

Section 2. Personnel and Equipment

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

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

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

Section 3. Compensation and Payment

3.1 Contractor's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is sixty-two thousand fifty dollars and no/100 (\$62,050.00). In no case shall the amount paid by Drainage District under this Agreement exceed the Maximum Compensation without an approved change order.

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

3.3 Drainage District will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to Drainage District two (2) original copies of invoices showing the amounts due for services performed in a form acceptable to Drainage District. Drainage District shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. Drainage District shall pay each such approved invoice within thirty (30) calendar days. Drainage District reserves the right to withhold payment pending verification of satisfactory work performed.

Section 4. Limit of Appropriation

4.1 Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that Drainage District shall have available the total maximum sum of sixty-two thousand fifty dollars and no/100 (\$62,050.00), specifically allocated to fully discharge any and all liabilities Drainage District may incur.

4.2 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that Drainage District may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed sixty-two thousand fifty dollars and no/100 (\$62,050.00).

Section 5. Time of Performance

The time for performance of the Scope of Services by Contractor shall begin with receipt of the Notice to Proceed from Drainage District and end no later than eighteen months later. Contractor shall complete the tasks described in the Scope of Services within this time or within such additional time as may be extended by the Drainage District.

Section 6. Modifications and Waivers

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

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

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

Section 7. Termination

7.1 Termination for Convenience

7.1.1 Drainage District may terminate this Agreement at any time upon thirty (30) days written notice.

7.2 Termination for Default

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

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

7.2.1.2 If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this

Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to Drainage District's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from Drainage District specifying such breach or failure.

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

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

7.4 If Drainage 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 Contractor.

Section 8. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of Drainage District upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to Drainage District on request. Change or alteration of any such data and material by Drainage District or by others acting through or on behalf of Drainage District will be at Drainage District's sole risk.

Section 9. Inspection of Books and Records

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

Section 10. Insurance

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

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

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

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

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

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

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

Section 11. Indemnity

CONTRACTOR SHALL INDEMNIFY AND DEFEND DRAINAGE DISTRICT AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.

Section 12. Confidential and Proprietary Information

12.1 Contractor 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 Drainage District. Any and all information of any form obtained by Contractor or its employees or agents from Drainage District in the performance of this Agreement shall be deemed to be confidential information of Drainage District ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor 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 Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor'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 Contractor who can be shown to have had no access to the Confidential Information.

12.2 Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor 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 Drainage District hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist Drainage District in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise Drainage District immediately in the event Contractor 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 Contractor will at its expense cooperate with Drainage District in seeking injunctive or other equitable relief in the name of Drainage District or Contractor against any such person. Contractor agrees that, except as directed by Drainage District, Contractor 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 Drainage District's request, Contractor will promptly turn over to Drainage District all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

12.3 Contractor 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 Drainage District that is inadequately compensable in damages. Accordingly, Drainage 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. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of Drainage District and are reasonable in scope and content.

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

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

Section 13. Independent Contractor

13.1 In the performance of work or services hereunder, Contractor 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 contractor or, where permitted, of its subcontractors.

13.2 Contractor 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 Drainage District and shall not be entitled to any of the privileges or benefits of Drainage District employment.

Section 14. Notices

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

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

| | |
|--------------------|---|
| Drainage District: | Fort Bend County Drainage District ATTN: Mark Vogler, P.E. P.O. Box 1028 1124 Blume Road Rosenberg, Texas 77471 |
|--------------------|---|

With a copy to: Fort Bend County
Attn: County Judge
301 Jackson Street, Suite 719
Richmond, Texas 77469

Contractor: BIO-West, Inc.
1018 Frost Street
Rosenberg, Texas 77471

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

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

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

Section 15. Compliance with Laws

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

Section 16. Standard of Care

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

Section 17. Assignment and Delegation

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

17.2 Neither party may delegate any performance under this Agreement.

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

Section 18. Applicable Law

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

Section 19. Successors and Assigns

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

Section 20. Third Party Beneficiaries

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

Section 21. Severability

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

Section 22. Publicity

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

Section 23. Certain State Law Requirements for Contracts

The contents of this Section are required by Texas Law and are included by Drainage District regardless of content:

