and 00/100 cents (\$2,375,000.00), without an executed amendment, will be at the Consultant's expense and not payable by County.

3.2 The parties agree that upon the determination of the total funding request amount, Consultant and County will execute the Work Authorization (Attachment II) that will detail the final contract amount and cost for services. The attached Work Authorization assumes that County will be allocated total funds of \$56,030,000.00, based on the HGAC most recently released allocation as of 6/13/2022. The proposed costs listed within the attached Work Authorization are subject to change based on modification of the County's allocation from HGAC. It is also agreed that payments to such Consultant shall be subject to adjustment where monitoring review or audits by the agency indicate that personal services were compensated at greater than reasonable rates.

3.3 Services that fall outside of the regular scope and/or are not part of the proposed scope will be billed according to the hourly rate and fee schedule defined in the Corporate Hourly Rate and Fee Schedule (Attachment II). Prior to Consultant performing any services which are not part of the proposed scope, Consultant shall submit to County a projected hourly schedule and projected fee for approval.

3.4 County will pay Consultant based on the following procedures: Upon completion of the tasks identified in the Work Authorization, Consultant shall submit to the Fort Bend County Purchasing Office (2) original copies of invoices showing the amounts due for services performed in a form acceptable to Drainage District. Drainage District 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.

3.5 Approved invoices shall be paid within thirty (30) calendar days from the date the invoice is approved by the Drainage District, provided that there are not any disputes between the County and the Vendor, Consultant, Subcontractor, or Supplier about the goods delivered or the services performed that causes the payment to be late. Further, the County reserves the right to withhold payment pending verification of satisfactory work performed.

3.6 A Consultant that receives a payment from Fort Bend County must pay its subcontractor the appropriate share of the payment no later than the 10th day after the date the Consultant receives the payment. The appropriate share is overdue on the 11th day after the date the Consultant receives the payment.

Section 4. Non-Appropriation

It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County.

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 the Drainage District Director or authorized representative. Consultant shall complete the tasks described in the Scope of Services within 30 months from the notice to proceed or within such additional time as may be extended by the Drainage District Director.

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 by County: County may at any time and for any reason terminate Consultant's services and work under this Agreement at County's convenience upon providing written notice to the Consultant specifying the extent of termination and the effective date. Upon receipt of such notice, Consultant 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, Consultant shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement prior to the effective date of termination; plus (2) such other costs actually incurred by Consultant as are permitted by the prime contract and approved by County. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Consultant prior to the date of the termination of this Agreement. Consultant 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.

7.2 Termination for Cause

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 herein or any extension thereof that was granted by the Drainage District in writing;

7.2.1.2 If Consultant materially breaches any of the covenants, terms, conditions, contracts, or stipulations set forth in this Agreement, or if Consultant 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 Drainage District's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from Drainage District specifying such breach or failure.

7.2.2 County shall have a right to terminate for cause by giving written notice to Consultant of such termination and specifying the effective date thereof, which shall be at least five (5) days before the effective date of such termination.

7.2.3 In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by Consultant pursuant to this Contract shall, at the option of County, be turned over to County and become the property of County. In the event of termination for cause, Consultant shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

7.2.4 If, after termination for cause, 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 Drainage District in accordance with Section 7.1 above.

7.3 Termination for Lack of Funding

7.3.1 If County does not receive an award of CDBG-MIT Funds from the TX-GLO or if the award does not include the amount required for the performance of Services outlined herein, this Agreement shall terminate.

7.3.2 Upon termination of this Agreement, County shall compensate Consultant in accordance with Section 3, above, for those services which were completed 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.

7.3.3 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.

7.4. Resolution of Program Non-Compliance and Disallowed Costs

7.4.1 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 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 thirty (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.

7.4.2 If the matter is not resolved by negotiation within thirty (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. The parties may enter into a written agreement to choose a qualified mediator and to bear the costs of such mediation equally. If the matter is not resolved through such mediation within ninety (90) days of the initiation of the procedure to mediate, either party may proceed to file suit.

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. Change or alteration of any such data and material by County or by others acting through or on behalf of County will be at County's sole risk.

