

STATE OF TEXAS §  
COUNTY OF FORT BEND § KNOW ALL PERSONS BY THESE PRESENTS:  
§

**PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES  
FOR BRAZOS RIVER EROSION CONTROL PROJECT  
RFP 20-097**

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

WITNESSETH

WHEREAS, Drainage District desires that Contractor provide certain professional engineering and surveyor services for the mitigation of flood erosion along the Brazos River as a part of the Brazos River Erosion Control Project (hereinafter referred to as "Services"); pursuant to RFP 20-097; and

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

WHEREAS, Contractor clearly understands and acknowledges that the Drainage District has submitted a joint application with Fort Bend County to the Texas General Land Office (TX-GLO) for Community Development Block Grant- Mitigation (CDBG-MIT) funds for the performance of engineering services for the Brazos River Erosion Control project in an amount of \$96,907,994.36 (hereinafter referred to as "CDBG-MIT Funds"); and

WHEREAS, Contractor clearly understands and acknowledges that the performance of Services for work conducted under Phase II as described in the Scope of Services ("Exhibit A") of this Agreement is expressly contingent upon the receipt of CDBG-MIT Funds from the TX-GLO and that if no such funds are awarded or if the award does not include the amount required for the performance of Services, that the contract shall terminate upon the completion of Phase I; and

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

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

## **AGREEMENT**

### **Section 1. Scope of Services**

1.1 Contractor shall render Services for the project as described in Scope of Services attached hereto as Exhibit A.

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

1.3 Execution of this Agreement does not predicate Notice to Proceed. No work shall be performed for Phase I without receipt of a written Notice to Proceed with Phase I from the Drainage District Director or his authorized representative. No work for work performed under Phase II shall be performed without receipt of a written Notice to Proceed from the Drainage District Director or his authorized representative.

### **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 B ("Hourly Rates").

#### **3.2 Compensation and Payment for Phase I**

3.2.1 The Maximum Compensation for the performance of Services described in Exhibit A for Phase I is three hundred thousand dollars and no/100 (\$300,000.00). In no case shall the amount paid by Drainage District under this Agreement for the performance of Services for Phase I exceed three hundred thousand dollars and no/100 (\$300,000.00) without an approved change order.

### 3.3 Compensation and Payment for Phase II

3.3.1 Contractor understands and acknowledges that compensation for the performance of Services described in Exhibit A for Phase II are contingent upon the receipt of CDBG-MIT Funds from the TX-GLO.

3.3.2 The Maximum Compensation for the performance of Services described in Exhibit A for Phase II is fourteen million two hundred fifty thousand dollars and no/100 (\$14,250,000.00). In no case shall the amount paid by Drainage District under this Agreement for the performance of Services for Phase II exceed fourteen million, two hundred fifty thousand dollars and no/100 (\$14,250,000.00) without an approved change order.

3.4 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.

3.5 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 Limit of Appropriation for Phase I:

4.1.1 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 three hundred thousand dollars and no/100 (\$300,000.00), specifically allocated to fully discharge any and all liabilities Drainage District may incur.

4.1.2 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 three hundred thousand dollars and no/100 (\$300,000.00).

4.2 Limit of Appropriation for Phase II:

4.2.1 Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that Drainage District shall, pending receipt of CDBG-MIT Funds, have available the total maximum sum of fourteen million two hundred fifty

thousand dollars and no/100 (\$14,250,000.00), specifically allocated to fully discharge any and all liabilities Drainage District may incur.

4.2.2 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that, pending receipt of CDBG-MIT Funds, 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 fourteen million, two hundred fifty thousand dollars and no/100 (\$14,250,000.00).

#### **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 with Phase I from Drainage District as described in the Payment and Program Schedule attached hereto as part of Exhibit A. 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 Termination for Lack of Funding

7.3.1 If Drainage District does not receive an award of CDBG-MIT Funds from the TX-GLO or if the award does not include the amount required for the performance of Services for Phase II, this Agreement shall terminate upon the completion of Phase I, unless otherwise terminated before completion of Phase I in accordance with this Section.

