

**AGREEMENT FOR ENGINEERING SERVICES**

**THE STATE OF TEXAS   §**  
**§**  
**COUNTY OF HARRIS   §**

THIS AGREEMENT is made, entered into, and executed by and between the **Harris County Flood Control District**, a body corporate and politic under the laws of the State of Texas, hereinafter called "District" or "HCFCD," and **Cobb, Fendley & Associates, Inc.**, a Texas corporation, hereinafter called "Engineer."

WITNESSETH

WHEREAS, the District desires major maintenance activities to restore channel conveyance capacity in Barker Reservoir watershed, hereinafter called the "Project"; and

WHEREAS, the District desires that the Engineer perform Preliminary Engineering, Design, Bidding, and Construction Phase Engineering Services in connection with the Project; and

WHEREAS, the Engineer represents that it is capable and qualified to perform the services and prepare the items set forth herein.

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

**SECTION 1**

**SCOPE OF AGREEMENT**

The Engineer agrees to perform professional engineering services in connection with the Project, as stated in the sections to follow, and for rendering such services the District agrees to pay the Engineer compensation, as stated in the sections to follow.

**SECTION 2**

**CHARACTER AND EXTENT OF SERVICES**

The Engineer shall perform the services with regard to the Project listed in Appendix A hereto, hereinafter referred to as "Basic Services." The services furnished hereunder shall be completed to the satisfaction of the District.

**SECTION 3**

**ADDITIONAL SERVICES**

Upon written request from the Executive Director of the District or their designee ("Director"), the Engineer shall furnish Additional Services for the Project, as described in Appendix B hereto. All Additional Services shall be completed to the satisfaction of the District.

It is expressly understood and agreed that the Engineer shall not furnish any of the Additional Services without first obtaining written authorization from the Director. The District shall have no obligation to pay for Additional Services that have been rendered without prior written authorization from the Director.

#### SECTION 4

##### TIME FOR PERFORMANCE

All Basic Services shall be completed within 369 calendar days of the notice to proceed. It is understood and agreed that the time during which the Engineer's work is under review by the District shall not be included in the calendar day time allowed for completion. All Additional Services shall be completed within the time set forth in the applicable work authorization.

Where the Director determines that good cause exists, the Director may extend the time for performance of Basic Services or Additional Services. Any extensions of time granted by the Director shall be in writing.

#### SECTION 5

##### THE ENGINEER'S COMPENSATION

For and in consideration of the Basic Services performed by the Engineer, as set forth in Section 1, the District shall pay the Engineer a fixed fee of \$395,489.00, with monthly payments toward same based on the percentage of each task completed during the preceding calendar month, subject to acceptance by the District. The fee allocation by task to be used for billing purposes is as follows:

	<u>Amount</u>
A.1 PROJECT MANAGEMENT	\$ 61,468.00
A.2 PRELIMINARY ENGINEERING	\$ 20,056.00
A.3 CONSTRUCTION DOCUMENTS	
A.3.A 50% SUBMITTAL	\$142,856.00
A.3.B BID READY SUBMITTAL	\$113,166.00
A.3.C FINAL PLANS SUBMITTAL	<u>\$ 57,943.00</u>
	\$395,489.00

Adjustments to the fee allocation may be made within the Total Basic Services Fee with prior review and written approval by the Director. The District shall reimburse the Engineer according to the following rates for Additional Services provided pursuant to Section 3 by employees of the Engineer:

<u>Responsibility</u>	<u>Maximum Hourly Rate</u>
Principal	\$330.00
Sr. Project Manager	\$275.00
Project Manager I	\$199.00
Engineer I	\$142.00
Design/Drafter III	\$121.00
CADD Technician II	\$102.00
Administrative	\$119.00

The District may also authorize Additional Services to be compensated on a fixed fee basis upon acceptance by the Engineer. The District shall pay the Engineer a prorated amount of the fixed fee monthly, based on the percentage of the task completed during the preceding calendar month, subject to acceptance by the District. Where authorization of Additional Services is made on a fixed fee basis, the hourly rates set out above shall not apply.

Notwithstanding anything that may be construed to the contrary herein, in no event shall the Engineer be entitled to compensation and reimbursement in excess of \$512,603.74 for performing Additional Services hereunder. Nor shall the Engineer be required to perform Additional Services hereunder after becoming entitled to compensation and reimbursement of \$512,603.74 for Additional Services.

Adjustments to the Additional Services budget allocation may be made with written approval by the Director.

It is expressly understood that the Engineer shall neither seek reimbursement nor will the District be obligated to pay or reimburse the Engineer for normal business expenses such as overtime, postage, messenger services, delivery charges, mileage within Harris County, parking fees, facsimile (fax) transmissions, computer time on in-house computers and graphic systems, blueline drawings or photocopies specifically required in Section 2, or other costs or expenses, except those for which reimbursement is specifically provided in the following sentence. If approved in writing by the Director prior to their being incurred, the Engineer may be reimbursed the reasonable and necessary cost of the following, to the extent they are incurred in providing services hereunder: services performed by a subcontractor pursuant to authorization for such expenses and as permitted by the County Purchasing Act, copies of reports or other documents to be delivered to the District or in accordance with instructions of the District in excess of the number specifically required by Section 2, costs of travel outside of Harris County, rental costs of transportation equipment necessary to gain access to the Project site, costs of presentation materials (i.e., charts, slides, transparencies), costs of abstracting, and costs of photographic and video services.

## SECTION 6

### TIME OF PAYMENT

During the performance of the services provided herein, at intervals of not fewer than thirty (30) days each, the Engineer shall submit to the District a statement sworn to by the Engineer or an officer of the Engineer, in a form acceptable to the Harris County Auditor and in compliance with Section 5, setting forth the services completed and the compensation due for the same, plus the amounts payable under Section 3 (Additional Services) that have not been previously billed or paid. All hourly charges shall be itemized on the basis of the hourly rates and shall be certified in writing by the Engineer to be true and correct. The Director and the Harris County Auditor shall approve the statement after review, with such modifications as may be deemed appropriate. The District shall pay each statement approved within thirty (30) days after approval by the Director and the County Auditor, provided that the approval or payment of any such statement shall not be considered to be evidence of performance by the Engineer to the point indicated by such statement, or of the receipt of or acceptance by the District of the work covered by such statement. The Engineer shall in no case submit an invoice for less than \$500.00, except where the invoice is for the final payment.

Time sheets corroborating the information provided in the statement, signed by individuals performing services under this Agreement and their supervisor(s), showing the name of each individual performing services hereunder, the date or dates that he or she performed said services, his or her hourly rate, the total amount billed for each individual, and the total amount

billed for all individuals, and including such other details as may be requested by the Harris County Auditor for verification purposes, shall be kept and maintained by the Engineer for a period of five (5) years after the completion of performance hereunder. The Director and/or the County Auditor shall have the right, after giving written notice, to review any and all documents or other data in the custody of the Engineer, in connection with any statement submitted by the Engineer to the District for approval and payment by the District.

## SECTION 7

### TERMINATION

The Director may terminate this Agreement at any time by notice in writing to the Engineer. Upon receipt of such notice, the Engineer shall discontinue all services in connection with the performance of this Agreement. As soon as practicable after receipt of notice of termination, the Engineer shall submit a statement showing in detail the services performed under this Agreement to the date of termination. The District shall pay the Engineer that proportion of the total fee which the services actually performed under this Agreement bear to the total services called for herein, less such payments on account of the charges as have been previously made. Copies of all complete or partially complete designs, plans, specifications, and other documents prepared or obtained under this Agreement shall be delivered to the District when and if the Agreement is terminated.

## SECTION 8

### NOTICES AND COMMUNICATIONS

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the Engineer at the following address:

Cobb, Fendley & Associates, Inc.  
13430 Northwest Frwy., Ste. 1100  
Houston, TX 77040  
Attn: Charles M. Eastland, P.E.

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the District at the following address:

Harris County Flood Control District  
9900 Northwest Freeway  
Houston, Texas 77092  
Attn: Executive Director

## SECTION 9

### LIMIT OF APPROPRIATION

The Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the District shall have available the total maximum sum of \$908,092.74 specifically allocated to fully discharge any and all liabilities that may be incurred by District pursuant to the terms of this Agreement, and that the total maximum compensation the Engineer may become entitled to hereunder and the total maximum sum the District shall become liable to pay to the Engineer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the said total maximum sum provided for in this Section and certified as available therefor by the County Auditor as evidenced by the issuance of a purchase order from the Harris County Purchasing Agent.



## SECTION 10

### SUCCESSORS AND ASSIGNS

The District and the Engineer 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. Neither the District nor the Engineer shall assign, sublet, or transfer its or his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body that may be a party hereto.

## SECTION 11

### PUBLIC CONTACT

The Engineer shall under no circumstances release any material or information developed in the performance of services hereunder, without the prior express written permission of the Director. Contact with the news media, private citizens, or community organizations shall be the sole responsibility of the District. Inquiries concerning this Agreement or Project shall be referred to the Director.

## SECTION 12

### COMPLIANCE AND STANDARDS

The Engineer agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the Engineer's profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and the Engineer's performance. The Engineer represents that, prior to performing hereunder, he has or shall obtain all necessary licenses, ownership, or permission for use of any and all proprietary information, materials, or trade secrets employed in the performance of work hereunder for the District and agrees that it shall not copy, reproduce, recreate, distribute, or use any such proprietary information, materials, or trade secrets of any third party, except to the extent permitted by such third parties, or as otherwise authorized by law.

In accordance with TEX. GOV'T CODE ANN. § 2271.002, the Engineer warrants and represents that it does not boycott Israel and agrees that it will not boycott Israel during the term of this contract.

The Engineer represents and certifies that, at the time of execution of this Agreement, the Engineer (including, in this provision, any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same) is not listed by the Texas Comptroller of Public Accounts pursuant to Chapters 2252 or 2270 of the Texas Government Code, nor will the Engineer engage in scrutinized business operations or other business practices that could cause it to be listed during the term of this Agreement.

