



**DeWight Dopslauf, C.P.M., CPPO**  
**Harris County Purchasing Agent**

May 08, 2023

Commissioners Court  
Harris County, Texas

**RE: Interlocal Agreement(s)**

Members of Commissioners Court:

Please approve the attached Order(s) authorizing the County Judge to execute the attached Agreement(s) for the following:

**Description:** Evaluate regional opioid overdose reduction efforts for Harris County Public Health  
**Agency:** University of Texas Health Science Center at Houston  
**Term:** through 08/31/2023  
**Amount:** \$324,576  
**Reviewed By:** • Harris County Purchasing • Public Health Services

Sincerely,

DeWight Dopslauf  
Purchasing Agent

BB  
Attachment(s)  
cc: Agency

**FOR INCLUSION ON COMMISSIONERS COURT AGENDA MAY 16, 2023**



## **INTERLOCAL AGREEMENT**

THE STATE OF TEXAS §

COUNTY OF HARRIS §

This Interlocal Agreement is made and entered into by and between **Harris County, Texas** (“County”), a body corporate and politic under the laws of the State of Texas, acting by and through Harris County Public Health (“HCPH”) and **The University of Texas Health Science Center at Houston**, on behalf of its School of Public Health (“UTHealth”) pursuant to the Interlocal Cooperation Act, Tex. Gov’t Code Ann. §§791.001 – 791.030. The County and UTHealth may each be referred to herein collectively as the Parties and individually as a Party.

### **RECITALS:**

Harris County desires to retain the services of UTHealth to assist in evaluating regional opioid overdose reduction efforts; and

UTHealth represents that it possesses the required licenses, knowledge, expertise, and ability to perform such services; and

The Parties acknowledge that evaluating regional opioid overdose reduction efforts serves a public purpose; and

The Parties acknowledge that payments will come from current revenues available to the paying Party; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **TERMS:**

#### **I. SCOPE OF SERVICES**

##### **UTHealth Duties**

- A. UTHealth agrees to evaluate regional opioid overdose reduction efforts by assigning J. Michael Wilkerson, PhD, MPH, an Assistant Professor in Health Promotion and Behavior Sciences to oversee program evaluation activities hereunder and to perform the following listed services for HCPH (“Services”). Evaluation activities are to begin the month of notification of CDC grant award CE-1904 and include the following.
1. Assisting with the finalization of all data collection instruments and programming the instruments into Qualtrics or RedCap, online data collection tools;
  2. Overseeing data collection of survey and qualitative data;
  3. Conducting descriptive bivariate, and regression analyses for key outcomes;

4. Attending OD2A team meetings, which will take place on a monthly basis to provide status dates on all strategies of the grant;
  5. Submitting evaluation reports to CDC; and
  6. Collaborating with the OD2A team to disseminate findings via conferences and peer-reviewed publications.
- B. UTHealth must perform its duties in accordance with generally accepted standards applicable thereto and must use that degree skill commensurate with the public health profession to comply with all applicable federal, state, and local laws, regulations, rules, and ordinances now in force or that may hereafter be enacted or promulgated.
- C. UTHealth will perform the services included in this Agreement as an independent UTHealth. UTHealth is responsible for all tax obligations related to amounts received for services rendered. It is expressly understood that UTHealth is not an employee of County and all amounts to be paid are fees for professional services. County will provide Form 1099 to UTHealth if required. County will not direct or supervise UTHealth as to the manner, means, or method in which UTHealth performs services hereunder. County looks to UTHealth for results only.
- D. To the extent allowed by applicable law, UTHealth agrees to keep confidential the contents of all discussions with county officials, as well as the contents of all county records and all other information obtained or created by UTHealth during UTHealth's performance of services under this Agreement unless the Executive Director or designee authorizes UTHealth to release the information to outside parties. UTHealth must not access any information that UTHealth is not authorized to receive. Further, UTHealth must not copy, recreate, or use information or documents obtained or created in connection with this Agreement other than for the performance of this Agreement. Notwithstanding the foregoing, UTHealth shall not be required to hold confidential information that is a) is already in UTHealth's possession at the time of disclosure thereof; b) is or later becomes part of the public domain through no fault of UTHealth; c) is received from a third party having no obligations of confidentiality to the County; d) is independently developed by UTHealth; or e) is required by law or regulation to be disclosed.
- E. UTHealth may not assign this Agreement or the rights and obligations under the Agreement.

### **HCPH Duties**

HCPH agrees to:

- A. Provide a point of contact for all correspondence related to this agreement;
- B. Provide dates and times of all OD2A related meetings;
- C. Provide access to Qualtrics or RedCap, or other online data collection tools for evaluation.

## **II. TERM OF THE AGREEMENT**

The term of this Agreement shall begin upon execution by all Parties and end on August 31, 2023, unless earlier terminated in accordance with this Agreement.

### **III. TERMINATION PROVISIONS**

- A) Either Party may terminate this Agreement at any time by providing thirty (30) days notice in writing to UTHealth.
- B) Upon receipt of termination notice, UTHealth shall discontinue all Services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- C) Within thirty (30) days after receipt of notice of termination, UTHealth agrees to submit an invoice showing in detail the Services performed under this Agreement up to and including the date of termination.
- D) The County agrees to pay UTHealth that proportion of the prescribed charges for the Services actually performed and deliverables actually received under this Agreement bear to the total Services or deliverables called for under this Agreement, less such payments on account of charges as have previously been made.