23.1 Agreement to Not Boycott Israel Chapter 2270 Texas Government Code: Contractor verifies that if Contractor employs ten (10) or more full-time employees and this Agreement has a

value of \$100,000 or more, Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

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

Section 24. Federal Clauses

Contractor understands and acknowledges that this Agreement is being funded totally or partially with federal funds from the Federal Emergency Management Agency. 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 simplified acquisition threshold, 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.**

24.01 Clean Air Act and the Federal Water Pollution Control Act.

(1) Clean Air Act

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 Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

(2) Federal Water Pollution Control Act.

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 Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

24.02 Energy Policy and Conservation Act.

Contractor agrees to comply with the Energy Policy and Conservation Act (42 U.S.C. Section 6201).

24.03 Debarment and Suspension.

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

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

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

24.04 Byrd Anti-Lobbying Amendment.

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

24.05 Political Activities.

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

24.06 Procurement of Recovered Materials.

In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired: (i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements; or (iii) At a reasonable price. (2) Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

24.07 Access to Records.

(1) The Contractor agrees to provide County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract. (4) In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

24.08 DHS Seal, Logo, and Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.

24.09 Compliance with Federal Law, Regulations, and Executive Orders.

The Contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

24.10 No Obligation by Federal Government.

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the County, Contractor, or any other party pertaining to any matter resulting from the contract.

24.11 Program Fraud and False or Fraudulent Statements or Related Acts.

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

24.12 Civil Rights and Non-Discrimination.

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

a) Nondiscrimination on the Basis of Race, Color, and National Origin.

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

b) Nondiscrimination on the Basis of Sex.

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

c) Nondiscrimination on the Basis of Disability.

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

d) Nondiscrimination on the Basis of Handicap.

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

e) Nondiscrimination on the Basis of Age.

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

f) Nondiscrimination on the Basis of Limited English Proficiency.

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

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

24.13 Contracting with Small, Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms:

Contractor will take all necessary, affirmative steps to assure that qualified small and minority businesses, women's business enterprises, and labor area surplus firms are used when possible by:

- a) Placing small and minority businesses and women's business enterprises on solicitation lists;
- b) Assuring that it solicits small and minority businesses and women's business enterprises whenever they are potential sources;

- c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
- e) Utilizing the assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce
- f) Contractor must require subcontractors to take the five affirmative steps described in a-e above.

24.14 Environmental and Historic Preservation Protections.

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

24.15 Disaster Reservists.

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

24.16 False Statements Act.

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

Contractor understands that in the event County becomes aware of any allegation or a finding of fraud, waste, or misuse of funds received from FEMA or the Office of the Governor, the County is required to immediately notify OOG of said allegation or finding and to continue to inform OOG of the status of any such on-going investigations. The County must also promptly refer to OOG any credible evidence that a principal, employee, agent, Contractor, subcontractor, or other person has -- (1) submitted a claim for award funds that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving award funds. County must also immediately notify OOG in writing of any misappropriation of funds, fraud, theft, embezzlement, forgery, or any other serious irregularities indicating noncompliance

with grant requirements. County must notify the local prosecutor's office of any possible criminal violations.

24.17 Prompt Payment

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

24.18 Retention of Records.

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

24.19 Veteran Preference

The Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in 5 USC Section 2108) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

Section 25. Human Trafficking

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

Section 26. Captions

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

Section 27. Conflict

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

Section 28. Entire Agreement

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

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

FORT BEND COUNTY DRAINAGE DISTRICT

BIO-WEST, INC.