Section 9. Inspection of Books and Records

Consultant will permit County, or any duly authorized agent of Drainage District, 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 Worker's Compensation insurance. Substitutes to genuine Worker's Compensation Insurance will not be allowed.

10.1.2. Employers' Liability insurance with limits of not less than \$1,000,000 per injury per 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, excluding Professional Liability, 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 two (2) years beginning from the time that work under the Agreement is completed.

Section 11. Indemnity

CONSULTANT SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONSULTANT, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, 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 Drainage District 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, Drainage District 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 Drainage District 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 Contractor

13.1 In the performance of work or services hereunder, Consultant shall be deemed an independent Contractor, 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 Fort Bend 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:

Drainage District:	Fort Bend County Drainage District ATTN: Mark Vogler, P.E. P.O. Box 1028 1124 Blume Road Rosenberg, Texas 77471
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With a copy to: Fort Bend County
Attn: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

Consultant: Public Management, Inc.
Attn: Patrick K. Wiltshire,
President
P.O. Box 1827
Cleveland, Texas 77328

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 and the fulfillment of all Americans with Disabilities Act (ADA) requirements. When required by Fort Bend County, Consultant shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 16. Force Majeure

If, by reason of force majeure, either party hereto shall be rendered unable, wholly or in part, to carry out its obligations under this Agreement, then if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term “force majeure” as employed herein shall mean acts of God, acts of public enemy, order of any government entity of the United States or of the State of Texas, or any civil or military authority, and any other cause not reasonably within the control of the party claiming such inability.

Section 17. Assignment

Consultant shall not assign, transfer, or delegate any rights, obligations, or duties under this Agreement without the prior written consent of the County. Consent may be required from both the County and any federal or state agency associated with the funding for this Agreement.

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 Fort Bend County or the Drainage District’s sovereign immunity.

Section 19. Successors and Assigns

Fort Bend 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. Access to Books and Records

County, the agency, the U.S. Department of Housing and Urban Development (HUD) and/or Federal Emergency Management Administration (FEMA), Inspectors General, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of Consultant which are directly pertinent to this Program, for the purpose of making audit, examination, excerpts, and transcriptions, and to close out the County's contract. Consultant agrees hereby to maintain all records made in connection with the Program for a period of three (3) years after County makes final payment and all other pending matters are closed. All subcontracts of Consultant shall contain a provision that County, the agency, and the Texas State Auditor's Office, or any successor agency or representative, shall have access to all books, documents, papers and records relating to subcontractor's contract with Consultant for the administration, construction, engineering or implementation of the Program between the agency and County.

Section 24. Subcontracts

24.1 No work under this Agreement shall be subcontracted by the Consultant without prior approval, in writing, from County. County has approval rights over the use and/or removal of all subcontracts and/or vendor(s).

24.2 Consultant must verify subcontractors eligibility based on factors such as past performance, proof of liability insurance, and possession of a federal ID tax number, debarment status, and state licensing requirements.

24.3 Consultant shall, prior to proceeding with the work, provide written notification to the County of any such subcontractor including the name and taxpayer identification number of subcontractor, the task(s) being performed, and the number of subcontractor employees expected to work on the task. If a subcontractor is found to be ineligible after award of a contract, the contract shall be immediately terminated and the matter reported to HUD.

24.4 In any approved subcontracts, Consultant shall legally bind such subcontractor to perform and make such subcontractor subject to all County policies, as well as, the duties, requirements, and obligations of Consultant as specified in this Agreement.

24.5 Consultant assumes the responsibility for the performance of the subcontractors. Nothing in this Agreement shall be construed to relieve Consultant of the responsibility for ensuring that the goods delivered and/or the services rendered by Consultant and/or any of its subcontractors comply with all the terms and provisions of this Agreement.

24.6 If any time during progress of the work, County determines that any subcontractor is incompetent or undesirable, County will notify the Consultant 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 contained in this Agreement shall create any contractual relation between any subcontractors and Fort Bend County or the Drainage District.