### **IV. PAYMENT METHOD AND LIMITATIONS**

- A) UTHealth understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that UTHealth may become entitled to for the Services performed under this Agreement, and the total maximum sum that the County shall become liable to pay to UTHealth under this Agreement, shall not under any conditions, circumstances, or interpretations thereof exceed the sum of Three Hundred Twenty-Four Thousand Five Hundred Seventy-Six and 34/100 Dollars (\$324,576.34), as certified available by the Harris County Purchasing Agent. Carry over of funds from year 1 to year 2 and year 2 to year 3 is allowed.
- B) Consideration. The Parties agree that UTHealth provided the services as specified in this Agreement, and as full compensation for receipt of the services from August 1, 2022 through May 16, 2023, and for the benefits of this release, the County agrees to pay Two hundred Fifty-Five Six Hundred Thirteen and 34/100 Dollars (\$255,613.34) to UTHealth. UTHealth understands and agrees that this compensation is part of, not in addition to, Three Hundred Twenty-Four Thousand Five Hundred Seventy-Six and 34/100 Dollars (\$324,576.34) stipulated in subsection A of this Limit of Appropriation.
- C) Indemnification and Release. By executing this Release in order to receive the benefit of the mutual agreement reached, UTHealth is waiving and releasing the County, its Commissioners, officers, employees, agents, and assigns from any and all claims, damages, actions, suits in equity, or causes of action, of whatsoever nature, whether now or not presently known to the Parties because of any matter or thing done or omitted concerning or relating to the issues surrounding the Invoices, which includes any and all lawsuits, whether pending or in the future, against the County, its Commissioners, officers, employees, agents, or assigns.
- D) UTHealth understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that UTHealth may become

entitled to hereunder, and the total maximum sum that the County shall become liable to pay to UTHealth hereunder, shall not under any conditions, circumstances, or interpretations thereof exceed the sum certified by the Purchase Order. Notwithstanding anything to the contrary, or that may be construed to the contrary, the County's liability under the terms and provisions of this Agreement is limited to the funds on the Purchase Order; and that when all the funds so certified are expended, Consultant's sole and exclusive remedy shall be to terminate this Agreement.

E) UTHealth understands and agrees that this Agreement is contingent upon the availability of third-party funds, including but not limited to federal funds awarded to the State or County ("Grant Funds") for the term of the Agreement. It is expressly understood and agreed that the County has no County funds available with which to pay its obligations hereunder except funds allocated and received by the County under the Grant awarded to the County. The County shall not be liable under any circumstances or any interpretations hereof for any costs under this Agreement until the Grant Funds are actually received by the County and then only to the extent that such monies are actually received and certified available for this Agreement by the County Auditor as evidenced by the issuance of a purchase order by the Harris County Purchasing Agent. It shall be the obligation of UTHealth to assure itself that sufficient funds have been allocated to pay for the Services to be provided. Should UTHealth receive any Grant Funds from the County that are determined not subject to payment with Grant Funds, UTHealth shall refund to the County any and all such amounts that have been paid by the County.

F) UTHealth understands and agrees that the payment obligations created by this Agreement are conditioned upon the availability of third-party funds and appropriated for the payment of such obligations under the Grant. In the event these Grant Funds are discontinued or reduced during the Agreement term, the County shall not be liable for payment of any funds above the actual Grant Funds the County receives. It is expressly understood and agreed that the County has available the total maximum sum of funds certified available by the County Auditor through the issuance of the purchase order for the purpose of satisfying the County's obligations under the terms and provisions of this Agreement. In the event the Grant Funds are discontinued or reduced, and the Parties are unable to renegotiate the Agreement upon mutually acceptable terms, UTHealth's sole and exclusive remedy shall be to terminate this Agreement. The County's obligation to make any payments under the Agreement using Grant Funds is limited to the amount of Grant Funds received. UTHealth agrees that it will not be entitled to any damages or remedies of any kind including, but not limited to, liquidated or incidental damages, late fees, penalties, and finance charges. Failure to certify funds or to certify sufficient funding for any reason shall not be considered a breach of this Agreement. UTHealth shall provide the products, services and deliverables during the applicable grant period only.

G) UTHealth understands and agrees that the Grant Funds awarded to the County are the exclusive funding of the Agreement. In order to be eligible for payments under the Grant, UTHealth agrees to comply with all of the applicable terms and requirements of the Grant as supplied by the County. UTHealth further agrees to reimburse the County, within thirty (30) days after written notice, for any Grant Funds received from the County under the Agreement for which the County is denied reimbursement under the Grant or which are otherwise determined to be ineligible for reimbursement under the Grant. Federal Grant Regulations require that UTHealth pay all suppliers and UTHealth's performing services under this Agreement within thirty (30) days of receipt of payment from the County.

H) UTHealth understands and agrees that it shall not proceed with any Services until it receives written authorization from the County to begin. If at any time during the course of the Agreement, UTHealth knows that the funds available will not cover the cost of the Services, UTHealth shall notify the County immediately.

I) Subject at all times to the availability of Grant Funds and the County's right to withhold payment of any questionable charges, the County shall pay each undisputed invoice in accordance with Texas state law.

## **V. NOTICE**

Any notice permitted or required to be given to UTHealth by County may be given by certified United States mail, return-receipt requested, postage prepaid, addressed to:

The University of Texas Health Science Center at Houston  
Sponsored Projects Administration  
7000 Fannin Street, UCT 1006  
Houston, Texas 77030  
713/500-3999  
preaward@uth.tmc.edu

With a copy to:

The University of Texas Health Science Center at Houston  
Center for Health Promotion and Prevention Research  
Division of Health Promotion and Behavioral Sciences  
School of Public Health  
7000 Fannin Street, Suite 2620  
Houston, Texas 77030  
713/500-9974  
Johnny. M.Wilkerson@uth.tmc.edu

Any notice permitted or required to be given to County by UTHealth may be given by certified United States mail, return-receipt requested, postage prepaid, addressed to:

Harris County Public Health  
2223 West Loop South  
Houston, TX 77027  
Attention: Asha Moor, MPH, CHES, Strategic Analyst

With a copy to:

Purchasing  
Harris County Administration Building  
1001 Preston, 6<sup>th</sup> Floor  
Houston, TX 77002-1891

Either Party may change its address by giving notice to the other Party in writing. Any notice mailed by registered or certified United States mail, return-receipt requested, shall be deemed given upon deposit in the United States mail.

