



WHEREAS, Contractor clearly understands and acknowledges that the Grant Administration Services for the Project Description (Acquisition) portion of the Performance Statement of CDBG-DR Contract No. 20-065-092-C257 are NOT included in this Grant Administration Services Agreement; and

WHEREAS, Contractor clearly understands and acknowledges that the performance of Services, as described in the Scope of Basic Services of this Agreement (attached as Exhibit "A"), is expressly contingent upon the receipt of CDBG-DR Funds from the GLO and that if no such funds are awarded or if the award does not include the amount required for the performance of Services outlined in Exhibit A, that the contract shall terminate in accordance with the termination provisions outlined herein below; and

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

WHEREAS, the attached Exhibits A, B and C are incorporated into each other and constitute part of this agreement, and when read together, shall constitute one integrated document (the "Agreement").

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

## **AGREEMENT**

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

1.1 Contractor shall provide to County, on behalf of the Fort Bend County Drainage District ("Drainage District"), grant administration services, including but not limited to the administration and completion of infrastructure, utilities, housing, and eligible projects approved under the U.S. Department of Housing and Urban Development Community Development Block Grant Disaster Recovery Program ("CDBG-DR"), Contract Number 20-065-092-C257, administered by the Texas General Land Office ("GLO") to aid areas most impacted by Hurricane Harvey, as described in more detail in the Scope of Services attached hereto as Exhibit A (the "Services").

1.2 The grant administration services for this Grant Administrative Services contract are exclusively limited to those services associated with the Flood and Drainage Facilities portion of the Performance Statement of CDBG-DR Contract Number 20-065-092-C257, including drainage easement acquisition as it relates to the Big Creek Expansion Project. The Flood and Drainage Facilities portion of this project is also defined in the Budget of CDBG-DR Contract Number 20-065-092-C257 as HUD Activity Type – Rehabilitation/Reconstruction of Public Improvements with a total Grant Award of \$13,740,994.95.

1.3 Grant Administration Services for the Project Description (Acquisition) portion of the Performance Statement of CDBG-DR Contract Number 20-065-092-C257 are NOT included in this Grant Administrative Services contract. These services are also defined in the Budget of CDBG-DR Contract Number 20-065-092-C257 as HUD Activity Types – Acquisition-General with a total Grant

Award of \$3,582,281.05 and Housing Incentives to Encourage Resettlement with a total Grant Award of \$93,916.00.

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

15 All Services shall be performed in accordance with the terms and conditions of the RFP 22-047.

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

## **Section 2. Time of Performance and Extensions**

2.1 The time for performance of the Scope of Services by Contractor shall begin with receipt of the Notice to Proceed from County or from the Drainage District Director. Contractor shall complete the tasks described in the Scope of Services within 730 calendar days or the project administrative closure date, as defined by GLO, whichever is later or within such additional time as may be extended by County or the Drainage District Director.

2.2 County may extend the term of the Agreement by written notice to the Contractor within the term of the original Agreement. If the County exercises this option, the extended contract shall be considered to include the option clause and shall require continued performance by the Contractor of any services within the limits and at the rates specified in the contract.

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

3.1 Contractor 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 Five Hundred Thousand dollars and 00/100 cents (\$500,000.00), payable solely from CDBG-DR grant funds and specifically allocated to fully discharge any and all liabilities County may incur. In no event shall the amount paid by the County for all services under this Agreement exceed this maximum compensation amount without an amendment executed by the parties. Any products provided, or services rendered, in excess of \$500,000.00, without an executed amendment, will be at the Contractor's expense and not payable by County.

3.2 County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to the Fort Bend County Drainage District an invoice showing the amounts due for services performed in a form acceptable to County. Drainage District shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Fort Bend County Auditor for processing.

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

3.4 A Contractor that receives a payment from Fort Bend County must pay its subcontractor the appropriate share of the payment no later than the 10<sup>th</sup> day after the date the Contractor receives the payment. The appropriate share is overdue on the 11<sup>th</sup> day after the date the Contractor receives the payment.

3.5 Listing of specific milestones shall not be construed as a representation or warranty, and Contractor makes no representation or warranties that these milestones measure overall contract process facilitated by the Contractor’s performance of the services, and any particular milestone will be achieved or that any specific GLO or other requirements ultimately will be met. The fee schedule shall be based upon identified contract milestones, as follows:

<b>Flood and Drainage Facilities - Administrative Services Milestones</b>	<b>Fee</b>	<b>Cumulative Progress</b>
Project Kick-Off Meeting and Review of Grant Administration and Project Documentation Completed to Date	\$ 75,000.00	15%
Compile for the Grant Record all documents submitted to the GLO by the County's Contracted Environmental Services Firm	\$ 75,000.00	30%
Bid Advertisement	\$ 50,000.00	40%
Construction Notice to Proceed	\$ 125,000.00	65%
Construction Complete: As-Built Plans, Certificate of Construction Completion, and Final Wage Compliance Report issued	\$ 150,000.00	95%
Grant Completion Report for Drainage Project Submitted and Approved	\$ 25,000.00	100%
<b>DRAINAGE ADMINISTRATION SUBTOTAL</b>	<b>\$ 500,000.00</b>	
<b>TOTAL</b>	<b>\$ 500,000.00</b>	

**Section 4. Additional Services**

If authorized by County, the Contractor shall furnish Additional Services of the following types which are not considered normal or customary Administrative Services. Any additional services outlined herein shall be paid by County at an hourly rate of Ninety-five and 00/100 Dollars (\$95.00):

4.1 Additional door-to-door income survey work required as part of an amendment, other Contract modification, or a change in GLO policy or practice.

4.2 New and/or additional acquisition activities resulting from unknown needs prior to project initiation, site changes, and/or condemnation proceedings.

4.3 Preparing to serve, or serving, as a consultant or witness for County in any litigation, other legal or administrative proceeding involving this project.

4.4 Preparation of financial statements and records such as audits, check registers, and ledgers that are required for project implementation and are typically generated by the County in the normal course of business.

4.5 Additional or extended services made necessary by (1) a significant amount of defective work of any construction contractor, consulting engineer and/or architect; (2) force account documentation for labor, equipment and materials valued at over \$25,000; and (3) default of any construction contractor, consulting engineer and/or architect.

4.6 Fees for any professional services required to carry out project-related activities that must be furnished by a third-party professional including but not limited to services by an accountant, appraiser, archaeologist, architect, attorney, auditor, biologist or other natural scientist, engineer, historic preservationist, or surveyor, shall be in addition to the base fee payable to Contractor specified in Section III.

4.7 Expenditures for any additional services, including any fees for professional services, shall require prior written approval by County.

#### **Section 5. Modifications and Waivers**

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

5.2 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.

5.3 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.

5.4 In the event a change is requested, but the parties cannot agree on the specific terms of such change, the parties may mutually agree to terminate this Agreement. Absent such agreement to terminate, the Agreement will continue without the change.

## **Section 6. Assignment and Delegation**

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. Neither party may delegate any performance under this Agreement. Any purported assignment of rights or delegation of performance in violation of this Section is void; except that, any claims for money by the Contractor from the County under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval.

## **Section 7. Records and Audits**

7.1 During the term of this Agreement, the Contractor shall assist the County in maintaining fiscal records and supporting documentation for all expenditures of funds made under the Contract. Such records must include data on racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under the contract. County shall retain such records, and any supporting documentation, for the greater of three years from closeout of the contract or the period required by other applicable laws and regulations.

7.2 Contractor shall permit County, by and through the Drainage District Director, or any duly authorized agent of Drainage District, to inspect and examine the project records of Contractor 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 8. Non-Appropriation**

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

## **Section 9. Personnel and Equipment**

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

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

9.3 The Contractor may subcontract any of the work or services covered by this agreement, provided that (a) any subcontracted work or services must be the subject of a written contract or agreement, (b) the Contractor shall be responsible to the County for the acts or omission of any such subcontractor, and (c) such subcontractors shall be subject to the requirements of the program.

## **Section 10. Termination**

### 10.1 Termination for Convenience

10.1.1 Either the County or the Contractor may terminate this Agreement at any time upon thirty(30) days written notice. If the Agreement is terminated as provided herein, the Contractor will be paid for the time provided and expenses incurred up the termination date. Upon payment for any work satisfactorily completed up to the date of termination for convenience, all finished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this Agreement shall, at the option of the County, become its property

### 10.2 Termination for Default

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

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

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

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

### 10.3 Termination for Lack of Funding

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

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

10.5 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 Contractor.

### **Section 11. Insurance**

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

11.1.1 Worker's Compensation insurance. Substitutes to genuine Worker's Compensation Insurance will not be allowed.

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

11.1.3 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.