Section 25. Local Program Liason

For purposes of this Agreement, the Fort Bend County Judge, the Fort Bend Count Drainage District Director or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the Consultant. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.

Section 26. Supervision

Consultant shall provide competent management for the Project, approved by County, who shall be working on the Project for direction, coordination, sequencing and all other required activities, for the entire duration of and until final acceptance of Work. The approved manager or superintendent shall not be discontinued (except upon Final Completion of the Project or in the event of his or her termination of employment or disability or if the County requests a replacement to resolve incompatible working relationships) and no new individual shall be designated without prior approval of the County.

Section 27. Certain State Law Requirements for Contracts.

The contents of this Section are required by Texas Law and are included by County regardless of content.

25.1 Agreement to Not Boycott Israel Chapter 2271 Texas Government Code: 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 hereby verifies it does not boycott Israel and will not boycott Israel during the term of this Agreement. For purposes of this verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

25.2 Texas Government Code Section 2252.152 Acknowledgment: Consultant represents and verifies, pursuant to Section 2252.152 of the Texas Government Code, that at the time of execution of this Agreement, neither Consultant, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapter 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, Section 807.051 or Section 2253.153 of the Texas Government Code. The term “foreign terrorist” in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

Section 28. Federal Standards and Requirements

Consultant understands and acknowledges that this Agreement is being funded totally or partially with federal funds from the U.S. Department of Housing and Urban Development, Texas General Land Office Community Development Block Grant – MIT (“CDBG-MIT”) funds, administered by the Texas General Land Office (“GLO”). As a condition of receiving these funds, Consultant

represents that it is and will remain in compliance with all federal terms included in Attachment III, attached hereto and incorporated fully by reference. All expenditures under this Contract must be made in accordance with the rules and regulations promulgated under the CDBG-MIT Program, and any other applicable laws. Further, Consultant acknowledges that all funds are subject to recapture and repayment for non-compliance. These terms flow down to all third party contractors and their subcontracts at every tier that exceed the simplified acquisition threshold set at \$50,000 by the County, unless a particular award term or condition specifically indicates otherwise. **The Consultant shall require that these clauses shall be included in each covered transaction at any tier.**

Section 29. Silence of Specifications

The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement.

Section 30. 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 31. Seals, Logos, and Flags

Consultant shall not use any Federal, State, or local government agency seal, logo(s), crest, or reproduction of flags or likeness of agency officials without expressed, specific agency pre-approval in writing.

Section 32. Attorney's Fees

County does not agree to pay any and/or all attorney fees incurred by Consultant in any way associated with the Agreement.

Section 33. 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 34. Inclusion by Reference

This Agreement hereby includes by reference and is subject to the Attachments titled “Scope of Work (Attachment I), “Work Authorization and Corporate Hourly Rate & Fee Schedule” (Attachment II), and the “Federal Standards and Requirements” (Attachment III), which are attached hereto and hereby incorporated by reference as if set out in full in the body of this Agreement. The parties acknowledge and agree that the aforementioned Exhibits constitute a part of the Agreement, and the Agreement and the Attachments are one integrated document.

Section 35. Conflict

In the event there is a conflict between this Agreement and the Attachments I and II, this Agreement controls to the extent of the conflict.

Section 36. Entire Agreement

This instrument, inclusive of the attached Attachments I, II and III, contains the entire Agreement between the parties hereto relating to the rights herein granted and the obligation herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect excepting a subsequent modification in writing signed by all the parties hereto.

{EXECUTION PAGE FOLLOWS}

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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

PUBLIC MANAGEMENT, INC.

KP George, County Judge

Patrick K. Wiltshire,
President

September 1, 2022

Date

Date

ATTEST:

Laura Richard, County Clerk

REVIEWED BY:

Mark Vogler
Mark Vogler
Fort Bend County Drainage District
Director and Chief Engineer

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of **\$ 2,375,000.00** to accomplish and pay the obligation of the Fort Bend County Drainage District under this contract.