## **VI. ENTIRE AGREEMENT**

This instrument contains the entire agreement between the Parties hereto relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning the Agreement shall be of no force or effect except a subsequent modification in writing signed by the Parties.

## **VII. GOVERNING LAW AND VENUE**

This Agreement is governed in all respects by the laws and Constitution of the State of Texas. Exclusive venue is in Harris County, Texas.

## **VIII. DISCLOSURE OF E-MAIL ADDRESSES**

UTHealth affirmatively consents to the disclosure of UTHealth's e-mail addresses that are provided to County in the conduct of this agreement. This consent is intended to comply with the requirements of the Public Information Act, Section 552.137 of the Texas Government Code, and shall survive termination of the Agreement. This consent shall apply to e-mail addresses provided by UTHealth and agents acting on behalf of UTHealth and shall apply to any email address provided in any form for any reason whether related to this Agreement or otherwise.

## **IX. PUBLIC INFORMATION**

Both Parties expressly acknowledges that the other Party is subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code, and notwithstanding any provision in this Agreement to the contrary, both Parties will make any information related to this Agreement or otherwise available to third parties in accordance with the Public Information Act.

## **X. WAIVER OF BREACH**

Waiver of a breach or violation of any provision of this Agreement is not a waiver of any subsequent breach.

## **XI. NO PERSONAL LIABILITY**

Nothing in this Agreement may be construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a party to this Agreement, and the Parties expressly agree that the execution of this Agreement does not create any personal liability on the part of any officer, director, employee, or agent of County or UTHealth.

## **XII. UTHealth's RESPONSIBILITIES REGARDING USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION ("PHI")**

### **A. General:** UTHealth agrees to

- (1) hold all Protected Health Information ("PHI"), confidential except to the extent that disclosure is required by Federal or State law, including the Texas Public Information Act, Chapter 552, Texas Government Code. TEX. GOV'T CODE ANN §§ 552.001 *et seq.*, as amended. PHI is defined in 45 CFR § 164.501 and is limited to information created or received by UTHealth from or on behalf of County.
- (2) be bound by all applicable Federal and State of Texas licensing authorities' laws, rules, and regulations regarding records and governmental records, including the Health Insurance Portability and Accountability Act of 1996, PL 104-191 and Chapter 181, Texas Health and Safety Code, as amended, collectively referred to herein as "Privacy Requirements."
- (3) cooperate with the Texas Medicaid Fraud Control Unit and to make appropriate personnel available for interviews, consultation, grand jury proceedings, pre-trial conference, hearings, trial, and in any other process, including investigations that are required as a result of UTHealth's Services to County. Compliance with this paragraph is at UTHealth's own expense.

### **B. Representations:** UTHealth represents that it is familiar with Privacy Requirements, State HIV/AIDS and mental health information, and State and Federal drug/alcohol-related health information.

### **C. Business Associate:** UTHealth is a "Business Associate" of County as that term is defined under the Privacy Requirements. UTHealth agrees:

- (1) *Nondisclosure of PHI:* Not to use or disclose the PHI received from County or on behalf of County other than as permitted or required by this Agreement, or as otherwise required by law.
- (2) *Limitation on Further Use of Disclosure:* Not to further use or disclose the PHI received from or on behalf of County in a manner that would be prohibited by the Privacy Requirements of HIPAA if disclosure was made by County, or if either UTHealth or County is otherwise prohibited from making such disclosure by any present or future State or federal law, regulation, or rule.
- (3) *Safeguards:* To use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement or as required by State or federal law, regulation, or rule, and to use reasonable administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of County.
- (4) *Reporting Unauthorized Disclosures:* To report to County any use or disclosure of PHI that is not authorized by this Agreement immediately upon becoming aware of such unauthorized use or disclosure.
- (5) *UTHealth and Agents:* To make all reasonable efforts to ensure that any *UTHealth* or agent to whom UTHealth provides PHI or electronic PHI received from County agrees to the same restrictions and conditions that apply to UTHealth with respect to such PHI and to implement reasonable safeguards to protect electronic PHI.