11.1.4 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.

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

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

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

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

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

12.2 Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

12.3 Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to 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. Contractor 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 Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Contractor expressly acknowledges that 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 Contractor shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

### **Section 13. Independent Contractor**

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

13.2 Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of 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 Drainage District  
ATTN: Mark Vogler, P.E.  
P.O. Box 1028  
1124 Blume Road  
Rosenberg, Texas 77471

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

Contractor: GrantWorks, Inc.  
Attn: Bruce J. Spitzengel,  
President  
2201 Northland Drive  
Austin, Texas 78756

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

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

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

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

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

### **Section 16. Standard of Performance**

16.1 Contractor represents to County that all Services to be provided under this Agreement shall be performed with the professional skill and care ordinarily provided by competent consultants practicing under the same or similar circumstances. Further, Consultant shall perform the Services as expeditiously as is prudent considering the ordinary professional skill and care of a competent consultant.

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

**Section 17. Indemnity**

Contractor shall indemnify and defend county against all losses, liabilities, claims, causes of action, and other expenses, including reasonable attorney's fees, arising from activities of contractor, its agents, servants or employees, performed under this agreement that result from the negligent act, error, or omission of contractor or any of contractor's agents, servants or employees.

**Section 18. Applicable Law**

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

**Section 19. Successors and Assigns**

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

**Section 20. Third Party Beneficiaries**

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

**Section 21. Remedies, Alternative Dispute Resolution, and Arbitration**

21.1 The parties hereto agree to resolve all disputes arising hereunder in accordance with this section.

21.2 As authorized by 41 U.S.C. 1908, in instances where Contractors violate or breach contract terms, County is authorized to impose administrative, contractual, or legal remedies which may provide for sanctions and penalties as appropriate.

21.3 In the event of a failure by Contractor to satisfactorily perform the Services specified herein and/or a default by Contractor in abiding by the other terms and conditions of the Agreement, County may terminate the Contract on written notice to Contractor and Contractor shall be liable to all damages, costs, and expenses (including attorney's fees) incurred by County

related to this default. Such termination is in addition to and not in lieu of any other remedies that County may have in law or equity. Administrative remedies for non-performance, violation or breach of the Agreement, or termination of the Agreement for default may include suspension and debarment. County may assess liquidated damages for failure to meet completion deadlines, contract breaches, or performance failures of the Contractor or its Subcontractors.

21.4 Contractor shall be provided the opportunity to cure certain performance failures or instances of default as described in the contract documents. The parties agree that if a dispute arises out of or relates to this Agreement or any alleged breach hereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or CDBG-Disaster Recovery program requirements, the party desiring to resolve such dispute shall deliver a written notice of the dispute, including the specific claim in the dispute to the other party. Following the delivery of such notice, the parties involved in the dispute shall meet at least twice within the sixty (60) day period commencing with the date of the notice and in good faith shall attempt to resolve such dispute through negotiation. If any dispute is not resolved or settled by the parties as a result of such negotiation, the parties in good faith shall submit the dispute to non-binding mediation before a mutually agreeable individual. Such mediation shall be conducted in Fort Bend County, Texas or in another mutually agreeable location. The parties shall bear the costs of such mediation equally. If the dispute is not resolved through such mediation, either party may proceed to file suit.

21.5 The legal dispute resolution process as applicable under the Texas Civil Practice and Remedies Code shall include, but is not limited to, Texas and Civil Practice and Remedies Section 38 – Attorney’s Fees, Section 41 – Damages, and Section 154 – General Provisions. The parties should attempt to resolve any claim for breach of contract made by Contractor, to the extent it is applicable to the Agreement and not preempted by other law. Except as otherwise provided by law, nothing herein is a waiver by the County or the State of Texas of the right to seek redress in a court of law.

21.6 County does not agree to submit any disputes arising out of the Agreement to binding arbitration.

## **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 Contractor 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. Required Contract Provisions**

Contractor understands and acknowledges that the Part 200 Uniform Requirements require that non-Federal entities’ contracts contain the applicable provisions described in Appendix II to Part 200 – “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.” Contractor further understands and acknowledges that violations of law will be referred to the proper authority in the applicable jurisdiction. All Prime Contractors awarded contracts by Fort Bend County which

are federally funded, in whole or in part, are required to comply with the provisions in Exhibit B attached, and included by reference. In addition, Contractor understands and acknowledges that a prime Contractor with Fort Bend County is required to include the provisions in Exhibit B, in any contracts executed with subcontractors performing the scope of work and shall pass these requirement on to is subcontractors and third-party contractors, as applicable.

#### **Section 24. Subcontracts**

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

24.2 Contractor shall, prior to proceeding with the work, notify the County in writing of the name of any subcontractors proposed for the work, including the extent and character of the work to be done by each. The Drainage Director must approve the actual subcontractors prior to their use.

24.3 Contractor must verify subcontractor eligibility based on factors such as past performance, proof of liability insurance, and possession of a federal ID tax number, debarment status, and state licensing requirements. The Contractor assumes the responsibility for the performance of the subcontractor. If a subcontractor is found to be ineligible after award of a contract, the contract shall be immediately terminated and the matter reported to HUD.

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

#### **Section 25. Local Program Liaison**

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

#### **Section 26. Supervision**

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

## **Section 27. Certain State Law Requirements for Contracts.**

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

**27.1 Agreement to Not Boycott Israel Chapter 2271 Texas Government Code:** Contractor verifies that if Contractor employs ten (10) or more full-time employees and this Agreement has a value of \$100,000 or more, Contractor hereby verifies it does not boycott Israel and will not boycott Israel during the term of this Agreement. For purposes of this verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

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

## **Section 28. Conflicts of Interest**

**28.1 Governing Body.** County agrees that no member of its governing body, no other public official of County, and no other officer, employee, or agent of the County who exercises any functions or responsibilities in connection with the planning and the carrying out of the program, shall have any personal financial interest, direct or indirect, in this Agreement, and County shall take appropriate steps to assure compliance with this requirement.

**28.2 Other Local Public Officials.** No other public official who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering, or implementation of the CDBG award between the GLO and the County shall have any personal financial interest, direct or indirect, in the Contractor or this Agreement; and the Contractor shall take appropriate steps to assure compliance.

**28.3 Contractor and Employees.** The Contractor warrants and represents that it has no conflict of interest associated with the CDBG award between the GLO and the County or this Agreement. The Contractor further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the CDBG award between the GLO and the County or in any business, entity, organization or person that may benefit from the award. The Contractor further agrees that it will not employ an individual with a conflict of interest as described herein.

**Section 29. Provision of Information**

It is agreed that all information, data, reports and records and maps as are existing, available, and necessary for the carrying out of the work outlined in this Agreement shall be furnished to the Contractor by the County and its agencies. No charge will be made to Contractor for such information and the County and its agencies will cooperate with Contractor in every way possible to facilitate the performance of the work described in this Agreement.

**Section 30. Silence of Specifications**

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

**Section 31. Human Trafficking**

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

**Section 32. Seals, Logos, and Flags**

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

**Section 33. Attorney's Fees**

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursement, as awarded by the court, in addition to any other relief to which such party may be entitled.

**Section 34. 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 35. Controlling Document**

In the event there is a conflict between this Agreement and the attached Exhibits A&B, this Agreement controls to the extent of the conflict.

### **Section 36. Ownership and Reuse of Documents**

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion of the Project or at the time of payment under Section 3 for work performed, whichever is sooner. Contractor shall promptly furnish all such data and material to County on request. Contractor shall retain ownership rights to templates, internal tracking systems, and other documents produced by Contractor that have a common use applicable to multiple clients and are not produced specifically for the County under this Agreement. Change or alteration of any such data and material by County or by others acting through or on behalf of County will be at County's sole risk.

### **Section 37. Waiver of Consequential Damages**

Neither party will be liable to the other party or any other person or entity for any special, incidental, indirect, consequential, punitive, or exemplary damages arising out of or relating to this Agreement, regardless of the form of action and whether or not such party has been informed of or otherwise might have anticipated the possibility of such damages.

### **Section 38. Force Majeure**

A "Force Majeure Event" means any event or cause beyond a party's reasonable control (including without limitation, construction delays, fire, flood, rain, weather, casualty, explosions, damage by third parties whether negligently or intentionally caused, strikes, work stoppages, picketing, acts of God or other casualties, or the laws or actions of any governmental authority), as a result of which at any time a party is unable to perform any of its obligations under this Agreement. If a Force Majeure Event occurs during the term of this Agreement that prevents the Consultant from performing its obligations hereunder, the Consultant and the Client will in good faith mutually agree on one of the following alternatives: (1) extend the time for performance, or (2) terminate this Agreement and, as mutually agreed, cause the payment to Consultant of fees not yet paid for services performed prior to the occurrence of the Force Majeure Event or cause the refund to Client of fees previously paid for services that were not performed prior to the occurrence of the Force Majeure Event.

