

STATE OF TEXAS                   §  
    §  
 COUNTY OF FORT BEND       §

**AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES  
 DISPARITY STUDY**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Mason Tillman Associates, Ltd., (hereinafter "Consultant"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Consultant prepare a Disparity Study necessary to determine if the predicate exists for setting race-based subcontract goals for the County, (hereinafter "Services"); and

WHEREAS, County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262 of the Texas Local Government Code; and

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

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

**AGREEMENT**

**Section 1. Scope of Services**

Consultant shall render Services to County as described in Consultant's Proposal dated July 7, 2021 attached hereto as Exhibit "A" and included herein for all purposes.

**Section 2. Personnel**

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

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

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Agreement for Professional Consulting Services

Disparity Study

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08/05/2021 Original (e) sent to Diana Gutierrez, Budget & Finance dept.

### **Section 3. Compensation and Payment**

3.1 The Maximum Compensation for the performance of Services billed at the applicable rates as described in Exhibit A is three hundred thousand dollars and no/100 (\$300,000.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an amendment executed by the parties.

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

3.3 County will pay Consultant based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Consultant shall submit to County, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to County. County 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. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

### **Section 4. Limit of Appropriation**

4.1 Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of three hundred thousand dollars and no/100 (\$300,000.00), specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Consultant may become entitled to and the total maximum sum that County may become liable to pay to Consultant shall not under any conditions, circumstances, or interpretations thereof exceed three hundred thousand dollars and no/100 (\$300,000.00).

### **Section 5. Time of Performance**

Time for performance of the Scope of Services under this Agreement shall begin on Consultant's receipt of a notice to proceed and end no later than twelve (12) months thereafter. Consultant shall complete the tasks described in the Scope of Services, within this time or within such additional time as may be extended by the County.

### **Section 6. Modifications and Waivers**

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

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

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

## **Section 7. Termination**

7.1 Termination for Convenience – County may terminate this Agreement at any time upon forty-eight (48) hours written notice.

### **7.2 Termination for Default**

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

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

7.2.1.2 If Consultant materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

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

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

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Consultant.

## **Section 8. Ownership and Reuse of Documents**

All documents, data, reports, research, graphic presentation materials, etc., developed by Consultant as a part of its work under this Agreement, shall become the property of County upon

completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Consultant shall promptly furnish all such data and material to County on request.

#### **Section 9. Inspection of Books and Records**

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

#### **Section 10. Insurance**

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

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

10.1.2 Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

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

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

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

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

Professional Liability, shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

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

#### **Section 11. Indemnity**

**CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, INCLUDING THE REIMBURSEMENT OF COUNTY'S REASONABLE ATTORNEYS FEES IN PROPORTION TO CONSULTANT'S LIABILITY, ARISING FROM ACTIVITIES OF CONSULTANT, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, INTENTIONAL TORT, ERROR, OR OMISSION OF CONSULTANT OR ANY OF CONSULTANT'S AGENTS, SERVANTS OR EMPLOYEES.**

#### **Section 12. Confidential and Proprietary Information**

12.1 Consultant acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Consultant or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Consultant shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Consultant) publicly known or is contained in a publicly available document; (b) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.

12.2 Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Consultant shall advise County immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this

Agreement and Consultant will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Consultant against any such person. Consultant agrees that, except as directed by County, Consultant will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Consultant will promptly turn over to County all documents, papers, and other matter in Consultant's possession which embody Confidential Information.

12.3 Consultant acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

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

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

### **Section 13. Independent Consultant**

13.1 In the performance of work or services hereunder, Consultant shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.

13.2 Consultant and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

#### **Section 14. Notices**

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

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

County:	Fort Bend County, Attn: County Judge 401 Jackson Street, 1 <sup>st</sup> Floor Richmond, Texas 77469
With a copy to:	Fort Bend County, Commissioner Precinct 2 Attn: Commissioner 303 Texas Parkway Missouri, Texas 77489
Consultant:	Mason Tillman Associates, Ltd. Attn: Eleanor Mason Ramsey, Ph.D., President 1999 Harrison Street, Suite 200 Oakland, California 94612

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

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

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

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

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

## **Section 16. Standard of Care**

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

## **Section 17. Assignment**

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

17.2 Neither party may delegate any performance under this Agreement.

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

## **Section 18. Applicable Law**

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

## **Section 19. Successors and Assigns**

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

## **Section 20. Third Party Beneficiaries**

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

## **Section 21. Severability**

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



## **Section 22. Publicity**

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

## **Section 23. Captions**

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

## **Section 24. Conflict**

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

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

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

25.2 Texas Government Code Section 2251.152 Acknowledgment: By signature below, Consultant represents pursuant to Section 2252.152 of the Texas Government Code, that Consultant is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

## **Section 26. Certain Federal Law Requirements for Contracts**

The Consultant understands and acknowledges that this Agreement may be totally or partially funded with federal and or state funds. As a condition of receiving these funds, the Consultant represents that it is and will remain in compliance with all federal and or state terms as stated below. These terms flow down to all third party vendors and their subcontracts at every tier that exceed the simplified acquisition threshold, unless a particular award term or condition specifically indicates otherwise. The Consultant shall require that these clauses shall be included in each covered transaction at any tier. The Consultant will require all of its staff to comply with Federal documentation requirements administered by the County.

26.1 Americans with Disabilities Act (ADA) – The Consultant shall comply with all federal, state, County, and local laws concerning this type of products/service/equipment/project and the fulfillment of all ADA requirements.

26.2 Drug-Free Workplace – The Consultant shall provide any and all notices as may be required under the Drug-Free Workplace Act of 1988, 28 CFR Part 67, Subpart F, to their employees and all sub-contractors to insure that the County maintains a drug-free workplace.

26.3 Small, Minority Firms, Women’s Business Enterprises and Labor Surplus Area Firms – The Consultant will take all necessary affirmative steps to assure that qualified small, minority firms, women’s business enterprises, and labor surplus area firms are used when possible by:

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

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

26.3.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

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

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

26.3.6 Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subsections (26.3.1) through (26.3.5) above.

26.4 Energy Policy and Conservation Act – The Consultant agrees to comply with the Energy Policy and Conservation Act (42 U.S.C. Section 6201).

26.5 Debarment and Suspension –

26.5.1 The Consultant certifies that it is in compliance with the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180 which states that a contract award in any tier must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders Nos. 12549 (3 C F R part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order No. 12549. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount).

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

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

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

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

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

## 26.9 Clean Water

26.9.1 The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Consultant agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the appropriate EPA Regional Office. The Consultant agrees it will not use any violating facilities. It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities”. It will report violations of use of prohibited facilities to the appropriate EPA Regional Office.

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

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

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

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

26.13 Contracting with Small, Minority Firms, Women’s Business Enterprises and Labor Surplus Area Firms – The Consultant will take all necessary, affirmative steps to assure that qualified small and minority businesses, women’s business enterprises, and labor area surplus firms are used when possible by:

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

26.13.2 Assuring that it solicits small and minority businesses and women’s business enterprises whenever they are potential sources;

26.13.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises;

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

26.13.5 Utilizing the assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

26.13.6 The Consultant must require subcontractors to take the five affirmative steps described in 26.15.1 – 26.16.5 above.

26.14 False Statements Act – The Consultant agrees to comply with the False Statement Act sets forth liability for, among other things, any person who knowingly submits a false claim to the Federal government or causes another to submit a false claim to the government or knowingly makes a false record or statement to get a false claim paid by the government. 31 U.S.C. §§ 3729-3733.

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

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

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

## **Section 27. Human Trafficking**

BY ACCEPTANCE OF AGREEMENT, CONSULTANT ACKNOWLEDGES THAT THE COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

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

MASON TILLMAN ASSOCIATES, LTD

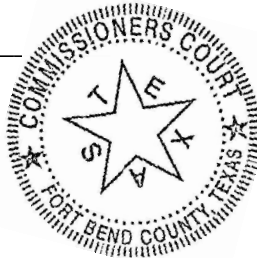
  
\_\_\_\_\_  
KP George, County Judge  
County Judge KP George

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

7.27.2021  
\_\_\_\_\_  
Date

Eleanor M. Ramsey, Ph.D.  
\_\_\_\_\_  
Authorized Agent – Printed Name

ATTEST:




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

President  
\_\_\_\_\_  
Title

July 22, 2021  
\_\_\_\_\_  
Date

#### AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 300,000.00 to accomplish and pay the obligation of Fort Bend County under this contract.

  
\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

# EXHIBIT A

# Fort Bend County, TX



MASON TILLMAN  
ASSOCIATES, LTD

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## Disparity Study

Submitted July 2021



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## Cover Letter

July 7, 2021

Honorable Grady Prestage,  
Fort Bend County Commissioner, Precinct 2  
303 Texas Parkway Number 23  
Missouri City, TX 77489

Honorable Grady Prestage,

Mason Tillman Associates, Ltd., a certified African American woman-owned business, proudly presents its proposal to prepare the Disparity Study for Fort Bend County. Mason Tillman confirms that our company meets all requirements needed to perform a legally sound disparity study within the eligible uses of the American Response Plan Act (ARPA) State and Local Fiscal Recovery Funds as set forth in the U.S. Treasury's interim final rule of May 10, 2021.<sup>1</sup>

Eligibility requirements<sup>2</sup> of the ARPA allows governments to use the funds to benefit small and minority businesses that experienced economic harm from the pandemic and requires the funds be used to “respond to” the harm from the pandemic in ways that are “related and reasonably proportional”. Further, ARPA places special importance on responding to the needs of minority business communities and workers hit hardest by the pandemic. ARPA also acknowledges that pre-existing social conditions and the associated systemic public health and economic challenges have contributed to the more severe impacts of the pandemic on businesses and workers of color and women.