Robert E. Sturdivant, County Auditor

Attachments:

Attachment I – Scope of Work

Attachment II – Work Authorization and Corporate Fee Schedule

Attachment III – Federal Standards and Requirements

ATTACHMENT I

Scope of Work

ATTACHMENT I

SCOPE OF WORK

Consultant will provide Client with administrative services as follows:

PRE- FUNDING SERVICES:

Application Preparation: The Consultant will prepare the application as directed by the Client to apply for available funding sources adherent to the state and federal agencies guidelines. The Consultant will coordinate all activities and other service providers with regard to the preparation of the application, including, but not limited to:

- Review of proposed project for program compliance and will work with Client staff to provide an overview;
- Advise on important deadlines and procedures;
- Schedule project meetings with client staff to evaluate proposed project and timeframes.
- Prepare project description in conjunction with staff and project engineer;
- Evaluate project objective and develop timelines/milestones;
- Prepare project maps in ArcGIS and PDF format;
- Prepare necessary preliminary Environmental Compliance documentation;
- Conduct public hearings (as applicable) for application submission and attend Client meeting to address application development;
- Package complete application with all pertinent supplemental documentation for client to review prior to submission;
- Identify and document beneficiaries;
- Advise client on funding availability, anticipated scoring, selection and award process.

POST FUNDING SERVICES

GENERAL ADMINISTRATION SERVICES

Administrative Duties: The Consultant will coordinate, as necessary, between Client and any other appropriate service providers (i.e. Engineer, Environmental, etc.), contractor, subcontract and/or administrative agency to effectuate the services requested.

- Oversee the project and achieve all of the project goals within the constraints given by the funding agency;
- Develop and implement project phases to plan, budget, oversee, and document all aspects of the specific project;
- Coordinate all activities related to the project's successful completion with all other professionals and organizations associated with this project.

Recordkeeping: The Consultant will assist the Client with maintaining all records generated by the program. This includes all records required by the funding agency and the Client (i.e. program management records).

- Complete filing system will be developed and maintained at Client's office;
- Both physical and electronic form of records will be developed and accessible;
- Records will be updated as necessary to ensure compliance with funding source and administrative agency;
- Records will be retained for the appropriate period of time as dictated by the funding agency, with electronic records available for perpetuity.

Financial Management: The Consultant will assist the Client in keeping the general journal, general ledger, cash receipts journal and all other necessary financial documents, as well as monitor the Client's financial system.

- Utilize and assist with the agency's system of record to complete milestones, submit documentation, reports, draws, change requests, etc.;
- Request fund expenditure in-line with project milestones;
- Develop a detailed Contract Ledger;
- Establish a filing system that accurately and completely reflects the financial expenditures of the program and project(s).
- Keep track of disbursement of funds and ensure that the vendors are paid within the required timeframe set out by the funding agency.

Construction Management: The Consultant will coordinate and supervise the project to ensure designated activities are realizing the intended outcomes as stated in contract documents. We will oversee specialized contractors and other personnel and allocate necessary resources.

- Assist the Client in submitting/setting up project applications in the Agency's system of record;
- Coordinate the development, completion, and execution of contract documents to ensure supporting documentation is in order;
- Conduct regular on-site visitations and assessments;
- Development and maintenance of construction management status log;
- Recommendation and development of scope realignments as prescribed by the project's complexities.

CONTRACT ADMINISTRATION SERVICES

Administrative Duties: The Consultant will work with the Client's staff to provide the necessary administrative and planning services to see the project to completion. The Consultant will meet with officials on a regular basis to review progress on the objectives of the project and then take actions to see that those objectives are met.

- Act as the Client's liaison to the funding agency in all matters concerning the project;
- Coordinate communication via email, conference call, facsimile, and direct meetings to ensure the project is on schedule and all parties are properly informed;
- Prepare and submit any necessary reports required by the funding agency during the course of the project (i.e. Monthly/Quarterly Progress Reports, Project Monitoring Reports, Project Completion Reports, etc.);
- Provide Client staff specific instructions on the necessary administrative procedures that will assure a successful project;
- Establish and maintain record keeping systems;
- Assist with resolving monitoring and audit findings.