7.4 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.

7.5 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  
401 Jackson Street, 1<sup>st</sup> Floor  
Richmond, Texas 77469

Contractor: Huitt-Zollars, Inc.  
Attn: Gregory R. Wine, P.E.  
10350 Richmond Ave, Suite 200  
Houston, Texas 77042

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

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

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

#### **Section 15. Compliance with Laws**

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 Performance**

16.1 Contractor represents to Drainage District that all Services to be provided under this Agreement shall be performed 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.

16.2 Contractor warrants to Drainage District that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

**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. Federal Clauses**

Contractor understands and acknowledges that this Agreement is being funded totally or partially with federal funds from the U.S. Department of Housing and Urban Development, Texas General Land Office Community Development Block Grant – MIT (“CDBG-MIT”) funds, administered by the Texas General Land Office (“GLO”). As a condition of receiving these funds, Contractor represents that it is and will remain in compliance with all federal terms included in Exhibit C. All expenditures under this Contract must be made in accordance with the rules and regulations promulgated under the CDBG-MIT Program, and any other applicable laws. Further, 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, 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.**

## **Section 24. Subcontracts**

24.1 No work under this Agreement shall be subcontracted by the Contractor without prior approval, in writing, from the Drainage District.

24.2 Contractor shall, prior to proceeding with the work, notify the Drainage District in writing of the name of any subcontractors proposed for the work, including the extent and character of the work to be done by each.

24.3 If any time during progress of the work, the Drainage District determines that any subcontractor is incompetent or undesirable, the Drainage District will notify the Contractor who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the Drainage District.

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

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

**25.1 Agreement to Not Boycott Israel Chapter 2271 Texas Government Code:** 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.

**25.2 Texas Government Code Section 2251.152 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 26. 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 27. 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 28. Conflict**

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

**Section 29. 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.


*{Execution Page Follows}  
{Remainder Intentionally Left Blank}*

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

**FORT BEND COUNTY DRAINAGE DISTRICT**

**HUITT-ZOLLARS, INC.**

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

  
\_\_\_\_\_  
Gregory R. Wine, PE, LEED AP  
Senior Vice President

10.27.2020

Date

October 26, 2020


Date

ATTEST:

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



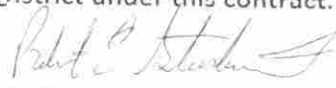
REVIEWED BY:

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

**AUDITOR'S CERTIFICATE**

14,250,000.00

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

  
\_\_\_\_\_  
Robert E. Sturdivant, County Auditor

# EXHIBIT A

SCOPE OF WORK

PAYMENT SCHEDULE

PROJECT SCHEDULE

## SCOPE OF SERVICES

The Firm shall render the following professional engineering services necessary for the Brazos River Erosion at the Grand Parkway (SH 99) and at Interstate Highway 69 (US Highway 59).