In accordance with Tex. Gov't Code Ann. Chapter 2252 Subchapter F, Engineer warrants and represents that, at the time of execution of this Agreement and for the duration of the Term of this Agreement and any Renewal Terms, Engineer does not appear on the Texas State Comptroller's list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization. The Engineer certifies that it will not enter into a contract with any subcontractor that is listed on the federal government's terrorism watch list as described in Executive Order 13224.

The Engineer warrants and represents, in accordance with Tex. Gov't Code Ann. § 2274.002, that unless the Engineer meets an exemption under subsection (c), then, as required by subsection (b), the Engineer's signature on this Agreement constitutes the Engineer's written

verification that it does not boycott energy companies and will not boycott energy companies during the term of the contract.

The Engineer warrants and represents, in accordance with Tex. Gov't Code Ann. § 2274.002, that unless the Engineer meets an exemption under subsection (c) or section 2274.003, then, as required by subsection (b) of section 2274.002, the Engineer's signature on this Agreement constitutes the Engineer's written verification that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of the contract.

The Engineer warrants and represents that neither it, nor any of its principals or other affiliated entities, owe any debts to Harris County (the "County"), including, but not limited to delinquent taxes, court judgments, tickets, tolls, fees, or fines. Taxes are deemed delinquent on the date certain as specified by the Harris County Tax Office. For the purposes of this Agreement, a court judgment is not required for delinquent taxes to be considered a debt.

The Engineer shall immediately report to County through the County's Fraud, Waste, or Abuse Hotline and also notify the County in accordance with all the Notice provisions contained in this Agreement all suspected or known instances and facts concerning fraud, waste, abuse, or criminal activity under this Agreement. The County's Fraud, Waste, or Abuse Hotline can be accessed by phone at 866-556-8181 or online at <https://secure.ethicspoint.com/domain/media/en/gui/68174/index.html>.

## SECTION 13

### LICENSE REQUIREMENTS

The Engineer shall have and maintain any licenses or certification required by the State of Texas or recognized professional organization governing the services performed under this Agreement.

## SECTION 14

### CERTIFICATE OF INTERESTED PARTIES

In compliance with Government Code § 2252.908, the Engineer must submit a completed Certificate of Interested Parties Form 1295, including an unsworn declaration and the Certification of Filing, printed after completing the electronic filing requirements on the Texas Ethics Commission website (see [www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)), to the District along with this signed Agreement.

## SECTION 15

### CONFLICT OF INTEREST CERTIFICATION

The Engineer certifies that the Engineer has complied with Chapter 176 of the Texas Local Government Code by completing and filing any required conflict of interest disclosures or questionnaires (see [www.ethics.state.tx.us/forms/CIQ.pdf](http://www.ethics.state.tx.us/forms/CIQ.pdf)). If this certification is materially incomplete or inaccurate, the Engineer acknowledges that the District shall have the right to terminate this Agreement without prior notice.

## SECTION 16

**INDEMNIFICATION**

**TO THE EXTENT ALLOWED BY LAW, THE ENGINEER AGREES TO INDEMNIFY AND HOLD HARMLESS THE DISTRICT, ITS OFFICERS, EMPLOYEES, AND AGENTS FROM LIABILITY, LOSSES, EXPENSES, DEMANDS, REASONABLE ATTORNEYS' FEES, AND CLAIMS FOR BODILY INJURY (INCLUDING DEATH) AND PROPERTY DAMAGE TO THE EXTENT CAUSED BY THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT OF THE ENGINEER (INCLUDING THE ENGINEER'S AGENTS, EMPLOYEES, VOLUNTEERS, AND SUBCONTRACTORS/CONSULTANTS UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH ENGINEER EXERCISES CONTROL) IN THE PERFORMANCE OF THE SERVICES DEFINED IN THIS AGREEMENT. THE ENGINEER SHALL ALSO SAVE THE DISTRICT HARMLESS FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, IN PROPORTION TO THE ENGINEER'S LIABILITY, THAT MIGHT BE INCURRED BY THE DISTRICT, IN LITIGATION OR OTHERWISE RESISTING SUCH CLAIMS OR LIABILITIES.**

## SECTION 17

**INSURANCE REQUIREMENTS**

Coverage and Limits. During the Term of this Agreement and any extensions thereto, the Engineer at its sole cost and expense shall provide insurance of such type and with such terms and limits as may be reasonably associated with this Agreement. As a minimum, the Engineer shall provide and maintain the following coverage and limits:

- (a) Workers Compensation, as required by the laws of Texas, and Employers' Liability, as well as All States, United States Longshore & Harbor Workers Compensation Act and other endorsements, if applicable to the project, and in accordance with state law.

## Employers' Liability

(i)	Each Accident	\$1,000,000
(ii)	Disease – Each Employee	\$1,000,000
(iii)	Policy Limit	\$1,000,000

- (b) Commercial General Liability, including but not limited to, the coverage indicated below. This policy will provide coverage for personal and bodily injury, including death, and for property damage, and include an endorsement for contractual liability. Coverage shall not exclude or limit the Products/Completed Operations, Contractual Liability, or Cross Liability. Where exposure exists, the District may require coverage for watercraft, blasting, collapse, explosions, blowout, cratering, underground damage, pollution, and other coverage. *The District shall be named Additional Insured on primary/non-contributory basis.*

(i)	Each Occurrence	\$1,000,000
(ii)	Personal and Advertising Injury	\$1,000,000
(iii)	Products/Completed Operations	\$1,000,000
(iv)	General Aggregate (per project)	\$2,000,000

- (c) Professional Liability/Errors and Omissions, in an amount not less than One Million Dollars (\$1,000,000) per claim and in the aggregate.

- (d) Umbrella/Excess Liability in an amount not less than One Million Dollars (\$1,000,000) per occurrence and in the aggregate. *The District shall be named Additional Insured on primary/non-contributory basis.*

(e) Automobile Liability insurance to include the Engineer's liability for death, bodily injury, and property damage resulting from the Engineer's activities covering use of owned, hired, and non-owned vehicles, with combined single limit of not less than One Million Dollars (\$1,000,000) for each accident. *The District shall be named Additional Insured on primary/non-contributory basis.*

(f) Any other coverage required of the Engineer pursuant to statute.

**Delivery of Policies.** Immediately upon execution of this Agreement and before any services are commenced by the Engineer, the Engineer shall provide the District evidence of all of the above coverage on forms and with insurers acceptable to the District. The Engineer must maintain a valid Certificate of Insurance as described herein on file with the District at all times during the term of this Agreement. The Engineer must include a note referencing the Agreement No. and either (1) mail the Certificate of Insurance to the District at 9900 Northwest Freeway, Houston, TX 77092, Attn: Contract Management or (2) submit it by email to [HCFCFCD\\_AdminServices@hcfcd.hctx.net](mailto:HCFCFCD_AdminServices@hcfcd.hctx.net).

**Issuers of Policies.** Coverage shall be issued by company(s) licensed by the Texas Department of Insurance to do business in Texas, unless said coverage is not available or economically feasible except through an excess or surplus lines company, in which case the company(s) should be registered to do business in Texas. Companies shall have an A.M. Best rating of at least A-VII.

**Certificates of Insurance.** The Engineer shall provide unaltered Certificates of Insurance which evidence the required coverage and endorsements and satisfy the following requirements:

- (a) Be less than 12 months old;
- (b) Include all pertinent identification information for the Insurer, including the company name and address, policy number, NAIC number or AMB number, and an authorized signature;
- (c) Include the project name and reference numbers and indicate the name and address of the Project Manager in the Certificate Holder Box; and
- (d) Be appropriately marked to accurately identify:
  - (i) All coverage and limits of the policy;
  - (ii) Effective and expiration dates;
  - (iii) Waivers of subrogation, endorsement of primary insurance and additional insured language, as described herein.

**Certified Copies of Policies and Endorsements.** Upon request, the Engineer shall furnish certified copies of insurance policies and endorsements to the District.

**Renewal Certificates.** Renewal certificates are due to the District at least thirty (30) days prior to the expiration of the current policies.

**Subcontractors.** If any part of the Agreement is sublet, insurance shall be provided by or on behalf of any subcontractor, and shall be sufficient to cover their portion of the Agreement. The Engineer shall furnish evidence of such insurance to the District as well.

**Additional Insured.** The Engineer shall include the District and its respective officers, directors, agents, and employees as an Additional Insured on the Commercial General Liability, Automobile Liability, and Umbrella/Excess Liability insurance certificates. The Engineer's coverage shall be primary insurance to any similar insurance maintained by the District and must contain an endorsement stating such. Coverage to the District as an Additional Insured on any of the Engineer's insurance coverage shall not be subject to any deductible.

**Deductibles.** The Engineer shall be responsible for and pay any claims or losses to the extent of any deductible amounts applicable under all such policies and waives any claim it may have for the same against the District, its officers, directors, agents, or employees.

**Claims-made Policies.** All insurance policies written on a claims-made basis, including Professional Liability/Errors and Omissions, shall be maintained for a minimum of two (2) years following completion of all services under this Agreement ("Extended Reporting Period"). The Engineer shall obtain or maintain full prior acts coverage at least to the effective date of this Agreement in the event of a carrier or policy change.

**Waiver of Subrogation.** The Engineer waives any claim or right of subrogation to recover against the District, its officers, directors, agents, and employees ("Waiver of Subrogation"). Each policy required under this Agreement must contain a Waiver of Subrogation endorsement.

**Notice of Cancellation, Non-Renewal, or Material Change.** The Engineer shall provide the District with thirty (30) days' minimum written notification in the event of cancellation, non-renewal, or material change to any or all of the required coverage.