A disparity study is a tool that will allow the County to assess the economic impacts of the pandemic by documenting the utilization of the available MWBE businesses during and before the pandemic. If economic disparities in the County's utilization of available minority and woman-owned businesses existed prior to the pandemic, they too would be identified in the disparity study's statistical analysis. Furthermore the compounding

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<sup>1</sup> <https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>

<sup>2</sup> Laid out in the amended sections 602(c)(1) and 603(c)(1)(A) of Title VI of the Social Security Act:  
<https://www.govinfo.gov/content/pkg/COMPS-15671/pdf/COMPS-15671.pdf>



effects of the pandemic would be revealed in the anecdotal and policy analysis required for a constitutionally sound disparity study.

Procurement policies and practices that compound the economic conditions created by the pandemic or preexisting conditions that were exacerbated by the pandemic also would be documented in the disparity study. In short, the analysis undertaken in a disparity study is the legal requirement which the County, as a local government, would need to use race-based remedies to address the effects of the pandemic.

Therefore Mason Tillman's disparity study will not only satisfy ARPA funding requirements, but the data would meet the legal requirement to mitigate the adverse impacts of the pandemic by adopting a race-based procurement program.

Mason Tillman, established in 1978 in Oakland, California, is the most highly qualified disparity study firm in the nation and commits to provide the requested services on time and within budget. Our firm's skills, qualifications, and over 40 years of experience preparing comprehensive and legally sound disparity studies are unparalleled. We have conducted 146 disparity studies for government entities, including 19 studies for counties, none of which have been successfully challenged. The table below summarizes our disparity study clients. A full list of Mason Tillman's disparity studies can be found in Appendix A.

#### Summary of **Mason Tillman Disparity Studies, 1990-2020**

<b>Client Type</b>	<b>Number of Agencies</b>
City	34
State	15
County	19
Transportation Agency	39
School District	15
Utility District	15
Housing Authority	3
Redevelopment Agency	5
<b>TOTAL</b>	<b>146</b>

Mason Tillman has the unique distinction of having its constitutionally sound methodology reviewed in two federal circuit courts without a legal challenge. The firm was engaged to conduct a post-enactment disparity study by two governmental entities whose MWBE programs, which were predicated on a competitor's study, had been legally challenged. Each of Mason Tillman's post-enactment studies were approved by the federal court, and the entity's MWBE program was reinstated. The two federal cases were *Midwest Fence Corp. v. Illinois Department of Transportation*<sup>3</sup> (*Midwest Fence*) and *Kossman*

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<sup>3</sup> *Midwest Fence Corp. v. United States Dep't of Transp.*, 84 F. Supp. 3d 705 (2015).

*Contracting Co. v. City of Houston*<sup>4</sup> (Kossman). The judge in *Midwest Fence* referred to our methodology as “critical” to establishing a “substantial basis in evidence to support the continuation of the race and gender-specific remedies set forth in the Illinois Department of Transportation’s Disadvantaged Business Enterprise Program.”<sup>5</sup>

Mason Tillman’s staff includes in-house lawyers who provide the highly nuanced skills and expertise to ensure the production of a legally sound disparity study. In addition to guiding the preparation of the post-enactment studies for the City of Houston and the Illinois Department of Transportation, our legal team has provided litigation support to government attorneys attempting to assess the constitutional soundness of their challenged MWBE program. Our staff also includes public policy experts, statisticians, business professionals, and social scientists with extensive experience performing disparity studies for cities, counties, states, transportation agencies, municipalities, and various other government entities. Complementing our staff is a Houston based consultant with broad-based outreach and community engagement experience.

Mason Tillman is also prepared to provide post-disparity study services. In the event the findings document a statistically significant disparity, and the County adopts the study findings, our staff can assist in designing a program to increase the participation of minority and woman-owned businesses on the County’s prime contracts and subcontracts. Any proposed program would be designed to mitigate any documented impact of the pandemic on the County’s utilization of minority and woman owned businesses.

As Project Manager, I have led each of Mason Tillman’s disparity studies. My background as a social scientist, with a doctorate degree in anthropology from the University of California, Berkeley, and formal statistical training, is the foundation of the firm’s capacity to perform robust public policy research and legally sound disparity studies.

As the President of the firm, I am available to answer questions regarding this proposal and to legally bind the firm with respect to all proposal content. All correspondence regarding this proposal and any resulting agreements can be directed to:

**Eleanor Mason Ramsey, Ph.D., President**  
Mason Tillman Associates, Ltd.  
1999 Harrison Street, Suite 2000 • Oakland, CA 94612  
Tel: (510) 835-9012 • Fax: (510) 835-2647  
[eramsey@mtaltd.com](mailto:eramsey@mtaltd.com)

Please do not hesitate to contact me if you require additional information or clarification of the information presented herein.

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<sup>4</sup> *Kossman Contr. Co. v. City of Houston*, 128 Fed. Appx. 376 (2005).

<sup>5</sup> *Midwest Fence Corp. v. United States Dep’t of Transp.*, 84 F. Supp. 3d 705 (2015).

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. Ramsey', with a long horizontal flourish extending to the right.

Eleanor Mason Ramsey, Ph.D.  
President

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## ***Project Understanding***

A.

### ***I. Understanding of the Scope of Work***

Fort Bend County is seeking consulting services to prepare a disparity study to determine if the utilization of minority and woman-owned businesses is in parity with their availability. And too, the County seeks recommendations for policy and procedures to address any documented disparity prior to and during the pandemic. The scope of the proposed study falls squarely within the eligibility requirements of the ARPA. Furthermore given the ARPA requirement for an immediate assessment of the economic impacts of the pandemic on minority businesses the study can be performed timely because Mason Tillman has implemented measures during the pandemic to perform the required research virtually. The measures will allow the research to be conducted without delays, even during the pandemic. Given our work plan and use of virtual communication tools, we can commit to complete the disparity study report within nine months.

The fundamental components of a disparity study are the utilization, availability and anecdotal analysis. The utilization analysis quantifies the award of prime and subcontracts to minority businesses in the agency's market area. Since public contracting is a major source of a minority businesses' revenue the County's contracting policies would directly affect its minority businesses' recovery from the economic impact of the pandemic.<sup>6</sup> The depth of this research is describe in the Scope of Work.

The availability analysis, which measures the percent of minority businesses in the agency's market area, will be measured before and during the pandemic. In this study, the information will be compared to the utilization data to assess the pandemic's impact on market area minority businesses.

Anecdotal accounts collected through interviews with minority businesses identify the social and economic impacts of the agency's procurement policies and the practices of its prime contractors before and during the pandemic. Interviews collected in the study will also be used, together with the statistical evidence, to proscribe policy and procedural changes to mitigate the economic impact of the pandemic and conditions existing before the pandemic on the economic viability of minority businesses within the County's geographic market area. .



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<sup>6</sup> 86 FR 26793 <https://www.federalregister.gov/d/2021-10283> Coronavirus State and Local Fiscal Recovery Funds Department of The Treasury Interim Final Rule May 17, 2021

The utilization, availability, and anecdotal analysis, the three components of a legally sound disparity study as outlined in this proposal, will comport with the constitutional standards established in *Croson*. The research will produce the data needed to determine if there is a legal basis for the County to adopt a Minority and Woman-owned (MWBE) business program. While at the same time, the disparity study findings will meet the requirement of the ACRPA funding by documenting the impacts of the pandemic and presenting substantiated and quantified recommendations to mitigate the effects of the pandemic.

The recommendations chapter will describe policy changes to mitigate the direct impact of the pandemic, systemic impact of discrimination, and the economic conditions exacerbated by the pandemic. Recommendations would also describe specific policy that the County could implement to mitigate the pandemic's impacts.

Detailed below is the constitutional standard that will govern the disparity study research that Mason Tillman proposes to perform. The methodology as proposed, will meet the ARPA funding requirements and the dictates of *Croson*. The disparity study methodology and measures to assess the impact of the pandemic on the minority businesses in the County are presented in the tasks below.



## ***B. Legal Standard for a Disparity Study***

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### ***Disparity Study Critical Components***

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- 1. Legal Review*
  - 2. Procurement Review*
  - 3. Utilization Analysis*
  - 4. Geographic Market Determination*
  - 5. Availability Analysis*
  - 6. Disparity Analysis*
  - 7. Anecdotal Evidence*
  - 8. Recommendations*
- 

A legal review is the **first step** in the study that Mason Tillman proposes to undertake. The County's procurement policies will be reviewed in **step two** to determine the contracting process employed. Prime and subcontract records will be compiled in **step three** to determine the County and its prime contractors' utilization of minority and women-owned business enterprises (M/WBEs) and non-MBEs on professional services, construction services, and goods and services contracts. Identification of the County's market area is **step four**. Prime utilization records will be used to

determine the market area in which companies awarded the contracts were located. **Step five**, the availability analysis, identifies businesses in the market area that are willing and able to provide the professional services, construction services and good and services procured by the County and its prime contractors. In **step six**, analyses of disparity will be performed to determine whether there is statistically significant underutilization of MWBEs and non-MWBEs within each of the industries. In **step seven**, the anecdotal analysis, contemporary experiences of business owners in the County's market area will be collected and reviewed. Finally, in **step eight** the recommendations, which include best management practices to enhance the County's current practices and remedy any identified disparity, will be prepared.

The methodology that will be used to perform the study will comport with these legal criteria. Outlined below is the proposed methodology.

## ***II. Project Kick-off Meetings***

At the inception of the Study, Mason Tillman will convene an initial kick-off meeting with the County's managers and staff responsible for managing contract records, payments, and invoices. These virtual meetings will ensure the correct contract data is extracted from the financial management system.

### ***A. Managers Meeting***

During the managers meeting, elements and objectives of the Study will be detailed, and questions from department managers will be addressed. Also, the County's role in providing the prime contract and subcontract awards and payments will be established.



