

**THIRD AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES  
(On-Call Surveying Engineering Services)**

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

THIS THIRD AMENDMENT TO 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," and Landtech, Inc., a Texas corporation, doing business in Texas as **Landtech Consultants, Inc.**, hereinafter called "Surveyor." The District and Surveyor are referred to herein collectively as the "Parties" and individually as a "Party."

**RECITALS**

On or about October 23, 2018, the Parties entered into an Agreement for Professional Services, to provide surveying services as may be needed in support of the floodplain re-study and District projects (the "Master Agreement").

The Parties previously amended the Master Agreement, on November 12, 2019, to provide for additional surveying services to be performed by Surveyor and additional compensation to be paid to Surveyor in connection with the projects (the "First Amendment").

The Parties again amended the Master Agreement, on May 24, 2022, to provide for additional surveying services to be performed by Surveyor and additional compensation to be paid to Surveyor in connection with the projects (the "Second Amendment").

The Parties now desire to amend the Master Agreement for the third time (the "Third Amendment").

The District requires additional surveying services as provided under Article 1, Character and Extent of Services.

The Surveyor is willing to provide the necessary additional surveying services for further consideration.

The Parties desire to add rate classifications and increase the existing rate classifications under Article 3, The Surveyor's Compensation.

The District and the Surveyor now desire to set a Minority- and Women-Owned Business Enterprise goal and attach Appendix A, "Harris County Minority- and Women-Owned Business Enterprise Program Policy," to the Agreement.

The Parties now desire to increase the Limit of Appropriation by \$350,000.00, to \$950,000.00.

**TERMS**

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

## 1. Term and Time of Performance

Article 2 of the Master Agreement, entitled, "Time of Performance," is hereby amended to add the below paragraph to the article and rename the article to be entitled, "Term and Time of Performance":

The term of this Agreement shall be for a period beginning upon execution of the Agreement by the Harris County Judge and remain in full force and effect until October 22, 2028, unless earlier terminated as set out herein.

## 2. Maximum Rates

ARTICLE 3 of the Master Agreement, entitled, "The Surveyor's Compensation," is hereby amended to read:

Within thirty days after execution of this Agreement, the District shall have issued an initial Purchase Order to the Surveyor in the amount of \$10,000.00 as consideration for the Surveyor's obligation to perform services assigned during the term of this Agreement in accordance with the terms hereof. Subject to the Limit of Appropriation under Article 7, the District agrees to pay the Surveyor according to the following rates:

<u>Position</u>	<u>Maximum Hourly Rate</u>
Project Manager (RPLS) .....	\$195.00
Project Surveyor (RPLS) .....	\$170.00
Survey Technician .....	\$130.00
CADD Technician .....	\$120.00
Party Chief .....	\$100.00
Instrument Person .....	\$ 60.00
Rod Person .....	\$ 40.00
Clerical Support .....	\$ 80.00
2-Person Survey (Field) Crew .....	\$200.00
3-Person Survey (Field) Crew .....	\$235.00
Boat with Motor* .....	\$275.00/day
All-Terrain Vehicle* .....	\$200.00/day

\*Requires prior written approval by the Director.

Further, it is expressly understood that the Surveyor shall neither seek reimbursement nor will the District be obligated to pay normal business costs or expenses. Non-reimbursable costs and expenses include, without limitation, 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; however, the following costs and expenses may be reimbursed, to the extent such costs and expenses are previously approved in writing by the Director.

<u>Description</u>	<u>Basis of Compensation</u>
A. Authorized subcontracts and payment of required fees as necessary for the completion of required Professional Services and related services as requested under Article 1.	Actual Reasonable Cost.

- |    |   |                         |
|----|---|-------------------------|
| B. | Authorized printing and reproduction in addition to normal photocopying and working drawings.   | Actual Reasonable Cost. |
| C. | Extra travel required by the Surveyor and authorized by the District to points outside Harris County, including travel, meals, and lodging. | Actual Reasonable Cost. |
| D. | Special equipment and supplies as authorized by the District.   | Actual Reasonable Cost. |
| E. | Rental costs for equipment to gain access to project sites.   | Actual Reasonable Cost  |
| F. | Costs of presentation materials.  | Actual Reasonable Cost  |

It is expressly understood and agreed that the Surveyor shall not furnish any of the above services without the prior written authorization of the Director. The District shall have no obligation to pay for such services which have been performed without the prior written authorization of the Director as hereinabove provided.

