



NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties do mutually agree as follows:

1. **Recitals.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.
2. **Scope of Services.** Consultant shall render services to District as provided in Consultant's Proposal attached hereto as "Exhibit A" and incorporated herein by reference (the "Services"), in accordance with Fort Bend County RFP 25-066 – Mussel Survey and Relocation Services for Fort Bend County Drainage District.
3. **Time for Performance.** Time for performance for the Services provided under this Agreement shall begin with Consultant's receipt of Notice to Proceed and shall end no later than November 30, 2026. Consultant shall complete such tasks described in the Scope of Services, within this time or within such additional time as may be extended by District.
4. **Compensation and Payment Terms.**

Consultant's fees for the Services shall be calculated at the rate(s) set forth in Exhibit "A" attached hereto. The Maximum Compensation to Consultant for the Services performed under this Agreement is Six Hundred Twenty-Four Thousand, Five Hundred Fourteen and 15/100 Dollars (\$624,514.15). In no event shall the amount paid by District to Consultant under this Agreement exceed said Maximum Compensation without an approved change order.

- (a) Consultant understands and agrees that the Maximum Compensation stated is an all-inclusive amount and no additional fee, cost or reimbursed expense shall be added whatsoever to the fees stated in the attached Exhibit "A."
- (b) District will pay Consultant based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Consultant shall submit to District staff person designated by the District, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to District. Consultant shall submit invoices no more frequently than on a monthly basis. 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. District shall pay each such approved invoice within thirty (30) calendar days.
- (c) Accrual and payment of interest on any overdue payments assessed by Consultant, if any, shall be governed by Chapter 2251 of the Texas Government Code.

- (d) Consultant understands and agrees that District's obligation to make any payment(s) hereunder is dependent upon Consultant's completion of the Services in a timely, good, and professional manner and in accordance with the performance representations made in Section 25 of this Agreement. Therefore, District reserves the right to withhold payment pending verification of satisfactory work performed.
5. **Limit of Appropriation.** Consultant understands and agrees that the Maximum Compensation for the performance of the Services within the Scope of Services described in Section 2 above is \$624,514.15. In no event shall the amount paid by District under this Agreement exceed the Maximum Compensation without a District approved change order. Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that District shall have available the total maximum sum of \$624,514.15 specifically allocated to fully discharge any and all liabilities District may incur under this Agreement. 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 District may become liable to pay Consultant under this Agreement shall not under any conditions, circumstances, or interpretations thereof exceed \$624,514.15.
6. **Non-appropriation.** Consultant understands and agrees that in the event no funds or insufficient funds are appropriated by the District under this Agreement, District shall immediately notify Consultant in writing of such occurrence and the Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were received or made without penalty, liability or expense to the District. In no event shall said termination of this Agreement or District's failure to appropriate said funds be deemed a breach or default of this Agreement or create a debt by District in any amount(s) in excess of those previously funded.
7. **Taxes.** Consultant understands and agrees that District is a governmental entity and political subdivision of the state of Texas, and as such, is exempt from payment of any sales and use taxes. District shall furnish evidence of its tax-exempt status upon written request by Consultant.
8. **Insurance.** Prior to commencement of the Services, Consultant shall furnish District 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 District. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by District. 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:

- (a) Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
- (b) 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.
- (c) 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.
- (d) Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- (e) Professional Liability insurance with limits not less than \$1,000,000.

District and members of the Fort Bend County Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of Consultant, excluding Professional Liability, shall contain a waiver of subrogation in favor of District.

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 this Agreement 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 the work under this Agreement is completed.

Consultant shall not commence any portion of the work under this Agreement until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by District.

No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to District.

Approval of the insurance by District shall not relieve or decrease the liability of the Consultant.

9. **Indemnity.** PURSUANT TO SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS DISTRICT, ITS OFFICIALS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, LIABILITY, AND COSTS, INCLUDING THE REIMBURSEMENT OF REASONABLE ATTORNEY FEES, ARISING OUT OF OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT OR CONSULTANT'S AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL. IN ADDITION, CONSULTANT SHALL FURTHER PROCURE AND MAINTAIN LIABILITY INSURANCE WITH COVERAGE AS PROVIDED IN SECTION 8 OF THIS AGREEMENT.

CONSULTANT SHALL TIMELY REPORT TO DISTRICT ALL SUCH MATTERS ARISING UNDER THE INDEMNITY PROVISIONS ABOVE. UPON THE RECEIPT OF ANY CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN, OR JUDGMENT, AND NO LATER THAN THE FIFTEENTH DAY OF EACH MONTH, CONSULTANT SHALL PROVIDE DISTRICT WITH A WRITTEN REPORT ON EACH 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 DISTRICT REQUIRED BY CONSULTANT IN THE DEFENSE OF EACH MATTER. 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 RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, OR ITS AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL, CONSULTANT SHALL, NEVERTHELESS, 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 SAID ACTS AND/OR OMISSIONS OF CONSULTANT ARE NOT AT ISSUE IN THE MATTER.

THE INDEMNITY PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT HOWEVER CAUSED, AND NO PAYMENT, PARTIAL PAYMENT, OR ISSUANCE OF CERTIFICATION OF COMPLETION OF THE SERVICES UNDER THIS AGREEMENT BY DISTRICT, WHETHER IN WHOLE OR IN WHOLE OR IN PART, SHALL WAIVE OR RELEASE ANY OF THE PROVISIONS OF THIS SECTION.

10. **Public Information Act.** Consultant expressly acknowledges and agrees that District is a public entity and as such, is subject to the provisions of the Texas Public Information Act under Chapter 552 of the Texas Government Code. In no event shall District be liable to Consultant for release of information pursuant to Chapter 552 of the Texas Government Code or any other provision of law. Except to the extent required by law or as directed by the Texas Attorney General, District agrees to maintain the confidentiality of information provided by Consultant expressly marked as proprietary or confidential.

District shall not be liable to Consultant for any disclosure of any proprietary or confidential information if such information is disclosed under Texas law or at the direction of the Texas Attorney General. Consultant further acknowledges and agrees that the terms and conditions of this Agreement are not proprietary or confidential information.

11. **Compliance with Laws.** Consultant shall comply with all federal, state, and local laws, statutes, ordinances, rules, regulations, and the 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. Consultant, in providing all services hereunder, further agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
12. **Independent Contractor.** 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. 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 District and shall not be entitled to any of the privileges or benefits of District employment.
13. **Use of Customer Name.** Consultant may use District's name without District's prior written consent only in Consultant's customer lists. Any other use of District's name by Consultant must have the prior written consent of District.
14. **District/District Data.** Nothing in this Agreement shall be construed to waive the requirements of Section 205.009 of the Texas Local Government Code.
15. **Personnel.** Consultant represents that it presently has, or is able to obtain adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that Consultant shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of District, to perform the Services when and as required and without delays.

All employees of Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee or agent of Consultant who, in District's opinion, is incompetent or by his conduct becomes detrimental to providing Services pursuant to this Agreement, shall, upon request of District, immediately be removed from association with the Services required under this Agreement.

When performing Services on-site at District's facilities, Consultant shall comply with, and will require that all Consultant's Personnel comply with, all applicable rules, regulations and known policies of District that are communicated to Consultant in writing, including

security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by District to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

16. **Confidential and Proprietary Information.** 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 District. Any and all information of any form obtained by Consultant or its employees or agents from District in the performance of this Agreement shall be deemed to be confidential information of District ("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.

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 District 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 District in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Consultant shall advise District 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 District in seeking injunctive or other equitable relief in the name of District or Consultant against any such person. Consultant agrees that, except as directed by District, 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 District's request, Consultant will promptly turn over to District all documents, papers, and other matters in Consultant's possession which embody Confidential Information.

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 District that is inadequately compensable in damages. Accordingly, District 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 District and are reasonable in scope and content.

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

17. **Ownership and Reuse of Documents.** All work product and data produced or developed under this Agreement by Consultant including any documents, data, notes, reports, research, graphic presentation materials, and any other related material (collectively, "Materials"), shall at all times be the property of District. District, at all times, shall have a right of access to the Materials. Consultant shall promptly furnish and deliver all such Materials to District on request. Notwithstanding the foregoing, Consultant shall bear no liability or responsibility for Materials that have been modified post-delivery to District or used by District for a purpose other than that for which they were prepared under this Agreement.
  