Real Property Acquisition (as applicable): The Consultant will assist the Client in the preliminary acquisition assessment as well as the development and/or coordination of acquisition of real property (real property in the context of acquisition refers to permanent interest in real property as well as certain less-than-full-fee interests in real property).

- Adherence to the Uniform Act (URA) which guides the acquisition of real property that may be necessary to the needs of the project;

- ***If it is determined that property needs to be acquired, Public Management, Inc. will perform the following services according to the URA for an additional fee.***
- Development and maintenance of appropriate file materials to ensure compliance with federal, state, and program requirements;
- Administrative coordination of parcels, values, correspondence;
- Coordinate property appraisals and determine just compensation;
- Ensure easement/right of way boundaries are in line with proposed project and survey;
- Completion and/or file closure of acquired property.

Environmental Services: The Consultant will prepare all documents and correspondence for environmental review and clearance as well as maintain close coordination with local officials, project engineer and other members of the project Consultant to assure appropriate level of environmental review is performed. This project element will abide by the National Environmental Policy Act (NEPA) or any other Federal, State or local regulation as applicable.

- Review each project description to ascertain and/or verify the level of environmental review required: Exempt, Categorical Exclusion not Subject to 58.5, Categorical Exclusion Subject to 58.5, Environmental Assessment, and Environmental Impact Statements;
- Prepare and maintain a written environmental review record;
- Consult and coordinate with oversight/regulatory agencies to facilitate environmental clearance;
- Conduct site-visits as necessary to ensure environmental compliance;
- Prepare all responses to comments received during comment phase of the environmental review, including State/Federal Agency requiring further studies and/or comments from public or private entities during public comment period;
- Provide documentation of clearance for Parties Known to be Interested as required by 24 CFR 58.43;
- Advise and complete environmental re-evaluations per 24 CFR 58.47 when evidence of further clearance or assessment is required;
- Assist in compliance with flood plain and wetlands management review guidelines;
- **Not included in this service are archeological, engineering, or other special service costs mandated by environmental review record compliance agencies.**

Civil Rights Requirements: The Consultant will structure the program so that all procurement procedures, contracts, and polices will be in accordance with state and federal regulations associated thereto. Ensure that the contractors make affirmative efforts to employ Section 3 Residents and Business Concerns, Minority Business Enterprises, Small Business Enterprises and Women Business Enterprises.

- Set up Civil Rights & Citizen Participation File;
- Designate a Civil Rights Officer (CRO);
- Adopt policies and grievance procedures regarding Citizen Participation;
- Adopt Policies and Pass Resolution/Proclamation/Ordinances regarding Civil Rights;
- Publish Citizen Participation and Civil Rights Notices;
- Place necessary documentation in Bid Packets for Contractors;
- Include required clauses in Construction Contracts between Grant Recipient and Contractor;
- Take action to Affirmatively Further Fair Housing;
- The Consultant will be diligent and consistent in implementing the project's civil rights responsibilities and will undertake further action and reporting requirements.

Procurement/Bidding/Contracting: Procurement is the process through which an entity obtains goods and services from vendors. The Consultant will assist the Client in following appropriate procurement procedures to obtain professional and construction services necessary to complete the project.

- Provide assistance to ensure compliance with Local Government Code Chapter 252 as applicable to goods and services;
- Provide assistance to ensure compliance with 2 CFR 200.320 (Methods of Procurement to be Followed).

Labor Standards Monitoring: The Consultant will ensure that all labor standards laws and regulations are observed during the course of the project. The Consultant will structure the program so that all procurement procedures and contracts will meet equal opportunity requirements. The Consultant will also ensure that the contractors make affirmative efforts to employ minority persons and minority subcontractors. Ensure compliance with laws regarding Labor Standards, which include:

- Davis-Bacon Act (40 USC Chapter 31, Subchapter IV);
- Contract Work Hours & Safety Standards Act (CWHSSA);
- Copeland (Anti-Kickback) Act (18 USC 874; 40 USC 3145);
- Fair Labor Standards Act.