### SCOPE OF SERVICES

1. Attend preliminary conferences with the FBCDD regarding the requirements of the project.
2. Determine necessity for acquisition of any additional real property/easements/right-of-ways (ROWs) for the CDBG-MIT project and, if applicable, furnish to the FBCDD:
  - a. Name and address of property owners;
  - b. Legal description of parcels to be acquired; and
  - c. Map showing entire tract with designation of part to be acquired.
3. Make any necessary surveys of existing rights-of-way, topography, utilities, or other field data required for proper design of the project. Provide consultation and advice as to the necessity of the FBCDD providing or obtaining other services such as auger borings, core borings, soil tests, or other subsurface explorations; laboratory testing and inspecting of samples or materials; other special consultations. The Firm will review any tests required and act as the FBCDD's representative in connection with any such services.
4. Prepare railroad/highway permits.
5. Prepare a preliminary engineering study and report on the project in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the FBCDD, to include preliminary layouts, sketches and cost estimates for the project, and to set forth clearly the Firm's recommendations; to be completed within 60 days of execution of this Agreement.
6. Furnish the FBCDD copies of the preliminary report, if applicable (additional copies will be furnished to the FBCDD at direct cost of reproduction).
7. Submit detailed drawings and plans/specifications to appropriate regulatory agency(ies) and assist FBCDD with obtaining clearance(s).
8. Prepare bid packet/contract documents/advertisement for bids. At the time the bid packet is completed, the Firm shall also furnish to the FBCDD an updated written Estimate of Probable Costs for the Project.
9. Make 10-day call to confirm prevailing wage decision.
10. Incorporate any and all wage rate modifications or supersedes via bid addendum (if applicable).
11. Conduct bid opening and prepare minutes.
12. Tabulate, analyze, and review bids for completeness and accuracy.
13. Accomplish construction contractor's eligibility verification through [www.SAM.gov](http://www.SAM.gov).
14. Conduct pre-construction conference and prepare copy of report/minutes.
15. Issue Notice to Proceed to construction contractor.
16. Provide in all proposed construction contracts deductive alternatives where feasible, so that should the lowest responsive base bid for construction exceed the funds available, deductive alternatives can be taken to reduce the bid price.
17. Design for access by persons with disabilities for those facilities to be used by the public in accordance with Public Law 504.

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

**PAYMENT SCHEDULE**

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

Project – Brazos River Erosion

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**BASIC SERVICES**

Phase 1 – will be paid based on work performed as authorized by Fort Bend Drainage District and shall begin with receipt of Written Notice to Proceed with Phase I \$300,000 (Hourly)

Phase 2 - will be paid based on the completion of project Milestones shown below.

<b>Milestone</b>	<b>Basic Services Fee (Lump Sum)</b>
• Receipt of Written Notice to Proceed with Phase II	\$4,275,000
• 100% Design Approval (30%)	\$4,275,000
• Bid Advertisement (10%)	\$1,425,000
• Construction Notice to Proceed (15%)	\$2,137,500
• As-Built Plans/COCC/FWCR (15%)	\$2,137,500
<b>Total</b>	<b>\$14,250,000</b>

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**PROJECT SCHEDULE**

Phase I will be completed within six (6) months of contract execution Phase II is anticipated to be completed within three (3) years of receipt of Notice to Proceed with Phase II.

# EXHIBIT B

THIRTY YEARS

## Houston

2020

### HOURLY RATE SHEET

#### Engineering/Architecture

Principal	\$ 255.00
Design Principal	\$ 235.00
Sr. Project Manager	\$ 235.00
QA Manager	\$ 230.00
Project Manager	\$ 200.00
Sr. Civil Engineer	\$ 200.00
Sr. Structural Engineer	\$ 200.00
Sr. Mechanical Engineer	\$ 190.00
Sr. Electrical Engineer	\$ 190.00
Civil Engineer	\$ 185.00
Structural Engineer	\$ 185.00
Mechanical Engineer	\$ 165.00
Electrical Engineer	\$ 165.00
Plumbing Engineer	\$ 150.00
Engineer Intern	\$ 135.00
Sr. Architect	\$ 195.00
Architect	\$ 160.00
Architect Intern 1	\$ 100.00
Architect Intern 2	\$ 120.00
Architect Intern 3	\$ 150.00
Sr. Landscape Architect	\$ 175.00
Landscape Architect	\$ 135.00
Landscape Architect Intern	\$ 100.00
Sr. Planner	\$ 250.00
Planner	\$ 160.00
Planner Intern	\$ 100.00
Sr. Designer	\$ 155.00
Designer	\$ 130.00
Sr. CADD Technician	\$ 140.00
CADD Technician	\$ 100.00

#### Interior Design

Sr. Interior Designer	\$ 140.00
Interior Designer	\$ 120.00
Interior Designer Intern	\$ 90.00