18. **Inspection of Books and Records.** Consultant shall permit District, or any duly authorized agent of District, to inspect and examine the books, records, information, and documentation (collectively, "Records") of Consultant which relate to the Services provided under this Agreement for the purposes of making audits, examinations, excerpts, copies, and transcriptions. Consultant shall maintain all such Records in a readily available state and location, reasonably accessible to District or their authorized representatives. District's right to inspect such books and records shall survive the termination of this Agreement for a period of four (4) years, or until any litigation concerning any of the Services has been satisfactorily resolved, whichever occurs later. **CONSULTANT SHALL NOT DESTROY OR DISCARD ANY RECORDS REASONABLY RELATED TO THIS AGREEMENT OR THE SERVICES, UNLESS THE TIME PERIOD FOR MAINTAINING THE SAME HAS EXPIRED.**
  
19. **Termination.**
  - (a) Without Cause. District, in its sole discretion, and without prejudice to any other remedy to which it may be entitled to at law or in equity, may terminate this Agreement, in whole or in part, without cause, upon thirty (30) days prior written notice to Consultant.
  
  - (b) With Cause. District, in its sole discretion, and without prejudice to any other remedy to which it may be entitled to at law or in equity, may terminate this Agreement, in whole or in part, with cause, for any of the following reasons, each of which shall constitute a material breach and "Default" of the Agreement:

- (1) Consultant fails to perform any portion of the Scope of Services within the timeframe(s) provided under this Agreement.
  - (2) Consultant fails to comply with District's documentation and reporting requirements, terms and requirements of this Agreement, or applicable federal, state, or local laws and regulations.
  - (3) Non-performance and suspension of the Agreement by Consultant that exceeds thirty (30) calendar days due to Force Majeure.
  - (4) Consultant fails to perform any obligation under this Agreement or as required by law, ordinance, or regulation and such failure creates an imminent threat to the public health and/or safety.
  - (5) Consultant otherwise 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.
  - (6) District shall notify Consultant in writing of the alleged Default in reasonable detail ("Notice"). Upon receipt of said Notice, Consultant shall have opportunity to cure such Default within the time specified in the Notice by District. If Consultant fails to cure such Default within such time, and to the reasonable satisfaction of District, then District may elect to terminate this Agreement for cause.
  - (7) If, after termination of the Agreement by District 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 hereunder shall be the same as if the termination had been issued by District without cause in accordance with this Agreement.
- (c) Upon termination of this Agreement for any reason, Consultant shall cease all work and activity for the Services by the date specified by District and shall not incur any new obligations or perform any additional services for the work performed hereunder beyond the specified date. District shall compensate Consultant in accordance with Section 4, above, for such work provided by Consultant under this Agreement prior to its termination and which has not been previously presented for payment by Consultant to District.
- (d) If District 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.

20. **Force Majeure.** In the event either Party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, then, within a reasonable time after the occurrence of such event, but no later than ten (10) calendar days after, the Party whose obligations are so affected (the “Affected Party”) thereby shall notify the other in writing stating the nature of the event and the anticipated duration. The Affected Party’s obligations under this Agreement shall be suspended during the continuance of any delay or inability caused by the event, but for no longer period. The Affected Party shall further endeavor to remove or overcome such delay or inability as soon as is reasonably possible.

For purposes of this Agreement, Force Majeure includes, but is not limited to: acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America or the State of Texas or any civil or military authority other than a Party to this Agreement, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, severe storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and any other incapacities of any Party, similar to those enumerated, which are not within the control of the Party claiming such inability, which such Party could not have avoided by the reasonable exercise of due diligence and care.

21. **Assignment.** Consultant shall not assign this Agreement to another party without the prior written consent of District, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported or attempted assignment or transfer in violation of this Section shall be null and void.
22. **Successors and Assigns Bound.** District and Consultant each bind themselves and their successors and assigns to the other Party and to the successors and assigns of such other Party, with respect to all covenants of this Agreement.
23. **Publicity.** Contact with citizens of Fort Bend County, media outlets, or other governmental agencies shall be the sole responsibility of District. Under no circumstances, whatsoever, shall Consultant release any material or information developed or received during the performance of Services hereunder unless Consultant obtains the express written approval of District or is required to do so by law.
24. **Notice.** Any and all notices required or permitted under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, or personally delivered to the following addresses:

**If to District:** Fort Bend County Drainage District  
Attn: Chief Engineer  
301 Jackson Street  
Richmond, Texas 77469

**And**

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

**If to Consultant:** Terracon Consultants, Inc  
5307 Industrial Oaks Blvd, Ste 160  
Austin, Texas 78735

Within five (5) business days of the Effective Date of this Agreement, each Party to this Agreement shall designate in writing to the other Party one person and one alternate person to be that Party's designated spokesperson for communications between the Parties.

25. **Standard of Care.** Pursuant to Section 271.904 of the Texas Local Government Code, Consultant represents to District that Consultant has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession ("Professionals") practicing in the greater Houston metropolitan area. Consultant shall provide the Services to District with the same professional skill and care ordinarily provided by such Professionals under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional.
26. **Travel Policy.** Mutually approved travel and mileage expenses incurred in the performance of the Services hereunder will be reimbursed to Consultant only to the extent that those costs do not exceed Fort Bend County travel reimbursement allowances. A copy of District's Travel Policy with those reimbursement limits shall be provided to Consultant upon request.
27. **Arbitration, Litigation Waiver, and Attorney Fees.** District does not agree to submit disputes arising out of this Agreement to binding arbitration nor does District agree to pay any and/or all attorney fees incurred by Consultant in any way associated with this Agreement. Therefore, any references in Consultant's Proposal to binding arbitration, waiver of a right to litigate a dispute, or payment of attorney fees are hereby deleted.
28. **No Waiver of Jury Trial.** District does not agree that all disputes (including any claims or counterclaims) arising from or related to this Agreement shall be resolved without a jury. Therefore, any references in Consultant's Proposal to District's waiver of jury trial are hereby deleted.

29. **Limitations.** Limitations for the right to bring an action, regardless of form, shall be governed by the applicable laws of the State of Texas, and any provisions to the contrary in Consultant's Proposal are hereby deleted.
30. **Indemnification by District.** **CONSULTANT UNDERSTANDS AND AGREES THAT UNDER THE TEXAS CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, DISTRICT CANNOT ENTER INTO AN AGREEMENT WHEREBY DISTRICT AGREES TO INDEMNIFY OR HOLD HARMLESS ANOTHER PARTY. THEREFORE, ANY AND ALL REFERENCES IN CONSULTANT'S PROPOSAL TO DISTRICT DEFENDING, INDEMNIFYING, OR HOLDING OR SAVING HARMLESS CONSULTANT OR ANY OTHER PARTY, FOR ANY REASON WHATSOEVER, ARE HEREBY DELETED.**
31. **Entire Agreement and Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes all previous agreements, written or oral, pertaining to the subject matter of this Agreement. Any amendment to this Agreement must be in writing and signed by each Party to come into full force and effect. **IT IS ACKNOWLEDGED BY CONSULTANT THAT NO OFFICER, AGENT, EMPLOYEE, OR REPRESENTATIVE OF DISTRICT HAS ANY AUTHORITY TO CHANGE THE TERMS OF THIS AGREEMENT OR ANY ATTACHED EXHIBITS HERETO UNLESS EXPRESSLY AUTHORIZED BY THE FORT BEND COUNTY COMMISSIONERS COURT.**
32. **Conflict.** In the event there is a conflict among the terms of this document entitled "Agreement for Mussel Survey and Relocation Services" and the terms of Consultant's Proposal or any other exhibit attached hereto, the terms of this document shall prevail with regard to the conflict.
33. **Understanding Fair Construction.** By execution of this Agreement, the Parties acknowledge that they have read and understood each provision, term, and obligation contained herein. This Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting Party than the non-drafting Party.
34. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
35. **No Waiver of Immunity.** Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver or surrender by District of its governmental powers or immunity under the Texas Constitution or the laws of the state of Texas.