Force Account (as applicable): The Consultant will assist the Client in preparing force account documentation for the project, if necessary, and will consolidate this information for suitable presentation to funding agency.

- Develop and maintain documentation of all associated costs;
- Using appropriate recordkeeping forms required by funding agency;
- Submit documentation upon completion of necessary milestones.

Contract Close-out Assistance: The Consultant will prepare any necessary reports required by the funding agency to close out the project. The Consultant will work with the Client in preparing the annual audits and necessary actions to ensure the project reaches the “Administratively Closed” status.

- Ensure projects outcomes are in line with contract documents and funding agency’s goals and objectives;
- Ensure project beneficiaries are appropriately documents and reported;
- Develop, complete, and submit project completion report(s) and any other necessary administrative completion documents.

It is specifically agreed and understood that Consultant will not provide either personally or by contract any professional or technical services requiring a license by the State of Texas in any phase or aspect of the foregoing. Rather, Consultant will advise Client of the need of such services in furtherance of the planned objectives of Client's Program.

Client acknowledges that Consultant is providing Administrative Services only to Client and that Consultant is not responsible for any procurement activities for or on behalf of the Client. That is, Client, not Consultant, will advertise for and procure the services of any third party required to fulfill Program requirements. By way of example only, Client, not Consultant, must timely and properly post any advertisements necessary to fulfill Program requirements and Client, not Consultant, will enter into any required contracts with third parties necessary to fulfill Program requirements.

ATTACHMENT II

Work Authorization
and Corporate Fee Schedule

**Attachment I1
Work Authorization**

For work associated with Fort Bend County CDBG-MIT Contract No. XX-XXX-XXX-XXXX, and in consideration of the foregoing, Client agrees to pay Consultant a fee not to exceed:

Two Million Three Hundred Seventy-Five Thousand Dollars and 0/100 (\$2,375,000.00)

The fees are payable upon receipt of invoice from Consultant in accordance with the following schedule for Administrative Services.

GENERAL ADMINISTRATIVE SERVICES		
<u>MILESTONE</u>	<u>PERCENTAGE</u>	<u>FEE</u>
Kick-off Meeting & Start-up Package	15%	\$352,500.00
Environmental Notice to Proceed	15%	\$352,500.00
Authority to Use Grant Funds	20%	\$470,000.00
Bid Advertise	10%	\$235,000.00
Construction Notice to Proceed	25%	\$587,500.00
As-Builts/COCC/FWCR	10%	\$235,000.00
Closeout Packet Approval	5%	\$117,500.00
Subtotal	100%	\$2,350,000.00
ENVIRONMENTAL SERVICES		
Environmental Services	N/A	\$25,000.00
Subtotal	N/A	\$25,000.00
TOTAL FEE		\$2,375,000.00

It is also agreed that payments to such Consultant shall be subject to adjustment where monitoring reviews or audits by the client indicate that personal services were compensated at greater than reasonable rates. *Upon execution of this Work Authorization Public Management, Inc. is issued Notice to Proceed (NTP) for contract start-up documents and the environmental review record.*

PATRICK K. WILTSHIRE
President

CHIEF ELECTED OFFICIAL

ATTEST:

Attachment II
Corporate Hourly Rate & Fee Schedule

PUBLIC MANAGEMENT, INC.
2022 Hourly Rate

Principal Consultant	\$275.00/HR
Senior Consultant	\$250.00/HR
Senior Project Manager	\$225.00/HR
Environmental Specialist	\$200.00/HR
Project Manager	\$200.00/HR
Planner	\$200.00/HR
GIS Manager	\$200.00/HR
GIS Technician	\$185.00/HR
Assistant Project Manager/Planner	\$170.00/HR
Compliance Specialist	\$150.00/HR
Executive Assistant	\$125.00/HR

Hourly rates for personnel not listed will be billed at direct payroll cost

REIMBURSABLE EXPENSES

- Travel (vehicle miles traveled) at allowable IRS rate per mile, or at actual out-of-pocket cost.
- Actual cost of subsistence and lodging.
- Actual cost of long-distance telephone calls, expenses, charges, delivery charges, and postage.
- Actual invoiced cost of materials required for the job and used in drafting and allied activities, including printing and reproduction.