## ***B. Database Meeting***

During the database meeting, the scope of the Study will be defined, the utilization database structure depicted in Table 1 will be described, and the location of the County's contract and purchasing records will be determined. A system and schedule for retrieving the required electronic contract data will be developed.

## ***III. Legal Analysis***

### ***A. Disparity Study Legal Analysis***

The Study must conform to the standards set forth in *Croson* and its progeny. Therefore, Mason Tillman maintains a detailed legal review of the relevant laws and judicial filings applicable to race and gender. The legal review maintained by Mason Tillman is updated as federal decisions are published. The County will be provided the current legal analysis, which will be updated when the Houston METRO disparity study is completed in December.

**Deliverable: Legal Review Chapter**

## ***IV. Determine the Study Period***

The case law is not explicit about a required study period. However, the general rule of thumb is three to five years. The last year in the three to five-year range should be the most recent 12 months. An objective in determining the study period is to have ample, recent contract data. The court has indicated that the data used to support a MWBE program is stale when it is more than ten years old. Mason Tillman recommends a study period of five years, from 2016 – 2020. A study period from 2016 to 2020 should yield ample contract data for the analysis, and if an MWBE/DBE Ordinance is adopted in 2021, the data will not be stale.

## ***V. Procurement Analysis***

The County's procurement policies and procedures employed during the study period will be reviewed. The review will also include an assessment of the procurement procedures and practices that might impact the award of contracts to MWBEs. The initial review will examine the procurement manual and standard contract provisions. In addition, the assessment of the procurement practices will include an examination of all phases of the procurement process from the department's requisition for goods or services to the contract award. Thus, the practices employed by the departments to define the technical requirements in their solicitations, the distribution of the solicitations, and the review and evaluation of bids and proposals will be included in the procurement analysis.

**Deliverable: Procurement Chapter**



## ***VI. Utilization Analysis***

### ***A. Prime Contract Data Collection***

Logistics for retrieving the required prime contract records maintained in the County's financial management system will be determined during the project kick-off meetings. The data retrieval process, as defined during the meetings, will govern the prime data collection. Mason Tillman's database staff will coordinate with the County to secure complete payment and award amounts for the prime contracts awarded in each industry during the five-year study period.

**Table 1: Sample Utilization Database Structure**

<b>Column Heading</b>	<b>Description</b>
<b>Contract P.O. Number</b>	Unique number assigned to contract/purchase order
<b>Project Name</b>	Project title or description
<b>Business Name</b>	Primary name of company
<b>Business Address</b>	Address of company
<b>Race and Gender</b>	Race and gender of business owner
<b>Vendor ID</b>	Unique vendor number assigned to company by accounts payable
<b>Industry Code</b>	Codes for types of work (NAICS, NIGP, SIC)
<b>Product or Service</b>	Description of type of service performed or product provided
<b>Award Date (Prime and Sub)</b>	Date of contract award for prime contractors and date first contracted for all others (MMDDYY)
<b>Award Amount (Prime and Sub)</b>	Amount of each company's award (for prime contractors, the original contract award amount)
<b>Contract Modification Date</b>	Date of each contract modification (MMDDYY)
<b>Contract Modification Amount</b>	Amount of each contract modification or total modifications
<b>Payment</b>	Total payment made to contractor (may be different from AWARD)

A proprietary data application developed by Mason Tillman has utilities that are used to clean and analyze the contract records. SQL, Python™, and R scrub and analyze the contract records. Table 2 lists the analytical processes performed by the software Mason Tillman uses to normalize client contract data to perform the statistical analyses required to produce a legally defensible Study. Using these utilities, contracts are identified that should be excluded from analysis, such as contracts not within the industries being studied, contracts awarded outside of the study period, and duplicate records.



**Table 2: Mason Tillman’s Data Management Software Programs**

ANALYTICAL PROCESS	SOFTWARE PROGRAM						
	STATA <sup>®</sup>	R	Python <sup>™</sup>	SQL	Excel <sup>®</sup>	Access <sup>®</sup>	Import.io
Data Extraction	•			•		•	
Web scraping		•	•				•
Data Cleaning	•		•		•	•	
Data Mining			•	•		•	
Query Design				•		•	
Data Manipulation	•	•		•	•	•	
Data Analysis	•	•			•	•	
Data Visualization	•	•			•	•	

The prime contract dataset will be cleaned by identifying and correcting issues based on Mason Tillman’s proprietary quality control system which detects duplicates, incomplete records, data entry errors, and inaccurate data. Then, a Data Verification Report will be produced. The report will detail the excluded records and any other questions or issues to be reviewed by the County before performing the utilization analysis. All prime contract data will be housed in the proprietary relational database.

#### **Deliverable: Data Verification Report**

#### **Industry Categorization**

Once the prime contract data are cleaned and the County has addressed any critical questions concerning the data, each prime contract will be classified by *North American Industry Classification System (NAICS)* code. The County’s industry classification standards will be reviewed to ensure the accuracy of the coding. Where there is concern about the assigned NAICS, NIGP or other proprietary codes, additional research will be done by Mason Tillman. All *NAICS and NIGP* code assignments will be submitted to the County for review.

#### **Deliverable: Industry Classification Tables**

#### **Ethnicity and Gender Assignment**



The ethnicity and gender of each prime contractor will be verified. Prime contractor ethnicity and gender identification will be secured using certification lists, organization directories, Internet research, and business owner surveys. Mason Tillman has also developed a comprehensive database of regional businesses, MWBEs and non -MBEs. This resource will reduce the time and effort to verify the utilized vendors ethnicity and gender. The cleaned prime contract records coded by industry, ethnicity, and gender will be analyzed and presented in the Prime Utilization Chapter.

#### **Deliverable: Prime Utilization Chapter**

##### ***B. Subcontract Data Collection***

The analysis of the subcontracts awarded by the County 's prime contractors will determine whether the County is a passive participant in ethnic or gender discrimination. The Court states the passive analysis is necessary and it requires compiling subcontract records. These records will be collected from files in the various County department. Research conducted in project files may be required to compile a complete dataset of both the MWBE and non-minority male-owned subcontractors used on both the County's professional services and construction prime contracts. Documents within the project files will be reviewed to identify subcontractors listed on bids/proposals, inspector logs, compliance plans, prevailing wage reports, close-out reports, and invoice statements.

In addition to the review of the City's project documents to identify subcontractors, a survey will be conducted to verify the subcontractor's ethnicity, gender, and payment amount. The relational database used to analyze the prime contract records will also be used to analyze the subcontract records.

#### **Deliverable: Subcontractor Utilization Chapter**

##### ***VII. Geographic Market Area Determination***

Identification of the market area is necessary because it is within the geographic market area that available businesses will be enumerated. The market area is defined by the geographic area where the County awarded most of its prime contract dollars. A cluster analysis will be undertaken to determine the geographic distribution of prime contracts by industry and the dollars and number of contracts awarded in the geographic area. The analysis will distribute the contracts and dollars by counties within the State of Texas and outside the State. Discussions with County staff will be held before making a final determination of the market area.

#### **Deliverable: Geographic Market Area Chapter**

##### ***VIII. Availability Analysis***

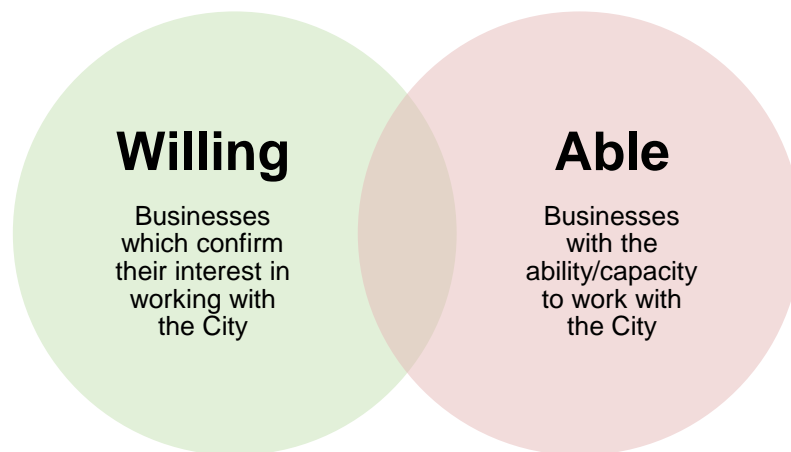
Availability, the crux of a constitutional disparity study, has been highly scrutinized by the courts. *Croson* defines "availability" as the number of businesses in the jurisdiction's



geographic market area which are willing and able to provide goods or services. Circuit courts have addressed the issue of ability, the legal principle commonly known as capacity. A constitutionally sound analysis that calculates availability must address capacity of the willing businesses to perform the jurisdiction's contracts. The methodology to enumerate willing and able businesses within the market area is based on two factors: 1) interest in doing business with the County, as implied by the term "willing," and 2) ability or capacity to provide a service or goods, as implied by the term "able."

Mason Tillman has prepared a comprehensive dataset of businesses in Harris County in the performance of the 2019 Houston METRO Disparity Study. Businesses in Mason Tillman's dataset provide the full array of goods and services a county government procures. Once the market area is defined, in accordance with the analysis described above, the relevant businesses listed in the Houston METRO database will be identified. Building upon our database of market area businesses identified in performing the METRO disparity study additional research will be undertaken to identify other market area businesses willing to contract with the County.

**Chart 1: Determination of Availability**



The method Mason Tillman used to compile the database of Harris County businesses was both rigorous and court-approved in both the Fifth Federal Circuit Court of Appeal<sup>7</sup> and the Seventh Federal Circuit Court of Appeal.<sup>8</sup>

**A. Data Collection**

**Prequalification Standards**

Any prequalification standards used by the County during the study period to determine a contractor's eligibility to bid, propose, or be selected for contracts must be defined before identifying businesses in Mason Tillman's database of available businesses. The review of

<sup>7</sup> *Midwest Fence Corp. v. Illinois Department of Transportation (IDOT)*, 2011 U.S. Dist. LEXIS 115408 (N.D. Ill. Sept. 27, 2011).