#### Survey

Survey Manager	\$ 170.00
Sr. Project Surveyor	\$ 155.00
Project Surveyor	\$ 140.00
Survey Technician	\$ 130.00
Surveyor Intern	\$ 115.00

#### Survey Crews

1-Person Survey Crew	\$ 100.00
2-Person Survey Crew	\$ 150.00
3-Person Survey Crew	\$ 175.00

#### Construction

Construction Manager	\$ 190.00
Resident Engineer	\$ 185.00
Sr. Project Representative	\$ 135.00
Resident Project Representative	\$ 100.00

#### Administrative

Sr. Project Support	\$ 100.00
Project Support	\$ 80.00

#### Reimbursable Expenses

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

# EXHIBIT C

## FEDERAL CLAUSES

Contractor understands and acknowledges that this Agreement is being funded totally or partially with federal funds from the U.S. Department of Housing and Urban Development Community Development Block Grant – Disaster Recovery (“CDBG-MIT”) funds, administered by the Texas General Land Office (“GLO”). As a condition of receiving these funds, Contractor represents that it is and will remain in compliance with all federal terms 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 laws. Further, 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, 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 Attachments are included as a condition to any proposal, bid or contract:

**ATTACHMENT A:** Federal Assurances and Certifications which includes the following forms:

- (i) The Federal Assurances for Construction Programs (Standard Form 424D), (Only required for construction projects)
- (ii) The “Certification Regarding Lobbying – Compliant with Appendix A to 24 C.F.R. Part 87”
- (iii) If any funds granted under this Contract have been used for lobbying purposes, Contractor must complete and execute Standard Form LLL, Disclosure of Lobbying Activities

**ATTACHMENT B:** General Affirmations

**ATTACHMENT C:** Nonexclusive List of Applicable Laws, Rules, and Regulations

**ATTACHMENT D:** Additional Conditions

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 **Attachment A** have been reviewed and that Contractor is in compliance with each of the requirements reflected therein. Contractor must execute the forms included in **Attachment A**.

### 2. Federal Certifications.

To the extent that they are applicable, Contractor further certifies that the Federal Certifications also in **Attachment A** have been reviewed, and that Contractor is in compliance with each of the requirements reflected therein. Contractor must execute the forms included in **Attachment A**. The Federal Certifications form must be executed by Contractor's authorized signatory.

### **3. General Affirmations.**

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

### **4. State Required Clauses**

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.

### **5. Abandonment or Default.**

If the Contractor defaults on the Contract, the County reserves the right to cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible vendor qualified under the Solicitation. The defaulting contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the County based on the seriousness of the default.

### **6. 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.

### **7. Books and Records.**

County shall keep and maintain full, true, and complete records sufficient to allow the GLO, the Texas State Auditor's Office, the United States Government, and/or their authorized representatives to determine County's compliance with this Contract and all applicable laws, rules, and regulations, including the applicable laws and regulations provided in **Attachment C**.

### **9. Inspection and Audit.**

All records related to this Contract, including records of County and its Subcontractors, 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 County'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. County 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.** County shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through County and the requirement to cooperate is included in any subcontract it awards.

#### **10. Period of Retention.**

All records relevant to this Contract shall be retained for a period subsequent to the final closeout of the State of Texas CDBG-MIT grant program, in accordance with federal regulations. **The County will notify all Program participants of the date upon which local records may be destroyed.**

#### **11. 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.

#### **12. Energy Policy and Conservation Act (42 U.S.C. 6201).**

Contractor shall comply with all 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 (42 U.S.C. 6201).

#### **13. Clean Air Act and the Federal Water Pollution Control Act.**

For all contracts in excess of \$150,000. Contractor and any all subcontractors must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

#### **14. Procurement.**

Contractor must confirm that it is not debarred from receiving state or federal funds at each of the following web addresses: Texas Comptroller's Vendor Performance Program at <https://comptroller.texas.gov/purchasing/>; and the Federal General Services Administration's Excluded Parties List System at <https://www.epls.gov>.