KP George, County Judge



Authorized Agent- Signature

MARTIN HEANEY

Authorized Agent- Printed Name

ATTEST:

VICE PRESIDENT

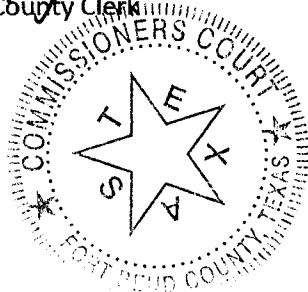
Title



Laura Richard, County Clerk


JANUARY 6, 2020

Date



AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$62,050.⁰⁰ to accomplish and pay the obligation of the Fort Bend County Drainage District under this contract.



Robert E. Sturdivant, County Auditor

EXHIBIT A



December 10, 2019

Mr. Adam Wright
Fort Bend County Drainage District
1124 Blume Road
Rosenberg, Texas 77471

Re: Environmental Services for the Fort Bend County Drainage District
Big Creek Rehabilitation Project -- Fort Bend County

Dear Mr. Wright:

BIO-WEST, Inc. (BIO-WEST) is pleased to provide Fort Bend County Drainage District (FBC-DD) this proposal and cost estimate to provide environmental services for the Big Creek Rehabilitation Project; these include but are not limited to professional environmental reviews, waters of the U.S. delineations, Section 404 Permitting, and attending meetings that may relate to the Clean Water Act or Rivers and Harbors Act. BIO-WEST will provide these services as needed to complete the work as directed by FBC-DD and funding partners.

Project Approach

Task 1 – Waters of the U.S Delineation

BIO-WEST will assess the project site to map onsite aquatic features potentially regulated by the United States Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act (RHA). Field efforts will be designed to identify and delineate the boundaries of potentially jurisdictional waters of the U.S. at the project site. Our methods would include:

- Review of available data, such as topographic maps, aerial photographs, hydric soils lists, public databases, etc.
- Field reconnaissance of the project site for identification of wetlands and other waterbodies
- Use of a Trimble® Global Positioning System (GPS) device with sub-meter accuracy to mark each sampling location and the extent of any wetlands or waterbodies within the project site boundaries per USACE standards

This effort will identify and document the presence of waters of the U.S., including wetlands, within the project site and include a delineation of these resources as specified in the 1987 USACE Wetlands Delineation Manual, the 2010 Regional Supplement to the USACE of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region – Version 2.0, Regulatory Guidance Letter 05-05 – Ordinary High Water Mark (OHWM) Identification, and other applicable industry guidance and standards. All aquatic features will be classified in the field by either simplified United States Fish and Wildlife Department's (USFWS) Cowardin System of Wetland Classification for wetlands, or observable or recorded flow regime per current United States Geologic Survey (USGS) and USACE definitions.

Our delineation report will include documentation required for a standard submittal to the USACE, including, but not limited to (where available):

- Project Introduction, Background Research, and Methodology
- Results and findings, including aquatic feature classification information
- BIO-WEST's professional recommendation on the jurisdictionality of all on-site aquatic features
- A vicinity map

- A waters of the U.S., including wetlands, delineation map
- A USGS topographic map
- A Federal Emergency Management Agency (FEMA) map
- A USFWS National Wetland Inventory (NWI) map
- A Natural Resource Conservation Service (NRCS) soils map
- A National Hydrography Dataset (NHD) map
- LIDAR and/or digital elevation maps (if available)
- Electronic, geo-referenced shapefiles or CAD files of delineated boundaries
- Project site photographs documenting site conditions
- USACE Wetland Delineation Data Forms for each sampling point taken during field surveys

This scope of work only proposes to identify and delineate aquatic features within the subject property and provide a written report documenting those findings to the client for their records and to assist in determining a development strategy for the property. The findings will document the potential presence or absence of Section 404/10 waterbodies within the project site; this is a critical first step in any regulatory process. All field data and recommendations would be valid for a period of five years from the date of each report.