### **Section 39. Severability**

In any case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

### **Section 40. Federal Standards and Requirements**

40.1 Contractor understands and acknowledges that this Agreement is being funded totally or partially with federal funds from the U.S. Department of Housing and Urban Development, Texas General Land Office Community Development Block Grant – Disaster Recovery ("CDBG-DR") funds, administered by the Texas General Land Office ("GLO").

40.2 All expenditures under this Contract must be made in accordance with the rules and regulations promulgated under the CDBG-DR Program, and any other applicable laws. Further, Contractor acknowledges that all funds are subject to recapture and repayment for non-compliance. These terms flow down to all third party contractors and their subcontracts at every tier that exceed the simplified acquisition threshold, unless a particular award term or condition specifically indicates otherwise. **The Contractor shall require that these clauses shall be included in each covered transaction at any tier, if applicable.**

40.3 As a condition of receiving these funds, the parties represent that they will remain in compliance with all Federal laws, regulations and rulings, including but not limited to, the terms attached hereto as Exhibit C, which are incorporated fully by reference, and including the terms below:

- a. CIVIL RIGHTS ACT OF 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- b. SECTION 504 REHABILITATION ACT OF 1973, as amended. The Consultant agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.
- c. AGE DISCRIMINATION ACT OF 1975. The Consultant shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- d. SECTION 109 OF THE HOUSING & COMMUNITY DEVELOPMENT ACT OF 1974.
  - i. Under Title VI of the Civil Rights Act of 1964, no person shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this Title.
- e. EQUAL OPPORTUNITY CLAUSE. During the performance of this Agreement, the Consultant agrees as follows:
  - i. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  - ii. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - iii. The Consultant will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Consultant's legal duty to furnish information.
  - iv. The Consultant will send to each labor union or representative of workers with which he has a collective

bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- v. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- vi. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- vii. In the event of the Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- viii. The Consultant will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

**f. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.**

- A. The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- B. Affirmative steps must include:
  - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - iii. 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;
  - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  - v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

**g. ECONOMIC OPPORTUNITIES FOR SECTION 3 RESIDENTS AND SECTION 3 BUSINESS CONCERNS.**

- i. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- ii. The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable

rules and orders of the GLO issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

- iii. The Client shall require each contractor to send to each labor organization or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- iv. The Client shall require that this Section 3 clause is included in every contract or subcontract for work in connection with the project and will, take appropriate action upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Client shall not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will terminate any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with requirements of the regulations. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- v. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the GLO issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.
- vi. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- vii. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- viii. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).
- h. **PATENT RIGHTS AND INVENTIONS.** The Consultant shall comply with the requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract. (2 CFR 200 Appendix II (f) and Rights to Inventions in 37 CFR Part 401).
- i. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.** If the federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "rights to inventions made by nonprofit organizations and small business firms under government grants, contracts and cooperative agreements," and any

implementing regulations issued by the awarding agency. (2 CFR 200 Appendix II (F)).

- j. ENERGY EFFICIENCY. The Consultant shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871). (2 CFR 200 APPENDIX II (H) and 42 U.S.C. 6201).
- k. VERIFICATION NO BOYCOTT ISRAEL. As required by Chapter 2271.002, Government Code, the Consultant hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- l. NO FOREIGN TERRORIST ORGANIZATIONS. Pursuant to Chapter 2252.152, Texas Government Code, the Consultant represents and certifies that, at the time of execution of this Agreement neither the Consultant, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.
- m. GLO LOCAL INFRASTRUCTURE PROGRAM PROJECT DELIVERY FEE CAP. Total project delivery fees paid under this Contract, including any subcontracts, shall not exceed the GLO's cap of maximum rates based on the fixed rate pricing that is dependent upon the CDBG-DR Supplemental final award amount at contract closeout. The percentage fee cap is outlined in this Agreement in Part I. Section III. Compensation and Method of Payment. Project Delivery may include, but is not limited to, grant administrator fees, costs associated with environmental clearance, and eligible costs for in-house efforts. Any decrease in the total CDBG-DR Supplemental award at final contract closeout, including those resulting from lower-than-anticipated construction costs or reduced project scope, will automatically adjust the total not-to-exceed fee owed to GrantWorks.

#### **Section 41. Inclusion by Reference**

This Agreement hereby includes by reference and is subject to the Exhibits titled “Basic Scope of Work (Exhibit A), “Required Contract Provisions” (Exhibit B), and the “Federal Standards and Requirements” (Exhibit C), which are attached hereto and hereby incorporated by reference as if set out in full in the body of this Agreement. The parties acknowledge and agree that the aforementioned Exhibits constitute a part of the Agreement, and the Agreement and the Exhibits are one integrated document.

#### **Section 42. Entire Agreement**

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


*{EXECUTION PAGE FOLLOWS}*

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**

**GRANTWORKS, INC.**

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

  
\_\_\_\_\_  
Bruce J. Spitzengel,  
President

December 6, 2022  
Date

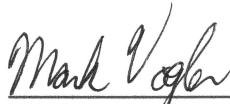
10/31/2022  
Date



ATTEST:

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

REVIEWED BY:

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

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$ 500,000.00  
to accomplish and pay the obligation of the Fort Bend County under this contract.

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

Attachments:

- Exhibit A – Basic Scope of Work
- Exhibit B – Required Contract Provisions
- Exhibit C – Federal Standards and Requirements

# EXHIBIT A

## Basic Scope of Work

AGREEMENT FOR GRANT ADMINISTRATION SERVICES  
EXHIBIT A - SCOPE OF WORK

TEXAS GENERAL LAND OFFICE GRANT  
ADMINISTRATION SERVICES

TEXAS GENERAL LAND OFFICE  
GRANT ADMINISTRATION SERVICES  
**BASIC SCOPE OF WORK**

SCOPE OF SERVICES REQUESTED.....  
DESCRIPTION OF SERVICES AND SPECIAL CONDITIONS.....  
GRANT ADMINISTRATION SERVICES-INFRASTRUCTURE .....



## **SCOPE OF SERVICES REQUESTED**

Providers will help Client and the GLO fulfill State and Federal Community Development Block Grant Disaster Recovery Program statutory responsibilities related to recovery in connection with any federally declared disaster. Providers will assist in completion of CDBG-DR qualified housing or non-housing projects. Respondents may be qualified to provide Grant Administration services for housing projects, non-housing projects, or both. Grant administrative services must be performed in compliance with the U.S. Department of Housing and Urban Development ("HUD") and guidelines issued by the GLO.

## **DESCRIPTION OF SERVICES AND SPECIAL CONDITIONS**

Consultant shall furnish post-funding grant administrative services to complete the CDBG-DR Program projects, including, but not limited to the following:

### **Post-Funding Services\***

Grant Administrator will administer and complete infrastructure, utilities, housing, and eligible projects approved for Client's U.S. Department of Housing and Urban Development Community Development Block Grant - Disaster Recovery Program (CDBG-DR) Contract Number 20-065-092-C257, administered by the Texas General Land Office ("GLO"). The selected administrative firm must follow all requirements of the Texas CDBG-DR Program.

\*The post-funding services for this grant administrative services contract are exclusively limited to those services associated with the Flood and Drainage Facilities portion of the Performance Statement of CDBG-DR Contract Number 20-065-092-C257, including drainage easement acquisition as it relates to the Big Creek Expansion Project. The Flood and Drainage Facilities portion of this project is also defined in the Budget of CDBG-DR Contract Number 20-065-092-C257 as HUD Activity Type - Rehabilitation/Reconstruction of Public Improvements with a total Grant Award of \$13,740,994.95.

\*Post-funding services for the Project Description (Acquisition) portion of the Performance Statement of CDBG-DR Contract Number 20-065-092-C257 are NOT included in this grant administrative services contract. These services are also defined in the Budget of CDBG-DR Contract Number 20-065-092-C257 as HUD Activity Types - Acquisition-General with a total Grant Award of \$3,582,281.05 and Housing Incentives to Encourage Resettlement with a total Grant Award of \$93,916.00.