#### **15. 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.

#### **16. Procurement of Recovered Materials.**

To the extent applicable, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (1) competitively within a timeframe providing for compliance with the contract performance schedule; (2) meeting contract performance requirements; or (3) at a reasonable price.

Information about this requirement, to ensure maximum use of recovered/recycled materials per to 2 CFR 200.322, 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>.

#### **17. 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 Attachments, 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.

#### **18 Termination for Cause and Termination for Convenience**

Contractor understands that all contracts in excess of \$10,000, including subcontracts, must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

**ASSURANCES - CONSTRUCTION PROGRAMS**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.)
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

### CERTIFICATION REGARDING LOBBYING LOWER TIER COVERED TRANSACTIONS

Applicants should review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 15 CFR Part 28, "New Restrictions on Lobbying."

#### LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000 or a loan or loan guarantee over \$150,000 as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, 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.
- (2) 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language 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 subrecipients shall certify and disclose accordingly.

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. Code. 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 occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

#### Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

In any 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 commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

**As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification.**

NAME OF APPLICANT AWARD NUMBER AND/OR PROJECT NAME

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE DATE

## DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure.)

Approved by OMB  
0348-0046

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  Congressional District, if known: <sup>4c</sup> _____	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known: _____	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> (if individual, last name, first name, MI):	<b>b. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MI):	
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the bar above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

**THIS FORM SHOULD BE EXECUTED ONLY WHEN REPORTING LOBBYING ACTIVITIES UNDERTAKEN WITH GRANT FUNDS**

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

**GENERAL AFFIRMATIONS**

Provider agrees without exception to the following affirmations:

1. Provider certifies that he/she/it has not given, offered to give, nor intends to give at anytime hereafter, any economic opportunity, future employment, gift, loan gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
2. Provider certifies that neither Provider nor any firm, corporation, partnership, or institution represented by Provider or anyone acting for such firm, corporation, partnership, or institution has (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or federal antitrust laws; or (2) communicated the contents of the Contract or proposal either directly or indirectly to any competitor or any other person engaged in the same line of business during the procurement process for the Contract or proposal.
3. Provider certifies that if its business address shown on the Contract is a Texas address, that address is the legal business address of Provider and Provider qualifies as a Texas Resident Bidder under Texas Administrative Code, Title 34, Part 1, Chapter 20.
4. Section 2155.004 of the Texas Government Code prohibits the award of a contract that includes proposed financial participation by a person who received compensation from the Subrecipient to participate in preparing the specifications or request for proposals on which the Contract is based. Under Section 2155.004, Government Code, the vendor [Provider] certifies that the individual or business entity named in this bid or Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
5. Under Texas Family Code section 231.006, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services. Under Section 231.006, Texas Family Code, the vendor or applicant [Provider] certifies that the individual or business entity named in this Contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
6. Provider agrees that any payments due under the Contract will be applied towards any debt, including but not limited to delinquent taxes and child support, Provider owes to the State of Texas.
7. The Subrecipient is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism and any subsequent changes made to it. The Subrecipient will cross-reference Providers/vendors with the federal System for Award Management (<https://www.sam.gov/>), which includes the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.
8. Provider certifies: 1) that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity; 2) that Provider is in compliance with the State of Texas statutes and rules relating to procurement; and 3) that Provider is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov/>.

9. Under Section 2155.006(b) of the Texas Government Code, the Subrecipient may not enter into a contract that includes proposed financial participation by a person who, during the five year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, Provider certifies that the individual or business entity named in the Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
10. The state auditor may conduct an audit or investigation of any entity receiving state funds 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. Provider shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Provider and the requirement to cooperate is included in any subcontract it awards.
11. Provider understands that the neither the Subrecipient nor the GLO tolerate any type of fraud. The Subrecipient's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Providers are expected to report any possible fraudulent or dishonest acts, waste, or abuse affecting any transaction with the GLO to the GLO's Internal Audit Director at 512.463.5338 or to [tracey.hall@glo.texas.gov](mailto:tracey.hall@glo.texas.gov).