At the option of the Director, the Director may also issue work authorization(s) for performance of specified professional services to be compensated on a lump sum basis upon acceptance by the Surveyor. If a work authorization specifies payment on a lump sum basis for certain services, the hourly rates set out above shall not apply. In addition, where work performed pursuant to a work authorization is to be compensated on a lump sum basis, the budget for same shall not be increased pursuant to Article 1 or Article 3 of this Agreement, except to the extent that additional services are assigned to be performed by the Surveyor by further written authorization from the Director.

### **3. Notice**

ARTICLE 6 of the Master Agreement, entitled, "Notice," is hereby amended to read:

Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the District or the Surveyor at the following addresses. If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

To the Surveyor:                      Landtech Consultants, Inc.  
    1315 W Sam Houston Parkway N, Suite 100  
    Houston, Texas 77043  
    Attention: Paul P. Kwan, R.P.L.S., President

To the District:                        Harris County Flood Control District  
    9900 Northwest Freeway  
    Houston, TX 77092  
    Attention: Executive Director

Either party may designate a different address by giving the other party ten days written notice.

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

ARTICLE 7 of the Master Agreement, previously amended and entitled, "Limit of Appropriation," is hereby amended to read:

The Surveyor has been advised by the District, and the Surveyor clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the District has available the maximum sum of Ten Thousand and No/100 Dollars (\$10,000.00) specifically allocated to fully discharge any and all liabilities that may be incurred by the District pursuant to the terms of this Agreement, and that the maximum compensation the Surveyor may become entitled to hereunder and the maximum sum the District shall become liable to pay to the Surveyor hereunder, shall not under any conditions, circumstances, or interpretations hereof exceed the said maximum sum provided for in this Article and certified as available therefor by the County Auditor as evidenced by the issuance of a Purchase Order from the Harris County Purchasing Agent in this amount, except to the extent that additional funds are certified as available in accordance with Purchase Orders issued pursuant to Article 1. The total amount of funds which can be certified without amendment to this Agreement shall not exceed Nine Hundred Fifty Thousand and No/100 Dollars (\$950,000.00).

If the Professional Services and charges to be provided for will equal or exceed the amount certified available, the Surveyor shall notify the District immediately. If the amount certified is depleted prior to the end of the term of this Agreement, the Surveyor may terminate all Professional Services upon the total depletion of the certified funds unless the District certifies additional funds, as evidenced by a written amendment to this Agreement and the Purchase Order, in which event the Surveyor shall continue to provide the approved Professional Services herein specified to the extent funds are available.

#### **5. Compliance and Standards**

ARTICLE 9 of the Master Agreement, previously amended and entitled, "Compliance and Standards," is hereby amended to read:

The Surveyor 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 Surveyor'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 Surveyor's performance. The Surveyor 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 Surveyor warrants and represents that it does not boycott Israel and agrees that it will not boycott Israel during the term of this contract.

The Surveyor represents and certifies that, at the time of execution of this Agreement, the Surveyor (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 Surveyor 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, Surveyor 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, Surveyor 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 Surveyor 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 Surveyor warrants and represents, in accordance with Tex. Gov't Code Ann. § 2276.002, that unless the Surveyor meets an exemption under subsection (c), then, as required by subsection (b), the Surveyor's signature on this Agreement constitutes the Surveyor's written verification that it does not boycott energy companies and will not boycott energy companies during the term of the contract.

The Surveyor warrants and represents, in accordance with Tex. Gov't Code Ann. § 2274.002, that unless the Surveyor meets an exemption under subsection (c) or section 2274.003, then, as required by subsection (b) of section 2274.002, the Surveyor's signature on this Agreement constitutes the Surveyor'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 Surveyor 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 Surveyor shall immediately report to County through the County's Fraud, Waste, or Abuse Hotline and also notify the District 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>.