Task 2 – Archeological Desktop Site File Review & Agency Coordination

A “desktop” level of investigation will be completed in order to determine the potential for intact, buried resources to be found in the project’s construction footprint/archaeological APE. Site file research will be conducted by consulting online research archives maintained by the THC. Research objectives will be to identify all previously recorded cultural resources that may be located within the project APE and within 1.6 kilometers (1 mile) of the proposed project’s APE. A review of the Texas Historic Sites Atlas, the National Register of Historic Places (NRHP) database, the list of State Archaeological Landmarks, and the list of Recorded Texas Historic Landmarks, will be reviewed. In addition, soils maps, topographic maps, and aerial photographs will be inspected in order to determine the potential for previously unrecorded archaeological sites to be present within the project footprint. The TX DOT Potential Archeological Liability Map (PALM) will be reviewed as part of the assessment.

The results of this assessment will be presented in a coordination letter. It is anticipated that a recommendation that archaeological field survey is not needed for the project; however, a survey is included in the event that the USACE requests it (see Task 6). The report will contain a brief culture history, methods, the results of research, an assessment of the potential for intact, buried cultural resources to be found within the project APE, and recommendations for further work, if necessary.

Appropriate maps will accompany the report and coordination with THC will also occur as part of this project.

Task 3 – Section 404 Clean Water Act Permitting & USACE Coordination

If impacts to jurisdictional waters of the U.S. are unavoidable, BIO-WEST will work to develop the most suitable Clean Water Act permit strategy in order to move forward with development of the Subject Property. Sections 404 of the CWA and 10 of the RHA establish programs to regulate the discharge of dredged or fill material into jurisdictional waters of the U.S. Both sections require a permit, either through application or self-certification, before any fill material may be discharged into waters of the United States, unless the activity is exempt from regulation (e.g., certain farming and forestry activities).

All proposed activities are regulated through a standard permitting process. Four types of permits are generally allowed: Regional General Permits (RGPs), Nationwide Permits (NWP), Standard Individual Permits (SIP), and Letters of Permission (LOPs). RGPs and NWPs are usually allowed when impacts are minimal and do not exceed a 1/2-acre or 500 linear foot threshold. A SIP is generally required for potentially significant impacts greater than 1/2 acres. LOPs are special condition IPs where impacts are significant, require greater scrutiny, or are otherwise out of the ordinary permitting framework. All permits are reviewed by the USACE, which evaluates applications under a public interest review, as well as the environmental criteria set forth in the CWA Section 404(b)(1) Guidelines, and regulations promulgated by United States Environmental Protection Agency (EPA).

SUBTASK 3A - Nationwide Permitting

If impacts to waters of the U.S. are under 0.50 acres, BIO-WEST proposes to draft a Nationwide Permit (NWP) permit application pursuant to USACE guidelines and Section 404 of the CWA for all proposed impacts to potentially jurisdictional waters of the U.S., including wetlands, on the project site. Under this scenario, BIO-WEST assumes that the Project will be limited to impacts of less than 0.50 acres to WOTUS to stay within the guidelines of the NWP program.

BIO-WEST will prepare the appropriate NWP Pre-construction Notification (PCN) for submittal to the USACE. Prior to preparing the PCN, BIO-WEST will coordinate to obtain engineering drawings showing proposed design layouts and impacts. BIO-WEST cannot complete the PCN without these documents. BIO-WEST will utilize ENG Form 4345 and attach the following to the application:

- Applicant and Applicant's Agent Name and Contact Information
- Detailed Project Description
- Detailed Project Location Information
- Detailed Description of Proposed Impacts
- Waters of the U.S. Delineation
- Threatened and Endangered Species Determination
- Cultural Resource Assessment and Recommendation
- Texas Commission on Environmental Quality (TCEQ) Tier I Checklist
- Figures and Exhibits Depicting All Proposed Impacts
- Compensatory Mitigation Plan for Unavoidable Loss to Waters of the U.S.

Once the permit application is completed, BIO-WEST will forward an electronic copy for review and comment. Following the incorporation of comments, BIO-WEST will submit the completed application to the USACE – Galveston District for review. BIO-WEST will coordinate the application throughout the remainder of the permitting process. While BIO-WEST cannot guarantee approval of the permit application, BIO-WEST will utilize its best professional judgment and the standard and care utilized by similar companies completing similar work in the USACE – Galveston District. Based on current permitting timelines, BIO-WEST estimates that an NWP will take between three and six months to obtain a decision.