This rate schedule will be applicable through December 31, 2022. In January, 2023, if increases are necessary due to increases in wages or other salary related costs, the rates shown will be adjusted accordingly.

ATTACHMENT III

Federal Standards and Requirements

ATTACHMENT III
FEDERAL TERMS AND CONDITIONS

I.

Equal Employment Opportunity

During the performance of this Contract, Consultant agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor 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 contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor 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.

(4) The contractor 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 contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor 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.

(7) In the event of the contractor'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 contractor 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.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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 contractor 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 contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant

agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) Incorporation by reference. The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Deputy Assistant Secretary may designate.

(e) Incorporation by operation of the order. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings. [43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997; 79 FR 72993, Dec. 9, 2014; 80 FR 54934, September 11, 2015]

II.

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.

III.

Section 109 of the Housing and Community Development Act of 1974

The Contractor 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.

IV.

Section 504 Rehabilitation Act of 1973, as Amended

The Contractor 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.

V.

Age Discrimination Act of 1975

The Contractor 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.

VI.

"Section 3" Compliance in the Provision of Training, Employment and Business Opportunities (Limited to contracts greater than \$100,000)

a) The work to be performed under this contract is subject to the requirements of section 3 of the Federal Emergency Management Administration 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 FEMA assistance or FEMA-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 FEMA assistance for housing.

b) The parties to this contract agree to comply with FEMA's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

c) The Contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor'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 Contractor 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

e) 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 Contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

f) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor 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 contractor's obligations under 24 CFR part 135.

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

h) 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 Agreement 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).

VII.

Section 503 of the Rehabilitation Act (the "Act") - Handicapped Affirmative Action for Handicapped Workers

a) Consultant will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Consultant agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising layoff or termination rates of pay or other forms of compensation, and selection for training, including apprenticeship.

b) Consultant agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

c) In the event of Consultant's non-compliance with requirements of this clause, actions for non-compliance may be taken in accordance with rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

d) Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the director, provided by or through the

contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

e) Consultant will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973 and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

f) Consultant will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary Issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor with respect to any subcontract or purchase order as the director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

VIII.

Interest of Members of Client

No member of the governing body of Client and no other officer, employee, or agent of Client who exercises any functions or responsibilities in connection with the planning and carrying out of the Program, shall have any personal financial interest, direct or indirect, in this Contract and Consultant shall take reasonably appropriate steps to assure compliance.

IX.

Interest of Other Local Public Officials

No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connections with the planning and carrying out of the Program, shall have any personal financial interest, direct or indirect, in this Contract; and Consultant shall take appropriate steps to assure compliance.

X.

Interest of Consultant and Employees

Consultant covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Contract, no person having any such interest shall be employed.

XI.

Debarment and Suspension (Executive Orders 12549 and 12689)

The Consultant 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 Consultant. The

Consultant 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.”

XII.

Copyrights and Rights in Data

FEMA has no regulations pertaining to copyrights or rights in data as provided in 24 CFR 85.36. FEMA requirements, Article 45 of the General Conditions to the Contract for Construction (form FEMA-5370) requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this contract will identify any applicable patents to enable the general contractor to fulfill the requirements of the construction contract.

XIII.

Clean Air and Water.

(Applicable to contracts in excess of \$100,000)

Due to 24 CFR 85.36(i)(12) and federal law, the Design Professional shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 USC § 7607, section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), on all contracts, subcontracts, and sub grants of amounts in excess of \$100,000.

XIV.

Energy Efficiency

Pursuant to Federal regulations (24 C.F.R 85.36(i)(13)) and Federal law, except when working on an Indian housing authority Project on an Indian reservation, the Design Professional shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et. seq.).

XV.

Retention and Inspection of Records

Pursuant to 24 CFR 85.26(i)(10) and (11), access shall be given by the Design Professional to the Owner, FEMA, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three years after the Owner or Design Professional and other sub grantees make final payments and all other pending matters are closed.