**Remedies for Noncompliance.** Failure to comply with any part of this Article is a material breach of this Agreement. The Engineer could immediately, and without notice, have all compensation withheld or suspended, be suspended from providing further services, or be terminated from this Agreement for any lapse in coverage or material change in coverage which causes the Engineer to be in noncompliance with the requirements of this Article.

## SECTION 18

### OWNERSHIP OF PLANS, COPYRIGHT

The District shall be the absolute and unqualified owner of any information, programs, Mylar reproductions, plans, preliminary layouts, sketches, reports, cost estimates, inventions, software, firmware, designs, computer applications, computations, computer input/output information, and other documents or materials prepared pursuant to this Agreement, including source codes therefor, with the same force and effect as if the District prepared the same. The District shall have an exclusive and perpetual copyright in and to any and all materials produced for the District pursuant to this Agreement and the Engineer shall convey and assign, and does hereby convey and assign, to District all right, title, and interest, including but not limited to copyright, the Engineer may have or may acquire in and to such materials. The Engineer agrees that work performed hereunder for the District will be deemed to have been done, to the extent authorized by law, on a "works made for hire" basis. In the event and to the extent such works are determined not to constitute "works made for hire" as that term is understood in copyright law, the Engineer hereby irrevocably assigns and transfers to the District all right, title, and interest in and to such works, including, but not limited to, copyrights. The Engineer agrees to promptly deliver to the District copies, in a form acceptable to the Director, of any and all such information, programs, Mylar reproductions, plans, preliminary layouts, sketches, reports, cost estimates, inventions, software, firmware, designs, computer applications, documents, materials and/or data, including the source codes therefor, upon request from the District. Copies of all complete or partially complete information, programs, Mylar reproductions, plans, preliminary layouts, sketches, reports, cost estimates, inventions, software, firmware, designs, computer applications, and other documents and materials, including source codes therefor, prepared pursuant to this Agreement, shall also be delivered to the District when and if the Agreement is terminated, or upon completion of performance hereunder, whichever occurs first. The Engineer may retain one (1) set of reproducible copies of such documents and materials, but such copies shall be for the Engineer's use in the preparation of studies or reports for the District only. The Engineer is expressly prohibited from selling, licensing, or otherwise marketing or donating such documents or materials, or using the same in the preparation of work for any other client without the express written permission of the Director. The Engineer does not intend or represent that construction

documents or materials will be suitable for reuse. If the District reuses the same, such action shall be at the District's risk and without liability to the Engineer. If the Engineer furnishes partially complete plans, layouts, sketches, specifications, or other documents and materials by virtue of termination under Section 7 above, the Engineer shall not be held accountable or responsible for the completeness of any document or material so produced.

## SECTION 19

### MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MWBE) COMPLIANCE

The Engineer shall comply with Harris County's Minority- and Women-Owned Business Enterprise ("MWBE") program as set out in the County's MWBE policy attached as Appendix C. The Engineer shall make good faith efforts to award subcontracts or supply agreements in at least 20% of the value of this Agreement to MWBEs. The Engineer acknowledges that it has reviewed the requirements of the County's MWBE program as described in Appendix C – "Harris County MWBE Policy" and will comply with them.

## SECTION 20

### MODIFICATIONS

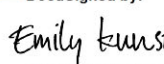
This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force or effect, excepting a subsequent modification in writing signed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

EXECUTED on \_\_\_\_\_.

APPROVED AS TO FORM:

HARRIS COUNTY FLOOD CONTROL  
DISTRICT

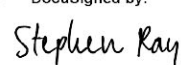
CHRISTIAN D. MENEFFEE  
Harris County Attorney

DocuSigned by:  
  
By \_\_\_\_\_  
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EMILY KUNST  
Assistant County Attorney

By \_\_\_\_\_  
LINA HIDALGO  
County Judge

ATTEST:

COBB, FENDLEY & ASSOCIATES, INC.

DocuSigned by:  
  
By \_\_\_\_\_  
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Stephen Ray

Name

Principal

Title

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By \_\_\_\_\_  
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Charles M. Eastland, P.E.

Name

Exec Vice President

Title



## APPENDIX A

### GENERAL SCOPE OF BASIC SERVICES

The intent of the basic services is to prepare construction documents for the Barker Reservoir Repairs Project – T100-00-00-X002. The scope of services for basic services is as follows:

#### Reference Materials and Standards:

- Harris County Flood Control District:
  - Criteria Manual for the Design of Flood Control and Drainage Facilities in Harris County
  - Policy and Design Criteria Manual for the Design of Flood Control and Drainage Facilities
  - Surveying Guidelines
  - HCFCD Drawing and Graphic Standards
  - Geotechnical Guidelines
  - Harris County Floodplain Reference Marks (<http://www.harriscountyfrm.org/>)
- Wherever there are differences in requirements between the reference materials and standards and this scope, Engineer shall perform services in accordance with the stricter requirements.
- Units of Measure - This Project shall be prepared using English units.
- Deliverables in Electronic Format: In addition to the hard copy Project deliverables required below, the Engineer shall submit electronic copies of intermediate and final reports, documents, plans and other work products on Compact Disks (CDs) or other suitable media.
  - Submit text files in Microsoft Word 97 or later version.
  - Submit design drawing files and exhibits in AutoCAD Civil 3D 2011 or later version format.
  - Submit a duplicate of text and drawing files in PDF format using Acrobat 5.0 or later version.
  - Submit photographs in a digital format converted to a JPEG image and stored on the CD. Images shall have a resolution no lower than 1024 X 768.

#### 1. PROJECT MANAGEMENT

Project Management during Basic Services: Perform Project management and administration necessary for completion of the Project. Services shall include, but are not limited to, the following:

- A. Provide sub-consultant contract management.
  - 1) The Engineer shall not subcontract any part of its Contract without approval by the Director.
  - 2) The Engineer shall evaluate Sub-Consultant proposals to the same extent as if the services were performed by the Engineer.
  - 3) The Engineer shall be responsible for services performed by Sub-Consultants to the same extent as if the services were performed by the Engineer.
  - 4) The Engineer shall replace any Sub-Consultant when requested to do so by the Director, who shall state the reasons for such request.
  - 5) The Engineer shall provide the Director with a copy of any of its Consultant subcontracts at the Director's request.
- B. Attend Project kickoff meeting and monthly status meetings. Provide an agenda for each meeting and follow up with meeting minutes after each meeting.

- C. Develop and maintain a Project schedule in Microsoft Project format. Submit schedule updates on a monthly basis.
- D. Coordinate with utility companies to obtain permits or permission to cross pipeline rights-of-ways.

## 2. PRELIMINARY ENGINEERING

Perform data collection and review of the specified project areas. Prepare a comprehensive Project schedule to be maintained at all times. Present all available data at an initial preliminary design project meeting.

- A. Evaluation of existing site conditions: Conduct onsite review of existing site conditions, existing problems and identify any constraints. Research/collect/review previous drainage studies, geotechnical reports, construction plans, public and private utility data, right of way information and adjacent land use. Review on-going and planned projects in the Project area. Procure new topographic surveys, geotechnical investigations, environmental and archeological assessments, and utility investigations as necessary.
- B. Findings and Recommendations: Present factors such as operation, cost, constructability, utility conflicts, maintenance requirements, safety and aesthetics. Provide recommended solution for final design and implementation.

## 3. CONSTRUCTION DOCUMENTS

Prepare drawings in accordance with HCFCD's latest Drawing and Graphic Standards, and Surveying Guidelines. Construction drawings shall be prepared so they are legible and to scale when printed on 11"x17" size paper. Prepare specifications and special provisions for a Project Manual in a format prescribed by the District. Prepare a final cost estimate of probable construction cost using District pay items. Follow Quality Assurance/Quality Control (QA/QC) procedures that meet or exceed the District's own requirements (written procedure available upon request). The Engineer may choose to use the District's procedures or submit their own for approval prior to proceeding with design. Prepare a comprehensive Project schedule to be maintained at all times and submitted with monthly invoices. Progress submittals are as discussed in the following.

- A. 50% Submittal:
  - 1) Deliver 2 sets of 11"x17" plans, a PDF file of the plans, and all CAD files. The submittal shall include the following as a minimum and shall have been reviewed for quality assurance:
  - 2) Plans
    - a. HCFCD Cover Sheet
    - b. Index of Drawings with revision date of each sheet shown
    - c. Project vicinity map
    - d. General Notes
    - e. Project Layout
    - f. Project survey control and control point detail sheets showing survey baseline, survey data tables, existing and proposed HCFCD right of way, public and private easements crossing and adjacent to District ROW.
    - g. Quantity estimate page (where the Project involves multiple sites)
    - h. Soil boring locations



- i. Plan and Profile Sheets with proposed design top of banks, bottom widths, flowlines, hydraulic structures, piping and appropriate design labeling. Include existing and proposed right of way, existing topography baseline location/control, existing and proposed drainage structures/features, existing utilities (public and private), existing tree preservation and ROW encroachment locations.
    - j. Construction access plan
    - k. Typical cross sections
    - l. Appropriate HCFCD standard detail sheets as required
    - m. Stormwater Pollution Prevention Plan (SWPPP) standard BMP plan
  - 3) Additional items to submit:
    - a. Draft engineers estimate using HCFCD pay items in standard HCFCD format
    - b. Assessment of current construction budget relative to Project scope
    - c. Separate planset indicating proof of following QA/QC procedures
    - d. Utility Conflict Table, showing all utilities in conflict, whether or not a relocation is required, if so, who is responsible for coordinating the relocation, and what is the current status.
  - 4) Provide plans to the applicable utility companies for review.
- B. 80% Submittal (Bid Ready) Submittal:
- 1) Incorporate the District's 50% comments and deliver 3 sets of 11"x17" plans, signed and sealed by a Professional Engineer (P.E.) licensed in the State of Texas, and a PDF file of the plans **suitable in the Engineer's opinion as complete and ready to bid** as well as all CAD files. The submittal shall include all items from the 50% submittal as well as any remaining details required to bid the Project. Details needed to construct Project Items to submit include:
  - 2) Plans - all items from the 50% submittal plus:
  - 3) Additional Items to Submit
    - a. Prepare and submit through coordination with the District Design Project Manager a completed Project Manual, signed and sealed by a Professional Engineer (P.E.) licensed in the State of Texas, including special provisions, Summary of Work, and all Project specific specifications.
    - b. Engineers estimate using HCFCD pay items in standard HCFCD format
    - c. Assessment of expected construction time in calendar days using the District provided table.
    - d. Storm Water Pollution Prevention Plan (SWPPP) and Standard HCFCD Details
    - e. The PDF of comments previously provided during the 50% submittal with responses to all questions and comments within the PDF
    - f. Separate planset indicating proof of following QA/QC procedures.
    - g. Updated Utility Conflict Table showing all utilities in conflict, whether or not a relocation is required. If so, who is responsible for coordinating the relocation, and what is the current status.
  - 4) If appropriate, conduct a bid ready "plan in hand" site visit with appropriate HCFCD personnel.
  - 5) Participate in a Bid Ready constructability review with both the District's Design and Construction Project Manager's both present.
  - 6) Coordinate with the District Design Project Manager to provide plans to all applicable federal, state, county and municipal agencies, for review and comment.
  - 7) Provide plans to the applicable utility companies for review.