BIO-WEST will perform the following under this task:

1. Draft and submit the Nationwide Permit (NWP) application and support documents to the applicant/client for review prior to submittal to the USACE. BIO-WEST must have written approval from the client authorizing BIO-WEST to submit the permit application to the USACE.
2. Attend two (2) on-site meetings with USACE and resource protection agencies, if requested.
3. Attend two (2) additional meetings with the USACE.
4. Consult with the client and engineer regarding the proposed roadway/drainage plans and alternatives.

5. Consult with the applicant regarding the appropriate Wetland Mitigation Plan (mitigation bank or onsite). If client chooses on-site mitigation, BIO-WEST can prepare the mitigation plan and conceptual design (to be proposed separately if needed).
6. Assist the applicant/client in providing the USACE build and no-build alternative analysis.

SUBTASK 3B - Standard Individual Permitting

If unavoidable impacts are greater than 0.50 acres of waters of the U.S. BIO-WEST will submit a Standard Individual Permit. In order to submit a complete standard permit application to the USACE specific project details including 30% construction and engineering drawings will be required to be shared with BIO-WEST. BIO WEST will work with the preferred engineer to acquire Project design drawings and supporting documentation.

BIO-WEST will utilize ENG Form 4345 for the permit application and attach the following:

- Applicant and Applicant's Agent Name and Contact Information
- Project Description (nature of the activity, project purpose, reason(s) for discharge, type(s) of material being discharged, surface area of wetlands or other waters, a description of avoidance, minimization, and compensation, and addresses of adjoining property owners)
- Project Location Information
- Description of Proposed Impacts
- TCEQ Tier II Questionnaire
- Threatened and Endangered Species Determination
- Cultural Resource Assessment

To address and calculate project impacts the wetland delineation information and the project plans from the engineer will be prepared. Additionally, the iHGM functional assessment and (GDSAT tool – if needed) will be prepared and included to identify the values of the existing features. Once the permit application is completed, BIO-WEST will forward an electronic copy of the application for review and comment. Following incorporation of comments, BIO-WEST will submit the completed application to the USACE – Galveston District for review. Based on previous conversations with the client, BIO-WEST understands the need to secure appropriate compensatory mitigation for the proposed project. Upon determination that impacts to jurisdictional areas are unavoidable and will require mitigation BIO-WEST will immediately begin discussions with qualified mitigation solution companies in order to seek out mitigation credits. BIO-WEST will work in order to secure the appropriate mitigation option that best suites the needs of the proposed project.

Note: This scope of services does not include the purchase of compensatory mitigation credits for wetland and/or stream impacts.

Task 5 – Archeological Cultural Resource Pedestrian Survey

The objective of the Historical, Cultural and Archeological Assessment is to evaluate the detectable existence of sites of significant historical, cultural and archeological public value on the subject site. If an applicant is requesting a permit from the USACE to fill jurisdictional wetlands or submit a federal permit (e.g., NWP), the USACE requires that the THC and USACE staff archeologist review the proposed project. The USACE cannot issue a permit to fill wetlands without the THC and USACE staff archeologist's final approval. Based upon the soil conditions and potential for finding cultural resources, the USACE under Section 106 often requires an applicant to conduct an Archeological Cultural Resource Pedestrian Survey to determine if cultural resources or historical structures are present on the property. Based upon review of the PALM Map, it is unlikely that a survey would be required, but is included in the event that the USACE requests it.

If cultural resources are found, BIO-WEST and the archeologist will coordinate with the client to discuss project options. A physical investigation for the presence of historical, cultural, or archeological indicators will be performed.

The cost for artifact curation will be determined as needed and is not included in this scope. It is assumed that the survey for the detention pond and outfalls would be conducted simultaneously (in one mobilization).