<sup>8</sup> *Kossmann Contracting Co. v. The City of Houston*, No. Civ-H-96-3100 (S.D. Tex., March 2007).





prequalification standards will determine how and where they are applied in the County's contracting process to measure suitability to respond to a solicitation. After careful review of the prequalification process, any other standards defining eligibility to bid or propose will be identified and applied to the availability dataset compiled for the Houston METRO disparity Study.

### **Records from the County**

Lists of businesses, including MWBEs and non-minority male-owned businesses that have indicated an interest in doing business with the County, will be requested. A primary source of businesses known to the County is the utilized firms, vendor lists, plan-holders lists, bid tabulations, and SBE certified lists. Unsuccessful bidders, considered both willing and able, can be retrieved from bid tabulations and plan holder lists. Businesses on these lists have demonstrated both willingness and capacity to contract with the County and the lists will be reviewed to identify any business that is not on Mason Tillman's regional database.

### **Public Service Announcements**

Public<sup>3</sup> service announcements will be distributed to targeted radio stations. Press releases will be distributed to targeted print media. Paid radio advertisements may also be used to solicit the interest of available businesses otherwise not otherwise enumerated by Mason Tillman.

#### ***B. Perform Capacity Analysis***

In performing a disparity study capacity or ability is an essential condition of an available business. This critical requirement was addressed when the availability data set was prepared for Houston METRO. An additional dimension of the capacity analysis is the measure of the average County contract. Thus, the distribution of the contracts the County awarded, and the size of the largest contracts awarded to MWBEs will be determined.

**Largest Awards:** The analysis will classify the largest contracts that the County awarded to MWBE businesses by ethnicity, gender, and industry to document the demonstrated capacity of MWBE businesses to perform on large County contracts.

### **Deliverable: Prime and Subcontract Availability Chapters**

#### ***IX. Anecdotal Analysis***

According to *Croson*, anecdotal evidence alone is insufficient to establish the existence of statistically significant disparity. Therefore, anecdotal evidence must be considered in concert with statistical data when evaluating the existence of discrimination in the market area.

#### ***A. Qualitative Interviews***



Two methods will be employed to collect anecdotal data: 1) in-depth interviews will be conducted with 30 business owners in the market area, and 2) an on-line survey will be used to elicit from all available market areas, businesses information regarding their experiences in attempting to work with the County.

The 30 in-depth interviews with business owners in the County 's market area will provide categorical data describing barriers and exemplary practices in obtaining publicly funded contracts. In addition, in-depth interviews will provide an understanding of business owners' perception of market area conditions that affect their access to credit, bonding, licenses, insurance, and interactions with trade associations, unions, suppliers, payment procedures, business practices, and employment practices.

Interviewees will be identified at the two (2) community stakeholder town hall meetings in the market area. Interviewees will be current and former MWBE and non-minority male business owners in the goods and services industries.

Interviewees will also be identified using bidder lists, trade and professional business association membership rosters, regional certification directories, and prequalification lists. Interviews will be transcribed and analyzed utilizing NVivo™ qualitative analysis software. The findings will be coded and reviewed for patterns and practices perceived as either barriers or exemplary procedures.

#### ***B. e-Survey***

A survey instrument distributed through electronic mail applications over the Internet will supplement the anecdotal interviews by including the same questions used in the interview questionnaire. The e-survey findings will also provide a means for all willing businesses to contribute anecdotal evidence to the analysis.

### **Deliverable: Anecdotal Analysis Chapter**

#### ***X. Disparity Analysis by Ethnicity and Gender***

The disparity analysis will determine if MWBE prime contractor and subcontractor utilization in the three industries-- goods and services, professional services, and construction. And the analysis will also determine if the utilization in each industry is at parity with each groups' availability. Under an equitable system of awarding contracts, the proportion of dollars awarded to MWBEs within each of the industries should be relatively close to the proportion of available MWBEs in the market area.

As the first step in conducting the statistical test, the number of dollars that each ethnic and gender group is expected to receive based on the group's availability in the market area must be calculated. Next, a disparity ratio must be calculated. The disparity ratio is the difference between each ethnic and gender group's expected contract amount and the actual contract amount received by the group. The disparity ratio will be determined by dividing the actual contract amount (utilization) by the expected contract amount (availability).



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*Croson* states that an inference of discrimination can be made *prima facie* if the disparity is statistically significant.

To determine the statistical significance of the disparity ratio Mason Tillman will conduct two statistical tests: 1) the percentage of willing and able MWBE businesses to the percentage of MWBEs awarded a prime contract or subcontract with the County; and 2) the percentage of the County's goods and services including professional and non-professional services, and construction services and other dollars awarded to MWBEs compared to such dollars awarded to non-minority male-owned businesses during the same time.

$$\text{Disparity Ratio} = \frac{\text{Utilization}}{\text{Availability}}$$

A disparity ratio of less than 0.8 indicates a degree of disparity. Therefore, a test of statistical significance is undertaken if there is a disparity for any ethnic or gender group. The statistical test of significance determines the probability that the identified disparity ratio is due to chance. If there is a low probability that the disparity is due to chance, *Croson* states that an inference of discrimination can be made.<sup>9</sup> To test the significance of a disparity ratio, Mason Tillman statisticians calculate a P-value.<sup>10</sup>

Statistical significance will be tested using three methods and the findings will be based on one of the methods. The three methods are 1) a parametric analysis,<sup>11</sup> 2) a non-parametric analysis,<sup>12</sup> and 3) a simulation analysis.

The disparity ratio calculated for each of the three industries at the prime contract level and the two industries at the subcontract level will be subject to the statistical significance test. Separate prime and subcontractor disparity findings will be reported by ethnicity, and gender within the industries studied.

## **Deliverable: Prime Contract and Subcontract Disparity Chapters**

### ***XI. Recommendations***

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<sup>9</sup> When conducting statistical tests, a confidence level must be established as a gauge for determining whether an observed occurrence is not due to chance. It is important to note that a 100 percent confidence level or a level of absolute certainty can never be obtained in statistics. A 95 percent confidence level is considered by the Courts to be an acceptable level in determining whether an inference of discrimination can be made. Thus, the data analyzed here was done within the 95 percent confidence level.

<sup>10</sup> P-value is a measure of statistical significance.

<sup>11</sup> Parametric analysis is a statistical examination based on the actual values of the variable. In this case, the parametric analysis consists of the actual dollar values of the contracts.

<sup>12</sup> Non-parametric analysis is a method to make data more suitable for statistical testing by allowing one variable to be replaced with a new variable that maintains the essential characteristics of the original one. In this case, the contracts are ranked from the smallest to the largest. The dollar value of each contract is replaced with its rank order number.



### ***A. Race and Gender-Neutral Remedies***

Race and gender-neutral initiatives can be employed without a finding of statistical disparity and are therefore applicable to all ethnic and gender groups in each industry. Race and gender-neutral recommendations will derive from results of the statistical analysis, anecdotal analysis, procurement policy review, data collection process and a review of the County's solicitation documents and practices.

### ***B. Race and Gender-Specific Remedies***

*Croson* requires jurisdictions to have a “strong basis in evidence” to ensure that any proposed race- and gender-conscious program goals meet the “narrowly tailored” requirement to rectify the effects of a statistically significant disparity without unduly burdening unprotected classes.<sup>13</sup> In the event there is a finding of disparity, narrow tailored race and gender recommendations will be proposed. Recommendations for race or gender-based goals will be limited to subcontracts and will only apply to the ethnic and gender groups with a statistically significant disparity. Furthermore, the subcontract goals will not exceed the groups availability. All recommendations proposed will enhance the effectiveness of MWBEs contracting with the County.

## **Deliverable: Recommendations Chapter**

## ***XII. Project Management Plan***

### ***A. Proposed Timeline***

To perform the research and produce the deliverables on time, and within budget. Mason Tillman proposes a nine-month timeline. The timeline includes production of the critical components that are required for a comprehensive constitutionally sound Study.

### ***B. Budget***

The proposed budget, assuming the availability of prime contract records in digital format, is \$300,000.

### ***C. Project Control Mechanism***

Compliance with the timeline requires employment of a system of project control strategies. These include the following: Milestones PM+'s functionality that allows Mason Tillman to effectively manage large-scale projects through cloud-based text documents, milestone management, file sharing, time tracking, and a messaging system. Mason

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<sup>13</sup> *Concrete Works of Colorado v. Airport and Airport of Denver*, 36 F.3d 1513 at 1522 (10th Cir. 1994), (citing *Wygant v. Jackson Board of Education*, 476 U.S. 267, 292 (1986); see *Croson* 488 U.S. at 509 (1989)).



Tillman also utilizes internal intranet, SharePoint, and Office365™ in order to share, edit and manage documents in real-time.

Mason Tillman's **Local Area Network**, on which all digital documents are backed up daily allows immediate retrieval given any unforeseen issues with files. The use of SharePoint and Office365 also allows Mason Tillman to access our servers and data using cloud software. This ensures that the management team can carry out essential functions, even in the event that access to our primary facility is compromised.

#### ***D. Communication Plan***

The communication plan ensures the County, and its stakeholders are kept informed about Mason Tillman's project deliverables and adherence to the delivery schedule, the extent and frequency of the communication with the stakeholders will be decided in consultation with the County.



## **Internal Communication Process**

Mason Tillman's project manager will be accessible by telephone and e-mail five days a week, from 8:30 am to 5:30 pm PST and accessible after hours via cellular phone should an emergency arise. The project manager will respond to all inquiries from the County, determine the most expedient means to provide a response, and provide a status of any inquiry, as required. The project manager will be available to discuss the project's progress upon request.