- (6) *Report:* To report to County any security incident within 5 business days of becoming aware of such incident. For the purposes of this paragraph, “security incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system;
- (7) *Mitigation:* To mitigate, to the extent practicable, any harmful effect that is known to UTHealth of a use or disclosure of PHI by UTHealth or by a UTHealth or agent of UTHealth resulting from a violation of this Agreement.
- (8) *Notice-Access by Individual:* To notify County in writing within three days of any request by the individual for access to the individual’s PHI and to, upon receipt of such request from the individual, direct the individual to County for access to the individual’s PHI.
- (9) *Notice-Request for Amendment:* To notify County in writing within three business days of any request by the individual for amendment to the individual’s PHI and to, upon receipt of such request from the individual, direct the individual to County to request amendment of the individual’s PHI.
- (10) *Notice-Request for Accounting:* To notify County in writing within three business days of any request by the individual for an accounting of disclosures made of the individual’s PHI and to, upon receipt of such request from the individual, direct the individual to County for an accounting of the disclosures of the individual’s PHI.
- (11) *HHS Inspection:* Upon written request, to make available to the Secretary of Health and Human Services (“HHS”) or his designee, UTHealth’s internal practices, books, and records relating to the use and disclosure of PHI received from or held for HCPH in a time or manner designated by the Secretary for purposes of the Secretary determining UTHealth’s compliance with the HIPAA Privacy Requirements.
- (12) *County Inspection:* Upon written request, to make available to County during normal business hours UTHealth’s internal practices, books, and records relating to the use and disclosure of PHI received from or held for HCPH in a time and manner designated by County.
- (13) *PHI Amendment:* To incorporate any amendments, corrections, or additions to the PHI of County when notified by County that the PHI is inaccurate or incomplete or that other documents are to be added as required by or allowed by the HIPAA Privacy Requirements.
- (14) *Documentation of Disclosures:* UTHealth agrees to document disclosure of PHI and information related to such disclosures as is necessary for County to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528 as amended.
- (15) *Termination Procedures:* Upon termination of this Agreement for any reason, to return all PHI received from County to County or, if specially requested to do so by County in writing, to destroy all PHI received from County. This provision applies when UTHealth maintains PHI from County in any form. If UTHealth determines that returning or destroying the PHI received from County is infeasible, UTHealth shall (i) provide to County notification of the conditions that make return or destruction infeasible; (ii) extend the protections of this Agreement to such PHI; and (iii) limit any further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible.
- (16) *Notice-Termination:* Upon written notice to UTHealth, County may terminate any portion of the Agreement under which UTHealth maintains, compiles, or has access to

PHI. Additionally, upon written notice to UTHealth, County may terminate the entire Agreement if County determines, at its sole discretion, that UTHealth has repeatedly violated a Privacy Requirement.

(17) *Security Incidents:* UTHealth shall report any security incident to County.

- D. Survival of Privacy Provisions: UTHealth's obligations with regard to PHI and electronic personal health information shall survive the termination of this Agreement.
- E. Amendment Related to Privacy Requirements: The Parties agree to take such action as is necessary to amend this Agreement if either Party, in its reasonable discretion, determines that amendment is necessary for County to comply with the Privacy Requirements of HIPAA and Texas Health and Safety Code §§ 181.001 *et seq.*, as amended, and any other law or regulation affecting the use or disclosure of PHI. Any ambiguity in this Agreement shall be resolved to permit both Parties to comply with the Privacy Requirements of HIPAA and Texas Health and Safety Code §§ 181.001 *et seq.*, as amended.
- F. **Indemnification.** To the extent authorized by the Constitution and the laws of the State of Texas, UTHealth agrees to indemnify and hold harmless County and its directors, officers, employees, and agents (individually and collectively "County Indemnities") against any and all losses, liabilities, judgments, penalties, awards and costs (including costs of investigation and legal fees and expenses) arising out of or related to (a) a breach of this Agreement relating to the Privacy Requirements by UTHealth, or (b) any negligent or wrongful acts or omissions of UTHealth or its employees, directors, officers, subUTHealths, or agents, relating to the Privacy Requirements including failure to perform their obligation under the Privacy Requirements.
- G. Access to Books and Records of UTHealth  
UTHealth agrees to allow the Comptroller General of the United States, the Department of Health and Human Services (HHS), the County Auditor, and their duly authorized representatives, access to contracts, books, documents, and records necessary to verify the nature and extent of the costs of the Services provided by UTHealth. UTHealth agrees to allow such access until the expiration of one (1) year after the services are finished under the contract or subcontract. Such access will be provided in accordance with the regulations of the Centers for Medicare and Medicaid Service (CMS). UTHealth allows similar access to books, records, and documents related to contracts between UTHealth and organizations related to or subcontracted by UTHealth, as defined by the regulations of CMS.

### **XIII. FRAUD, WASTE OR ABUSE**

Fraud, Waste or Abuse Hotline. UTHealth shall immediately report to the 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>.


#### **XIV.**

Contractor warrants and represents it will deliver the Services in compliance with the federal clauses attached hereto as Exhibit A and incorporated herein by reference.

**[Signature Page Follows]**

IN WITNESS WHEREOF, This agreement has been executed on behalf of Harris County by a duly authorized representative of Harris County and by The University of Texas Health Science Center at Houston.

**UTHEALTH**

By:  Digitally signed by  
Valerie Christine Bomben  
Date: 2023.05.03  
13:15:17 -05'00'

Valerie Bomben  
Director, Sponsored Contracts  
The University of Texas Health Science  
Center at Houston  
Date Signed: 5/3/2023

**HARRIS COUNTY**

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

Date Signed: \_\_\_\_\_

**Approved:**

By: \_\_\_\_\_  
Barbie L. Robinson, MPP, JD, CHC  
Executive Director  
Harris County Public Health  
Date Signed: \_\_\_\_\_

**Approved as to Form:**


Christian D. Menefee  
County Attorney  
  
By: \_\_\_\_\_  
Tiffany Bangs  
Assistant County Attorney  
CAO File: 23GEN0014

Exhibit A

Required Federal Clauses

(Follows Behind)

## **FEDERAL REGULATIONS**

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

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

Contractor must provide Harris County, the State of Texas, the Texas General Land Office (GLO), the U.S. Department of Housing and Urban Development (HUD), the FEMA Administrator, the Inspectors General, the Comptroller General of the United States, and any other agency or any of their pass-through entities or authorized representatives access to any books, documents, papers, and records of the Contractor and its subcontractors which are directly pertinent to this contract/project for the purposes of making/responding to audits, examinations, excerpts, and transcriptions.

Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract. The right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents.

Contractor must keep records within Harris County or note in its submission that records will be available within the boundaries of Harris County to those representatives within twenty-four (24) hours of request by the County. Contractor must maintain all records pertaining to the project for seven (7) years after receiving final payment and after all other pending matters have been closed.