**NOTE:** Information, documentation, and other material related to this Contract may be subject to public disclosure pursuant to the "Public Information Act," Chapter 552 of the Texas Government Code.

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## NONEXCLUSIVE LIST OF APPLICABLE LAWS, RULES, AND REGULATIONS

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

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

### GENERALLY

The Acts and Regulations specified in this Contract;

**Consolidated Security, Disaster Assistance, and Continuing Appropriation Act (Public Law 110-329);**

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

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

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

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

**Disaster Recovery Implementation Manual;**

**Plan for Disaster Recovery;** and

**Guidance Documents: 2008 Supplemental Disaster Recovery Fund: Hurricanes Dolly and Ike; and Non-Housing Activities Application Guide, issued by the Texas Department of Housing and Community Affairs.**

### CIVIL RIGHTS

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

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

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

Executive Order 11063, as amended by Executive Order 12259, and 24 C. F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The

failure or refusal of Provider to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;

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

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794.) and "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8. By signing this Contract, Provider understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

#### **LABOR STANDARDS**

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

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

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

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

Federal Executive Order 11246, as amended;

#### **EMPLOYMENT OPPORTUNITIES**

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

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

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

Federal Executive Order 11246, as amended;

#### **GRANT AND AUDIT STANDARDS**

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

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for

Federal Awards (2 C.F.R. Part 200);

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

Title 1 Texas Administrative Code § 5.167(c);

#### **LEAD-BASED PAINT**

Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) and the procedures established by TDRA thereunder.

#### **HISTORIC PROPERTIES**

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

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

Federal historic preservation regulations as follows: 36 C.F.R. part 800 with respect to HUD programs; and

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

#### **ENVIRONMENTAL LAW AND AUTHORITIES**

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

National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347); and

Council for Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508).

#### **FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION**

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

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

**COASTAL ZONE MANAGEMENT**

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

**SOLE SOURCE AQUIFERS**

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

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

**ENDANGERED SPECIES**

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

**WILD AND SCENIC RIVERS**

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

**AIR QUALITY**

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

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

**FARMLAND PROTECTION**

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

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

**HUD ENVIRONMENTAL STANDARDS**

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

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

**ENVIRONMENTAL JUSTICE**

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

**SUSPENSION AND DEBARMENT**

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

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

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

**OTHER REQUIREMENTS**

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

**ACQUISITION / RELOCATION**

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

**FAITH-BASED ACTIVITIES**

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

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**EQUAL OPPORTUNITY CLAUSE, SECTION 109 AND SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974 AND SECTION 3 HUD REQUIREMENTS**

Equal Opportunity Clause (applicable to federally assisted construction contracts and subcontracts over \$10,000). During the performance of this contract, the Firm agrees as follows:

- a. The Firm will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Firm will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. 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.
- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. Contractor will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d. 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 Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. 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.

- g. In the event of 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 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.
- h. Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. 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 Firm becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Section 109 of the Housing and Community Development Act of 1974. Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.

- a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- c. Contractor agrees to send to each labor organization or representative of workers with which Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment

positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- d. Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. Contractor will not subcontract with any subcontractor where Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- e. Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent Contractor's obligations under 24 CFR part 135.
- f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

# 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**

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**  
Huitt-Zollars, Inc.  
Dallas, TX United States

Certificate Number:  
2020-682264

Date Filed:  
10/23/2020

**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 Drainage District

Date Acknowledged:  
10/27/2020

**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.**  
20-097  
Engineering Services for the Brazos River Project

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Huitt, Larry	Dallas, TX United States	X	
McDermott, Robert	Dallas, TX United States	X	
Wall, Cliff	Dallas, TX United States	X	
Twomey, James	Dallas, TX United States	X	
Wine, Greg	Dallas, TX United States	X	

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)