## **6. Minority- and Women-Owned Business Enterprise**

ARTICLE 21, entitled "Minority- and Women-Owned Business Enterprise (MWBE)", is added to the Master Agreement, reading:

The Surveyor 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 A. The MWBE goal for this Agreement is **20.6%**. However, the District notes the Surveyor is currently an MWBE certified firm, and therefor, the work performed by the Surveyor's own workforce is completed by an MWBE. The Surveyor acknowledges that it has reviewed the requirements of the County's MWBE program as described in Appendix A – "Harris County MWBE Policy" and will comply with them.

## **7. Contract Construction**

ARTICLE 22, entitled "Contract Construction," is added to the Master Agreement reading:

- A) This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement.
- B) The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement.
- C) When terms are used in the singular or plural, the meaning shall apply to both.
- D) When either the male or female gender is used, the meaning shall apply to both.

**8. Appendix A**

Appendix A entitled "Harris County's Minority- and Women-Owned Business Enterprise Program Policy," is hereby added to the Agreement and made a part thereof by reference for all purposes.

**9. Order of Precedence**

It is expressly understood and agreed the Master Agreement and First and Second Amendments are incorporated herein by reference. In the event of any conflict between the terms and provisions of this Third Agreement, or any portion thereof, and the terms and provisions of any part or portion of the Master Agreement, the First Amendment, or the Second Amendment, this Third Amendment shall control.

All other terms and provisions of Master Agreement and the previous Amendments shall remain in full force and effect as originally written.

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

APPROVED AS TO FORM:

CHRISTIAN D. MENEFEE  
HARRIS COUNTY ATTORNEY

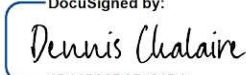
HARRIS COUNTY FLOOD CONTROL  
DISTRICT

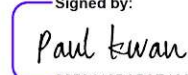
Signed by:  
  
By \_\_\_\_\_  
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Emily Kunst  
Assistant County Attorney  
25GEN1009

By \_\_\_\_\_  
Lina Hidalgo  
County Judge

ATTEST:

LANDTECH, INC. DOING BUSINESS IN  
TEXAS AS LANDTECH CONSULTANTS, INC.

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Dennis Chalaire  
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Name  
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Vice President  
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Title

Signed by:  
  
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Paul Kwan  
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Name  
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president  
\_\_\_\_\_  
Title

## APPENDIX A

### 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 OEEEO, 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, OEEC 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 OEE0 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 OEE0. 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 OEE0'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 all members present except \_\_\_\_\_.

A quorum was present. Among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF A THIRD AMENDMENT TO  
 AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN  
 THE HARRIS COUNTY FLOOD CONTROL DISTRICT AND  
 LANDTECH, INC., DOING BUSINESS IN TEXAS AS  
 LANDTECH CONSULTANTS, 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
Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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"/>

On or about October 23, 2018, the Parties entered into an Agreement for Professional Services, to provide surveying services as may be needed in support of the floodplain re-study and District projects (the "Master Agreement").

The Parties previously amended the Master Agreement, on November 12, 2019, to provide for additional surveying services to be performed by Surveyor and additional compensation to be paid to Surveyor in connection with the projects (the "First Amendment").

The Parties again amended the Master Agreement, on May 24, 2022, to provide for additional surveying services to be performed by Surveyor and additional compensation to be paid to Surveyor in connection with the projects (the "Second Amendment").

The Parties now desire to amend the Master Agreement for the third time (the "Third Amendment").

The District requires additional surveying services as provided under Article 1, Character and Extent of Services.

The Surveyor is willing to provide the necessary additional surveying services for further consideration.

The Parties desire to add rate classifications and increase the existing rate classifications under Article 3, The Surveyor's Compensation.

The District and the Surveyor now desire to set a Minority- and Women-Owned Business Enterprise goal and attach Appendix A, "Harris County Minority- and Women-Owned Business Enterprise Program Policy," to the Agreement.

The Parties now desire to increase the Limit of Appropriation by \$350,000.00, to \$950,000.00.

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, the Third Amendment to Agreement for Professional Services by and between the Harris County Flood Control District and Landtech, Inc., doing business in Texas as Landtech Consultants, Inc., for additional surveying services as may be needed in support of the floodplain re-study and District projects for a fee increase of \$350,000.00, raising the maximum fee to be paid by the District to \$950,000.00, said Third Amendment to 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 any and all things necessary or convenient to accomplish the purposes of this order.

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