C. Final Plans (100%) Submittal:

- 1) Incorporate the District's Bid Ready comments and deliver a PDF of the plans and Project manual signed and sealed by a Professional Engineer licensed in the State of Texas.
- 2) Submit a final checkset for the District Project Manager review including:
  - a. PDF of the Plans and Project Manual signed and sealed by a Professional Engineer licensed in the State of Texas.
  - b. Engineer's estimate using HCFCD pay items in standard HCFCD format.
  - c. Assessment of expected construction time in calendar days using the District provided table.
  - d. The PDF of comments previously provided during the Bid Ready submittal with responses to all questions and comments within the PDF.
  - e. Separate planset indicating proof of following QA/QC procedures.
  - f. Updated Utility Conflict Table showing all utilities in conflict and indicating all conflicts have been addressed.
- 3) The District Project Manager will review the final checkset with appropriate coordination with other District personnel as needed. Upon review and approval by the District Project Manager, Engineer shall:
  - a. Incorporate any final revisions received from the District Project Manager
  - b. Submit Original 11"x17" plans, signed and sealed by a Professional Engineer licensed in the State of Texas. Only sheets revised after the checkset need to be re-signed.
  - c. Plans shall include signatures of all external agency signatures including utility companies.
  - d. Submit a PDF file of the plans, preferably vector based.
  - e. Submit a PDF of the Project Manual ready for bidding, bookmarked for each section.
  - f. Coordinate with the District to obtain permit from the appropriate Floodplain Administrator(s).
  - g. Submit all CAD files a digital terrain model compatible for use in AutoCAD Civil 3D as applicable.

## APPENDIX B

### GENERAL SCOPE OF ADDITIONAL SERVICES

The Engineer shall render the following Additional Services in connection with the Project when authorized in writing by the Director:

#### 1. SURVEY SERVICES

- A. Perform survey in accordance with the District's Surveying Guidelines and other District design requirements as designated in writing by the Director.

#### 2. GEOTECHNICAL INVESTIGATION

- A. Perform in accordance with the District's Geotechnical Investigation Guidelines and other District requirements.
- B. Review the "Bid Ready" plans for the purpose of confirming that the design recommendations of the geotechnical report are complied with.
- C. Boring Logs in the final plans shall be signed and sealed by the Professional Engineer licensed in the State of Texas who was responsible for signing and sealing the Geotechnical Work the plans are based upon.

#### 3. ENVIRONMENTAL SITE ASSESSMENT

- A. Perform in accordance with District requirements.

#### 4. BIDDING PHASE

- A. Attend and assist the District in conducting the pre-bid conference including answering questions and interpreting the drawings and specifications.
- B. Prepare necessary addenda to address issues or clarifications necessary for completion of the bidding process.
- C. Review tabulated bid results for discrepancies including potential unbalancing of unit bid prices and provide a written recommendation issued on company letterhead for the award of a construction contract.
- D. Provide clarification, correct discrepancies, correct errors and omissions; assist the District in evaluating the bid proposals; and assist in the preparation of a construction contract between the District and the successful bidder.
- E. Prepare a Submittal Log in coordination with the District Design and Construction Project Managers for District approval. The log shall list those items identified in the Contract Documents that require a submittal by the Contractor for District approval. Issue the Submittal Log to the Contractor within one week after the project is awarded.
- F. Prepare a set of "Issued for Construction Drawings" within 10 business days after bids are received. Revise the "Issued for Construction Drawings" to reflect all addenda changes made to the Bid Documents during the bid period.

#### 5. CONSTRUCTION PHASE

- A. Assign a professional engineer licensed in the State of Texas to manage the Project and to attend meetings of any official nature concerning the Project, unless otherwise set forth in the Scope of Work or approved in writing by the District. All submittal approvals and Request For Information (RFI) responses must include the signature of either the Engineer of Record or their equally qualified designee also licensed as a professional engineer in the State of Texas. The format for the approval block on submittals and RFIs will be provided by the District.
  - 1) Schedule and attend a pre-construction prep meeting to discuss with the District Construction Project Manager the roles and requirements during construction.
  - 2) Attend the pre-construction conference scheduled and conducted by the District.

- 3) Make periodic visits to the Project site at appropriate intervals (not less than monthly) as construction proceeds to observe and provide a written construction site observation report in a format provided by the District. Personal Protective Equipment (PPE) requirements at the project site shall be followed, and all visitors must check in with the District Inspector immediately upon accessing the site. Submit the construction site observation report to the District Construction Project Manager, with copy to the District Design Project Manager. Describe the progress and the quality of the executed work. Monthly visits shall be combined with the monthly construction progress meetings.
  - a. When making a site visit, Engineer shall check in with the District's Inspector at the site so it can be noted in the Daily Work Report. If the inspector is not present, Engineer shall notify the District Construction Project Manager of being on-site.
- 4) Immediately notify the District Inspector and the District Construction Project Manager of any unsafe conditions or major work deficiencies observed during the site visits. Document such notifications on the construction site observation report.
- 5) Submittals: Engineer will receive, immediately log, and review shop drawings, samples, and other submissions furnished by the Contractor that are submitted to the Engineer. Engineer will determine if the shop drawings, samples, and other submissions conform to the requirements of the Contract Documents. Engineer will maintain a log of all contractor submittals (the Submittal Log) which shall include the submittal date, the relevant pay item(s) and specification(s), the product identification, the action taken, and the date returned.
  - a. Engineer will review and respond to the contractor within three (3) business days with copy to the District Construction Manager unless the submittal is for the approval of a disposal site.
  - b. If a submittal from a contractor is for approval of a disposal site for excavated material, the Engineer will forward the submittal to the District's Environmental Regulatory Compliance Department with copy to the District Construction Project Manager and will not issue approval or disapproval of the site without written notification from the District's Environmental Regulatory Compliance Department.
  - c. All responses to include the latest updated version of the Submittal Log.
- 6) Requests for Information (RFI's): Engineer shall receive, immediately log, and review RFI's from the contractor and prepare a response. Provide all responses within three (3) business days of a logged request. Maintain a current log of all RFI's received (the RFI Log), action taken, and the date returned. Responses shall clearly provide design clarification and recommendations to assist the District in resolving field problems relating to construction.
  - a. If the response does not impact the contract time and/or result in a change in cost, the Engineer shall provide responses directly to the Contractor within three (3) business days of a logged request and copy the District Construction Project Manager with the response.
  - b. If the response does impact the contract time and/or result in a change in cost, the Engineer shall provide a draft response to the District Construction Project Manager (with copy to the District Design Project Manager). Engineer shall coordinate with the District Construction Project Manager and then provide response directly to the Contractor within three (3) business days of a logged request and copy the District Construction Project Manager and the District Design Project Manager.
  - c. All responses to include the latest updated version of the RFI Log.

- 7) When required as a result of field conditions, an RFI, or other reasons, Engineer shall update and modify construction documents as needed during construction of the project. All revisions to the construction plans must be submitted within five (5) business days to the District Construction Project Manager for review and shall include appropriate QA/QC documentation. Engineer will include an opinion of whether any additional costs or time or changes to the contract are potentially warranted. Upon approval by the District Construction Project Manager, the Engineer shall issue the revised plan(s) to all planholders.
  - a. The Engineer shall maintain a formal list of planholders and track all plan revisions on the list.
  - b. The Engineer should also submit the change in quantities (extensions, additions and deletions) with all revisions.
- 8) Schedule and conduct the Substantial Completion inspection (a definition of Substantially Complete is provided in the Project Manual General Conditions or as provided in Special Provisions). Engineer shall prepare a list of items remaining to be completed or corrected by the Contractor (the Punch List), and provide the list to the contractor with copy to the District Construction Project Manager and Inspector within one (1) business day after the date of the inspection. When the Project is found by the Engineer to be Substantially Complete, the Engineer will provide a written recommendation to the District Construction Project Manager stating such.
- 9) Schedule and conduct the Final Inspection to verify all Punch List items have been corrected by the Contractor. Provide written notification to the District Construction Project Manager stating whether or not all Punch List items have been completed.
- 10) Engineer shall prepare a determination of final quantity of material excavated in comparison with the pre-construction conditions and submit to the District Construction Project Manager. This determination will be made using either survey conducted by the Engineer if currently authorized to do so, or with survey provided by others (usually the Contractor) and provide written comments to the District Construction Project Manager of any concerns or discrepancies. Final approved quantities should be logged on the submittal log.
- 11) Prepare, seal and submit the Record Drawings to the District Design Project Manager. The Record Drawings shall become the property of the District and shall show significant changes made in the Work by the Contractor during the construction of the Project. Record Drawings shall be prepared on the original "Issued for Construction" drawings in the format specified by the District at the time of execution. The Engineer shall prepare the Record Documents based solely upon the annotated "as-built" drawings, addenda, revisions issued by the Engineer, and change orders. Engineer shall also include any other data furnished by the District or the Contractor which the Engineer feels is substantial.