## Grant Administration Services - General

### (a) Administrative Duties:

- i Coordinate, as necessary, between subrecipient and any other appropriate service providers (i.e., Engineer, Environmental Service Provider, etc.), contractor, subcontractor and GLO to effectuate the services requested.
- ii May assist in public hearings.
- iii. Will work with GLO's system of record.
- iv. Provide monthly project status updates.
- v. Funding release will be based on deliverables identified in Section 3.
- vi. Labor and procurement duties:
  - a. Provide all labor Standards Officer (LSO) Services.
  - b. Ensure compliance with all relevant labor standards regulations.
  - c. Ensure compliance with procurement regulations and policies.
  - d. Maintain document files to support compliance.

### vii Financial duties:

- a. Prepare and submit all required reports (Section 3, Financial Interest, etc.).
- b. Assist subrecipient with the procurement of audit services.
- c. Assist subrecipient in establishing and maintaining a bank account for CDBG-DR Supplemental program funds.
- d. Implementation and coordination of Affirmatively Furthering Fair Housing ("AFFH") requirements as directed by HUD and the GLO.
- e. Implementation and coordination of Section 504 requirements.
- f. Program compliance.
- g. Ensure that fraud prevention and abuse practices are in place and being implemented.
- h. Prepare and submit all closeout documents.
1. Submit all invoices no later than 60 days after the expiration of the contract. All outstanding funds may be swept after 60 days. The provider may request an extension of this requirement in writing.
- J. Assist in preparation of contract revisions and supporting documents including but not limited to:
  - Amendments/modifications,
  - Change orders.

### (b) Construction Management

- i. The provider will assist the subrecipient in submitting/setting up project applications in the GLO's system of record.
- ii The provider may compile and collate complete contract/bid packages that meet GLO program requirements. The packages will contain supporting documentation that meets or exceeds the requirements of the GLO's program. If applications do not have the necessary forms, the provider may assist the subrecipient by coordinating to acquire the necessary documentation.
- iii. The provider may monitor, report, and evaluate contractor's performance; notify the subrecipient if the contractor(s) fails to meet established scheduled milestones. Receive, review, recommend, and process any change orders as appropriate to the individual projects.

- iv. The provider may assist the subrecipient with project Activity Draws/Close Out.
- v. The provider may assist the subrecipient by submitting all the necessary documentation for draws and to close a project activity in the GLO's system of record. The provider will compile, review for completeness, and collate complete contract closeout packages that meet GLO program requirements for draw requests. If applications do not have the necessary forms, the provider may assist the subrecipient by coordinating to acquire the necessary documentation .
- vi Reassignment scope alignment (if necessary).

## Grant Administration Services - Infrastructure

### a) Administrative Duties:

- i. Ensure program compliance including all CDBG-DR requirements and all parts therein, current Federal Register, etc.
- ii. Assist subrecipient in establishing and maintaining financial processes.
- iii. Obtain and maintain copies of the subrecipient's most current contract including all related change requests, revisions, and attachments.
- iv. Establish and maintain record keeping systems.
- v. Assist subrecipient with resolving monitoring and audit findings.
- vi Serve as monitoring liaison.
- vii. Assist subrecipient with resolving third party claims.
- viii. Report suspected fraud to the GLO.
- ix. Submit timely responses to the GLO requests for additional information.
- x. Complete draw request forms and supporting documents.
- xi. Facilitate outreach efforts, application intake, and eligibility review.**
- xii. Perform any other administrative duty required to deliver the project.
- xiii. Utilize and assist with GLO's system of record to complete milestones, submit documentation, reports, draws, change requests, etc.
- xiv. Submit change requests and all required documentation related to any change requests.

### (b) Acquisition Duties:

- i Submit acquisition reports and related documents.
- ii Establish acquisition files.
- iii Complete acquisition activities: Assist in facilitating acquisition services that may be required, including any or all of the following activities: obtaining documentation of property ownership, correspondence and notifications to property owners, negotiations between the Client and property owners, requesting signatures, filing records, CAD-based fair market value estimates, coordinating the services of appraisers, surveyors, or other third parties. Costs for any third-party acquisition services shall be paid from the Acquisition line item.

# EXHIBIT B

## Required Contract Provisions

## **EXHIBIT B**

### **REQUIRED CONTRACT PROVISIONS**

The Part 200 Uniform Requirements require that non-Federal entities' contracts contain the applicable provisions described in Appendix II to Part 200 — "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards." Violations of law will be referred to the proper authority in the applicable jurisdiction. All Prime Contractors awarded contracts by Fort Bend County which are federally funded, in whole or in part, are required to comply with the provisions below. Additionally, Prime Contractors with Fort Bend County are required to include the provisions below in any contracts executed with subcontractors performing the scope of work and shall pass these requirements on to its subcontractors and third-party contractors, as applicable. In addition to other provisions required by the relevant Federal agency, State of Texas, or Fort Bend County, all contracts made by Fort Bend County under the Federal award shall contain provisions covering the following, as applicable.

#### **ACCESS TO RECORDS & RECORD RETENTION (2 CFR 200.336)**

Contractor must provide Fort Bend County, the State of Texas, the Texas General Land Office (GLO), the U.S. Department of Housing and Urban Development (HUD), the FEMA Administrator, the Inspectors General, the Comptroller General of the United States, or any of their pass-through entities or authorized representatives access to any books, documents, papers, and records of the Contractor and its subcontractors which are directly pertinent to this contract/project for the purposes of making/responding to audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents. Contractor must keep records within Fort Bend County or note in its submission that records will be available within the boundaries of Fort Bend County to those representatives within twenty-four (24) hours of request by the County. Contractor must maintain all records pertaining to the project for seven (7) years after receiving final payment and after all other pending matters have been closed.

#### **ACCESSIBILITY (24 CFR 570.614) & SECTION 504 (29 U.S.C. Section 794 and 24 CFR Parts 8-9)**

Contractor shall comply with all federal, state and local laws and regulations which prohibit recipients of federal funding from discriminating against individuals with disabilities. Applicable laws and regulations with which Contractor shall comply shall include, but are not limited to, the following: Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) (24 CFR Parts 8-9); Title II of the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157); the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 and Appendix A to 41 CFR Part 101-19, subpart 101-19.6); the Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225); Texas Administrative Code, Title 10, Chapter 60, Subchapter (B) the Texas Architectural Barriers Act (TABA); the Architectural Barriers (AB) Rules; and the Texas Accessibility Standards (TAS).

#### **BYRD ANTI-LOBBYING AGREEMENT (2 CFR 200 APPENDIX II (J) AND 24 CFR 570.303)**

Pursuant to 31 U.S.C.A. § 1352 (2003), if at any time during the contract term funding to contract exceeds \$100,000.00, the Contractor shall file with the County the Federal Standard Form LLL titled "Disclosure Form to Report Lobbying."

## EXHIBIT B

### REQUIRED CONTRACT PROVISIONS

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 must 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 non-federal award. See Attachment D, *Certification Regarding Lobbying*.

#### **CIVIL RIGHTS ACT OF 1964 (Title VI 42 U.S.C. § 2000d)**

Title VI of the Civil Rights Act of 1964, Section 109 of the Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) (24 CFR Parts 8-9), and the Americans with Disabilities Act of 1990 (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225), prohibits Contractors from excluding or denying individuals benefits or participation in this project on the basis of race, color, religion, national origin, sex, or disability. The provisions require that no person in the United States shall on the ground of race, color, religion, national origin, sex, or disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with community development funds made available pursuant to these Acts.

For purposes of this Part “program or activity” is defined as any function conducted by an identifiable administrative unit of the recipient, or private Contractor receiving community development funds or loans from the recipient. “Funded in whole or in part with community development funds” means that community development funds in any amount in the form of grants or proceeds from HUD guaranteed loans have been transferred by the recipient or a subrecipient to an identifiable administrative unit and disbursed in a program or activity. A Contractor may not, under any program or activity to which the regulations of this Part may apply directly or through contractual or other arrangements, on the grounds of race, color, national origin, or sex:

- a. Deny any facilities, services, financial aid or other benefits provided under the program or activity;
- b. Provide any facilities, services, financial aid or other benefits, which are different, or are provided in a different form from that provided to others under the program or activity;
- c. Subject to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefit under the program or activity;
- d. Restrict in any way access to, or in the enjoyment of any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity;
- e. Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity; and
- f. Deny an opportunity to participate in a program or activity as an employee.

## **EXHIBIT B**

### **REQUIRED CONTRACT PROVISIONS**

#### **CLEAN AIR ACT (2 CFR Appendix II to Part 200 (G))**

Pursuant to 2 CFR Appendix II to Part 200 (G), if at any time during the contract term funding to contract exceeds \$150,000, the Contractor must comply with all provisions of the Clean Air Act (42 U.S.C. 85) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contractors securing a contract in excess of \$150,000.00 shall not expend such funds by making use of subcontracting with facilities included on the Environmental Protection Agency List of Violating Facilities as per Section 306 of the Clean Air Act, Section 508 of The Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations 40 CFR.