Task 6 – Project and Construction Management

BIO-WEST will provide FBC-DD with one point of contact to manage invoicing and project related questions. BIO-WEST will also attend meetings and make themselves available to the project engineer, contractors, and federal/state agencies for various meetings, phone calls, and day to day project management over the course of the project. BIO-WEST will provide on-site construction management as needed during construction activities to ensure compliance with all applicable Clean Water Act regulations.

Reporting and Deliverables

Waters of the U.S. Delineation, Threatened and Endangered Species, and Cultural Review Reporting

Following on-site investigations, an environmental overview report will be prepared for the project site. This report will include documentation required by the USACE, including, but not limited to: project introduction, background research, methodology, results, findings, BIO-WEST's professional recommendation on the jurisdictionality of all on-site aquatic features, site maps, a waters of the U.S., including wetlands delineation map, project site photographs documenting site conditions, and USACE Wetland Delineation Data Forms for each sampling point taken during field surveys. All findings presented in this letter report would be preliminary and based on BIO-WEST's professional experience with similar projects under similar circumstances. Only the USACE and EPA can make the final jurisdictional determination.

Mapping and GIS

All geographic information data (USACE Routine Data points for waters of the U.S. and uplands, position lines, photo-points, ordinary high water mark points, etc.) from the delineation will be compiled by field crews, downloaded, and corrected via Pathfinder into ArcGIS. Data will be recorded in accordance with the USACE Galveston District's Standard GPS Protocol. BIO-WEST's GIS analysts will input this data into a master map file for CobbFendley.

Section 404 Permitting

BIO-WEST will prepare appropriate documentation for submission and authorization from the USACE.

ASSUMPTIONS

- The proposed site will be accessible during normal business hours, and any access codes, keys, or other entry methods will be provided to BIO-WEST.
- BIO-WEST assumes it will take one field crew, each consisting of a field lead and a technician, 5-10 days to complete TASK 1 according to USACE standards.
- The use of a UTV or ATV is not expected.
- All THC coordination can take place via email, letter, or telephone.
- No formal or informal coordination with the USFWS is proposed as part of this task.
- Project site boundaries will be set and will remain the same throughout this project.
- Any required agency file reviews will be able to be completed via the internet or phone calls.
- BIO-WEST will attend one to two in person meeting with the USACE if required.

ESTIMATED COSTS

The estimated cost associated with this investigation is noted below. This project will be conducted and billed as indicated below.

| | |
|---|---------------------|
| Task 1: Waters of the U.S. Delineation (Time and Materials) | \$10,000.00 |
| Task 2: Archeological Desktop Site File Review (Time and Materials) | \$5,000.00 |
| Task 3: Wetland Impact Analysis & Project Design Consultation (T&M) | \$2,750.00 |
| Task 4: Clean Water Act Permitting | |
| Subtask 4A: Nationwide Permit (Time and Materials) | \$15,000.00* |
| Task 5: Archeological Pedestrian Field Survey & Reporting (Time and Materials) | \$20,800.00 |
| Task 6 Project and Construction Management (Time & Materials) | \$8,500.00 |

***If an Individual Permit is required, the funds allocated in Subtask 5A will be applied to a Standard Individual Permit.**

Estimated Costs

BIO-WEST proposes to provide these On-Call Environmental Services on a TIME AND MATERIALS basis with costs not to exceed a total of \$62,050, a Standard Individual Permit is NOT included in this cost estimate. Non-labor charges will incur a 10% mark-up as a handling service fee.

If you have any questions or comments, please call the BIO-WEST office at (832) 595-9064.

Sincerely,



Andy Boswell
Senior Project Manager & Senior Ecologist

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING**

Certificate Number:
2020-573458

Date Filed:
01/03/2020

Date Acknowledged:
01/14/2020

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
BIO-WEST, Inc.
Rosenberg, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.
Fort Bend County

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.
RFQ 20-025
Environmental Consulting Services

| 4 | Name of Interested Party | City, State, Country (place of business) | Nature of interest (check applicable) | |
|---|--------------------------|--|---------------------------------------|--------------|
| | | | Controlling | Intermediary |
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5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)