## 6. REVISIONS

- A. Make requested revisions to documents and materials prepared under this Agreement.
- B. Provide such engineering services necessary for such revision, when they are not necessitated by any fault of the Engineer and such revisions are inconsistent with approvals or instructions previously given by the District, or are made necessary by the enactment or revision of codes, laws, or regulations issued subsequent to the preparation of such documents.

## APPENDIX C

### Harris County Minority- and Woman-Owned Business Enterprise Program Policy 10 November 2020

#### FINDINGS

**Whereas**, Harris County seeks to ensure competitive business opportunities for small, minority- and woman-owned business enterprises in the award and performance of County contracts, to prohibit discrimination on the basis of race, ethnicity, or sex in the award of, or participation in, County contracts, and to abolish barriers to full participation in County contracts by all persons, regardless of race, ethnicity or sex;

**Whereas**, the County is committed to equal opportunity for small, minority- and woman-owned businesses to participate in the award and performance of County contracts;

**Whereas**, the Supreme Court of the United States in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), has enunciated certain standards, often referred to as strict constitutional scrutiny, that are necessary to maintain effective contracting affirmative action programs in compliance with constitutional requirements;

**Whereas**, the County is committed to implementing its affirmative action program in conformance with the United States Supreme Court's decision in *Croson* and its progeny;

**Whereas**, Harris County awarded a Contract to perform a Disparity Study to meet the requirements of strict constitutional scrutiny from Colette Holt & Associates in 2018;

**Whereas**, the Disparity Study was designed to gather and analyze evidence relevant to whether Harris County has a strong basis in evidence of its compelling interest in using narrowly tailored measures to ameliorate identified discrimination;

**Whereas**, the Disparity Study found ample quantitative and qualitative evidence of the current effects of past and present discrimination against minority- and woman-owned business enterprises seeking to do business with Harris County as both Prime Contractors and Subcontractors;

**Whereas**, the Disparity Study recommended that Harris County employ race- and gender-neutral measures to remediate the identified discrimination;

**Whereas**, the Disparity Study recommended that Harris County employ narrowly tailored goals for the participation of minority- and woman-owned business enterprises in its contracting activities to further remediate the identified discrimination;

**Whereas**, the Disparity Study was completed and adopted by the Harris County Commissioners Court on June 30, 2020;

**Now, therefore**, Harris County adopts the following Minority- and Woman-owned Business Enterprise Program Policy.

**SECTION I. Minority- and Woman-Owned Business Enterprise Program Established.**

A Harris County Office of Economic Equity and Opportunity (OEEO or Office) and a Minority- and Woman-Owned Business Enterprise (M/WBE) Program are established by adoption of this Policy.

**SECTION II. Definitions.**

When used in this Policy, the following terms shall have the following meanings:

**Annual Aspirational Goal** means the County's overall, annual total target for the participation of MBEs and WBEs in County contracts.

**Bid** means a Bidder's response to a solicitation for Bids, proposals, or statements of qualifications for a project that is at least partially funded by the County of Harris but does not include federally-funded projects which have requirements that preempt the M/WBE Program.

**Bidder** means an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, a limited liability company or any other entity which has submitted a bid on a County contract, regardless of the procurement method employed by the County or the type of goods or services sought.

**Business, Business Concern or Business Enterprise** means an entity organized for-profit with a place of business located in the United States.

**Certified** means an MBE or WBE that has been found to meet the requirements of this Policy and is certified by a government agency recognized by the County.

**Commercially Useful Function** means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities.

**Compliance** means that County departments and County Prime Contractors and Subcontractors have correctly implemented the requirements of this Policy.

**Contract** means a mutually-binding legal relationship, or any modification thereof (other than a lease of real property, payments to other government agencies, payments or reimbursements to County employees, procurement of utilities, collective bargaining

agreement, or not-for-profit contract), obligating the vendor to furnish services, and/or supplies to the County and the County to pay for them.

**Contract Goal** means the goal for the participation of MBEs and/or WBEs on a specific solicitation, which shall be based on the percentage availability of MBEs and/or WBEs to perform the specific weighted scopes of work of the entire contract, the County's utilization of MBEs and WBEs to date, the County's progress towards meeting the Annual Aspirational Goal, and other relevant factors.

**Contractor** means any person or business entity that shall enter into a Contract with the County and includes all partners and all joint venturers of such person.

**County** means Harris County, Texas.

**Days** means calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or federal holiday, the period extends to the next day that is not a Saturday, Sunday, or federal holiday. Similarly, in circumstances where Harris County Government offices are closed for all or part of the last day, the period extends to the next day on which Harris County Government is open.

**Director** means the Director of the Office of Economic Equity and Opportunity or his or her designee.

**Disadvantaged Business Enterprise or DBE** means a for-profit small business concern as defined in the regulations governing the DBE program at 49 C.F.R. part 26, as amended.

**Disparity Study** means the report procured by the County and adopted by the County Commissioners, titled "Harris County Disparity Study 2020," conducted by Colette Holt & Associates.

**Good Faith Efforts** means efforts to achieve an MBE or WBE goal which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Program's requirements.

**Goods** means all physical materials, supplies, and equipment, excluding real property.

**Joint Venture** means an association of an MBE and/or WBE and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.



**Minority** means Black Americans, Hispanic Americans, Native Americans, Asian-Americans, or other Minorities as defined in the Disparity Study.

**Minority Business Enterprise or MBE** means a for-profit small business concern that is at least 51 percent owned by one or more individuals who are socially disadvantaged; whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals; which has a place of business located within the County's Marketplace; and which is Certified.

**Office** means the Harris County Office of Economic Equity and Opportunity created pursuant to this Policy and that is responsible for the OEEEO 3.

**Office of the Purchasing Agent or Purchasing** means the County department responsible to acquire appropriate goods and services essential to the operation of Harris County government and certain other governmental agencies in a timely and prudent manner, considering quality, value, and economy.

**Owned** means having all the customary incidents of ownership, including the right of disposition, and sharing in all risks and profits commensurate with the degree of ownership interest.

**Prime Contractor** means a Contractor that awarded a County contract and is at risk for the completion of an entire County project, including purchasing all materials, hiring and paying Subcontractors, and coordinating all the work.

**Program** means the Minority- and Woman-owned Business Enterprise Program established by this Policy.

**Reconsideration Official** shall mean a County representative that has not participated in the original determination that the Bidder did not make sufficient Good Faith Efforts to meet a Contract Goal.

**Site of Work** shall mean the physical place or places where the building or work called for in the contract will remain once the contract work has been completed and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project.

**Subcontractor** means a party that enters into a subcontract agreement with a Prime Contractor to perform work or provide materials on a County project.

**USDOT-Assisted Contract** shall mean any Contract between Harris County Government and a Prime Contractor funded in whole or in part with United States Department of Transportation financial assistance. Contracts funded by USDOT shall be subject to the Disadvantaged Business Enterprise program regulations at 49 C.F.R. Part 26, as amended.

**User Department** shall mean the department that develops the requisitions for Harris County.

**Utilization Plan** means the plan, in the form specified by the County, which must be submitted by a Bidder listing the MBEs and/or WBEs that the Bidder intends to use in the performance of a contract, the scopes of the work and the dollar values or the percentages of the work to be performed.

**Woman-Owned Business Enterprise or WBE** shall mean a for-profit small business concern that is at least 51 percent owned by one or more individuals who are women; whose management and daily business operations are controlled by one or more of the women; which has a place of business located within the County's Marketplace; and which is Certified as a WBE.

### **SECTION III. M/WBE Program Administration**

#### **A. Office of Economic Equity and Opportunity**

The Office of Economic Equity and Opportunity shall have primary responsibility for the implementation and administration of the M/WBE Program and all other contracting diversity programs, including but not limited to, the Disadvantaged Business Enterprise Program promulgated at 49 C.F.R. Part 26, as amended. The Director of OEEO shall report directly to Commissioners Court.

OEEO shall formulate, propose and implement rules and regulations for the development, implementation, administration and monitoring of the Program. OEEO's duties shall include, but not be limited to:

1. Reviewing, monitoring, and ensuring compliance with the requirements of the Program, including developing rules, regulations, policies and procedures to implement the Program.
2. Developing and maintaining procedures to ensure that MBEs and WBEs are able to compete on all County contracts.
3. Reviewing Contract language with the County Counselor to develop appropriate Program language.
4. Reviewing and verifying the certification status of MBEs and/or WBEs and providing access to directories of MBEs and/or WBEs.
5. Reviewing Bids and solicitations to ensure that MBEs and WBEs have an equal opportunity to participate in County Contracts, including, but not limited to reviewing the scope of work, bonding requirements, insurance requirements, the conditions in which retainage is held, etc.