**Detailed Workplan**, provided to the County upon receipt of the Notice to Proceed, is the roadmap for completing the Study within nine months. The workplan describes the project tasks, subtasks, deliverables, deadlines, and responsible party.

**Monthly Progress Reports** and client meetings track the study progress. Written reports are submitted on day 15 each month.

**Interim Chapters and Statistical Tables** are submitted intermittently during the 12 months to inform our client and demonstrate the progress of the work. Providing interim chapters and tables allows our work to be reviewed prior to receipt of the draft report.

**A Draft Final Report** is submitted for review and comment prior to the submittal of the final report.

**The Final Report** incorporates client comments.

**An Executive Summary** is submitted with the final report.

**A Legislative Briefing** of the study findings would be presented, upon request, after the project management team accepted the Study.

## **External Communication Process**

A virtual business community meeting will be organized in consultation with the County. The meeting will be electronically recorded and transcribed. Mason Tillman in collaboration with the County will identify the appropriate time to host the Zoom community meeting to maximize business attendance. The meeting will inform local businesses about the Study schedule and objectives. The meeting will serve as the formal announcement of the Study to the business community.

The meeting will also afford the business owners an opportunity to comment on their experiences contracting with the County and allow them an opportunity to offer program recommendations to be included in the Study. In addition, the County's meeting will solicit the business community's support for the Study and identify business owners willing to participate in the anecdotal phase of the Study.



Public notices, print and electronic invitations distributed through trade associations, ethnic chambers of commerce, community calendars, and paid media will maximize dissemination of the meeting notices.

**a. Web Page**

A Disparity Study webpage will be designed and maintained by Mason Tillman to communicate with the business community owners virtually. Frequently asked questions will be written to inform the public about the research process and schedule. With the approval of the County, the Disparity Study webpage will be linked to the County's website.

**b. Social Media**

Contingent upon the approval of the County, meeting notices and study updates will be distributed through the County's social media channels (Facebook™, Twitter™, and Instagram™, and LinkedIn™). An automated posting schedule with details regarding the community meetings would have to be approved by the County. Select social media posts will be sponsored to increase the number of post engagements, shares, and likes.

***XIII. Post Disparity Study Services***

At the completion of the disparity study Mason Tillman would be available to assist the County implement the study recommendations to mitigate any identified adverse impact of the pandemic on minority businesses, and increase the participation of MWBEs on the County's prime and subcontracts. Our experience providing program implementation assistance and overall goal setting reports is extensive.

***A. Procedures for Drafting Ordinances and Policies***

Mason Tillman has extensive experience promulgating policies and drafting ordinances has been based on findings of statistical disparity. If supported by the statistical findings and County approval, the firm's legal staff could assist with drafting an Ordinance to enact legislation for MWBE, SBE, and LBE initiatives and programs.

All policies, ordinances, and laws written by Mason Tillman would conform to the County's standard format to ensure consistency with existing legislation. Minimally, any new legislation pertaining to MWBE, Small Business and Local Business initiatives would include a 1) policy statement; 2) description on how the policy is related to the County's core mission and values; 3) description of the policy application; and 4) the County department responsible for administering the policy.

Key department heads, staff with procurement responsibilities, legislative officials, and business leaders would be consulted. Monitoring and reporting provisions will be included in the legislation to assess the effectiveness of the initiative. Staff training objectives would be proposed to effectively implement the initiative and the new procedures.



## ***B. Goal Setting***

### **Minority Business Enterprise Goals – Strict Scrutiny Standard**

In the event the Study reveals a statistically significant underutilization of MWBEs, the County Commission could approve an MWBE Ordinance with subcontracting goals. The methodology for setting MBE goals would be based on the strict scrutiny standard set forth in *City of Richmond v. J.A. Croson Co.*<sup>14</sup> and documented in the disparity study. Therefore, the MBE goals would only be applicable to ethnic groups that were found to have a finding of statistically significant underutilization on the County's subcontracts. And the subcontracting goals would be defined by the availability of MBEs in the County's market area that provide construction, professional services, and the goods and services procured by the County.

### **Women Business Enterprise Goals – Intermediate Scrutiny Standard**

2.

Intermediate scrutiny is a lesser standard of review that is applicable to gender-based goals which do not require a compelling governmental objective. Thus, WBE goals would be applicable to females that were found to be underutilized in each industry on the County's subcontracts. And the subcontracting goals would be defined by the availability of WBEs in the County's market area that provide construction, professional services, or goods and services procured by the County.

3.

### **Local Business Enterprise Goals - Rational Basis Standard**

Business enterprise goals based on factors other than race or gender are subject to the least rigorous review, the rational basis standard. To survive a constitutional challenge under a rational basis review, the government entity need only demonstrate that the governmental action or program is rationally related to a legitimate government interest.<sup>15</sup> Thus, a disparity analysis is not required for race and gender-neutral goals. Mason Tillman would define the LBE goals based on the availability of businesses in the County's market area that provide the goods and services, professional services and construction services procured by the County.

## ***C. Prepare Program Manuals***

If the County Commission promulgates a MWBE or LBE Ordinance Mason Tillman could draft program manuals based on the statistical findings and best management practices to implement any new policy. The program manual would present detailed procedures to implement the policy adopted by the County.

<sup>14</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

<sup>15</sup> *Armour v. City of Indianapolis, Ind.*, 132 S. Ct. 2073, 2080 (2012) (quoting *Heller v. Doe*, 509 U.S. 312, 319–320 (1993)).





## **MWBE Program Manual**

If the disparity study supports the implementation of an MWBE program and the County Commission approves an ordinance, an MWBE procedures manual would be needed. A manual would detail the rules and procedures to implement a program.

1.

### **SBE Program Manual**

In the event the County Commission approved a SBE program, policies and procedures could be detailed in a manual to reflect best management practices detailed in the disparity study.<sup>2</sup>The manual provisions could also include the relevant provisions outlined in the MWBE program manual.



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# Background and Experience

## ***I. Background***

Established in 1978, Mason Tillman is a certified African American owned business expert in the performance of disparity studies and the development of post disparity study minority, female, small, and local business enterprise contracting programs. In addition to business enterprise studies, Mason Tillman performs workforce analyses, drafts public policy, and provides compliance services, business development, and business retention strategies. The firm also has extensive knowledge of municipal procurement policy and organization change management.

The 146-disparity studies Mason Tillman has completed without a successful legal challenge has earned the firm national recognition as a leader in performing constitutionally sound disparity studies. Our expert legal and statistical team jointly developed the disparity study methodology. The statistical and anecdotal analysis in Mason Tillman's disparity studies are firmly grounded in the language and directives set forth in *City of Richmond v. J.A. Croson Company*<sup>16</sup> (*Croson*) and its progeny. The fact that our research model's responsiveness to the dictates of the law and the programmatic objectives of the client has insulated Mason Tillman's disparity studies from legal challenge. Furthermore, Mason Tillman methodology has been approved in both the Fifth and Seventh Appellate courts.

## ***II. Disparity Study Experience***

Mason Tillman's unblemished record of 146 disparity studies has earned the firm national recognition as a leader in performing legally defensible studies. In helping its clients defend business equity and inclusion programs predicated on a competitors' disparity study, Mason Tillman has the unique distinction of judicial review in two federal cases without a legal challenge to its study and affirmation of its disparity study methodology earned the president the status of a court certified disparity study expert. The firm's expert legal and statistical team developed the methodology that the two federal circuit courts, *Midwest Fence Corp. v. Illinois Department of Transportation* and *Kossman Contracting Co. v. City of Houston*, recognized as statistically rigorous and legally sound.

The statistical and anecdotal analyses in Mason Tillman's disparity studies are firmly grounded in the standards set forth in *City of Richmond v. J. A. Croson Company* (*Croson*) and its progeny. It is this adherence to the dictates of the law and the programmatic objectives of the client that have insulated Mason Tillman's disparity studies from any successful legal challenge.

The 146 disparity studies have been conducted in various communities throughout the United States including major municipalities: City of Houston, City of Columbus, City of



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<sup>16</sup> *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 (1989).

Oakland, City of St. Louis, and New York City. A complete list of 146 disparity studies conducted by Mason Tillman can be found in Appendix A.

As illustrated in Table 3 below, Mason Tillman's disparity study engagements, included as references have had relevant scope of services.

**Table 3: Mason Tillman's Disparity Study References**

Agency	Description of Study
<b>City of Columbus</b>  <b>Damita Brown</b> , Assistant Chief Diversity Officer  (614) 645-2193 dabrown@columbus.gov	Performed legal analysis of the <i>Croson</i> decision and its progeny. Analyzed contracts and assessed disparity by race, gender, and industry. Conducted anecdotal interviews to assess the prevalence of discrimination, barriers to MWBE contracting, and exemplary agency practices. Set contracting goals.
<b>West Palm Beach, FL</b>  <b>Frank Hayden</b> , Procurement Director  FFHayden@wpb.org (561) 822-2102	Performed legal analysis of the <i>Croson</i> decision and its progeny. Analyzed contracts and assessed disparity by race, gender, and industry. Conducted f to assess the focus groups to assess policies and procedures that were considered by businesses to be barriers to MWBE contracting, and exemplary agency practices. Set contracting goals. Reviewed solicitations following the MWBE Program implementation for compliance with the legal standard. Review certification eligibility requirements for the MWBE program.
<b>New York City</b>  <b>Senator James Sanders</b> , New York State  (718) 523-3069 sanders@nysenate.gov	Performed legal analysis of the <i>Croson</i> decision and its progeny. Analyzed contracts and assessed disparity by race, gender, and industry. Conducted anecdotal interviews to assess the prevalence of discrimination, barriers to MWBE contracting, and exemplary agency practices. Drafted ordinance structuring contracting program and set contracting goals.
<b>Houston TX</b> <b>Karen Hudson</b> <b>Deputy Chief Procurement Officer</b>  (713) 739-6048	Current contract to conduct Disparity Study



Agency	Description of Study
Karen.Hudson@ridemetro.org	

### III. Litigation Experience

As a nationally recognized expert in performing legally sound disparity studies, Mason Tillman has provided litigation support to public agency attorneys for over a decade, both as a litigation consultant and testifying expert witness. Given our history, there is no expectation that the County's disparity study would be challenged. However, in the unlikely event of a challenge, Mason Tillman's expert staff will be available to testify and otherwise assist the County in any litigation ensuing from or related to our work.