In compliance with the Disaster Recovery Act of 2018, the County and Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

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

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

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

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

Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress,

officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

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

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

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

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

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

Contractor must comply with all provisions of the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Contractors securing a contract in excess of \$150,000.00 shall not expend such funds by making use of subcontracting with facilities included on the Environmental Protection Agency List of Violating Facilities as per Section 306 of the Clean Air Act, Section 508 of The Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations 40 CFR.

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

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

- (1) Overtime Requirements – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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

Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

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



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

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

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

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

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

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

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

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

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

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

Pursuant to 2 CFR Appendix II to Part 200 (I), a Contract meeting the definition in 2 C.F.R. § 180.220 must not be made to parties listed on the System for Award Management (SAM) Exclusion lists, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Executive Orders 12549 and 12689, a contract award shall not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235). SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. A contract award must not be made to parties listed in the SAM Exclusions. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov).

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

This contract is a covered transaction for purposes of compliance with Title 2 C.F.R. parts 180 and 3000, and as such the Contractor is required to verify that none of the contractor, its principals (as defined at 2 C.F.R. § 180.995), or its affiliates (as defined at 2 C.F.R. § 180.905) are excluded (as defined at 2 C.F.R. § 180.940) or disqualified (as defined at 2 C.F.R. § 180.935). The Contractor must comply with 2 C.F.R. part 180, subpart C and 2 C.F.R. part 3000, subpart C and shall include this requirement and similar certification in all contracts between itself and any subcontractors in connection with the services performed under this Contract.

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

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

Contractor must fill out the required Certification as laid out in Appendix B to this Agreement. This certification is a material representation of fact relied upon by the County. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

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

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

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

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

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

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

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

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

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or

orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

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

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

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

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

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

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

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

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

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

Harris County is an equal opportunity employer of protected veterans. During the performance of this contract, the

Contractor must comply with required Equal Employment Opportunity for VEVRAA Protected Veterans provisions.

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

- a. The definitions set forth in 41 CFR 60-300.2 apply to the terms used throughout this Clause, and they are incorporated herein by reference.
- b. The contractor shall not discriminate against any employee or applicant for employment because he or she is a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran (hereinafter collectively referred to as "protected veteran(s)") in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices, including the following:
  - i. Recruitment, advertising, and job application procedures.
  - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.
  - iii. Rates of pay or any other form of compensation and changes in compensation.
  - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
  - v. Leaves of absence, sick leave, or any other leave.
  - vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor.
  - vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.
  - viii. Activities sponsored by the contractor including social or recreational programs.
  - ix. Any other term, condition, or privilege of employment.
- c. The contractor shall immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, with the appropriate employment service delivery system where the opening occurs. Listing employment openings with the state workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service delivery system. In order to satisfy the listing requirement described herein, contractors must provide information about the job vacancy in any manner and format permitted by the appropriate employment service delivery system which will allow that system to provide priority referral of veterans protected by VEVRAA for that job vacancy. Providing information on employment openings to a privately run job service or exchange will satisfy the contractor's listing obligation if the privately run job service or exchange provides the information to the appropriate employment service delivery system in any manner and format that the employment service delivery system permits which will allow that system to provide priority referral of protected veterans.
- d. Listing of employment openings with the appropriate employment service delivery system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.

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

notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are protected veterans. The contractor must ensure that applicants or employees who are disabled veterans are provided the notice in a form that is accessible and understandable to the disabled veteran (e.g., providing Braille or large print versions of the notice, posting the notice for visual accessibility to persons in wheelchairs, providing the notice electronically or on computer disc, or other versions). With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

- k. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by the terms of VEVRAA, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, protected veterans.
- l. The contractor will include the provisions of this clause in every subcontract or purchase order of \$100,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to VEVRAA so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.
- m. The contractor must, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their protected veteran status.
- n. The Contractor shall forfeit as a penalty to the County who administers the subject Project receiving Federal assistance, Sixty Dollars (\$60.00) for each worker, employed for each calendar day, or a portion thereof, such worker is paid less than the said stipulated rates for any work done under this Project, by him/her or by any contractor under him/her.
- o. All contractors shall keep, or cause to be kept, an accurate record showing the names of all workers, also the actual per diem wages paid to each of such workers.

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

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

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

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

#### **GREEN BUILDING STANDARDS**

At a minimum, Contractors must comply with local codes and any applicable national building codes for any work involving rehabilitation or construction, including design. When a contract is funded, in whole or in part, by HUD funding, Contractors must comply with applicable Green Building standards to the maximum extent feasible. Green

Building standards may apply to single-family properties, multifamily properties, or both and may include, but are not limited to best practices defined under LEED, Enterprise Green Communities, or NAHB National Green Building Standards and may include specific measures for water conservation, energy efficiency, and indoor air quality. Offeror must comply with the following standards, as applicable:

2009 ICC International Energy Conservation Code (IECC) ASHRAE 90.1-2007, which sets minimum energy standards for buildings except low-rise residential buildings ASHRAE 62.1-2010 and 62.2-2010, which set minimum standards for ventilation for indoor air quality for common areas in mid- and high-rise buildings, and low-rise residential buildings, respectively.

New or replacement residential housing, when funded by CDBG-DR grants, must adhere to Green Building standards, including Energy Star Certified Homes or Energy Star for Multifamily High Rise and other applicable green building requirements.

Moderate residential housing rehabilitation, when funded by CDBG-DR grants, must comply with the Community Planning & Development (CPD) Retrofit Checklist and provide Energy Star appliances, Water Sense or FEMP products if replaced.