6. Reviewing requests for Bids, Proposals and other solicitation documentation, including the evaluation criteria, to ensure the inclusion of the Program requirements and remove artificial barriers to potential MBE or WBE participation.
7. Participating in pre-solicitation discussions, including any design review meetings, to consider such factors as MBE or WBE availability, bonding limits, and capabilities in the development of specifications.
8. Developing and implementing a narrowly tailored Contract Goal setting methodology.
9. In consultation with County User Departments, setting an MBE or WBE Contract Goal on all appropriate Contracts, including Contract modifications.
10. Attending pre-bid/proposal and pre-construction/design conferences to explain the Program and its requirements.
11. Evaluating a Prime Contractor's achievement of a Contract Goal or Good Faith Efforts to meet a Contract Goal.
12. Determining whether an MBE or a WBE is performing a Commercially Useful Function on a Contract.
13. Monitoring and reporting the progress of M/WBE and non-M/WBE participation in all procurements by County departments.
14. Working with User Departments to monitor Contracts to ensure prompt payments to MBEs and WBEs and compliance with applicable Contract Goals and commitments.
15. Monitoring and ensuring Program compliance in the Contract performance and closeout process, including conducting Site of Work inspections or other investigations, as needed.
16. Conducting semi-annual reviews of the progress of each agency, department, and the County's overall achievement of the Annual Aspirational MBE and WBE goals.
17. Developing, where appropriate. Program elements such as a small business element, a Mentor-Protégé Program or other narrowly tailored remedies.
18. Preparing and presenting periodic reports on compliance with the M/WBE Policy, any issues that need to be addressed and progress towards meeting the Annual Aspirational MBE and WBE goals.

19. Assessing and recommending periodically any process changes that may be necessary to improve the overall effectiveness of the Program.
20. Assisting all County departments and Prime Contractors and Subcontractors with the implementation and/or application of the Program.
21. Promoting and conducting outreach functions to the M/WBE community and other stakeholders.
22. Providing information and technical assistance to MBEs and WBEs relating to County Contracting practices and procedures, Bid specifications, requirements and prerequisites and other support to assist MBEs and WBEs to succeed in the overall marketplace to increase their ability to effectively compete for County Contracts.
23. Encouraging and promoting joint ventures, partnering and teaming arrangements between M/WBEs and non-M/WBEs and between two or more M/WBEs to enhance innovative approaches to increase M/WBE participation.
24. Promoting the Program and its reporting accomplishments toward the Annual Aspirational Goals.
25. Facilitating and supervising regularly scheduled training to County employees on the Program.
26. Managing the collection of data to facilitate a future disparity study.
27. Receiving, reviewing and acting upon complaints and suggestions concerning the Program.
28. Referring any information regarding possible false, fraudulent or dishonest conduct in connection with the Program to the appropriate authorities.
29. Administering the DBE program for USDOT-Assisted Contracts pursuant to 49 C.F.R. Part 26, where the County is either as a direct recipient of United States Department of Transportation funds or as a subrecipient through another entity. The Director of OEEO shall serve as the DBE Liaison Officer pursuant to 49 C.F.R. Part 26, as amended.

#### **B. Other County Department's M/WBE Program Roles and Responsibilities**

Each County department that has or shares responsibility for the awarding or monitoring of County Contracts is responsible for promoting, supporting, and assisting in carrying out the Program. Such departments are to be held accountable for exercising specific functions in support of the Program, as well as any other function(s) deemed necessary

by OEE0 to implement the goals and objectives of the Program. To reduce barriers to MBE's and WBE's participation on County procurements, all departments requesting Bids, proposals or any other solicitation on behalf of the County shall:

1. Designate a procurement officer or designee, or multiple officers or designees, who shall be the point of contact for monitoring and reporting M/WBE compliance to OEE0.
2. Notify and provide OEE0 upon departmental knowledge of an anticipated solicitation the necessary information to determine whether a Contract Goal should be set, including but not limited to, the scope of work, experience and insurance requirements, budget, schedule, Bid specifications and any other relevant information no later than ten business days prior to the procurement announcement.
3. Evaluate anticipated solicitations to unbundle items or services to permit offers on quantities or scopes of work less than the total requirement or the performance of discreet portions of the project where feasible
5. At least ten business days before a solicitation will be advertised, forward a copy of the advertisement to OEE0 to ensure appropriate Program language has been included.
6. Ensure that all applicable provisions of the Program are included in Bid specifications/proposals and Contracts.
7. Assist OEE0 in identifying potential MBEs and WBEs for participation in particular Contracts.
8. Assist in the development, monitoring and implementation of M/WBE Contract Goals and commitments.
9. Manage Contracts in a consistent manner to assure compliance with the Program.
10. Assist in the compilation of Contract data for M/WBE availability and utilization.
11. Provide OEE0 with a copy of, or independent access electronically to, the necessary information for each Contract including, but not limited to, the Contract value, pre-bid/pre-proposal sign in sheets, the bid or proposal results, any Contract modifications, the MBE and/or WBE Contract Goal commitment and the Contracting parties' signatures confirming an executed agreement with the County.

12. Notify no later than five business days prior to any key post-award Contract meetings or issues that could affect the Prime Contractor's ability to achieve the M/WBE commitment, such as Contract kickoff meetings, monthly meetings or meetings to address Contract performance issues affecting M/WBE commitments.

13. Require that each Prime Contractor submit as part of its pay request process, the required Program information in the format required by the County to ensure an accurate accounting of M/WBE participation.

14. Assist and support OEE0 by ensuring that the Prime Contractor provide all necessary documents and information to close out the Contract that provide a final accounting for MBE, WBE and all Subcontractor participation on the Contract.

15. Assist and participate in workshops, trade fairs, outreach seminars, etc., to identify and increase the participation of MBEs and WBEs on projects.

16. Advertise the County's Contract opportunities via the County's website, and other avenues in consultation with OEE0 if appropriate, to maximize MBE and WBE participation.

17. Develop and advertise forecasts of upcoming procurement opportunities, including on an annual basis.

**SECTION IV: Race- and Gender-Neutral Measures to Ensure Equal Opportunities for All Contractors and Subcontractors**

A. The County shall develop and use race- and gender-neutral measures to the maximum feasible extent in implementing the Program. These measures may include, but are not limited to:

1. Establishing schedules for submitting Bids with adequate time frames for identifying and contacting MBEs and WBEs qualified to participate in the procurement.

2. Arranging solicitation times for the presentations of bids, specifications, and delivery schedules to facilitate the participation of interested Prime Contractors and Subcontractors.

3. Segmenting procurements to facilitate the participation of MBEs, WBEs and other small businesses.

4. Providing timely information on Contracting procedures, Bid preparation and specific Contracting opportunities, including through an electronic system and social media.

5. Assisting MBEs, WBEs and other small businesses with training seminars on the technical aspects of preparing a bid for a County contract.
  6. Providing assistance to businesses in overcoming barriers such as difficulty in obtaining bonding and financing, and support for business development such as accounting, bid estimation, safety requirements, and quality control, etc.
  7. Advertising solicitations within a sufficient period of time to allow M/WBEs to submit Bids and non-Certified Bidders to solicit quotes from MBE and WBE Subcontractors.
  8. Holding pre-Bid and pre-Proposal conferences, where appropriate, to explain the projects and to encourage Prime Contractors to use available qualified MBEs and WBEs.
  9. Reviewing retainage, bonding and insurance requirements and their application to bid calculations to eliminate unnecessary barriers to contracting with the County.
  10. Authorizing, where appropriate, mobilization payments to Prime Contractors and ensuring that Subcontractors receive their proportionate share of mobilization funds.
  11. Adopting prompt payment procedures, including requiring by contract, that Prime Contractors promptly pay Subcontractors and investigating complaints or charges of excessive delay in payments.
  12. Enforcing statutory and contractual prompt payment provisions, including the right to pay Subcontractors directly.
  13. At the discretion of OEEO, in cooperation with Purchasing, periodically entering into a procurement process without Contract Goals in order to determine MBE and WBE utilization in the absence of such Goals.
  14. Collecting information from all Prime Contractors on County construction contracts detailing the bids received from all Subcontractors for County construction contracts and the expenditures to Subcontractors utilized by Prime Contractors on County construction contracts.
  15. Referring complaints of discrimination against MBEs or WBEs to the appropriate authority for investigation.
- B. The Director will work with Purchasing and User Departments to adopt additional measures, as warranted.

**SECTION V: Annual Aspirational Goal**

The 2020 Disparity Study provided percentage estimates of the availability of MBEs and WBEs as a portion of all available firms to provide goods and services to the County. The Disparity Study also provided statistical information about disparities between the availability of MBE and WBEs and their utilization on County contracts. Based on these findings, the County adopts an overall, Annual Aspirational Goals for MBE and WBE participation on County contracts of thirty percent of total spending.

**SECTION VI: Race- and Gender-Conscious Measures to Implement the Program****A. Program eligibility**

To be eligible to be counted as an MBE or a WBE towards a Contract goal, the firm must be certified at the time of Bid submission by a government agency recognized by the County as meeting the requirements of strict constitutional scrutiny. The County shall make a list of such agencies readily available on its website and other means.

**B. Contract Goals**

The Director, in consultation with Purchasing and the User Department, shall establish a Contract Goal on each eligible Contract, based upon the percentage availability of at least three Certified MBEs and three Certified WBEs to perform the anticipated scopes of work of the entire contract, the County's utilization of MBEs and WBEs to date, the County's progress towards meeting the Annual Aspirational Goal, and other relevant factors.

**C. Counting MBE and WBE Participation Towards Contract Goals**

A Bidder may achieve the Contract Goals by its status as an MBE or WBE; by entering into a Joint Venture with one or more MBEs and/or WBEs; by subcontracting at any tier a portion of the work to one or more MBEs and/or WBEs; by direct purchase of materials or services from one or more MBEs and/or WBEs or by any combination of the above.

When an MBE or WBE participates in a Contract, the County will count only the value of the work actually performed by the MBE or WBE toward Contract Goal.

The participation of MBEs and/or WBEs will be counted as follows towards the Contract Goal:

1. The Bidder may count the entire amount of that portion of the Contract that is performed by the MBE's or WBE's own forces, including the cost of supplies and materials obtained by the MBE or WBE for the work of the contract, such as supplies purchased, or equipment leased by the MBE or WBE. Supplies and equipment the



MBE or WBE Subcontractor purchases or leases from the Prime Contractor or its affiliate does not count towards the Contract Goal.

2. The Bidder that is an MBE or a WBE may count the entire amount of the Prime Contractor's self-performance that the MBE or WBE is performing with its own forces.