36. **Applicable Law and Venue.** This Agreement shall be construed according to the laws of the state of Texas. Venue for any claim arising out of or relating to the subject matter of this Agreement shall lie in a court of competent jurisdiction of Fort Bend County, Texas.
37. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas law and are included by District regardless of content For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Consultant hereby verifies that Consultant and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
- (a) Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, Consultant is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
  - (b) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
  - (c) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
  - (d) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.
38. **Human Trafficking. BY ACCEPTANCE OF THIS AGREEMENT, CONSULTANT ACKNOWLEDGES THAT DISTRICT IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO DISTRICT FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.**

39. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of the Agreement.
40. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and shall have the same force and effect as the use of manual signatures.
41. **Certification.** By his or her signature below, each signatory individual certifies that he or she is the properly authorized person or officer of the applicable Party hereto and has the requisite authority necessary to execute this Agreement on behalf of such Party, and each Party hereby certifies to the other that it has obtained the appropriate approvals or authorizations from its governing body as required by law.
42. **Grant Funding.** Consultant understands that and acknowledges that this Agreement may be totally or partially funded with federal and/or state funds. Consultant represents and warrants that it is and will remain in compliance with all applicable federal and/or state provisions, including those attached as Exhibit "B" attached hereto and incorporated herein for all purposes.

*{EXECUTION PAGE FOLLOWS}*

IN WITNESS WHEREOF, and intending to be legally bound, District and Consultant hereto have executed this Agreement to be effective on the date signed by the last Party hereto.

**FORT BEND COUNTY DRAINAGE DISTRICT**

**TERRACON CONSULTANTS, INC.**

\_\_\_\_\_  
KP George, Fort Bend County Judge

*Jesse M. Kocher*

\_\_\_\_\_  
Authorized Agent – Signature

Jesse Kocher

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Agent- Printed Name

Director Regional Operations

**ATTEST:**

\_\_\_\_\_  
Title

10/24/2025

\_\_\_\_\_  
Date

\_\_\_\_\_  
Laura Richard, District Clerk

**APPROVED:**

*Mark Vogler*

\_\_\_\_\_  
Mark Vogler, Chief Engineer  
Drainage District

**AUDITOR'S CERTIFICATE**

I hereby certify that funds in the amount of \$ \_\_\_\_\_ are available to pay the obligation of the Fort Bend County Drainage District within the foregoing Agreement.

\_\_\_\_\_  
Robert Ed Sturdivant, District Auditor

I:\AGREEMENTS\2026 Agreements\Drainage\Terracon Consultants, Inc (26-Drng-100096)\Agmt for Professional Consultanting Services (Drainage District).docx rb-10.8.25

# EXHIBIT A

(Proposal Follows Behind)



5307 Industrial Oaks Blvd., Ste. 160  
Austin, TX 78735  
**P** (512) 442-1122  
**F** (512) 442-1181  
**Terracon.com**

August 18, 2025

Fort Bend County Drainage District  
1124 Blume Road  
Richmond, Texas 77471

Attn: Jacob Clayton, P.G., CFM  
Jacob.Clayton@fortbendcountytexas.gov  
(281)-342-2863

**RE: Proposal for Freshwater Mussel Survey and Relocation Services (RFP 25-066)**

Four Brazos River Stabilization Projects  
Fort Bend County, Texas  
Terracon Proposal No. P96257297

Dear Mr. Clayton:

Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit this proposal to the Fort Bend County Drainage District (FBCDD, Client) for freshwater mussel survey and relocation services associated with four Brazos River stabilization projects in Fort Bend County. These projects include, (1) Memorial Park in Sugar Land, (2) Levee Improvement District No. 10 (LID 10), (3) Simonton Pinch Point, and (4) I-59/I-69 Evacuation Route.

For a detailed description of our qualifications and project approach, please refer to Terracon's Request for Proposals (RFP 25-066) response dated June 17, 2025.

Our team holds the state and federal scientific collection permits required for these projects and maintains strong working relationships with key regulatory agencies, including the U.S. Fish and Wildlife Service (USFWS) and the Texas Parks and Wildlife Department (TPWD). These relationships help ensure a streamlined permitting process, effective coordination, and uninterrupted project execution.

We recognize the ecological significance of the project areas and will implement a cost-effective, efficient approach that balances regulatory compliance with scientific rigor. Our extensive experience with the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program supports FBCDD's funding structure and compliance requirements.

The following sections outline Terracon's project understanding, proposed scope of services, compensation, and project timeline. If this proposal meets with your approval,

Terracon is prepared to execute a project agreement specific to this proposal to authorize the stated work.

## **A. Project Understanding**

Terracon understands that the FBCDD is seeking freshwater mussel survey and relocation services in support of four river stabilization projects along the Brazos River in Fort Bend County. Terracon has reviewed the available information for each project site and developed the following project understanding:

- **Memorial Park in Sugar Land**

Riverbank erosion along this stretch poses a threat to Memorial Park, University Boulevard, a drainage ditch ("H"), a municipal fire station, Fort Settlement Middle School, and nearby residential areas protected by the Fort Bend County levee system. River stabilization efforts in this area could potentially impact approximately 0.72 miles of riverbank.

- **Levee Improvement District No. 10 (LID 10)**

This project involves the repair and reinforcement of levee infrastructure on the northwest side of LID 10, north of Highway 59. River stabilization activities at this location could affect approximately 0.56 miles of river channel.

- **Simonton Pinch Point**

This project aims to prevent the confluence of two river segments by placing longitudinal peak toe stones along the riverbed to stabilize banks and reduce erosion. Stabilization efforts here may impact up to 2.02 miles of river.

- **I-59/I-69 Evacuation Route**

Ongoing erosion near the I-59/I-69 bridges threatens a critical evacuation route for residents of Galveston and Brazoria Counties. River stabilization in this area is expected to impact approximately 1.64 miles of the river.

The segment of the Brazos River encompassing these four project areas is classified as a Group 2 stream by the USFWS, which is indicative of a relatively high likelihood of native freshwater mussel presence. In addition, species protected under the Texas Parks and Wildlife Code and the Endangered Species Act (ESA), including Texas Fawnsfoot, may be present within this segment.

FBCDD is seeking a qualified environmental consulting firm to:

- Coordinate with USFWS, TPWD, and other relevant regulatory agencies;
- Secure necessary survey and relocation permits;
- Develop and implement a site-specific safety plan;
- Conduct a comprehensive freshwater mussel survey in accordance with current agency protocols; and,
- Prepare and execute a relocation plan, if mussels are identified within the project areas.

## **B. Scope of Services**

### **Task 1: Project Management and Site Safety Plan Development**

Terracon will hold regular client update and logistics meetings throughout the project life cycle to ensure timelines, deliverables, and client expectations are met. The frequency of these meetings will be determined by FBCDD; however, at a minimum, Terracon will conduct a pre-task planning meeting and monthly project update meetings for each of the four projects. Terracon will coordinate internally and with the client to develop a site-specific safety plan (including a dive safety plan) for each project. A project manager will serve as the primary client contact, overseeing project logistics, safety requirements, and deliverables. In addition, a project executive will remain engaged throughout the project to ensure that the safety standards of both the client and Terracon are met, and to oversee quality control for fieldwork and deliverables.

### **Task 2: ARRPs Development and Agency Coordination**

Terracon will utilize provided and publicly available desktop information to develop Aquatic Resource Relocation Plans (ARRPs) and submit associated "Applications for Permit to Introduce Fish, Shellfish or Aquatic Plants into Public Waters" (AIPs) prior to the survey and relocation effort. The ARRPs and AIPs for each project will be submitted concurrently to TPWD and USFWS for review and approval. This will allow for relocation to commence immediately (during the same field deployment) should non-listed mussels be identified during surveys.

#### Listed Mussel Salvage Coordination

In the event federally-listed species are identified during Task 3 (as described below), the project team would complete the instream survey and relocation of common mussel species, recording the habitat and assemblage data required for USFWS coordination and the implementation of suitable salvage survey protocol. The salvage survey protocol will generally follow the avoidance and minimization measures outlined in the Biological Opinion and associated Incidental Take Statement (ITS), previously prepared as a result of consultation between Fort Bend County and USFWS. However, the spatial extent of the salvage area, and therefore the specific level of field effort required, will be based on findings from Task 3 and coordination with USFWS.