For any subcontractors under this contract receiving contracts in excess of \$150,000 Contractor is required to include a provision that requires compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 85) and Section 308 Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

#### **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (2 CFR Appendix II to Part 200 (E))**

Pursuant to 2 CFR 200 Appendix II (E), if at any time during the contract term funding to contract exceeds \$100,000, the Contractor must comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence

- (1) Overtime Requirements – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

## EXHIBIT B

### REQUIRED CONTRACT PROVISIONS

- (3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

#### **COPELAND “ANTI-KICKBACK” ACT (40 U.S.C. 3145)**

Pursuant to 2 CFR Appendix II to Part 200 (D), Contractor must comply with the provisions of the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each vendor, contractor, subcontractor, or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Contractor shall include this provision in all contracts between itself and any subcontractors in connection with the services performed under this Contract. Fort Bend County shall report all suspected or reported violations to the Federal awarding agency.

#### **COST PLUS CONTRACTING PROHIBITED (2 CFR 200.323(D))**

Cost-plus-a-percentage-of-cost (CPPC) contracts are prohibited by 2 CFR 200.323(d). The cost plus a percentage of cost and percentage of construction cost methods of contracting must never be used, including in subcontracts and third-party contracts. A cost-plus contract is one that is structured to pay the contractor or subcontractor their actual costs incurred, plus a fixed percent for profit or overhead.

A cost-plus-a-percentage-of-cost (CPPC) contract is a contract containing some element that obligates Fort Bend County or Contractor to pay a contractor or subcontractor an amount (in the form of either profit or cost), undetermined at the time the contract was made, to be incurred in the future, and based on a percentage of future costs. The inclusion of an overall contract ceiling price does not make these forms of contracts acceptable.

This type of contract is prohibited because there is no incentive for the contractor or subcontractor to keep its incurred costs low. Instead, there is a reverse incentive for the contractor or subcontractor to continue to incur additional costs in order to continue to drive the percentage of cost up. In other words, increased spending by the contractor will yield higher profits. This prohibition applies to all work, regardless of the circumstances, and applies to subcontracts of the contractor cases where the prime contract is a cost-reimbursement type contract or subject to price redetermination.

## **EXHIBIT B**

### **REQUIRED CONTRACT PROVISIONS DAVIS BACON AND RELATED ACTS (2 CFR 200 APPENDIX II (D))**

Pursuant to 2 CFR 200 Appendix II (D), for any contract in excess of \$2,000, Contractor must comply with the Davis Bacon and Related Acts, and the requirements shall be applicable to any labor or mechanic work completed in connection with this contract which fall under the Davis Bacon Act. Any Contractor awarded under this contract is required to comply with the Davis Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5) and with the Copeland "Anti-Kickback" Act (18 U.S.C. 874; 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR part 3). In accordance with the statute, Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

If Davis Bacon is applicable, Fort Bend County will provide a copy of the current *Davis Bacon Wage Decision* with this solicitation. The decision to award a contract or subcontract shall be conditioned upon the acceptance of the wage determination. Contractor shall submit certified payroll of contractor and all subcontractors on a weekly basis in the format required by the County. At County's request, Contractor shall make available and shall require its subcontractors to make available, copies of cancelled checks and check stubs for comparisons by the County or its agents.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that, the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii)) and the Davis Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following. The Statement of Compliance can be found on page 2 of the WH-347 form, and/or additional certifications of compliance may be required by Fort Bend County. Any Statement of Compliance is subject to the penalties provided by 18 U.S.C. § 1001, namely, a fine, possible imprisonment of not more than 5 years, or both. Accordingly, the party signing the statement should have knowledge of the facts represented as true.

Contractor must include this provision in all contracts between itself and any subcontractors in connection with the services performed under this Contract. Fort Bend County shall report all suspected or reported violations to the Federal awarding agency, as applicable.

### **DEBARMENT / SUSPENSION AND VOLUNTARY EXCLUSION (2 CFR Appendix II to Part 200 (I))**

Pursuant to 2 CFR Appendix II to Part 200 (I), a Contract meeting the definition in 2 C.F.R. § 180.220 must not be made to parties listed on the System for Award Management (SAM) Exclusion lists, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR 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 12549.

## EXHIBIT B

### REQUIRED CONTRACT PROVISIONS

Pursuant to Executive Orders 12549 and 12689, a contract award shall 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 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235). 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 12549. A contract award must not be made to parties listed in the SAM Exclusions. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov).

Additionally, no contracts shall be awarded to any Contractor that has been debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs, including but not limited to the Department of Health and Human Work (DHHS), Office of Inspector General(OIG) - List of Excluded Individuals & Entities (LEIE); U.S. General Services Administration (GSA) – Excluded Parties List System (EPLS); All States (50) Health & Human Work Commission Medicaid OIG Sanction List; Government Terrorist Watch List (OFAC / Patriot Act); Department of Commerce, Bureau of Industry and Security, Denied Persons List; and Department of Homeland Security, Immigration and Customs Enforcement (ICE) Most Wanted.

This contract is a covered transaction for purposes of compliance with Title 2 C.F.R. parts 180 and 3000, and as such the Contractor is required to verify that none of the contractor, its principals (as defined at 2 C.F.R. § 180.995), or its affiliates (as defined at 2 C.F.R. § 180.905) are excluded (as defined at 2 C.F.R. § 180.940) or disqualified (as defined at 2 C.F.R. § 180.935). These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities (See 2 C.F.R Part 200, Appendix II). The Contractor must comply with 2 C.F.R. part 180, subpart C and 2 C.F.R. part 3000, subpart C and shall include this requirement and similar certification in all contracts between itself and any subcontractors in connection with the services performed under this Contract.

The Contractor confirms that it is eligible or otherwise not disqualified or prohibited from participation in federal or state assistance programs under Executive Order 12549, *Debarment and Suspension*. Additionally, the Contractor warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs, including but not limited to the following: Department of Health and Human Work (DHHS), Office of Inspector General (OIG) - List of Excluded Individuals & Entities (LEIE); U.S. General Services Administration (GSA) – Excluded Parties List System (EPLS); All States (50) Health & Human Work Commission Medicaid OIG Sanction List; Government Terrorist Watch List (OFAC / Patriot Act); Department of Commerce, Bureau of Industry and Security, Denied Persons List; and Department of Homeland Security, Immigration and Customs Enforcement (ICE) Most Wanted. Fort Bend County reserves the right to verify any Respondents's status and document instances of debarment, suspension, or other ineligibility.

The Contractor shall verify that all subcontractors performing work under this Contract are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. The Contractor further must notify Fort Bend County in writing immediately if Contractor or its subcontractors are not in compliance with Executive Order 12549 during the term of this contract. Contractor shall include this provision in all contracts between itself and any subcontractors in connection with the services performed under this Contract.

## **EXHIBIT B**

### **REQUIRED CONTRACT PROVISIONS**

If it is found that the Contractor did not comply or is not in compliance with Executive Order 12549 (2 C.F.R. part 180, subpart C and 2 C.F.R. part 3000, subpart C), the Contractor may be subject to available remedies, including but not limited to, refunding Fort Bend County for any payments made to the Contractor while ineligible, and also acknowledges that the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

#### **ENERGY EFFICIENCY (42 U.S.C. 6201 and 2 CFR 200 APPENDIX II (H))**

Contractor must comply with the mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201). Contractor must include this provision in all contracts between itself and any subcontractors in connection with the services performed under this Contract.

#### **EQUAL EMPLOYMENT OPPORTUNITY (41 CFR 60-1.4(b) and 2 CFR 200 APPENDIX II (C))**

Contractor must comply with, and incorporate or cause to be incorporated into any contract for construction work, or modification thereof, the Equal Employment Opportunity provisions as follows:

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

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post

## EXHIBIT B

### REQUIRED CONTRACT PROVISIONS

copies of the notice in conspicuous places available to employees and applicants for employment.

5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

## **EXHIBIT B**

### **REQUIRED CONTRACT PROVISIONS**

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

Contractor must include the equal opportunity clause in each of its nonexempt subcontracts, and to require all non-exempt subcontractors to include the equal opportunity clause in each of its nonexempt subcontracts.

#### **EQUAL EMPLOYMENT OPPORTUNITY FOR WORKERS WITH DISABILITIES (48 CFR 52.222- 36)**

During the performance of this contract, the Contractor must comply with required Equal Employment Opportunity for Workers with Disabilities provisions.

Contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

- a. Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.
- b. Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

#### **EQUAL EMPLOYMENT OPPORTUNITY FOR VEVRAA PROTECTED VETERANS (41 CFR 60.300)**

Fort Bend County is an equal opportunity employer of protected veterans. During the performance of this contract, the Contractor must comply with required Equal Employment Opportunity for VEVRAA Protected Veterans provisions.

Contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

- a. The definitions set forth in 41 CFR 60-300.2 apply to the terms used throughout this Clause, and they are incorporated herein by reference.
- b. The contractor shall not discriminate against any employee or applicant for employment because he or she is a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran (hereinafter collectively referred to as “protected veteran(s)”) in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices, including the following:

## EXHIBIT B

### REQUIRED CONTRACT PROVISIONS

- i. Recruitment, advertising, and job application procedures.
  - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.
  - iii. Rates of pay or any other form of compensation and changes in compensation.
  - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
  - v. Leaves of absence, sick leave, or any other leave.
  - vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor.
  - vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.
  - viii. Activities sponsored by the contractor including social or recreational programs.
  - ix. Any other term, condition, or privilege of employment.
- c. The contractor shall immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, with the appropriate employment service delivery system where the opening occurs. Listing employment openings with the state workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service delivery system. In order to satisfy the listing requirement described herein, contractors must provide information about the job vacancy in any manner and format permitted by the appropriate employment service delivery system which will allow that system to provide priority referral of veterans protected by VEVRAA for that job vacancy. Providing information on employment openings to a privately run job service or exchange will satisfy the contractor's listing obligation if the privately run job service or exchange provides the information to the appropriate employment service delivery system in any manner and format that the employment service delivery system permits which will allow that system to provide priority referral of protected veterans.
- d. Listing of employment openings with the appropriate employment service delivery system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.

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### REQUIRED CONTRACT PROVISIONS

- e. Whenever a contractor, other than a state or local governmental contractor, becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this clause, it shall advise the employment service delivery system in each state where it has establishments that: (a) It is a Federal contractor, so that the employment service delivery systems are able to identify them as such; and (b) it desires priority referrals from the state of protected veterans for job openings at all locations within the state. The contractor shall also provide to the employment service delivery system the name and location of each hiring location within the state and the contact information for the contractor official responsible for hiring at each location. The “contractor official” may be a chief hiring official, a Human Resources contact, a senior management contact, or any other manager for the contractor that can verify the information set forth in the job listing and receive priority referrals from employment service delivery systems. In the event that the contractor uses any external job search organizations to assist in its hiring, the contractor shall also provide to the employment service delivery system the contact information for the job search organization(s). The disclosures required by this paragraph shall be made simultaneously with the contractor's first job listing at each employment service delivery system location after the effective date of this final rule. Should any of the information in the disclosures change since it was last reported to the employment service delivery system location, the contractor shall provide updated information simultaneously with its next job listing. As long as the contractor is contractually bound to these provisions and has so advised the employment service delivery system, there is no need to advise the employment service delivery system of subsequent contracts. The contractor may advise the employment service delivery system when it is no longer bound by this contract clause.
- f. The provisions of paragraphs 2 and 3 of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.
- g. As used in this clause:
  - i. All employment openings includes all positions except executive and senior management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.
  - ii. Executive and senior management means: (1) Any employee (a) compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities; (b) whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (c) who customarily and regularly directs the work of two or more other employees; and (d) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight; or (2) any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

## EXHIBIT B

### REQUIRED CONTRACT PROVISIONS

- iii. Positions that will be filled from within the contractor's organization means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.
- h. The contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- i. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- j. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are protected veterans. The contractor must ensure that applicants or employees who are disabled veterans are provided the notice in a form that is accessible and understandable to the disabled veteran (e.g., providing Braille or large print versions of the notice, posting the notice for visual accessibility to persons in wheelchairs, providing the notice electronically or on computer disc, or other versions). With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.
- k. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by the terms of VEVRAA, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, protected veterans.
- l. The contractor will include the provisions of this clause in every subcontract or purchase order of \$100,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to VEVRAA so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.

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### **REQUIRED CONTRACT PROVISIONS**

- m. The contractor must, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their protected veteran status.
- n. The Contractor shall forfeit as a penalty to the County who administers the subject Project receiving Federal assistance, Sixty Dollars (\$60.00) for each worker, employed for each calendar day, or a portion thereof, such worker is paid less than the said stipulated rates for any work done under this Project, by him/her or by any contractor under him/her.
- o. All contractors shall keep, or cause to be kept, an accurate record showing the names of all workers, also the actual per diem wages paid to each of such workers.

#### **FAIR LABOR STANDARDS ACT**

Contractor must comply the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) as now or hereafter amended, which regulates wage, hour and other employment practices that govern the use of funds provided and the employment of personnel under this contract. The Contractor warrants that it will pay all its workers all monies earned by its workers including, but not limited to regular wages, any overtime compensation, or any additional payments pursuant to the Fair Labor Standards Act, 29 United States Code (U.S.C.) Section 207 9a(1), as amended; the Texas Pay Day Act; the Equal Pay Act; Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, et al., as amended; or any provisions of the Texas Labor Code Ann. as amended.

#### **FLOOD DISASTER PROTECTION ACT OF 1973 (24 CFR 570.605)**

Contractor must comply with the provisions in 24 CFR 570.605, Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106), and the regulations in 44 CFR Parts 59-79.

#### **GREEN BUILDING STANDARDS**

At a minimum, Contractors must comply with local codes and any applicable national building codes for any work involving rehabilitation or construction, including design. When a contract is funded, in whole or in part, by HUD funding, Contractors must comply with applicable Green Building standards to the maximum extent feasible. Green Building standards may apply to single-family properties, multifamily properties, or both and may include, but are not limited to best practices defined under LEED, Enterprise Green Communities, or NAHB National Green Building Standards and may include specific measures for water conservation, energy efficiency, and indoor air quality. Respondent must comply with the following standards, as applicable:

- 2009 ICC International Energy Conservation Code (IECC)
- ASHRAE 90.1-2007, which sets minimum energy standards for buildings except low-rise residential buildings
- ASHRAE 62.1-2010 and 62.2-2010, which set minimum standards for ventilation for indoor air quality for common areas in mid- and high-rise buildings, and low-rise residential buildings, respectively.
- New or replacement residential housing, when funded by CDBG-DR grants, must adhere to Green Building standards, including Energy Star Certified Homes or Energy Star for Multifamily High Rise and other applicable green building requirements.

## **EXHIBIT B**

### **REQUIRED CONTRACT PROVISIONS**

- Moderate residential housing rehabilitation, when funded by CDBG-DR grants, must comply with the Community Planning & Development (CPD) Retrofit Checklist and provide Energy Star appliances, Water Sense or FEMP products if replaced.
- New or replacement residential housing, when funded by CDBG-DR grants, must adhere to Green Building standards, including Energy Star Certified Homes or Energy Star for Multifamily High Rise and other applicable green building requirements.

#### **HOLD HARMLESS AGREEMENT**

Contractor shall indemnify, defend, and hold harmless Fort Bend County from all claims for personal injury, death and/or property damage resulting directly or indirectly from contractor's performance. Contractor shall procure and maintain, with respect to the subject matter of this Request for Proposals, appropriate insurance coverage including, at a minimum, public liability and property damage with adequate limits to cover contractor's liability as may arise directly or indirectly from work performed under terms of this Request for Proposals. Certification of such coverage must be provided to the County upon request.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

#### **LEAD-BASED PAINT (24 CFR 570.608)**

Contractor must comply with the provisions found in 24 CFR 570.608, the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead Based Paint Hazard Reduction Act of 1992 (U.S.C. 4851-4856, and 24 CFR Part 35, subparts A, B, J, K, and R. This Article 2(f) is to be included in all subcontracts, for work in connection with this Contract, which relate to residential structures.

#### **NO COST-PLUS CONTRACTS (2 CFR 200.323(d))**

Contractor must comply with 2 CFR 200.323(d) and shall refrain from using the "cost-plus percentage of cost" method of contracting. Contracts, subcontracts, or third-party agreements funded by federal funds shall not contain any cost plus or incentive savings provisions. Therefore, Contracts made under this contract opportunity shall not make reference to compensation adjustments for cost plus or incentive savings provisions.

#### **NON-COLLUSION (The Sherman Act)**

Contractor must comply with the requirements of The Sherman Act, which prohibit collusion. Collusion occurs when two persons or representatives of an entity or organization make an agreement to deceive or mislead another. Such agreements are usually secretive and involve fraud or gaining an unfair advantage over a third party, competitors, consumers or others with whom they are negotiating. The collusion, therefore, makes the bargaining process inherently unfair. Collusion can involve promises of future benefits, price or wage fixing, kickbacks, or misrepresenting the independence of the relationship between the colluding parties.