New or replacement residential housing, when funded by CDBG-DR grants, must adhere to Green Building standards, including Energy Star Certified Homes or Energy Star for Multifamily High Rise and other applicable green building requirements.

#### **HOLD HARMLESS AGREEMENT**

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

#### **OBLIGATION OF THE FEDERAL GOVERNMENT**

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

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

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

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

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

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

Contractor shall not in any way, directly or indirectly:

- a. Collude, conspire, or agree with any other person, firm, corporation, Offeror or potential Offeror to the amount



of this Offer or the terms or conditions of this Offer.

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

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

## **NON-SEGREGATED FACILITIES**

### **“Prohibition of Segregated Facilities”**

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

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

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

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

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

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- E. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

The State of Texas maintains a Historically Underutilized Business Program, which identifies any business at least 51 percent owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman and/or Service Disabled Veteran, who reside in Texas and actively participate in the control, operations and management

of the entity's affairs as a Historically Underutilized Business (also considered MWBE). Contractors who wish to check the status of a firm may visit <https://comptroller.texas.gov/purchasing/vendor/hub/>.

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

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

### **POTENTIAL CONFLICTS OF INTEREST**

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

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

An outside consultant or contractor is prohibited from submitting a Statement of Qualifications for services on a Harris County project of which the consultant or contractor was a designer or other previous contributor, or was an affiliate, subsidiary, joint venturer or was in any other manner associated by ownership to any party that was a designer or other previous contributor. If such a consultant or contractor submits a prohibited Statement of Qualifications, that response shall be disqualified on the basis of conflict of interest, no matter when the conflict is discovered by Harris County.

### **PREVAILING WAGES (2 CFR 200 APPENDIX II (D) and TGC 2258)**

Pursuant to 2 CFR 200 Appendix II (D), Contractor must comply with Texas Government Code (TGC) 2258, Prevailing Wage Rates. Accordingly, Contractor must submit a certified payroll records as required, and compensate any worker employed on a public works project not less than as applicable. As noted under "Davis Bacon and Related Acts", when required by Federal program legislation, construction contracts in excess of \$2,000 awarded by Harris County shall require compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Contractor must pay wages to laborers and mechanics at a rate not less than the local prevailing wages, or Davis Bacon wages, as applicable. If both Texas prevailing wages and Davis Bacon provide rates for a particular class, Contractors must pay the greater wage rate. In addition, Contractor must pay wages not less than once a week.

In compliance with Section 2258 of the Texas Government Code, Contractor and any subcontractor hired by Contractor for the construction of any project, shall pay not less than the rates set forth in the Schedule of Prevailing Wages attached and incorporated by reference. In submitting a Statement of Qualifications, Contractor warrants that it and its subcontractors shall comply with all requirements and worker ratios per the applicable Schedule of Prevailing Wages and Texas state law.

Contractor must submit certified payroll of contractor and all subcontractors on a weekly basis. At County's request,

Contractor must make available and shall require its subcontractors to make available, copies of cancelled checks and check stubs for comparisons by the County or its agents. Regardless of whether Davis Bacon or Texas Prevailing Wages apply, the County reserves the right for its agents to visit the project site and to interview contractor, its subcontractors and employees of each on any date or time, as often as desired during the construction period, without prior notification.

Harris County will ascertain if proper wage rates are being paid to the employees as required. In the event of a discrepancy between the work performed and the wages paid, the County shall document same and notify Contractor. If, for any length of time and as determined by Harris County, discrepancies appear between the certified payrolls and the actual wage paid, the County shall require check stubs to be attached to each weekly certified payroll.

Pursuant to Texas Government Code Section 2258.051, the County reserves the right to withhold any monies due Contractor until such discrepancy is resolved and the necessary adjustment made. The Contractor shall forfeit as a penalty, in accordance with Texas Government Code Section 2258.023(b), to the County or entity who administers the subject Project receiving Federal assistance, Sixty Dollars (\$60.00) for each worker, employed for each calendar day, or a portion thereof, such worker is paid less than the said stipulated rates for any work done under this Project, by him/her or by any contractor/subcontractor under him/her.

All contractor/subcontractor shall keep, or cause to be kept, an accurate record showing the names of all workers, also the actual per diem wages paid to each of such workers. Contractor shall impose these same obligations upon its Subcontractors. Contractor understands that with weekly or monthly certified payrolls, contractor is responsible for any and all penalties that shall accrue during the month, regardless of the fact that any error could not be discovered by the Contract Compliance Officer until the following certified payroll.

#### **PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)**

In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

#### **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

Contractor must comply with 31 U.S.C. Chapter 38, *Administrative Remedies for False Claims and Statements*, which shall apply to the activities and actions of the Contractor and its subcontractors pertaining to any matter resulting from the contract.

#### **RESTRICTIONS ON PUBLIC BUILDINGS AND PUBLIC WORKS PROJECTS CERTIFICATION**

- a. Definitions. The definitions pertaining to this provision are those that are set forth on the clause entitled "Restrictions on Public Works Projects." (Set out under "Contract Clauses" below.)
- b. Certification. Except as provided in paragraph (C) of this provision, by submission of its Statement of Qualifications, Offeror certifies that it:
  - i. Is not a Contractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR) (see paragraph (H) of this provision);
  - ii. Has not or will not enter into any subcontract with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR, and
  - iii. Will not provide any product of a country included on the list of foreign countries that discriminate

against the U.S. firms published by the USTR.