### **Task 3: Instream Survey and Relocation**

Terracon will perform instream survey and relocation of native freshwater mussels within each of the four project areas. This work will be performed in accordance with stipulations outlined in the approved ARRPs. A detailed report outlining current habitat conditions and

results of the survey and relocation effort, and providing a set of detailed maps, will be submitted within 45 days following the conclusion of fieldwork for each project.

#### Task-specific Assumptions

- Survey and relocation efforts are to be conducted between the months of April through November, or when water temperatures are above 50°F.
- Proposed timelines are dependent on appropriate river flow conditions as these conditions pertain to safety (i.e., field deployments will not be conducted during high-flow events).

### **Contingent Task 4: Listed Mussel Salvage and Reporting**

If needed per the results of the instream survey (Task 3), permitted biologists will conduct salvage and relocation operations following guidelines outlined in the USFWS and TPWD approved ARRP, and per procedural guidelines outlined in the *Texas Freshwater Mussel Survey Protocol*<sup>1</sup> as well as during project-specific coordination with USFWS. A detailed report outlining current habitat conditions and results of the salvage effort, and providing a set of detailed maps, will be submitted within 45 days following the conclusion of fieldwork for each project.

#### Task-specific Assumptions

- Survey and relocation efforts are to be conducted between the months of April through November, or when water temperatures are above 50°F.
- The need for listed mussel salvage for the projects will depend on the findings from Task 3. This mussel salvage effort will require USFWS coordination and field deployments separate from that described in Task 3. Given seasonal freshwater mussel survey restrictions, it may be required that Task 4 field efforts are performed at the onset of the 2026 survey season.
- Proposed timelines are dependent on appropriate river flow conditions with regard to safety (i.e., field deployments will not be conducted during high-flow events).
- Formal consultation with USFWS under Section 7 of the ESA is not included in this Scope of Services.
- The cost estimates for this task assume that salvage efforts will need to occur within a maximum of 60 percent of the four project areas following USFWS coordination. This is a conservative estimate based on best professional judgement and previous experience within the impacted waterbody.

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<sup>1</sup> USFWS and TPWD. April 2024. 2024 Texas Freshwater Mussel Survey Protocol. [https://www.fws.gov/sites/default/files/documents/2024-04/2024\\_texas\\_freshwater\\_mussel\\_survey\\_protocol\\_0.pdf](https://www.fws.gov/sites/default/files/documents/2024-04/2024_texas_freshwater_mussel_survey_protocol_0.pdf)



## C. Compensation

Our estimated cost for the above-described services will be time-and-materials based with a not-to-exceed (NTE) amount of **\$624,514.15**. This cost estimate assumes that federally listed mussels are identified, and salvage efforts are required for each project. If no federally listed mussels are identified during the instream survey and relocation for the four projects and salvage efforts are not required, estimated costs are **\$317,933.00**. The proposed fees on a per-project basis are provided below. Please reference the fee proposal provided as Attachment A for a detailed summary of costs for each of the four projects.

Project	Total (without listed mussels)	Total (with listed mussels)
Memorial Park in Sugarland	\$58,918.00	\$125,328.32
LID 10	\$52,402.00	\$107,795.39
Simonton Pinch Point	\$134,656.00	\$248,626.50
I 59/I 69 Evacuation Route	\$72,017.00	\$142,764.94
<b>Total</b>	<b>\$317,993.00</b>	<b>\$624,514.15</b>

The stated fee is valid only for ninety (90) days after the date of this proposal. Once initiated, should completion of the proposed Scope of Services be delayed by the client for a period exceeding 12 months, additional charges may apply. Additional services requested or approved by the client, such as consultation or other work that is not specifically included in the Scope of Services described in this proposal, will be performed under a supplemental agreement for services.

## D. Schedule

Please note that relocations must be conducted within the same year as the start of instream construction. If instream activities have not commenced prior to July 1st of the next year, additional relocation efforts may be requested just prior to construction activities depending on the results of earlier relocation efforts. To this extent practicable,

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Terracon will conduct the tasks outlined below concurrently for each project. Terracon will perform the proposed services as presented above according to the schedule below:

Task	Activity	Schedule
1	Project management	Throughout project lifecycle
	Site safety plan development	Prior to commencement of field efforts for each project
2	Draft ARRPs and AIP (for each project)	15 business days following notice to proceed (NTP)
	TPWD and USFWS ARRPs review and permit issuance	Agency review completed within 20 business days following document submission
	Salvage survey coordination with USFWS and TPWD	Within 30 calendar days following completion of Task 3 field efforts
3	Instream survey and relocation	Fieldwork to occur following issuance of appropriate permit and prior to November 30. Anticipated to take 6 to 8 weeks to complete the four projects.
	Draft Freshwater Mussel Relocation Report (for the four projects)	Within 45 business days following completion fieldwork for each project
	Final Freshwater Mussel Relocation Report (for each project)	Within 15 business days following receipt of comments on draft
4	Listed Mussel Salvage	Field efforts to occur following USFWS coordination and approval of survey plan and within the freshwater mussel survey season (April 1 to November 30)
	Draft Freshwater Mussel Salvage Report (for the four projects)	Within 45 business days following completion fieldwork for each project
	Final Freshwater Mussel Salvage Report (for each project)	Within 15 business days following receipt of comments on draft

## **E. Reliance and Scope Limitations**

The reports will be prepared for the exclusive use and reliance of the Client and relevant federal agencies. Reliance by any other party is prohibited without the written authorization of the client and Terracon. Reliance on reports by the client and all authorized parties will be subject to the terms, conditions, and limitations stated in the mutually executed agreement, sections of this proposal incorporated therein, and report documents.

The environmental services described above will be performed in accordance with that level and care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. Except for the standard of care previously stated, consultant makes no warranties or guarantees, express or implied, relating to consultant's services and consultant disclaims any implied warranties or warranties imposed by law, including warranties of merchantability and fitness for a particular purpose. The stated and inherent limitations of the Scope of Services proposed herein must be considered when the user formulates opinions as to potential regulatory requirements associated with development of the site.

We hope that you will find our proposal to be comprehensive in its approach, reflective of our working knowledge of regulatory requirements, and cost competitive from a market perspective. We look forward to the opportunity to support this project. Should you have questions regarding this submittal, please contact me via phone at (512) 796-6963 or via email at [jeff.jenkerson@terracon.com](mailto:jeff.jenkerson@terracon.com).

Sincerely,

**Terracon Consultants, Inc.**



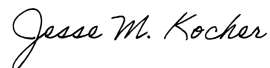
Jeff T. Jenkerson, MS, CWB  
Senior Scientist  
Natural Resources



S. Elizabeth Valenzuela  
Environmental Planning Group Manager  
Authorized Project Reviewer



Christopher Amy  
Manager Regional Service Line  
Environmental Planning



Jesse M. Kocher  
Director Regional Operations

Enclosure: Attachment A – Fee Proposal

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## **Attachment A**

### **Fee Proposal**

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Fee Proposal Summary			
Project	Labor	Direct Expense	Total
Memorial Park	\$ 106,882.32	\$ 18,446.00	\$ 125,328.32
LID No. 10	\$ 94,493.39	\$ 13,302.00	\$ 107,795.39
Simonton Pinch Point	\$ 205,220.50	\$ 43,406.00	\$ 248,626.50
I 59/I 69 Evacuation Route	\$ 119,573.94	\$ 23,190.00	\$ 142,763.94
<b>TOTAL</b>	<b>\$ 526,170.15</b>	<b>\$ 98,344.00</b>	<b>\$ 624,514.15</b>