The Sherman Act prohibits any agreement among competitors to fix prices, rig bids, or engage in other anticompetitive activity. Collusion, bid rigging, or other anticompetitive activity is considered a felony.

Contractor shall not in any way, directly or indirectly:

## EXHIBIT B

### REQUIRED CONTRACT PROVISIONS

- a. Collude, conspire, or agree with any other person, firm, corporation, Respondent or potential Respondent to the amount of this Offer or the terms or conditions of this Offer.
- b. Pay or agree to pay any other person, firm, corporation Respondent or potential Respondent any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Respondent.
- c. Assemble in coordination with any other organization in an attempt to fix the price of the work.

Contractors are expected to report any suspected fraud, collusion, or impropriety from the inception of solicitation through the end of the contract term.

### NON-SEGREGATED FACILITIES

#### “Prohibition of Segregated Facilities”

- a. Segregated facilities means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

Sexual orientation has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

- b. The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- c. The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

### PARTICIPATION BY MINORITY & WOMEN-OWNED BUSINESS ENTERPRISES (2 CFR 200.321)

Contractor must comply with the Minority and Women-owned Business Enterprise participation requirements under 2 CFR 200.321. Contractors must take all affirmative steps necessary to subcontract with Minority and Women-owned Business Enterprises (MWBs) to assure that MWBs are used when possible. These affirmative steps shall include:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

## EXHIBIT B

### REQUIRED CONTRACT PROVISIONS

- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- E. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

The State of Texas maintains a Historically Underutilized Business Program, which identifies any business at least 51 percent owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman and/or Service Disabled Veteran, who reside in Texas and actively participate in the control, operations and management of the entity's affairs as a Historically Underutilized Business (also considered MWBE). Contractors who wish to check the status of a firm may visit <https://comptroller.texas.gov/purchasing/vendor/hub/>.

Respondents are required to facilitate Minority & Women-Owned Business Enterprise participation and must describe their MWBE Utilization Plan as part of their Offer. The MWBE Utilization Plan should include Respondent's subcontracting and hiring plans, as well as a list of the MWBE or HUB firms Respondent intends to utilize to perform the contract. Respondents are encouraged to utilize MWBEs / HUB firms as subcontractors, subconsultants, or suppliers in order to comply with the requirements and may check for firms who perform relevant work by searching <https://comptroller.texas.gov/purchasing/vendor/hub/>. Respondents must include the certification or documentation that it, or its subcontractors, is HUB-certified by the Texas Comptroller of Public Accounts or the local MWBE office in their jurisdiction.

Contractor must facilitate Minority & Women-Owned Business Enterprise participation and take all affirmative steps to utilize MWBEs / HUB firms as subcontractors, subconsultants, or suppliers throughout the life of the Contract. Failure to include a MWBE Utilization Plan may deem Proposals non-responsive.

### POTENTIAL CONFLICTS OF INTEREST

Pursuant to 2 CFR 200.112, Contractor must comply with disclosure requirements in accordance with Texas Local Government Code, Chapter 176. Contractor shall not use funds to directly or indirectly pay any person for influencing or attempting to influence any public employee or official in connection with the awarding of any contract or the extension, continuation, renewal, amendment or modification of any contract. By law, the *Conflict of Interest Questionnaire* (provided by the Texas Ethics Commission at [www.ethics.state.tx.us](http://www.ethics.state.tx.us)) must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the Contractor becomes aware of facts that require the statement to be filed.

This law requires persons desiring to do business with the County to disclose any gifts valued in excess of \$250 given to any County Official or the County Official's family member, or employment of any County Official or the County Official's family member during the preceding twelve (12) month period. The disclosure questionnaire must be filed with the Fort Bend County Clerk. Refer to Texas Local Government Code, Chapter 176 for the details of this law.

An outside consultant or contractor is prohibited from submitting a Proposal for services on a Fort Bend County project of which the consultant or contractor was a designer or other previous contributor, or was an affiliate,

# EXHIBIT C

## Federal Standards and Requirements

## EXHIBIT C

### FEDERAL STANDARDS & REQUIREMENTS

During the term of this Agreement, Contractor shall comply with all applicable federal standards and regulatory requirements listed herein below, and including but not limited to those specified in Title 2 Code of Federal Regulations 200.326 and 2 C.F.R. 200 Appendix II, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and those listed under *Required Contract Provisions* (Exhibit B), and agrees to pass through these requirements to its subcontractors and third-party contractors who will perform work on or are relevant to this contract, as applicable.

- A. ACCESS TO RECORDS & RECORD RETENTION** – Respondent agrees to comply with 2 CFR 200.336 and provide Fort Bend County, the State of Texas, the Texas General Land Office (GLO), the U.S. Department of Housing and Urban Development (HUD), the FEMA Administrator, the Inspectors General, the Comptroller General of the United States, or any of their pass-through entities or authorized representatives access to any books, documents, papers, and records of the successful Respondents) which are directly pertinent to this contract/project for the purposes of making/responding to audits, examinations, excerpts, and transcriptions. Successful Respondent shall maintain all records pertaining to the project for seven (7) years after receiving final payment and after all other pending matters have been closed.
- B. ACCESSIBILITY** – Respondent agrees to comply with all federal, state and local laws and regulations which prohibit recipients of federal funding from discriminating against individuals with disabilities. Applicable laws and regulations with which Respondent must comply shall include, but are not limited to, the following: Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) (24 CFR Parts 8-9); the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157); the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 and Appendix A to 41 CFR Part 101-19, subpart 101-19.6); the Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225); Texas Administrative Code, Title 10, Chapter 60, Subchapter (B) the Texas Architectural Barriers Act (TABA); the Architectural Barriers (AB) Rules; and the Texas Accessibility Standards (TAS).
- C. BYRD ANTI-LOBBYING AGREEMENT** – Respondent submitting responses for contract opportunities expected to exceed \$100,000 agree to comply with CFR 200 Appendix II (J) and 24 CFR 570.303, and shall file the required certification (see Attachment D, *Certification Regarding Lobbying*) under 31 U.S.C. 1352.
- D. CIVIL RIGHTS ACT OF 1964 (TITLE VI 42 U.S.C. § 2000D)** – Respondent agrees to comply with Title VI of the Civil Rights Act of 1964, Section 109 of the Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) (24 CFR Parts 8-9), and the Americans with Disabilities Act of 1990 (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225), which prohibits Contractors from excluding or denying individuals benefits or participation in this project on the basis of race, color, religion, national origin, sex, or disability. The provisions require that no person in the United States shall on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with community development funds made available pursuant to these Acts.
- E. CLEAN AIR ACT & THE FEDERAL WATER POLLUTION CONTROL ACT** – If at any time during the contract term funding to contract exceeds \$150,000, Respondent agrees to comply with all provisions of the Clean Air Act (42 U.S.C. 85) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Respondent agrees it shall not expend such funds by making use of subcontracting with facilities included on the Environmental Protection Agency List of Violating Facilities as per Section 306 of the Clean Air Act, Section 508 of The Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations 40 CFR.

## EXHIBIT C

### FEDERAL STANDARDS & REQUIREMENTS

For any subcontractors under this contract receiving contracts in excess of \$150,000 Respondent agrees to include a provision that requires compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 85) and Section 308 of the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- F. *CONTRACT WORK HOURS & SAFETY STANDARDS ACT*** – Respondent agrees to comply with the Contract Work Hours and Safety Standards Act. For any contract awarded under this contract opportunity in excess of \$100,000, that contract shall be a covered transaction for purposes of compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
- G. *COPELAND “ANTI-KICKBACK” ACT*** – Respondent agrees to comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each vendor, contractor, subcontractor, or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
- H. *COST PLUS CONTRACTING PROHIBITED*** – Respondent agrees to comply with the prohibition against cost-plus-a-percentage-of-cost (CPPC) contracting. Pursuant to 2 CFR 200.323(d), Respondent agrees to never use cost plus a percentage of cost and percentage of construction cost methods of contracting, including in subcontracts and third-party contracts. A cost-plus contract is one that is structured to pay the contractor or subcontractor their actual costs incurred, plus a fixed percent for profit or overhead.
- I. *DAVIS BACON & RELATED ACTS*** – When applicable, Respondent agrees to comply with the Davis Bacon and Related Acts, and the requirements shall be applicable to any labor or mechanic work completed in connection with this contract which fall under the Davis Bacon Act. Any Contractor awarded under this contract is required to comply with the Davis Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 3 and part 6). In accordance with the statute, Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- J. *DEBARMENT AND SUSPENSION*** – Respondent affirms that it is not debarred nor suspended from receiving federally-funded awards. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension). These regulations restrict awards, sub-awards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities.
- K. *ENERGY EFFICIENCY*** – Respondent agrees to comply with the standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- L. *EQUAL EMPLOYMENT OPPORTUNITY*** – Respondent agrees to comply with the Equal Opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, Equal Employment

## EXHIBIT C

### FEDERAL STANDARDS & REQUIREMENTS

Opportunity (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor).