#### A. Court Authorized Post-Enactment Disparity Study

Most recently, the Illinois Department of Transportation retained Mason Tillman as an expert witness to defend a challenge to their DBE program in *Midwest Fence Corp. v. United States Department of Transportation* (USDOT), 2011 U.S. Dist. LEXIS 115408 (N.D. Ill. Sept. 27, 2011) (*Midwest Fence*). *Midwest Fence* challenged USDOT's DBE Program as applied by Illinois Department of Transportation (IDOT) based on NERA's 2004 Availability Study. Dr. Ramsey testified as an expert witness in a deposition taken during the trial on appeal. In 2013, Mason Tillman's Post Enactment DBE Disparity Study was used to resolve the lawsuit in favor of IDOT. The order granting summary judgment noted that "[Mason Tillman's disparity study is] the critical piece ... It establishes the 'disparity' from which IDOT's inference of discrimination primarily arises."

In *Midwest Fence Corporation v. Illinois Department of Transportation*, (IDOT) the Seventh Circuit Court of Appeals held that IDOT's DBE Program survived the strict scrutiny standard because Mason Tillman's post-enactment disparity study established a substantial basis in evidence to support the need to remedy the effects of past discrimination in its market area, and the program was found to be narrowly tailored to serve that remedial purpose.<sup>17</sup>

Name and Title	Contact Information
<b>Thor Y. Inouye, Esq.</b> Assistant Unit Supervisor – Civil Prosecutions Illinois Attorney General's Office	General Law Bureau 100 West Randolph Chicago, IL 60601 Phone: (312) 814-2035 TInouye@atg.state.il.us

In *Kossman Contracting Co. v. The City of Houston*, No. Civ-H-96-3100 (S.D. Tex., filed 1996), the City of Houston's MWBE program was challenged. The disparity study upon which the race-based program was established, prepared by DJ Miller & Associates, was found by the Court to be unconstitutional. In 2006, the Court issued a settlement agreement

<sup>17</sup> *Midwest Fence Corporation v. Illinois Department of Transportation* (7<sup>th</sup> Cir. West Law 6543514, 2016).



allowing the City to submit a post-enactment disparity study. Mason Tillman was retained to conduct the new study, which became the factual predicate for the City's MWBE Program. The Judge approved Mason Tillman's study and authorized the reinstatement of the City's MWBE Program in March 2007.

Name and Title	Contact Information
<b>Patrick Zummo, Esq.</b> Law Offices of Patrick Zummo	Phone: (713) 651-0590 Fax: (713) 651-0597 3900 Essex Lane, Suite 800 Houston, Texas 77027 PZummo@zoomlaw.com

### ***B. Disparity Study Expert Witness Services***

Dr. Ramsey was initially certified as an expert witness in *Associated Builders and Contractors v. City of Memphis*, 138 F. Supp. 2d 1015 (W.D. Tenn. 2000). In *Associated Builders and Contractors v. City of Memphis*, the City of Memphis, Tennessee's litigation team engaged Mason Tillman in 2004 as an expert witness to help defend its MWBE Program, which was based on a disparity study prepared by DJ Miller & Associates. Mason Tillman assisted in the development of a litigation strategy and provided an expert witness report.

Name and Title	Contact Information
<b>Monika Johnson, Esq.</b> Former: City of Memphis City Attorney Current: Southwest Tennessee Community College	737 Union Avenue Memphis, TN 38103 Phone: (901) 333-5065 Fax: (901) 323-0596 Mljohnson@southwest.tn.edu

### ***C. Disparity Study Litigation Support***

In 1999, the Southern Florida Water District retained Mason Tillman to evaluate its disparity study, which was the factual predicate for the District's MWBE Program that was challenged in *IT Corporation v. South Florida Water Management District*, No. 97-8872 CIV (S.D. Fla. Filed Nov. 13, 1997; the case was dismissed Dec. 16, 1998). Mason Tillman prepared a critical review of the methodologies used by the District's consultant, MGT of America, and determined that the study did not provide the factual predicate for the subcontracting goals which IT Corporation challenged. Based in part, upon Mason Tillman's consultant's report, the District agreed to modify its MWBE Program to settle the case.



Name and Title	Contact Information
<b>Carolyn Williams</b> Former: Director, Office of Supplier Diversity and Outreach South Florida Water Management District	4200 Congress Avenue, MS #21 Lake Worth, FL 33461-4796 Phone: (561) 868-3502 Fax: (561) 868-3504 williamc@palmbeachstate.edu

Name and Title	Contact Information
Current: District Ombudsman, South Florida Water Management District	

#### ***IV. Post Disparity Study and Legal Consultation Services***

##### ***A. MWBE Policy Review and Recommendation***

Mason Tillman has provided to several clients within the last five years post disparity study consultant services. Perhaps the most notable assignment is the recent service provided to New York State in drafting the revised MWBE policy-15A. Mason Tillman managed the drafting of the City of St Louis' MWBE and SBE ordinances and revisions to the procurement policy to incorporate the MWBE program standards reflected in the ordinance. Similar services were provided to Shelby County, Tennessee.

Currently Mason Tillman is providing post disparity study services to both the City of Columbus and the Louisville Metropolitan Sewer District. These assignments include drafting an MWBE program manual, building staff consensus for the program change and coordination with external constituents.

##### ***B. Workforce Ordinance Review and Recommendation***

Mason Tillman drafted the City of St. Louis' Workforce Ordinance to promulgate rules and procedures for the administration of the hiring goals for minority, female and residents on the City contraction and professional service contracts. The implementation plan for the draft Workforce Ordinance. Included procedures for change management including City staff training. Recommendations were made to the City: 1) to enhance the Community Jobs Board, 2) to provide education, training, and technical assistance to minorities, women, apprentices, and St. Louis residents in the construction industry, and 3) to establish contract specification language to implement the apprenticeship goals, minority and women participation goals, and the City resident participation goals, and 4) on other components of the ordinances.

#### **Small and Local Program Design**

Small and local business programs must meet a lesser legal standard than required for race-specific programs. While a disparity study is not required for small and local business programs, the race-neutral findings that a disparity study produces can be used to formulate such these programs. Mason Tillman has designed Small Business Enterprise and Local Business Enterprise programs and provided a comprehensive array of services to support the programs for large and small agencies, including the cities of Oakland, St. Louis, Davenport, and Cincinnati.



### ***C. Post Disparity Study Diversity Program Development Services***

#### **Contract Monitoring**

Monitoring compliance with contract goals is a core function of a rigorous equity program. Mason Tillman has performed the required tracking of prime contract and subcontract awards, and payments to monitor compliance for large and small projects, including for the City of San Jose, Shelby County in Tennessee, Alameda County Transportation Commission in California, and Los Angeles County Metropolitan Transportation Authority. Mason Tillman's proprietary database application tracks the prime and subcontract awards, the bidders, contract payments, and vendor certification.

#### **Utilization Reporting**

Preparing independent reviews of contract awards and payments is a core service provided by Mason Tillman, for clients including the State of Indiana, Alameda County General Services Agency, City of Hayward, and the University of California. Mason Tillman has performed utilization reviews and has written statistical reports presenting the analytical findings for construction projects involving as few as one prime contract and as many as 1,531,805 prime contract records. For most of our clients where large utilization data sets were analyzed, the reviews involved the examination of both prime contractors and subcontractors.

Customized tables, charts, and graphs can be generated from the database to report the data consistent with the client's requirements. The dataset also undergoes numerous quality control queries to identify unusual scenarios, such as prime payments exceeding prime awards and subcontract payments exceeding prime contract payments. Standard and customized ad hoc reports are an integral component of a rigorous compliance and monitoring system.

#### **Staff Training on Program Compliance and Implementation**

Mason Tillman has assisted government entities in establishing new MWBE contract compliance offices and provided the research on contracting policies and procedures needed to implement MWBE program. Additionally, Mason Tillman provided staff training on implementing recommendations to the City of Richmond, the City of Portland, and Shelby County, Tennessee, procurement staff. Staff trainings have focused on applying bid discounts to prime contracts, setting goals for subcontracts, quantifying good faith effort criteria, establishing an MWBE office, and adopting MWBE Program Certification Standards, among other training topics.



### **Contract Goal Attainment Review**

The Small, Local, Minority, and Woman-owned Business Enterprise programs which Mason Tillman has managed include contract specific goal setting, goal attainment review, and good faith effort evaluation.



A database application is used to quantify the goal setting and the goal attainment review. Each bidder's goal attainment is calculated. Based on subcontract dollars committed and verification of the performance of a commercially useful function, a formal memorandum generated from the database documents the goal attainment on each contract.





## Proposed Project Team

### I. Mason Tillman Study Team

Table 4 presents Mason Tillman's key staff roles and responsibilities pertaining to this Study.