Memorial Park [0.72 linear miles]										
STAFF MEMBER	UNIT	COST/UNIT	Task 1: Project Management and Site Safety Plan Development		Task 2: ARRP Development and Agency Coordination		Task 3: Instream Survey and Relocation		Contingent Task 4: Listed Mussel Salvage and Reporting	
			NUMBER	SUBTOTAL	NUMBER	SUBTOTAL	NUMBER	SUBTOTAL	NUMBER	SUBTOTAL
Project Executive	Hours	220	16	3,520	2	440	8	1,760	8	1,760
Project Manager/Lead Permitted Malacologist	Hours	180	24	4,320	8	1,440	16	2,880	40	7,200
Lead Diver/Permitted Malacologist (Sub-contractor Bio-West)	Hours	206	0	0	0	0	20	4,120	30	6,180
Diver/Permitted Malacologist (Sub-contractor Bio-West)	Hours	134	0	0	8	1,072	45	6,030	50	6,700
Senior Staff Scientist/Diver	Hours	127	0	0	8	1,016	50	6,350	35	4,445
Staff Scientist/Diver	Hours	113	0	0	0	0	8	908	35	3,971
Field Scientist/Diver I Environmental Technician/Diver II	Hours	100	0	0	0	0	90	9,000	140	14,000
GIS Analyst	Hours	78	0	0	0	0	90	6,979	140	10,856
Administrative Assistant I	Hours	114	1	114	4	457	4	457	2	228
	Hours	85	8	681	0	0	0	0	0	0
<b>Labor Sub-Total</b>				<b>\$ 8,635</b>		<b>\$ 4,425</b>		<b>\$ 38,483</b>		<b>\$ 55,340</b>
<b>Direct Expense</b>										
Mileage	Miles	0.87	0	0	0	0	900	783	900	783
Lodging	Daily	140	0	0	0	0	24	3,360	36	5,040
Supplies/Postage	Each	200	0	0	0	0	0	0	2	400
Scuba Equipment	Daily	400	0	0	0	0	4	1,600	6	2,400
Per Diem	Daily	68	0	0	0	0	24	1,632	36	2,448
<b>Direct Expenses Sub-Total</b>				<b>\$ -</b>		<b>\$ -</b>		<b>\$ 7,375</b>		<b>\$ 11,071</b>
<b>TASK TOTALS</b>				<b>\$ 8,635</b>		<b>\$ 4,425</b>		<b>\$ 45,858</b>		<b>\$ 66,411</b>
<b>PROJECT TOTAL (No Listed Mussels)</b>										<b>\$ 58,918</b>
<b>PROJECT TOTAL (Listed Mussels)</b>										<b>\$ 125,328</b>

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Levee Improvement District No. 10 [0.56 linear miles]										
			Task 1: Project Management and Site Safety Plan Development		Task 2: ARRP Development and Agency Coordination		Task 3: Instream Survey and Relocation		Contingent Task 4: Listed Mussel Salvage and Reporting	
STAFF MEMBER	UNIT	COST/UNIT	NUMBER	SUBTOTAL	NUMBER	SUBTOTAL	NUMBER	SUBTOTAL	NUMBER	SUBTOTAL
Project Executive	Hours	220	16	3,520	2	440	8	1,760	8	1,760
Project Manager/Lead Permitted Malacologist	Hours	180	24	4,320	8	1,440	50	9,000	40	7,200
Lead Diver/Permitted Malacologist (Sub-contractor Bio-West)	Hours	206	0	0	0	0	0	0	45	9,270
Diver/Permitted Malacologist (Sub-contractor Bio-West)	Hours	134	0	0	8	1,072	40	5,360	45	6,030
Senior Staff Scientist/Diver	Hours	127	0	0	8	1,019	16	2,037	8	1,019
Staff Scientist/Diver	Hours	113	0	0	0	0	8	908	90	10,211
Field Scientist/Diver I	Hours	98	0	0	0	0	120	11,786	90	8,840
Environmental Technician/Diver II	Hours	78	0	0	0	0	40	3,102	45	3,489
GIS Analyst	Hours	114	1	114	2	228	2	228	0	0
Administrative Assistant I	Hours	85	4	341	0	0	0	0	0	0
<b>Labor Sub-Total</b>				<b>\$ 8,295</b>		<b>\$ 4,199</b>		<b>\$ 34,181</b>		<b>\$ 47,818</b>
<b>Direct Expense</b>										
Mileage	Miles	0.87	0	0	0	0	900	783	900	783
Lodging	Daily	140	0	0	0	0	18	2,520	24	3,360
Supplies/Postage	Each	200	0	0	0	0	0	0	1	200
Scuba Equipment	Daily	400	0	0	0	0	3	1,200	4	1,600
Per Diem	Daily	68	0	0	0	0	18	1,224	24	1,632
<b>Direct Expenses Sub-Total</b>				<b>\$ -</b>		<b>\$ -</b>		<b>\$ 5,727</b>		<b>\$ 7,575</b>
<b>TASK TOTALS</b>				<b>\$ 8,295</b>		<b>\$ 4,199</b>		<b>\$ 39,908</b>		<b>\$ 55,393</b>
<b>PROJECT TOTAL (No Listed Mussels)</b>										<b>\$ 52,402</b>
<b>PROJECT TOTAL (Listed Mussels)</b>										<b>\$ 107,795</b>

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Simonton Pinch Point [2.02 linear miles]										
			Task 1: Project Management and Site Safety Plan Development		Task 2: ARRP Development and Agency Coordination		Task 3: Instream Survey and Relocation		Contingent Task 4: Listed Mussel Salvage and Reporting	
STAFF MEMBER	UNIT	COST/UNIT	NUMBER	SUBTOTAL	NUMBER	SUBTOTAL	NUMBER	SUBTOTAL	NUMBER	SUBTOTAL
Project Executive	Hours	220	16	3,520	2	440	8	1,760	8	1,760
Project Manager/Lead Permitted Malacologist	Hours	180	24	4,320	8	1,440	24	4,320	90	16,200
Lead Diver/Permitted Malacologist (Sub-contractor Bio-West)	Hours	206	2	412	0	0	120	24,720	50	10,300
Diver/Permitted Malacologist (Sub-contractor Bio-West)	Hours	134	2	268	8	1,072	120	16,080	200	26,800
Senior Staff Scientist/Diver	Hours	127	0	0	12	1,528	70	8,914	75	9,551
Staff Scientist/Diver	Hours	113	0	0	0	0	8	908	24	2,723
Field Scientist/Diver I	Hours	98	0	0	0	0	240	23,573	140	13,751
Environmental Technician/Diver II	Hours	78	0	0	0	0	240	18,610	140	10,856
GIS Analyst	Hours	114	2	228	2	228	4	457	2	228
Administrative Assistant I	Hours	85	3	255	0	0	0	0	0	0
<b>Labor Sub-Total</b>				<b>\$ 9,004</b>		<b>\$ 4,708</b>		<b>\$ 99,340</b>		<b>\$ 92,168</b>
<b>Direct Expense</b>										
Mileage	Miles	0.87	0	0	0	0	2,100	1,827	2,100	1,827
Lodging	Daily	140	0	0	0	0	72	10,080	72	10,080
Supplies/Postage	Each	200	0	0	0	0	0	0	1	200
Scuba Equipment	Daily	400	0	0	0	0	12	4,800	12	4,800
Per Diem	Daily	68	0	0	0	0	72	4,896	72	4,896
<b>Direct Expenses Sub-Total</b>				<b>\$ -</b>		<b>\$ -</b>		<b>\$ 21,603</b>		<b>\$ 21,803</b>
<b>TASK TOTALS</b>				<b>\$ 9,004</b>		<b>\$ 4,708</b>		<b>\$ 120,943</b>		<b>\$ 113,971</b>
<b>PROJECT TOTAL (No Listed Mussels)</b>										<b>\$ 134,656</b>
<b>PROJECT TOTAL (Listed Mussels)</b>										<b>\$ 248,627</b>