- c. Inability to certify. An Offeror unable to certify in accordance with paragraph (b) of this provision shall submit with its offer a written explanation fully describing the reasons for its inability to make the certification.
- d. Applicability of 18 U.S.C. 1001. This certification is paragraph (B) of this provision concerns a matter within the jurisdiction of an agency of the United States, and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 U.S.C. 1001.
- e. Notice. Offeror shall provide written notice to the Contracting Officer if, at any time before the contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- f. Restrictions on contract award. Unless a waiver to these restrictions is granted by the Secretary of Housing and Urban Development, no contract will be awarded to an Offeror (1) who is owned or controlled by a citizen or national of a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the USTR, (2) whose subcontractors are owned or controlled by citizens or national of a foreign country on the USTR list or, (3) who incorporates any product of a foreign country on the USTR list in the public works project.
- g. USTR List. The USTR published an initial list in the Federal Register on December 30, 1987 (53 FR 49244), which identified one country-Japan. The USTR can add countries to the list, and remove countries from it, in accordance with section 109 (C) of PUB. L. 100-202.

#### **RESTRICTIONS ON PUBLIC BUILDINGS AND PUBLIC WORKS PROJECTS**

- a. Definitions. "Component", as used in this clause, means those articles, materials, and supplies incorporated directly into the product. "Contractor or subcontractor of a foreign country," as used in this clause, means any Contractor or subcontractor that is a citizen or national of a foreign country or is controlled directly or indirectly by citizens or nationals of a foreign country. A contractor or subcontractor shall be considered to be a citizen or national of a foreign country, or controlled directly or indirectly by citizens or nationals of a foreign country:
  - i. If 50 percent or more of the Contractor or subcontractor is owned by a citizen or a national of the foreign country;
  - ii. If the title to 50 percent or more of the stock of the Contractor or subcontractor is held subject to trust or fiduciary obligation in favor of citizens or nationals of the foreign country.
  - iii. If 50 percent or more of the voting power in the Contractor or subcontractor is vested in or exercisable on behalf of a citizen or national of the foreign country;
  - iv. In the case of a partnership, if any general partner is a citizen of the foreign country;
  - v. In the case of a corporation. If its presidents or other chief executive officer or the chairman of its board of directors is a citizen of the foreign country or the majority of any number of its directors necessary to constitute a quorum are citizens of the foreign country or the corporation is organized under the laws of the foreign country or any subdivision, territory, or possession thereof; or
  - vi. In case of a contractor or subcontractor who is a joint venture, if any participant firm is a citizen or national of a foreign country or meets any of the criteria in subparagraphs (A) 1 through 5 of this clause. "Product", as used in this clause, means construction materials, i.e. articles, materials and supplies brought to the construction site for incorporation into the public works project, including permanently affixed equipment, instruments, utilities, electronic or other devices, but not including vehicles or construction equipment. In determining the origin of a product, Harris County will consider a product as produce in a foreign country id it has been assembled or

manufactured in the foreign country, or if the cost of the components mined, produced, or manufactured in the foreign country exceed 50 percent of the cost of all its components.

- b. Restrictions. The Contractor shall not (1) knowingly enter into any subcontract under this contract with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (see paragraph (C) of this clause, or (2) supply any product under this contract of a country included on the list of foreign countries that discriminate against U.S. firms published by the USTR.
- c. USTR List. The USTR published an initial list in the Federal Register on December 30, 1987 (53 FR 49244), which identified one country-Japan. The USTR can add other countries to the list, or remove countries from it, in accordance with section 109 (C) of PUB. L. 100-102.
- d. Certification. The Contractor may rely upon the certification of a prospective subcontractor that it is not a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR and that products supplied by such subcontractor for use on the Federal public works project under this contract are not products of a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the USTR, unless such Contractor has knowledge that the certification is erroneous.
- e. Subcontractors. The Contractor shall incorporate this clause, modified only for the purpose of properly identifying the parties, in all subcontracts. This paragraph (E) shall also be incorporated in all subcontracts.

#### **RIGHTS TO INVENTIONS (2 CFR Appendix II to Part 200 (F))**

Any discovery or invention that arises during the course of the contract shall be reported to Harris County. This clause requires the Contractor to disclose promptly inventions to the County (within 2 months) after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The awarding agency shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and Title 37 C.F.R. § 401.

If the Federal award meets the definition of "funding agreement" under 37 C.F.R. §.401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of Title 37 C.F.R. §401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

#### **SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974 (24 CFR 570.602)**

Section 109 of the Act requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR part 6.

#### **SECTION 3 ACT OF 1968 (12 U.S.C. 1701u and 24 CFR Part 135)**

For any HUD-funded contract with a value in excess of \$100,000, Contractor and subcontractors must comply with the Section 3 Act of 1968. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons. Section 3 is triggered when the normal completion of construction and rehabilitation projects creates the need for new employment, contracting, or training opportunities.

For any Section 3 Covered Contracts, Contractor and subcontractors must comply with all provisions of the Section 3 Act of 1968, contained under 24 CFR 135. Contractor and subcontractors must include the Section 3 Clause in its entirety, in every subcontract subject to compliance with regulations in 24 CFR 135.

Contractor and subcontractors must assure that to the greatest extent feasible, contracts for work to be performed in connection with the project are awarded to Section 3 Business Concerns. Contractor and subcontractors must post all new hire opportunities with the local Workforce Solutions Center and/or Work- in-Texas, in accordance with 24 CFR 135. The minimum numeric goals for Section 3 utilization are:

30 percent of total number of new hires are Section 3 Residents (i.e. 1 out of 3 new hires);

10 percent of all awarded construction contracts are awarded to Section 3 Business Concerns;

3 percent of all awarded non-construction contracts are awarded to Section 3 Business Concerns.

**12 U.S.C. 1701u and 24 CFR Part 135:**

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and sub contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the

maximum extent feasible, but not in derogation of compliance with section 7(b).