3. The Bidder may count the entire amount of fees or commissions charged by an MBE or WBE for providing a *bona fide* service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a Contract, provided the County determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

4. When an MBE or WBE Subcontracts part of the work of its Contract to another firm, the value of the Subcontracted work may be counted only if the MBE or WBE's Subcontractor is itself an MBE or a WBE. Work that an MBE or WBE Subcontracts to a non-certified firm does not count towards the Contract Goal.

5. When an MBE or WBE performs as a participant in a Joint Venture, the Joint Venture Bidder may count only the portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces. The MBE or WBE participant in the Joint Venture must be responsible for a clearly defined portion of the work to be performed equal to its share in the ownership, control, management responsibility, risks and profits of the Joint Venture. The Director shall review the profits and losses, initial capital investment, actual participation of the MBE or WBE Joint Venture partner in the performance of the contract with its own forces and for which it is separately at risk, and other pertinent factors of the Joint Venture. The Joint Venture agreement must be approved by the Director and it is required to operate in accordance with the approved Joint Venture agreement.

6. The Bidder may count the entire amount of expenditures with MBEs or WBEs for materials or supplies, provided the MBE or WBE is responsible for ordering and paying for the materials and supplies in full, using its own credit and accepting all the risks of the purchase.

The dollar value of work performed under a Contract with a certified firm after it has ceased to be certified can count toward the Contract Goal if the Bidder's Contract with the County was executed prior to removal of the firm's certification.

MBE or WBE Subcontractor participation only counts toward a Prime Contractor's compliance with its Utilization Plan when the amount being counted has actually been paid to the MBE or WBE.

Only expenditures to an MBE or WBE that is performing a Commercially Useful Function shall be counted towards the Contract Goal. To perform a Commercially Useful Function, the MBE or WBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price (if applicable), determining quality and quantity (if applicable), ordering the material, and installing and paying for the material itself. To determine whether an MBE or WBE is performing a Commercially Useful Function, the County will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing and the MBE or WBE credit claimed for its performance of the work, and other relevant factors.

An MBE or WBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of MBE or WBE participation. In determining whether an MBE or WBE is such an extra participant, the County will examine similar transactions, particularly those in which MBEs or WBEs do not participate. The Prime Contractor is responsible for ensuring that the firm is performing a commercially useful function. If the MBE or WBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the MBE or WBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the County will presume that it is not performing a Commercially Useful Function.

The County shall use the following factors in determining whether an MBE or WBE trucking company is performing a Commercially Useful Function:

1. The MBE or WBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting Contract Goals.
2. The MBE or WBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.
3. The MBE or WBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
4. The MBE or WBE may lease trucks from another MBE or WBE, including an owner-operator who is certified as an MBE or WBE. The MBE or WBE who leases trucks from another MBE or WBE receives credit for the total value of the transportation services the lessee MBE or WBE provides on the contract.
5. The MBE or WBE may also lease trucks from a non-certified firm, including from an owner-operator. The MBE or WBE that leases trucks equipped with drivers from a non-certified firm is entitled to credit for the total value of transportation services provided by non-certified firm's leased trucks equipped with drivers that do not to

exceed the value of transportation services on the contract provided by MBE- or WBE-owned trucks or leased trucks with MBE or WBE employee drivers. Additional participation by non-certified firm owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

*Example to paragraph 5:* MBE or WBE X uses two of its own trucks on a contract. It leases two trucks from MBE or WBE Y and six trucks equipped with drivers from non-certified Firm Z. Contract Goal credit would be counted for the total value of transportation services provided by Firm X and Firm Y, and may also be counted for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. Contract Goal credit could be counted only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

6. The MBE or WBE may lease trucks without drivers from a non-certified firm's truck leasing company. If the MBE or WBE leases trucks from a non-certified firm's truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

*Example to paragraph 6:* MBE or WBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-certified firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. Contract Goal credit would be counted for the total value of the transportation services provided by all four trucks.

7. For purposes of paragraph 6, a lease must indicate that the MBE or WBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the MBE or WBE, so long as the lease gives the MBE or WBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the MBE or WBE.

When an MBE or WBE is presumed not to be performing a Commercially Useful Function, the MBE or WBE may present evidence to rebut this presumption. OEE's determination that an MBE or WBE is not performing a Commercially Useful Function is not appealable and shall be final.

#### **D. Utilization Plan Submissions**

Compliance documents must be submitted as provided in the solicitation. Failure to do so will render the bid non-responsive. The Director shall review each bid submission to determine if it meets the Program and Solicitation requirements.

A Bidder must either meet the Contract Goal or establish its Good Faith Efforts to do so. Failure to do either will render the Bid non-responsive and it will be rejected by the County.

Each Bidder shall submit with its bid a completed and signed Utilization Plan that lists the names, addresses, telephone numbers, email addresses, a description of the work and contact person of the businesses intended to be used as Subcontractors, including those firms proposed to meet the Contract Goal; the type of work or service each Subcontractor will perform; and the dollar amount to be allocated to each Subcontractor. Each Bidder's Utilization Plan shall commit to meeting or exceeding the Contract Goal set forth in the solicitation or demonstrate its Good Faith Efforts to do so.

Provided that, in a negotiated procurement including a design-build procurement, the Bidder may make a Contractually binding commitment to meet the Contract Goal at the time of Bid submission or the presentation of initial proposals but provide the information required before the final selection for the Contract is made by the County.

Each Bidder must submit, at the time specified in the solicitation, a signed MBE and/or WBE Subcontractor's Letter of Intent for each firm specified in the solicitation, with a copy of each MBE's and/or WBE's current Letter of Certification from a state or local government or agency recognized by the County.

A Bidder may request a partial or total reduction of the Contract Goal, in the manner and form specified in the solicitation, based on its Good Faith Efforts to meet the Contract Goal. All information must be complete, accurate and adequately document the Bidder's Good Faith Efforts before the County commits to the performance of the Contract by the Bidder. The documentation of Good Faith Efforts must include copies of each MBE or WBE and non-Certified Subcontractor quote submitted to the Bidder when a non-Certified Subcontractor was selected over an MBE or a WBE for work on the Contract.

To determine whether a Bidder has made Good Faith Efforts, OEE0 will consider whether the Bidder:

1. Attended any pre-bid conference conducted by the County to acquaint Prime Contractors with MBEs and WBEs available to provide relevant goods and services and to inform MBEs and WBEs of subcontract opportunities on the Contract.
2. Solicited through reasonable and available means (e.g., written notices, advertisements) MBEs and WBEs certified in the anticipated scopes of Subcontracting of the Contract, not less than 15 calendar days before the Bid is due.
3. Provided timely and adequate information about the plans, specifications and requirements of the Contract. Followed up initial solicitations to answer questions and encourage MBEs and WBEs to submit Bids.

4. Negotiated in good faith with interested MBEs and WBEs that have submitted Bids and thoroughly investigated their capabilities. Evidence of such negotiations includes the names, email addresses and telephone numbers of MBEs and WBEs with whom the Bidder negotiated; a description of the information provided to MBEs and WBEs regarding the work selected for Subcontracting; and explanations as to why agreements could not be reached with MBEs and/or WBEs to perform the work. The Bidder may not reject MBEs and WBEs as being unqualified without sound reasons. That there may be some additional costs involved in finding and using MBEs and WBEs is not in itself a sufficient reason for a Bidder's failure to meet the Contract Goal, as long as such costs are reasonable.

5. Selected those portions of the contract consistent with the available MBEs and WBEs, including where appropriate, breaking out Contract work items into economically feasible units to facilitate MBE and WBE participation even when the Bidder would prefer to perform those scopes with its own forces.

6. Made efforts to assist interested MBEs and WBEs in obtaining bonding, lines of credit, or insurance as required by the County or the Bidder for performance of the Contract (if applicable).

7. Effectively used the services of OEEEO; MBE and WBE assistance groups; local, state, and federal minority or woman business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs and WBEs.

In determining whether a Bidder has made Good Faith Efforts, the levels of participation by MBEs and WBEs set forth in Utilization Plans submitted by other Bidders for the same procurement may be considered. For example, if the apparent successful Bidder fails to meet the Contract Goal(s) but meets or exceeds the average MBE or WBE participation obtained by other Bidders, this may be evidence that the apparent successful Bidder made Good Faith Efforts.

If the County determines that the apparent successful Bidder has failed to meet the Good Faith Efforts requirements of the Program the County must, before awarding the Contract, provide the Bidder an opportunity for administrative reconsideration. A Bidder's request for reconsideration must be to the County within ten business days of the Bidder's receipt of the County's determination that it did not make adequate Good Faith Efforts to meet the Contract Goal. As part of this reconsideration, the Bidder must have the opportunity to provide written documentation or argument concerning the issue of whether it met the Contract Goal or made adequate Good Faith Efforts to do so. The County's decision on reconsideration must be made by an official who did not take part in the original determination that the Bidder failed to meet the Contract Goal or make adequate Good Faith Efforts to do so. The Bidder must have the opportunity to meet in person with the County's reconsideration official to discuss the issue of whether it met the Contract Goal or made adequate Good Faith Efforts to do so. The County must

send the Bidder a written decision on reconsideration with 15 business days, explaining the basis for finding that the Bidder did or did not meet the Contract Goal or make adequate Good Faith Efforts to do so. The result of the reconsideration process is not administratively appealable.

The Prime Contractor shall make available to OEEEO upon request a copy of all Subcontracts. All Subcontractors, regardless of their Subcontracting tier, shall adhere to the provisions of the Program.

#### **E. Contract Performance Compliance**

The Prime Contractor shall be required to submit a status report of its progress towards meeting the Contract Goal, or other Program requirements, in the form and at the time specified in the Solicitation or as otherwise directed by the County. The Prime Contractor's failure to do so may result in a delay of the progress payment

Evidence of MBE and WBE subcontractor participation and payments must be submitted as required by the County to confirm Subcontractors' participation and payment.