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I 59/I 69 Evacuation Route [1.64 linear miles]										
			Task 1: Project Management and Site Safety Plan Development		Task 2: ARRP Development and Agency Coordination		Task 3: Instream Survey and Relocation		Contingent Task 4: Listed Mussel Salvage and Reporting	
STAFF MEMBER	UNIT	COST/UNIT	NUMBER	SUBTOTAL	NUMBER	SUBTOTAL	NUMBER	SUBTOTAL	NUMBER	SUBTOTAL
Project Executive	Hours	220	16	3,520	2	440	8	1,760	8	1,760
Project Manager/Lead Permitted Malacologist	Hours	180	24	4,320	8	1,440	16	2,880	40	7,200
Lead Diver/Permitted Malacologist (Sub-contractor Bio-West)	Hours	206	0	0	0	0	20	4,120	20	4,120
Diver/Permitted Malacologist (Sub-contractor Bio-West)	Hours	134	0	0	8	1,072	60	8,040	60	8,040
Senior Staff Scientist/Diver	Hours	127	0	0	8	1,019	70	8,914	75	9,551
Staff Scientist/Diver	Hours	113	0	0	0	0	8	908	24	2,723
Field Scientist/Diver I	Hours	98	0	0	0	0	120	11,786	140	13,751
Environmental Technician/Diver II	Hours	78	0	0	0	0	120	9,305	140	10,856
GIS Analyst	Hours	114	2	228	4	457	4	457	2	228
Administrative Assistant I	Hours	85	8	681	0	0	0	0	0	0
<b>Labor Sub-Total</b>				<b>\$ 8,749</b>		<b>\$ 4,427</b>		<b>\$ 48,169</b>		<b>\$ 58,228</b>
<b>Direct Expense</b>										
Mileage	Miles	0.87	0	0	0	0	900	783	900	783
Lodging	Daily	140	0	0	0	0	36	5,040	42	5,880
Supplies/Postage	Each	200	0	0	0	0	0	0	1	200
Scuba Equipment	Daily	400	0	0	0	0	6	2,400	7	2,800
Per Diem	Daily	68	0	0	0	0	36	2,448	42	2,856
<b>Direct Expenses Sub-Total</b>				<b>\$ -</b>		<b>\$ -</b>		<b>\$ 10,671</b>		<b>\$ 12,519</b>
<b>TASK TOTALS</b>				<b>\$ 8,749</b>		<b>\$ 4,427</b>		<b>\$ 58,840</b>		<b>\$ 70,747</b>
<b>PROJECT TOTAL (No Listed Mussels)</b>										<b>\$ 72,017</b>
<b>PROJECT TOTAL (Listed Mussels)</b>										<b>\$ 142,764</b>

# **EXHIBIT B**

(CDBG-MIT FEDERAL GRANT FUNDING CLAUSES follows behind)

CONTRACT PROVISIONS FOR CONTRACTS UTILIZING FEDERAL AWARDS AS REQUIRED UNDER 2 C.F.R. APPENDIX II TO PART 200.

Contractor understands and acknowledges that this Agreement may be totally or partially funded with federal funds. As a condition of receiving these funds, Contractor represents that it is and will remain in compliance with all federal terms as stated below. These terms flow down to all third party contractors and their subcontracts at every tier that exceed the small purchase threshold as set by the County, unless a particular award term or condition specifically indicates otherwise. The Contractor shall require that these clauses shall be included in each covered transaction at any tier.

1. Remedies and Breach.

Contracts for more than the small purchase threshold currently set by the County at \$50,000 must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

2. Termination.

All contracts of \$10,000 or more must address termination for cause and for convenience by the Contractor including the manner by which it will be effected and the basis for settlement.

3. Equal Employment Opportunity for Non-construction Contracts. 41 CFR §60.14(a).

The following clause applies for all non-construction contracts.

During the performance of this contract, the contractor 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 by the contracting officer 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 consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- (3) The contractor will not discharge 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 it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, 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 the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting 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 non-compliance with the nondiscrimination clauses of this contract or with any of such 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 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 provisions of paragraphs (1) through (8) 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 may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is

threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. Equal Employment Opportunity for all “federally assisted” Construction Contracts. 41 CFR §60.14(b)

The following clause applies for all federally assisted construction contracts where “federally assisted construction contracts” is defined as in 41 C.F.R. Part 60-1.3, or any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee:

During the performance of this contract, the contractor 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 consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge 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 (8) 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.

5. Davis-Bacon Act.

The following clause applies only for prime construction contracts of \$2,000 or more.

As amended (40 U.S.C. 3141–3148), when required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must

include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti- Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

6. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708).

The following clause applies only for contracts of \$100,000 or more that involve the employment of mechanics or laborers.

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Contractor shall include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) in all subcontracts of \$100,000 or more that involve the employment of mechanics or laborers.

7. Rights to Inventions under a Contract or Agreement.

The following clause only applies to contracts where the work is related to the performance of experimental, developmental, or research work funded by federal funds or where the work performed is subject to copyright.

Contractor acknowledges that the federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use (in whole or in part, including in connection with derivative works), for state (or Federal) purposes, all reports, drafts of reports, or other material, data, drawings, computer programs, and codes associated with this Contract, and/or any copyright or other intellectual property rights, and any material or information developed and/or required to be delivered under this Contract. Contractor will comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements".

8. Clean Air.

The following clause applies only for contracts of \$150,000 or more.

The Contractor 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 Contractor 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 appropriate EPA Regional Office. The Contractor agrees it will not use any violating facilities. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities". Contractor will report violations of use of prohibited facilities to the appropriate EPA Regional Office and to state and federal funding agency.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

9. Clean Water.

The following clause applies only for contracts of \$150,000 or more.

The Contractor 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 Contractor 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 appropriate EPA Regional Office. The Contractor agrees it will not use any violating facilities. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities". Contractor will report violations of use of prohibited facilities to the appropriate EPA Regional Office and to state and federal funding agency.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

10. Government-wide Debarment and Suspension.

The following clause applies only for contracts of \$25,000 or more.

The Contractor shall comply and facilitate compliance with the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. 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. Part 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).

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

Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 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.

11. Byrd Anti-Lobbying Amendment.

The following clause applies only for contracts of \$100,000 or more.

Contractor agrees to follow the requirements of 31 C.F.R. Part 21, "New Restrictions on Lobbying." Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Contractor certifies that it and all its subcontractors at every tier will not and have 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, award, including any extension, continuation, renewal, amendment, or modification covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying

Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352.

12. Procurement of Recovered Materials.

The Contractor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

13. Prohibited Telecommunications and Video Surveillance Services and Equipment.

Contractor understands and acknowledges that under 2 CFR Part 200.216, the County is prohibited from using federal funds to procure, obtain, extend or renew a contract to procure or obtain covered telecommunications equipment or services, including telecom equipment produced by Huawei Technologies Company or ZTE Corp. (or subsidiaries or affiliates of such entities).

Contractor, therefore, 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 in the performance of this agreement, it will not provide equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (i.) 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);
- (ii.) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (iii.) 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.

14. Domestic Preferences for Procurements.

As appropriate and to the extent consistent with law, Contractor shall to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products procured with federal funds. For purposes of this clause, (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

CONTRACT PROVISIONS FOR CONTRACTS UTILIZING FEDERAL AWARDS FROM:

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT COMMUNITY DEVELOPMENT BLOCK TX-GLO MITIGATION PROGRAM (“CDBG-MIT”) FUNDS

Contractor understands and acknowledges that this Agreement (also referred to herein as this Contract) is being funded totally or partially with federal funds from the U.S. Department of Housing and Urban Development Community Development Block Grant – Mitigation Funds (“CDBG-MIT”) being administered by the Texas General Land Office (“TX-GLO”). As a condition of receiving these funds, Contractor represents that it is and will remain in compliance with all federal terms, and state terms where applicable, as stated below. 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 local, state, or federal laws. Contractor 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 Contractor shall require that these clauses shall be included in each covered transaction at any tier.**

The following Exhibits (available at <https://www.glo.texas.gov/recovery/index.html>) are included as a condition to any proposal, bid or contract:

- Exhibit I: Federal Assurances Non-Construction Programs (Standard Form 424B)  
Certification Regarding Lobbying (24 CFR Part 87)  
Standard Form LLL Disclosure of Lobbying Activities
- Exhibit II: General Affirmations
- Exhibit III: Non-exclusive List of Applicable Laws, Rules, and Regulations for CDBG-MIT funds

In addition, Contractor is deemed to have read and understood, and shall abide by, all guidance documents applicable to the CDBG-MIT program including, without limitation 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; the State of Texas Action Plan for Disaster Recovery at <http://texasrebuilds.org>; and other guidance documents posted at: <http://texasrebuilds.org>.

1. Federal Assurances.

To the extent that they are applicable, Contractor further certifies that the Federal Assurances in the attached Exhibits have been reviewed and that Contractor is in compliance with each of the requirements reflected therein. Contractor must execute the forms included in the attached Exhibits.