**Table 4: Mason Tillman Study Team Project Roles**

Study Team	Project Roles and Responsibilities
<b>Eleanor Mason Ramsey, Ph.D.</b> Project Manager	<ul style="list-style-type: none"> <li>• Client Coordination</li> <li>• Executive Project Management</li> <li>• Quality Assurance/Cost Control</li> <li>• Final Report Preparation</li> <li>• Expert Witness Services</li> <li>• MBE Goal Setting</li> <li>• Post-Study Consultation</li> </ul>
<b>Don O'Bannon, Esq.</b> Legal Counsel	<ul style="list-style-type: none"> <li>• Race- and Gender-Neutral and Recommendations</li> <li>• Race- and Gender-Conscious Recommendations</li> <li>• Final Report Review</li> </ul>
<b>Debra Lawson, Esq.</b> Project Administrator	<ul style="list-style-type: none"> <li>• Race- and Gender-Neutral Recommendations</li> <li>• Race- and Gender-Conscious Recommendations</li> <li>• Program Review</li> <li>• Final Report Review</li> <li>• Assist with Legal Research</li> <li>• Conduct Procurement Policy Review</li> <li>• Manage Anecdotal Interviews</li> <li>• MBE Goal Setting</li> </ul>
<b>Antonina Salina, M.S.</b> Database Manager	<ul style="list-style-type: none"> <li>• Database Preparation</li> <li>• Subcontractor Data Extraction, Normalization, and Cleaning</li> <li>• Utilization, Market Area, and Availability Analyses</li> </ul>
<b>Mike Leong, M.S.</b> Senior Statistician	<ul style="list-style-type: none"> <li>• Clean and Standardize Data</li> <li>• Conduct Statistical Analyses</li> </ul>
<b>Nicholas Negoro, B.A.</b> Survey Manager	<ul style="list-style-type: none"> <li>• Program Analysis Research</li> <li>• Survey Coordination</li> <li>• Report Preparation</li> </ul>
<b>Thu Trieu, B.A.</b> Senior Research Assistant	<ul style="list-style-type: none"> <li>• Data Collection Coordination</li> <li>• Project Scheduling</li> <li>• Anecdotal Data Collection and Analysis</li> <li>• Program Analysis Research</li> <li>• Support Report Preparation</li> </ul>
<b>Margaret H. Lee, M.A.</b> Technical Writer/Editor	<ul style="list-style-type: none"> <li>• Edit and Proofread Project Documents</li> </ul>



## **PROJECT MANAGER: ELEANOR MASON RAMSEY, PH.D.**

### **Education**

- Ph.D., Anthropology, University of California, Berkeley, CA
- B.A., Psychology, Hunter College, New York, NY

### **Professional Licenses and Affiliations**

Federal Court-Certified Disparity Study Expert Witness in the Fifth and Seventh Circuits.

### **Disparity Study Experience**

Dr. Ramsey is a leading expert in minority, woman-owned and small business program design. Dr. Ramsey's investment in the analytical process of the disparity studies the firm has performed ensures the legal and scientific integrity of Mason Tillman's work product. Her knowledge and ability include the statistical analysis performed for disparity studies in accordance with legal rulings and policies. She is responsible for the development of Mason Tillman's *Croson* study methodologies.

Dr. Ramsey directs the staff's performance of disparity studies. Under her direction and leadership, Mason Tillman has conducted 146 disparity studies as the prime consultant on time and on budget. The success of the firm's completed disparity studies is a testament to her management skills and experience.

### **Expert Witness Experience**

Dr. Ramsey has served on the litigation team for three agencies to defend their respective disparity studies performed by a competitor. As a subject expert, she has provided testimony regarding the constitutional sufficiency of competitors' disparity studies. Dr. Ramsey was initially certified as a disparity study expert witness in *Associated Builders and Contractors v. City of Memphis*, 138 F. Supp. 2d 1015 (W.D. Tenn. 2000). Dr. Ramsey was also an expert witness in *Midwest Fence Corporation v. IDOT, et al.*<sup>18</sup>, filed in the Seventh Circuit.



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<sup>18</sup> *Midwest Fence Corp. v. United States Dep't of Transp.*, 84 F. Supp. 3d 705 (2015).

### **LEGAL COUNSEL: DON O'BANNON, ESQ.**

#### **Education**

- J.D., University of Virginia School of Law, Charlottesville, VA
- B.A., Political Science and Government, Dartmouth College, Hanover, NH

#### **Experience**

Mr. O'Bannon has provided legal advice on 31 disparity studies, including studies for Solid Waste Authority of Palm Beach, and Washington Suburban Sanitary State. Mr. O'Bannon brings more than 30 years of legal expertise to this position. Before his tenure with Mason Tillman, he served as chief legal counsel for the Dallas Area Rapid Transit disparity study, the lead government attorney for the North Central Texas Council of Governments Disparity and Availability Study, and the legal advisor on the City of Dallas Disparity Study. From 2005 to 2011, Mr. O'Bannon served as the vice president of Business Diversity & Development at Dallas Fort Worth Airport. Mr. O'Bannon's application of the USDOT MWBE regulations, 49 CFR Part 26 and 23, is nationally recognized.

### **ASSISTANT PROJECT MANAGER: DEBRA LAWSON, ESQ.**

#### **Education**

- J.D., Harvard University School of Law, Cambridge, MA
- B.A., Political Science, University of California, Berkeley, CA

#### **Experience**

Attorney Debra Lawson has served as Mason Tillman's Assistant Project Manager and legal advisor on 30 disparity studies for over six years. She has been Mason Tillman's Assistant Project Manager and legal advisor on 10 DBE Goal Setting studies and has developed comprehensive protocols for the coordination, production, and tracking of research progress. Prior to joining MTA, Ms. Scott served as an attorney for the California Bar Association.

Attorney Lawson will supervise the collection of the Agencies' contract records and review of the procurement policies. She will also manage anecdotal interviewee identification, transcript analysis, and report writing for the anecdotal analysis. She will report to Dr. Ramsey.

### **DATABASE MANAGER: ANTONINA SALINA, M.S.**

#### **Education**

- M.S., Computer Science, Saint Petersburg State Institute for Information Technologies, Precision Mechanics, and Optics, St. Petersburg, Russia
- B.S., Computer Science, Saint Petersburg State Institute for Information Technologies, Precision Mechanics, and Optics, St. Petersburg, Russia



### **Experience**

Ms. Antonina Salina has been Mason Tillman's database manager for six years. She has analyzed large data sets for 38 disparity studies. She has recently completed cleaning 40,000 contracts awarded by the State of New York from 2013 to 2015. As Mason Tillman's database manager, Ms. Salina is also responsible for developing, testing, and supporting database applications developed in Microsoft Access. Using SQL and Visual Basic, she supervises the cleaning of contract records and government agencies. Ms. Salina uses the proprietary statistical application designed by Mr. Leong to apply the significance test to the utilization data.

Ms. Salina will supervise the database team to guarantee that the necessary research is undertaken to prepare a clean dataset for the statistical analysis that must be performed. She will report to Dr. Ramsey.

### **SENIOR STATISTICIAN: MIKE LEONG, M.S.**

#### **Education**

- M.S., Statistics, University of California, Berkeley, CA
- B.S., Biophysics, University of California, Berkeley, CA

#### **Professional Licenses and Affiliations**

Mathematics and Statistics Coordinator, University of California, Berkeley

#### **Experience**

Mr. Mike Leong developed the statistical models that have been used to perform the statistical analysis on all 146 disparity studies that Mason Tillman has conducted. He also developed the multiple regression models that the database team uses to test the significance of private sector data and the capacity of market area businesses. He has recently designed several large-scale surveys conducted to address questions of studies.

Mr. Leong will provide his expertise on statistical matters that arise from the unique conditions of the availability and utilization data. He will report to Ms. Salina.

### **SURVEY MANAGER: NICHOLAS NEGORO, B.A.**

#### **Education**

- B.A., Psychology, California State University, Chico, CA

#### **Experience**

Mr. Nicholas Negoro has served as Survey Manager on 38 Mason Tillman disparity studies. Mr. Negoro supervises the multiple business surveys required to produce a legally sound study, including surveys undertaken to determine a business owner's race, gender, industry, and willingness to contract with the client.



Mr. Negoro will coordinate compiling comprehensive records of availability sources for willing and able prime contractors and subcontractors in the market area. He oversees downloading businesses lists from Internet sources, scraping, and cleaning each list to prepare them for analysis. He will also work with the Database Manager to track the research process and maintain an accurate log of the data collected. Mr. Negoro will ensure that quality control measures are followed for all Study report chapters and will serve as the day-to-day contact person for Mason Tillman.

### **TECHNICAL WRITER/EDITOR: MARGARET LEE, M.A.**

#### **Education**

- M.A., Journalism, New York University, New York, NY
- M.A., Art History, University of Texas, Austin, TX
- B.A., Liberal Arts Honors Program, University of Texas, Austin, TX

#### **Experience**

Ms. Margaret Lee is a seasoned copy editor with a background in journalism. She has worked on 70 Mason Tillman disparity studies. She has been responsible for drafting government reports as well as editing and proofreading client reports. Ms. Lee developed templates for formatting various types of required documents. She has also developed and maintains the company style guide and customizes style sheets according to our clients' needs. Press releases, public service announcements, and op-ed articles, as well as copy editing for the project webpage have been her responsibility. She is also experienced in producing culturally responsive material for government publications and for public distribution.

Ms. Lee will edit and proofread all written materials and disparity study report chapters. She will report to Ms. Scott.


## ***II. Subconsultants***

Table 5 presents Mason Tillman's subconsultant's role and responsibilities pertaining to this Study.

**Table 5: Mason Tillman Subconsultant Team Project Roles**

<b>GOODWILLE PIERRE, LLC.</b>	
<b>Goodwille Pierre, Esq.</b>	<ul style="list-style-type: none"> <li>• Anecdotal Interviews</li> <li>• Community Meeting Logistics</li> <li>• On-site Data Collection</li> </ul>



 **GOODWILLE PIERRE, LLC.:** Goodwille offers clients turnkey solutions for the implementation and management of diversity and/or goal orientated initiatives and provides corporate legal counsel, and compliance and intellectual property consultation.