County contract compliance officers and auditors, or their designees, shall have access to the Contractor's and Subcontractor's books and records, including certified payroll records, bank statements, employer business tax returns and all records including all computer records and books of account to determine the Prime Contractor's and MBE or WBE Subcontractor's compliance with the Goal commitment. Audits may be conducted at any time and without notice in the total discretion of the County. A Prime Contractor must provide the Director any additional compliance documentation within ten business days of such request. Audits may be conducted without notice at any time at the discretion of the County.

If County personnel observe that any purported MBE, or WBE Subcontractor other than those listed on the Utilization Plan are performing work or providing materials and/or equipment for those MBE and WBE Subcontractors listed on the Utilization Plan, the Prime Contractor will be notified in writing that an apparent violation is taking place and progress payments may be withheld. The Prime Contractor will be given an opportunity to meet with the Director prior to a finding of noncompliance.

The Contract Goal obligation extends to all Contract work covered by change orders, irrespective of the Contracting tier. The obligation to make Good Faith Efforts to meet the Contract Goal extends to the entire performance of the Contract. When Contract work is added, the Prime Contractor must award that work to the MBE or WBE listed in its Utilization Plan, if the original scope of work is to be performed an MBE or WBE listed in the Utilization Plan. If the original listed MBE or WBE cannot perform the additional work, the Prime Contractor must make Good Faith Efforts to secure MBE or WBE Subcontractors to perform the additional Contract work so that the Goal percentage committed to in the Contract is maintained or the Contract Goal is achieved.

When a scope of Contract work is deducted, the Prime Contractor must make Good Faith Efforts to achieve the Contract Goal percentages committed to in the Contract.

The Prime Contractor is required to fill out the Supplemental Change Order Form or such other documents as the County may require which details the names of the Subcontractors impacted and provides a description of the work and dollar amount of the change and the amended Contract value. The Prime Contractor will submit the Supplemental Change Order Form along with any additional documents as required to OEEC for approval.

After Contract award, a Prime Contractor cannot make any changes to the approved Utilization Plan or substitute or terminate an MBE or WBE Subcontractor listed in its approved Utilization Plan without prior written consent of OEEC. This includes, but is not limited to, instances in which a Prime Contractor seeks to perform work originally designated for an MBE or WBE Subcontractor with its own forces or those of an affiliate, a non-M/WBE or another MBE or WBE. The County will include in each Contract a provision stating that the Prime Contractor shall utilize the specific MBE(s) and WBE(s) listed in the approved Utilization Plan to perform the work and supply the materials for which each is listed, unless the Prime Contractor obtains OEEC's written consent. The Prime Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the approved MBE or WBE.

The County may provide such written consent only if the County agrees that the Prime Contractor has good cause to terminate the MBE or WBE. Good cause includes the following circumstances:

1. The listed MBE or WBE Subcontractor fails or refuses to execute a written Subcontract.
2. The listed MBE or WBE Subcontractor fails or refuses to perform the work of its Subcontract in a way consistent with normal industry standards. Good cause does not exist, however, if the failure or refusal of the MBE or WBE Subcontractor to perform its work on the Subcontract results from the bad faith or discriminatory action of the Prime Contractor.
3. The listed MBE or WBE Subcontractor fails or refuses to meet the Prime Contractor's reasonable, nondiscriminatory bond requirements.
4. The listed MBE or WBE Subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
5. The listed MBE or WBE Subcontractor is ineligible to work on Contracts because of suspension and debarment or applicable federal or state law.

6. The County has determined that the listed MBE or WBE Subcontractor is not a responsible Subcontractor.
7. The listed MBE or WBE Subcontractor voluntarily withdraws from the project and provides written notice to OEE0 of its withdrawal.
8. The listed MBE or WBE Subcontractor is ineligible to receive M/WBE credit for the type of work required.
9. MBE or WBE owner dies or becomes disabled with the result that the listed MBE or WBE Subcontractor is unable to complete its work on the contract.
10. Other documented good cause that OEE0 determine compels the termination of the MBE or WBE Subcontractor.

Good cause does not include where the Prime Contractor seeks to terminate a listed MBE or WBE Subcontractor so that the Prime Contractor can self-perform the work for which the MBE or WBE Subcontractor was engaged or so that the Prime Contractor can substitute another MBE or WBE or non-certified Subcontractor after Bid submission.

Before requesting to terminate and/or substitute a MBE or WBE Subcontractor, the Prime Contractor must give notice in writing to the MBE or WBE Subcontractor, with a copy to OEE0, of its intent to request to terminate, replace and/or substitute, and the reason for the request. The Prime Contractor must give the MBE or WBE five business days to respond to the notice and advise the County and the Prime Contractor of the reasons, if any, why the MBE or WBE objects to the proposed termination and why OEE0 should not approve the request. If required in a particular case as a matter of public necessity (e.g., safety), OEE0 may require a response period shorter than five business days.

When an MBE or WBE Subcontractor is terminated or fails to complete its work on the Contract for any reason, the Prime Contractor must make Good Faith Efforts to substitute another MBE or WBE for the original MBE or WBE. These Good Faith Efforts shall be directed at substituting another MBE or WBE to perform at least the same amount of work under the Contract as the MBE or WBE that was terminated, to the extent needed to meet the Contract Goal. The Prime Contractor must submit an MBE or WBE Subcontractor's Letter of Intent for each proposed new MBE or WBE subcontractor. If the Prime Contractor is not successful in substituting another MBE or WBE, then its documented Good Faith Efforts to do so must be submitted within 14 calendar days of the approved substitution. OEE0 shall provide a written determination to the Prime Contractor stating whether or not Good Faith Efforts have been demonstrated.

In the event a Prime Contractor, in the performance of its Contract, determines that the conditions of the work warrant a reduction in the scope of work to be performed by an MBE or WBE, the Prime Contractor must utilize Good Faith Efforts to fulfill its



contractual Goal commitment. The Prime Contractor must notify the Director in writing within 14 calendar days of the determination to request an amendment of its Utilization Plan. The Prime Contractor must give the MBE or WBE Subcontractor notice in writing, with a copy to the Director, of its intent to request to reduce the scope of work and the detailed reasons for the request. The Director will approve or disapprove the reduction based on the Prime Contractor's documented compliance with these provisions.

#### **SECTION 8: Enforcement and Sanctions for Non-Compliance**

The County shall insert into each Contract a clause stating that the failure by the Prime Contractor to carry out the requirements of the Program is a material breach of the Contract and may result in the termination of the Contract or such other remedies as the County deems appropriate, including but not limited to denying or limiting credit towards the Contract Goal, withholding progress payments, termination of the Contract, liquidated damages, debarment from future County Contract opportunities or other appropriate remedies.

Any MBE or WBE that has misrepresented its MBE or WBE status and/or failed to operate as an independent business concern performing a Commercially Useful Function, shall be declared by the Director to be ineligible to participate as an MBE or WBE in County contracts. A firm that has been declared ineligible may not participate as an MBE or WBE for a period of not less than one year and not more than three years.

Any sanctions imposed against an entity shall also apply personally to all officers and directors of the entity or partners of the entity, and their successors and assigns with knowledge of the acts and omissions that give rise to the sanctions against the entity.

The County may refer any matters to the appropriate law enforcement agencies for follow-up action.

#### **SECTION 9: Other Federal Regulations**

The provisions of this Policy shall not apply to any contract to the extent that different procedures or standards are required by any law or regulation of the United States.

#### **SECTION 10: Effective Date**

This Policy shall be effective and apply to all Bids for Contracts advertised after [date].

#### **SECTION 10: Sunset Provision**

The Program shall sunset five years from adoption of this Policy, unless otherwise reenacted. The County shall regularly review the operations and achievements of the Program. The County shall perform a disparity study prior to the sunset date.

**THE STATE OF TEXAS       §**  
**§**  
**COUNTY OF HARRIS       §**

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on \_\_\_\_\_, with the following members present, to-wit:

Lina Hidalgo	County Judge
Rodney Ellis	Commissioner, Precinct No. 1
Adrian Garcia	Commissioner, Precinct No. 2
Tom S. Ramsey, P.E.	Commissioner, Precinct No. 3
Lesley Briones	Commissioner, Precinct No. 4

and the following members absent, to-wit: \_\_\_\_\_, constituting a quorum, when among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF AN AGREEMENT FOR ENGINEERING SERVICES  
 BETWEEN THE HARRIS COUNTY FLOOD CONTROL DISTRICT  
 AND COBB, FENDLEY & ASSOCIATES, INC.**

Commissioner \_\_\_\_\_ introduced an order and made a motion that the same be adopted. Commissioner \_\_\_\_\_ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

		Yes	No	Abstain
AYES:	Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NAYS:	Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ABSTENTIONS:	Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Comm. Tom S. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Comm. Lesley Briones	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

WHEREAS, the District desires major maintenance activities to restore channel conveyance capacity in Barker Reservoir watershed, hereinafter called the "Project"; and

WHEREAS, the District desires that the Engineer perform Preliminary Engineering, Design, Bidding, and Construction Phase Engineering Services in connection with the Project; and

WHEREAS, the Engineer represents that it is capable and qualified to perform the services and prepare the items set forth herein.

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS THAT:

- Section 1: The recitals set forth in this order are true and correct.
- Section 2: Exemption from the County Purchasing Act under Texas Local Government Code § 262.024(a)(4) is hereby granted.
- Section 3: County Judge Lina Hidalgo is hereby authorized to execute for and on behalf of the Harris County Flood Control District, an Agreement by and between the Harris County Flood Control District and Cobb, Fendley & Associates, Inc., for a maximum fee to be paid by the District of \$908,092.74, said Agreement being incorporated herein by reference for all purposes as though fully set forth verbatim herein.
- Section 4: All Harris County and Harris County Flood Control District officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this order.

me cobb T100-X002 2022-196