2. Federal Certifications.

To the extent that they are applicable, Contractor further certifies that the Federal Certifications in the attached Exhibits have been reviewed, and that Contractor is in compliance with each of the requirements reflected therein. Contractor must execute the forms and return to County prior to start of performance.

3. General Affirmations.

To the extent that they are applicable, Contractor further certifies that the General Affirmations in the attached Exhibits have been reviewed, and that Contractor is in compliance with each of the requirements reflected therein.

4. Nonexclusive List of Applicable Laws, Rules, and Regulations.

To the extent that they are applicable, Contractor further certifies that the Nonexclusive List of Applicable Laws, Rules, and Regulations in the attached Exhibits have been reviewed, and that Contractor is in compliance with each of the requirements reflected therein.

ADDITIONAL STATE FUNDED CONTRACTS CLAUSES (TAKEN FROM TXGLO RECOVERY PROGRAM GUIDANCE)

1. Appropriation of Funds.

This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or the GLO in violation of Article III, Section 49, of the Texas Constitution. In compliance with Article VIII, Section 6 of the Texas Constitution, all obligations of the GLO hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the County may terminate this Contract.

2. Intellectual Property- Ownership and Use.

The following clause only applies to contracts where the work is related to the performance of experimental, developmental, or research work funded by federal funds or where the work performed is subject to copyright.

Contractor grants the County and/or TXGLO and/or the federal government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use (in whole or in part, including in connection with derivative works), for state (or Federal) purposes, all reports, drafts of reports, or other material, data, drawings, computer programs, and codes associated with this Contract, and/or any copyright or other intellectual property rights, and any material or information developed and/or required to be delivered under this Contract. Contractor will comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements".

3. Non-Endorsement by State and the United States.

Contractor shall not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, still or motion pictures, articles, manuscripts, or other publications) that states or implies the GLO, State of Texas, U.S. Government, or any government employee endorses a product, service, or position the Contractor represents. Contractor may not release information relating to this Contract or state or imply that the GLO, the State of Texas, or the U.S. Government approves of Contractor's work products or considers Contractor's work product to be superior to other products or services.

4. Books and Records.

The County, TX GLO, 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 copying at the Contractor's primary location or any location where such records and work product may be found, with or without notice from the GLO or other government entity with necessary legal authority. Contractor 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. If a Contractor is notified by GLO in writing, or if other applicable laws and regulations as described in 24 C.F.R. § 570.490 applies to a project, the record retention period may be extended. If any litigation, public information request, claim, or audit is started before the expiration of the record retention period, the records must be kept until the action has been resolved.

All subcontracts of Contractor shall contain a provision that County, 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 Client.

Contractor shall cooperate fully with any federal or state entity in the conduct of inspection, examination, audit, and copying, including providing all information requested. Contractor will ensure that this clause concerning federal and state entities' authority to inspect, examine, audit, and copy records and work product, and the requirement to fully cooperate with the federal and state entities, is included in any subcontract it awards.

5. Inspection and Audit.

All records related to this Contract shall be subject to the Administrative and Audit Regulations. Accordingly, such records and work product shall be subject, at any time, to inspection, examination, audit, and copying at the Contractor's primary location or any location where such records and work product may be found, with or without notice from the GLO or other government entity with necessary legal authority. Contractor shall cooperate fully with any federal or state entity in the conduct of inspection, examination, audit, and copying, including providing all information requested. Contractor will ensure that this clause concerning federal

and state entities' authority to inspect, examine, audit, and copy records and work product, and the requirement to fully cooperate with the federal and state entities, is included in any subcontract it awards.

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. **The Office of the Comptroller General of the United States, the Government Accountability Office, the Office of Inspector General, or any authorized representative of the U.S. Government shall also have this right of inspection.** Contractor shall ensure that this clause concerning the authority to audit funds received and the requirement to cooperate is included in any subcontract it awards.

The record retention period for Contractors' contracts does NOT end when the contract between the Contractor and the County is closed.

6. Procurement.

Contractor must confirm that it is not debarred from receiving state or federal funds at each of the following web addresses:

- (a) The Texas Comptroller's Vendor Performance Program at <https://comptroller.texas.gov/purchasing/>; and
- (b) The U.S. General Services Administration's System for Award Management at <https://www.sam.gov/>.

7. Bonding Requirements.

Contractor shall be required to obtain any performance and payment bonds to the extent they are required under Chapter 2253 of the Texas Government Code.

8. Communication with Third Parties.

The GLO and any other authorized federal agency or authority may initiate communications with Contractor and any subcontractor, and may request access to any books, documents, personnel, papers, and records of a subcontractor which are pertinent to this Contract. Such communications may be required to conduct audits, examinations, Davis-Bacon Labor Standards interviews, and gather additional information as necessary.

9. Purchases of Equipment and Computer Software.

Any purchase of equipment or computer software shall be made in accordance with all applicable laws, regulations, and rules including those listed in the attached Exhibits.

10. Assignment and Subcontracts.

Contractor shall not assign, transfer, or delegate any rights, obligations, or duties under this Contract 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. In any approved subcontracts, Contractor shall legally bind such subcontractor to perform and make such subcontractor subject to all the duties, requirements, and obligations of Contractor as specified in this Contract. Nothing in this Contract shall be construed to relieve Contractor of the responsibility for ensuring that the goods delivered and/or the services rendered by Contractor and/or any of its subcontractors comply with all the terms and provisions of this Contract. Contractor will provide written notification to the County of any such subcontractor performing fifteen percent (15%) or more of the work under this Contract, 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.

For this agreement or subcontract to which Federal Labor Standards requirements apply, Contractor shall maintain and have available to County all documentation required to ensure compliance. County shall retain five percent (5%) of the payment for this agreement or subcontract for construction or rehabilitation work until the County and the State have determined that the Federal Labor Standards have been satisfied.

ADDITIONAL REQUIRED FEDERAL CONTRACT CLAUSES (TAKEN FROM CDBG PROGRAM SUBRECIPIENT AGREEMENTS)

1. Equal Employment Opportunity for Non-construction Contracts.

The following clause applies for all non-construction contracts.

During the performance of this contract, the contractor 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 by the contracting officer 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 consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge 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 it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, 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 the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting 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 non-compliance with the nondiscrimination clauses of this contract or with any of such 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 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 provisions of paragraphs (1) through (8) 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 may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. Equal Employment Opportunity for all “federally assisted” Construction Contracts.

The following clause applies for all federally assisted construction contracts where “federally assisted construction contracts” is defined as in 41 C.F.R. Part 60-1.3, or any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at [41 C.F.R. Chapter 60](#), which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee:

During the performance of this contract, the contractor 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 consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge 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 (8) 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.

### 3. Civil Rights.

- a) Compliance. The Contractor agrees to comply with all local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
- b) Nondiscrimination. The Contractor agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 C.F.R. § 570.607, as revised by Executive Order 13279, including the applicable non-discrimination provisions in Section 109 of the HCDA which are still applicable. The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The Contractor will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
- c) Land Covenants. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 C.F.R. §§ 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Contractor, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.
- d) Section 504. The Contractor agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 706) which prohibits discrimination against the handicapped in any federally assisted program. The County shall provide the Contractor with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.
- e) Fair Housing Act. The Contractor will not violate the Fair Housing Act which prohibits discrimination in housing practices on the basis of race, color, religion,

sex, and national origin and provides protections from discrimination in any aspect of the sale or rental of housing for families with children and persons with disabilities. Contractor will abide by all requirements as set by the Fair Housing Act for the design and construction of new rental or for-sale multi-family housing to ensure a minimum level of accessibility for persons with disabilities.

4. Affirmative Action.

- a) Approved Plan. The Contractor agrees that it shall be committed to carry out pursuant to the County's specifications, an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965. When requested, the Grantee shall provide Affirmative Action guidelines to the Contractor to assist in the formulation of such program. The Contractor shall submit a plan for an Affirmative Action program for approval prior to the award of funds.
- b) Small, Women and Minority-Owned Businesses (W/MBE). The Contractor will use its best efforts to afford small businesses, minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. § 632), the term "minority and female business enterprise" means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Contractor may rely on written representations by subcontractors regarding their status as minority and female business enterprises in lieu of an independent investigation.
- c) Access to Records. The Contractor shall furnish and cause each of its subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
- d) Notifications to Labor Unions. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other Agreement or understanding, a notice, to be provided by the agency Contracting officer, advising the labor union or worker's representative of the Contractor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e) Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that it is an Equal Opportunity or Affirmative Action employer.