## **ANECDOTAL INTERVIEWS, RECOMMENDATIONS, POLICY AND PROCEDURE REVIEW: GOODWILLE PIERRE, ESQ.**

### **Education**

- B.A., Chemistry, Georgia State University, Atlanta, GA
- J.D., South Texas College of Law, Houston, TX

### **Experience**

Goodwille is the former Vice President of the National Bar Association (NBA). The NBA is the largest organization that represents over 70,000 Lawyers and Judges of African American and African descent worldwide. Goodwille is a four-time past Chair of Houston's Government Procurement Connections (GPC) Planning Committee. GPC is an annual conference, which draws more than 3,000 small business owners seeking government contracting opportunities, and more than 500 representatives from various government entities. Goodwille is dedicated to helping small and minority owned businesses, and the conference has enjoyed outstanding growth and produced tangible benefits for small and minority owned businesses each year under his leadership. Goodwille has also dedicated his life to the creation and execution of community legal education initiatives as well as many pro-bono legal clinics on various issues in Houston and throughout the country.

Mr. Pierre will conduct anecdotal interviews, recommendations, and policy and procedure review. He will report to Dr. Ramsey.



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## References

Mason Tillman has provided three references for similar projects completed by the firm. For each of the agencies referenced below, Mason Tillman conducted a disparity study. Each study included an analysis of available and utilized Minority and Women Owned Businesses and non-Minority Owned Businesses and race-based program recommendations supported by the results of the disparity study completed for each entity.

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## Appendix A – List of Disparity Studies

A full list of Mason Tillman disparity studies performed is presented in Table 6. Mason Tillman was the prime consultant on each disparity study listed. The fact that none of these disparity studies has been successfully challenged is testament to the validity of Mason Tillman’s interpretation of the case law and the soundness of our statistical methodology.

**Table 6: Mason Tillman’s List of Disparity Studies**

City	
City of Berkeley, California	2020
City of St. Petersburg, Florida	2018
City of Vicksburg, Mississippi	2018
City of Columbus, Ohio	2017
City of Oakland, California	2017
City of West Palm Beach, Florida	2015
City of Cincinnati, Ohio	2014
City of St. Louis, Missouri	2013
City of Fort Wayne, Indiana	2012
City of Jacksonville, Florida	2011
City of Arlington, Texas	2008
City of Davenport, Iowa	2008
City of Fort Worth, Texas	2008
City of Houston, Texas	2006
City of Oakland Update Study, California	2005
City of Kansas City, Missouri	2005
City of Bridgeport, Connecticut	2004
City of Tampa, Florida	2004
City of New York, New York	2003
City of Boston, Massachusetts	2002
City of Cleveland, Ohio	2001
City of Dallas, Texas	2001
City of Durham, North Carolina	2000
City of Pittsburgh, Pennsylvania	1999
City of New Haven, Connecticut	1998
City of Knoxville, Tennessee	1997
City of Oakland, California	1996





City	
City of Seattle, Washington	1996
City of Indianapolis, Indiana	1995
City of Gresham, Oregon	1994
City of Portland, Oregon	1994
City of Richmond, California	1994
City of San Jose, California (additional industries)	1994
City of San Jose, California	1992
County	
Baltimore County, Maryland	2018
Shelby County, Tennessee	2015
Palm Beach County, Florida	2014
Miami-Dade County, Florida	2012
Bexar County, Texas	2010
Clayton County, Georgia	2010
Wyandotte County, Kansas	2005
Baltimore County, Maryland	2004
Alameda County, California	2002
Cuyahoga County, Ohio	2001
Montgomery County, Maryland	2001
Durham County, North Carolina	2000
Knox County, Tennessee	1999
San Francisco City and County Human Rights Commission, California	1997
King County and the Department of Metropolitan Services, Washington	1996
Metropolitan Government of Nashville and Davidson County, Tennessee	1996
Multnomah County, Oregon	1994
Washington County, Oregon	1994
Maricopa County, Arizona	1990
State	
State of Rhode Island	2018
State of New York	2015
State of Illinois	2009
Commonwealth of Pennsylvania	2007
State of Texas Update Study	2005
State of New Jersey	2003
State of Ohio (Anecdotal Study)	2001
State of Indiana	1998



State	
State of Minnesota	1997
State of Washington	1997
State of Missouri	1994
State of Oregon Department of Administrative Services	1994
Transportation	
Houston Metro, Texas	2019
St. Louis Lambert Airport, Missouri	2018
Dallas Area Rapid Transit, Texas Update Study	2019
Port of Oakland, California	2018
San Mateo County Transit District, California	2016
Peninsula Corridor Joint Powers Board, California	2016
Santa Clara Valley Transportation Authority, California	2016
Port Authority of New York and New Jersey	2015
California High-Speed Rail Authority	2013
Los Angeles County Metropolitan Transportation Authority, California	2011
Jacksonville Port Authority, Florida	2011
Jacksonville Transportation Authority, Florida	2011
Dallas Area Rapid Transit Disparity Study Update 2012, Texas	2012
Illinois Department of Transportation Update Study	2012
Illinois Department of Transportation	2012
Illinois Department of Transportation District 4	2013
Illinois State Tollway, Illinois	2009
Dallas Fort Worth International Airport, Texas	2008
Fort Worth Transportation Authority, Texas	2008
North Texas Tollway Authority, Texas	2008
San Francisco Bay Area Rapid Transit, California	2007
Wayne County Airport Authority, Michigan	2006
Kansas City Area Transportation Authority, Missouri	2005
Tennessee Department of Transportation	2005
Hillsborough County Aviation Authority, Florida	2004
New Jersey Department of Transportation	2004
Dallas Area Rapid Transit 2002 Update Study, Texas	2002
Cleveland Cuyahoga Port Authority, Ohio	2001
Greater Cleveland Regional Transit Authority, Ohio	2001
Dallas Area Rapid Transit, Texas	1997
Knoxville Transit Agency, Tennessee	1997



Transportation	
Metropolitan Airports Commission, Minnesota	1997
Metropolitan Transit Agency, Nashville	1997
Minnesota Airport, Minnesota	1997
Minnesota Department of Transportation	1997
Nashville Airport Authority, Tennessee	1997
Port of Oakland, California	1997
Port of Seattle, Washington	1996
Tri-County Metropolitan Transportation District Portland, Oregon	1994
Alameda County Transportation Authority, California	1993
Utilities	
Louisville and Jefferson County Metropolitan Sewer District, Kentucky	2016
Solid Waste Authority of Palm Beach County, Florida	2015
St. Louis Metropolitan Sewer District, Missouri	2012
Jacksonville Electric Authority, Florida	2011
Washington Suburban Sanitary Commission, Maryland	2010
Sacramento Municipal Utility District Update Study, California	1998
State of Indiana Lottery	1998
State of Indiana Riverboat Casinos	1998
Sacramento Municipal Utility District, California	1993
East Bay Municipal Utility District, California	1997
Metropolitan Council, Minnesota	1997
Metropolitan Mosquito Control District, Minnesota	1997
Metropolitan Sports Facilities Commission, Minnesota	1997
Nashville Electric Service, Tennessee	1997
Seattle Public Facilities District, Washington	1996
Metropolitan Service District, Portland, Oregon	1994
Schools	
Broward County Public Schools, Florida	2014
St. Louis Community College, Missouri	2014
Duval County Public Schools, Florida	2011
Fort Worth Independent School District, Texas	2008
Dallas County Community College District, Texas	2005
Kansas City School District, Missouri	2005
School District of Hillsborough County, Florida	2005
Dallas Independent School District, Texas	2002
Cleveland Municipal School District, Ohio	2001

<b>Schools</b>	
Cuyahoga Community College District, Ohio	2001
Metropolitan Board of Education, Nashville Tennessee	1997
Seattle School District No. 1, Washington	1996
City College of San Francisco, California	1996
State of Oregon Higher Education, Portland	1994
Oakland Unified School District, California	1993
University of California, California	1990
<b>Housing</b>	
Pittsburgh Housing Authority, Pennsylvania	1999
New Haven Housing Authority, Connecticut	1998
Metropolitan Development and Housing Agency, Nashville, Tennessee	1997
<b>Other Disparity Studies</b>	
Pittsburgh Urban Development Agency, Pennsylvania	1999
Knoxville Community Development Agency, Tennessee	1998
Redevelopment Agency, City of Oakland, California	1996
Portland Redevelopment Agency, Oregon	1994
San Jose Redevelopment Agency, California	1992



**Fort Bend County  
Disparitiy Study  
Payment Milestones**

PHASE	DELIVERABLE	AMOUNT
<b>Phases I</b>	Submit a workplan including project tasks, deliverables and Mason Tillman and the County's responsibilities ; host kick off meetings with project managers and database staff; and prepare legal analysis chapter.	\$ 75,000.00
<b>Phase II</b>	Prepare procurement policy analysis and chapter; coordinate with County to extract prime contract dataset; prepare Data Verification Report of prime contract records provided by the County; identify availability sources; and host two business community meetings.	\$ 75,000.00
<b>Phase III</b>	Conduct geographic market analysis and prepare a market area chapter; gather anecdotal evidence of discrimination and prepare an anecdtoal chapter; reconstruct subcontract records and prepare subcontract chapter.	\$ 75,000.00
<b>Phase IV</b>	Reconstruct subcontract records and draft subcontract chapter.	\$ 50,000.00
<b>Phase V</b>	Prepare prime contract and subcontract disparity chapters; prepare recommendations chapter; and finalize the draft report.	\$ 20,000.00
<b>Phase VI</b>	Respond to County's questions and issues regarding the draft report and submit final report.	\$ 5,000.00
<b>Total</b>		\$ <b>300,000.00</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.**

Mason Tillman Associates, Ltd.  
Oakland, CA United States

**Certificate Number:**  
2021-782291

**Date Filed:**  
07/22/2021

**Date Acknowledged:**  
07/27/2021

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

Fort Bend County

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

Disparity Study  
Disparity Study

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

**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)