Respondent agrees it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Respondent agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.

**M. *EQUAL EMPLOYMENT OPPORTUNITY FOR WORKERS WITH DISABILITIES*** – Respondent agrees to comply with the requirements of the equal opportunity clause at 41 CFR 60-741.5(a). This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

Respondent agrees to include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor.

**N. *EQUAL EMPLOYMENT OPPORTUNITY FOR VETERANS*** – Respondent agrees to comply with required Equal Employment Opportunity for VEVRAA Protected Veterans provisions (41 CFR 60.300). Respondent agrees it shall not discriminate against any employee or applicant for employment because he or she is a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran in regard to any position for which the employee or applicant for employment is qualified. Respondent agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices.

Respondent shall include the Equal Employment Opportunity for VEVRAA Protected Veterans clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract).

**O. *FAIR LABOR STANDARDS ACT*** – Respondent agrees to comply with the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.). Respondent warrants and represents that it will pay all its workers all monies earned by its workers including, but not limited to regular wages, any overtime compensation, or any additional payments pursuant to the Fair Labor Standards Act, 29 United States Code (U.S.C.) Section 207 9a(1), as amended; the Texas Pay Day Act; the Equal Pay Act; Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, et al., as amended; or any provisions of the Texas Labor Code Ann., as amended.

**P. *FLOOD DISASTER PROTECTION ACT OF 1973*** – Respondent agrees to comply with the provisions in 24 CFR 570.605, Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106), and the regulations in 44 CFR Parts 59-79.

**Q. *GREEN BUILDING*** – Respondent agrees to comply with local codes and national building codes for any work involving rehabilitation or construction, including design. When contract is funded, in whole or in part, by HUD funding, Respondent agrees to comply with applicable Green Building standards to the maximum extent feasible. Green Building standards may apply to single-family properties, multifamily properties, or both and may include, but are not limited to best practices defined under LEED, Enterprise Green Communities, or NAHB National Green Building Standards and may include specific measures for water conservation, energy efficiency, and indoor air quality. Respondent agrees to comply with the following standards, as applicable:

- 2009 ICC International Energy Conservation Code (IECC)

## EXHIBIT C

### FEDERAL STANDARDS & REQUIREMENTS

- ASHRAE 90.1-2007, which sets minimum energy standards for buildings except low-rise residential buildings
- ASHRAE 62.1-2010 and 62.2-2010, which set minimum standards for ventilation for indoor air quality for common areas in mid- and high-rise buildings, and low-rise residential buildings, respectively.
- New or replacement residential housing, when funded by CDBG-DR grants, must adhere to Green Building standards, including Energy Star Certified Homes or Energy Star for Multifamily High Rise and other applicable green building requirements.
- Moderate residential housing rehabilitation, when funded by CDBG-DR grants, must comply with the Community Planning & Development (CPD) Retrofit Checklist and provide Energy Star appliances, Water Sense or FEMP products if replaced.

**R. *HOLD HARMLESS AGREEMENT*** – Respondent agrees to indemnify, defend, and hold harmless Fort Bend County from all claims for personal injury, death and/or property damage resulting directly or indirectly from contractor's performance. The successful Respondent shall procure and maintain, with respect to the subject matter of this Request for Proposals, appropriate insurance coverage including, at a minimum, public liability and property damage with adequate limits to cover contractor's liability as may arise directly or indirectly from work performed under terms of this Request for Proposals. Certification of such coverage must be provided to the County upon request.

**S. *LEAD BASED PAINT*** – When applicable, Respondent agrees to comply with the provisions found in 24 CFR 570.608, the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead Based Paint Hazard Reduction Act of 1992 (U.S.C. 4851-4856, and 24 CFR Part 35, subparts A, B, J, K, and R. This Article 2(f) is to be included in all subcontracts, for work in connection with this Agreement, which relate to residential structures.

**T. *NON-COLLUSION*** – Respondent agrees to comply with The Sherman Act, which prohibits any agreement among competitors to fix prices, rig bids, or engage in other anticompetitive activity. Collusion, bid rigging, or other anticompetitive activity is considered a felony. Respondent agrees that it has not in any way directly or indirectly: Colluded, conspired, or agreed with any other person, firm, corporation, Respondent or potential Respondent to the amount of this contract opportunity or the terms or conditions of this contract opportunity; Paid or agreed to pay any other person, firm, corporation Respondent or potential Respondent any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the contract opportunity; or Assembled in coordination with any other organization in an attempt to fix the price of the work.

**U. *PARTICIPATION BY MINORITY & WOMEN-OWNED BUSINESS ENTERPRISES*** – Respondent agrees to comply with the Minority and Women-owned Business Enterprise participation requirements under 2 CFR 200.321. Contractors who are awarded contracts with the County are required to take all affirmative steps necessary to subcontract with Minority and Women-owned Business Enterprises (MWBES).

**V. *POTENTIAL CONFLICT OF INTEREST*** – In accordance with 2 CFR 200.112, Respondent agrees to comply with disclosure requirements pursuant to Texas Local Government Code, Chapter 176. Respondent agrees not to use funds to directly or indirectly pay any person for influencing or attempting to influence any public employee or official in connection with the awarding of any contract or the extension, continuation, renewal, amendment or modification of any contract. By law, the Conflict of Interest Questionnaire (provided by the Texas Ethics Commission at [www.ethics.state.tx.us](http://www.ethics.state.tx.us)) must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date Respondent becomes aware of facts that require the statement to be filed.

## EXHIBIT C

### FEDERAL STANDARDS & REQUIREMENTS

- W. *PREVAILING WAGES***— When applicable, Respondent agrees to comply with Texas Government Code (TGC) 2258, Prevailing Wage Rates. In accordance with the statute, Contractors shall be required to pay wages to laborers and mechanics at a rate not less than the local prevailing wages, or Davis Bacon wages, as applicable. If both Texas prevailing wages and Davis Bacon provide rates for a particular class, Contractors must pay the greater wage rate.
- X. *PROCUREMENT OF RECOVERED MATERIALS***— Respondent agrees to 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). As such, any Contractors awarded under this contract opportunities are subject to the requirements of Section 6002.
- Y. *PROGRAM FRAUD & FALSE OR FRAUDULENT STATEMENT OR RELATED ACTS***— Respondent agrees to comply with 31 U.S.C. Chapter 38, *Administrative Remedies for False Claims and Statements*, which applies to the activities and actions of the Contractor and its subcontractors pertaining to any matter resulting from the contract.
- Z. *RESTRICTIONS ON PUBLIC BUILDINGS & PUBLIC WORKS PROJECTS***— Respondent certifies by the submission of its Proposal that it:
- **Is not a Contractor of a foreign country included on the USTR list.**
  - **Has not and will not enter into any subcontract with a subcontractor of a foreign country included on the USTR list.**
  - **Will not provide any product of a foreign country included on the USTR list.**
- AA. *SECTION 3 ACT OF 1968***— When applicable, Respondent agrees to comply with the provisions of 12 U.S.C. 1701u and 24 CFR 135. For any HUD-funded contract with an anticipated value in excess of \$100,000, the contract shall be considered a covered transaction for purposes of compliance with the Section 3 Act of 1968. Contractor must include the Section 3 Clause (Attachment T, *Section 3 Clause*) in its entirety, in every subcontract subject to compliance with regulations in 24 CFR 135.

# CERTIFICATE OF INTERESTED PARTIES

FORM **1295**

1 of 1

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

**OFFICE USE ONLY  
CERTIFICATION OF FILING**

**Certificate Number:**  
2022-840777

**Date Filed:**  
01/18/2022

**Date Acknowledged:**  
12/06/2022

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**  
GrantWorks, Inc.  
Austin, TX United States

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

**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.**  
RFP 22-047  
Grant Administrator Services for the Big Creek Expansion Project: Community Development Block Grant-Disaster Recovery (CDBG-DR) Hurricane Harvey for Fort Bend County Drainage District

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Spitzengel, Bruce	Sugar Land, TX United States	X	

**5 Check only if there is NO Interested Party.**

**6 UNSWORN DECLARATION**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

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

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

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(month) (year)

\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)