5. Employment Restrictions.

- a) Prohibited Activity. The Contractor is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; lobbying, political patronage, and nepotism activities.
- b) OSHA. Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participant's health or safety.
- c) Labor Standards. The Contractor agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of the Contract Work Hours and the Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. §§ 276, 327-333) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Contractor shall maintain documentation, which demonstrates compliance with hour, and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Contractor agrees that, except with respect to the rehabilitation or construction of residential property designed for residential use for less than eight (8) households, all Contractors engaged under Agreements in excess of \$2,000.00 for construction, renovation or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with federal requirements adopted by the Grantee pertaining to such Agreements and with the applicable requirements of the regulations of the Department of Labor, under 29 C.F.R., Subtitle A governing the payment of wages and ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Contractor of its obligation, if any, to require payment of the higher wage. The Contractor shall cause or require to be inserted in full, in all such Agreements subject to such regulations, provisions meeting the requirements of this paragraph, for such Agreements subject to such regulations.

The Contractor shall also comply with 24 C.F.R. Part 70, which sets out the circumstances under which individuals who volunteer their services, may be used.

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

- a) Compliance. Compliance with the provisions of Section 3, the regulations set forth in 24 C.F.R. Part 75, and all applicable rules and orders issued hereunder prior to

the execution of this Agreement, shall be a condition of the federal financial assistance provided under this Agreement and binding upon the Grantee, the Contractor and any subcontractor. Failure to fulfill these requirements shall subject the Grantee, the Contractor and any subcontractors, their successors and assigns, to those sanctions specified. Contractor certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

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

"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.

THE PARTIES TO THIS CONTRACT AGREE TO COMPLY WITH HUD'S REGULATIONS IN 24 C.F.R. PART 75, 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 75 REGULATIONS.

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.

THE CONTRACTOR AGREES TO INCLUDE THIS SECTION 3 CLAUSE IN EVERY SUBCONTRACT SUBJECT TO COMPLIANCE WITH

REGULATIONS IN 24 C.F.R. PART 75, 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 C.F.R. PART 75. 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 C.F.R. PART 75.

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 C.F.R. PART 75 REQUIRE EMPLOYMENT OPPORTUNITIES TO BE DIRECTED, WERE NOT FILLED TO CIRCUMVENT THE CONTRACTOR'S OBLIGATIONS UNDER 24 C.F.R. PART 75.

NONCOMPLIANCE WITH HUD'S REGULATIONS IN 24 C.F.R. PART 75 MAY RESULT IN SANCTIONS, TERMINATION OF THIS CONTRACT FOR DEFAULT, AND DEBARMENT OR SUSPENSION FROM FUTURE HUD ASSISTED CONTRACTS.

- b) The Contractor will not subcontract with any subcontractors where it has notice or knowledge that the latter has been found in violation of regulations under 24 C.F.R. 75 and will not enter into an Agreement with the subcontractor unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

## 7. Conduct

- a) Hatch Act. The Contractor agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.
- b) Conflict of Interest. The Contractor agrees to abide by the provisions of 2 C.F.R. Part 200 and 24 C.F.R. § 570.611, which includes (but is not limited to) the following:
  - i. The Contractor shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
  - ii. No employee, officer or agent of the Contractor shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

- iii. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Contractor, or any designated public agency.
- iv. No member of or delegate to the Congress of the United States, and no resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit direct or indirect which arises from the Agreement.

c) Lobbying.

This clause applies to all contracts and subcontracts of \$100,000 or more.

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. Part 20, “New Restrictions on Lobbying.” 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 the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to the County.

The Contractor certifies that: (See Attachment, Certifications for Contracts, Grants, Loans and Cooperative Agreements.)

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

- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
  - iii. It will require that the language of paragraph (4) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Contractors shall certify and disclose accordingly:
  - iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- d) Eligibility Restrictions for Certain Resident Aliens. The Contractor agrees to abide by the provisions of 24 C.F.R. § 570.613 with respect to the eligibility restrictions for certain resident aliens. Certain newly legalized aliens, as described in 24 C.F.R. Part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in this part of the regulation. The County shall provide the Contractor with any guidelines necessary for compliance with that portion of the regulation.
- e) Architectural Barriers Act and the Americans with Disabilities Act. The Contractor agrees to comply with any federal regulations issued pursuant to compliance with the Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151-4157) which requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with the standards that insure accessibility to, and use by, physically handicapped people. The Contractor also agrees to comply with any federal regulations issued pursuant to compliance with the Americans with Disabilities Act (42 U.S.C. § 12131 U.S.C. §§ 155, 201, 218 and 225) which provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. The Grantee shall provide the Contractor with any guidelines necessary for compliance with that portion of the regulation in force during the term of this Agreement.
- f) Copyright. If this Agreement results in any copyrightable material, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work for government purposes.

- g) Equal Participation of Faith-Based Organizations. The Contractor shall include the following clauses in every Subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each subcontractor or vendor. The Contractor agrees that funds provided under this Agreement will not be directly utilized for explicitly religious activities, such as worship, religious instruction, or proselytization in accordance with the federal regulations specified in 24 C.F.R. § 5.109 “Equal Participation of Faith-based Organizations in HUD Programs and Activities.” The Contractor must also document their compliance with the faith-based activities regarding disposition and change in use of real property as required under 24 C.F.R. § 576.406.

## 8. Environmental Conditions

- a) General Environmental Requirements (with respect to the use of funds). The Contractor agrees to comply with the following regulations insofar as they apply to the performance of this Agreement:
  - i. Clean Air Act, 42 U.S.C., §§ 1857, et seq.
  - ii. Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251, et seq., as amended 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
  - iii. Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R., Part 50, as amended.
  - iv. National Environmental Policy Act of 1969.
  - v. HUD Environmental Review Procedures (24 C.F.R., Part 58).
- b) Energy Conservation and Resource Recovery. The Contractor agrees to comply with 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. The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA), and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials” at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- c) National Flood Insurance Program. If a community has had notice for more than a year that an area has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, the Contractor agrees that CDBG funds cannot be spent for acquisition or construction purposes in the area unless the community is participating in the National Flood Insurance Program and such insurance has been purchased for the properties in question. Contractor also acknowledges that there is a statutory prohibition against providing Federal assistance to a person who had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance and the person failed to obtain and maintain such insurance. (24 C.F.R. § 58.6(b)).
- d) Flood Disaster Protection Act of 1973. The Contractor agrees to comply with the requirements of the Flood Disaster Protection Act of 1973 (P.L.-2234) in regard to the sale, lease or other transfer of land acquired, cleared or improved under the terms of this Agreement, as it may apply to the provisions of this Agreement.
- e) Lead-Based Paint. The Contractor agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 C.F.R. § 570.608, and 24 C.F.R. Part 35, and in particular Sub-Part B thereof. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants or properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning.
- f) Historic Preservation. The Contractor agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470) and the procedures set forth in 36 C.F.R., Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the Texas Historical Commission for all rehabilitation and demolition of historic properties that are fifty (50) years old or older or that are included on a Federal, State, or local historic property list.

9. Procurement.

Unless specified otherwise within this agreement, the Contractor shall procure all materials, property, or services in accordance with the requirements of 24 C.F.R. § 200.318, and shall subsequently follow, Property Management Standards, covering utilization and disposal of property.

10. False Statements or Claims.

Except as otherwise provided under federal law, any person who knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme or device or who makes

any materially false, fictitious, or fraudulent statement or representation or who makes or uses any false writing or document knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry shall be prosecuted under Title 18, United States Code, § 1001. Under penalties of 18 U.S.C. § 1001, the undersigned Contractor hereby declares that he/she has examined this Contract and Exhibits, including without limitation, the Solicitation and Solicitation Response, and to the best of his/her knowledge and belief any statements, entries, or claims made by Contractor are, correct, accurate and complete.

11. Conflict of Interest.

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