#### **TRANSACTIONS WITH TERRORIST ORGANIZATIONS PROHIBITED (Texas Government Code 2252.152)**

Pursuant to Chapter 2252, Texas Government Code, Contractor shall certify that, at the time of execution of this Contract, neither the Contractor, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (1) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (2) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code.

#### **TERMINATION FOR CAUSE & CONVENIENCE (2 CFR Appendix II to Part 200 (A) and (B))**

Pursuant to 2 CFR Appendix II to Part 200 (A), Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, shall address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to 2 CFR Appendix II to Part 200 (B), all contracts in excess of \$10,000 shall address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. Harris County shall have the right to terminate this contract for cause and convenience.

In the event of a failure by Contractor to satisfactorily perform the services specified herein and/or a default by Contractor in abiding by the other terms and conditions of this Contract, Harris County may terminate the Contract on written notice to Contractor and Contractor shall be liable for all damages, costs, and expenses (including attorney fees) incurred by County related to this default. Such termination is in addition to and not in lieu of any other remedies that Harris County may have in law or equity. Administrative remedies for non-performance, violation or breach of contract terms, or termination of contract for default may include suspension and debarment. Harris County may assess liquidated damages for failure to meet completion deadlines, contract breaches, or performance failures of the Contractor or its Subcontractors.

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

#### **VERIFICATION NOT TO BOYCOTT ISRAEL**

As required by Texas Government Code Chapter 2270, Contractor verifies that it does not boycott Israel and will not boycott Israel through the term of this Contract. For purposes of this verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

#### **VENDORS/CONTRACTORS OWING TAXES OR OTHER DEBTS**

Pursuant to Texas Local Government Code 262.0276, if, during the performance of this contract, Contractor’s taxes

become delinquent or Contractor becomes otherwise indebted to Harris County, Harris County reserves the right to provide notice to the Auditor or Treasurer pursuant to Texas Local Government Code 154.045.

Whether or not a Contractor's taxes are delinquent will be determined by an independent review of the Tax Office records. Contractors are encouraged to visit the Tax Office website at [www.hctax.net](http://www.hctax.net), set up a portfolio of their accounts and make their own initial determination of the status of their tax accounts. Contractors who believe a delinquency is reflected in error must contact the Tax Office to correct any errors or discrepancies prior to submitting their Statement of Qualifications in order to ensure that their Qualifications will be considered. Furthermore, if, during the performance of this contract, a Contractor's taxes become delinquent or a vendor becomes otherwise indebted to Harris County, Harris County reserves the right to provide notice to the Auditor or Treasurer pursuant to Texas Local Government Code §154.045. This policy is effective for all responses due on or after November 1, 2009.

#### **WHISTLEBLOWER PROTECTION ACT**

Contractor, subcontractors, and employees working on this Project shall be subject 41 U.S. Code § 4712, which requires that an employee of a contractor, subcontractor, grantee, or sub grantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

The Contractor shall inform its employees and subcontractors in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation. The Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts providing services for this Project.

#### **DHS SEAL, LOGO, AND FLAGS**

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

#### **COMPLIANCE WITH FED. LAW, REGULATIONS, & EOS**

This is an acknowledgement that FEMA financial assistance may be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

#### **DOMESTIC PREFERENCE REQUIREMENTS**

- A. As appropriate and to the extent consistent with law, Vendor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this paragraph must be included in all subcontracts and purchase orders for work or products under this Addendum. For purposes of this paragraph:
  - 1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - 2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

#### **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

- A. As used in this paragraph, the terms backhaul; covered foreign country; covered telecommunications



equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services as used in this paragraph—

B. Prohibitions

- 1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
- 2) Unless an exception in this paragraph applies, Vendor and its Subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from FEMA to:
  - i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
  - ii. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
  - iii. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
  - iv. Provide, as part of its performance of this Purchase Order or Addendum, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

C. Exceptions

- 1) This paragraph does not prohibit Vendor from providing—
  - i. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
  - ii. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- 2) By necessary implication and regulation, the prohibitions also do not apply to:
  - i. Covered telecommunications equipment or services that:
    - Are not used as a substantial or essential component of any system; and
    - Are not used as critical technology of any system.
    - Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

D. Reporting requirement

- 1) In the event Vendor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during performance of the Services set forth in this Addendum, or Vendor is notified of such by a Subcontractor at any tier or by any other source, Vendor shall report the information in the manner stated below to the recipient or subrecipient, unless elsewhere in this Addendum are established procedures for reporting the information.
- 2) Vendor shall report the following information pursuant to this paragraph:
  - i. Within one business day from the date of such identification or notification: The Contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
  - ii. Within 10 business days of submitting the information above: Any further available information about mitigation actions undertaken or recommended. In addition, Vendor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

- E. Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (E), in all subcontracts and other contractual instruments.

**ORDER OF COMMISSIONERS COURT**  
Authorizing Execution of an Interlocal Agreement

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 \_\_\_\_\_, 2023, with all members present except \_\_\_\_\_.

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

**ORDER AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT  
BETWEEN HARRIS COUNTY AND THE UNIVERSITY OF TEXAS HEALTH  
SCIENCE CENTER AT HOUSTON**

Commissioner \_\_\_\_\_ introduced an order and moved that Commissioners Court adopt the order. Commissioner \_\_\_\_\_ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

Vote of the Court	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Judge Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. 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 adopted follows:

**IT IS ORDERED** that The Harris County Judge is authorized to execute on behalf of Harris County an agreement in an amount not to exceed \$324,576.34 with The University of Texas Health Science Center at Houston to evaluate regional opioid overdose reduction efforts for Harris County Public Health. The Agreement is incorporated by reference and made a part of this order for all intents and purposes as though set out in full word for word.

All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.