

EXCAVATION AND REMOVAL AGREEMENT
HCFCFCD PROJECT ID U500-01-00-E003

THE STATE OF TEXAS §
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

THIS EXCAVATION AND REMOVAL AGREEMENT, hereinafter called the "Agreement," is entered into by and between the **Harris County Flood Control District**, a body corporate and politic under the laws of the State of Texas, hereinafter referred to as the "District" or "HCFCFCD," and **Apcon Services, LLC**, a Texas limited liability company, hereinafter referred to as the "Contractor."

WITNESSETH, that

WHEREAS, HCFCFCD Unit U500-01-00 is part of the District's regional detention program; and

WHEREAS, the District desires to have a specific portion of HCFCFCD Unit U500-01-00, hereinafter referred to as the "Site," cleared and excavated, the spoil removed and transported therefrom, and disposed of offsite, and a Storm Water Pollution Prevention Plan implemented, hereinafter referred to as the "Project," said Site being that certain 7.9-acre tract described in deed recorded at Clerk File No. RP-2021-465529 in the Official Real Property Records, Harris County, Texas; and

WHEREAS, the Contractor represents that it is capable and qualified to perform the various services that may be required.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and benefits to the parties herein named, the parties agree as follows:

I.

Subject to the terms and provisions hereinafter set forth, and after complete and punctual compliance therewith and performance thereof, the District agrees to pay One Thousand and No/100 Dollars (\$1,000.00) to the Contractor for implementation of a Storm Water Pollution Prevention Plan, Site clearing, construction, regrading, excavation, removal, transportation, and disposal offsite of a minimum of 20,000 cubic yards of spoil, but not to exceed a maximum of 49,000 cubic yards of spoil, in accordance with the plans and specifications provided to the Contractor by the District, hereinafter referred to as the "Plans." Payments to the Contractor shall be paid upon completion of the excavation and removal provisions of the Agreement, as determined by the District's Executive Director or his designee (hereinafter the "Director"). Strict adherence to the Plans is expressly made a term and condition of this Agreement.

II.

THE CONTRACTOR COVENANTS NOT TO SUE AND AGREES TO RELEASE, DEFEND, PROTECT, INDEMNIFY, AND FOREVER HOLD THE DISTRICT, ITS OFFICIALS, AGENTS, SERVANTS, EMPLOYEES, REPRESENTATIVES, LICENSEES, INVITEES, AND OTHER CONTRACTORS (HEREINAFTER IN THIS ARTICLE REFERRED TO AS THE "DISTRICT") HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, LIABILITY, CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY CHARACTER AND KIND RESULTING FROM PERSONAL INJURY, ILLNESS, DEATH, OR DAMAGE TO OR LOSS OF PROPERTY OCCURRING, GROWING OUT OF, INCIDENT TO, OR RESULTING DIRECTLY OR INDIRECTLY FROM THE ACTIONS OR OMISSIONS OF CONTRACTOR, ITS OFFICERS,

DIRECTOR, EMPLOYEES, AGENTS, SERVANTS, LICENSEES, SUBCONTRACTORS, OR REPRESENTATIVES IN SECURING, EXERCISING, OR IN ANY MANNER PERFORMING THE TERMS AND CONDITIONS OF THIS AGREEMENT. CONTRACTOR AGREES TO RELEASE AND COVENANTS NOT TO SUE OR IMPEAL THE DISTRICT UNDER ANY THEORY OF LIABILITY FOR A CAUSE OF ACTION WHICH MAY ARISE FOR DAMAGE, INJURY, SICKNESS, OR DEATH CAUSED IN WHOLE OR IN PART BY ANY DEFECT IN OR CONDITION OF ANY PROPERTY, AREA, FACILITIES, EQUIPMENT, TOOLS, OR OTHER ITEMS WHICH MAY BE PROVIDED BY DISTRICT, WHETHER OR NOT SUCH DEFECT OR CONDITION WAS KNOWN OR COULD HAVE BEEN KNOWN BY THE DISTRICT.

III.

All or a portion of the Project will be constructed on land or right-of-way belonging to the District. The District authorizes the Contractor to enter upon such land or right-of-way for the limited purpose of constructing the Project. The Contractor's authority to enter upon the land or right-of-way is expressly limited to the purposes set forth herein, is subject at all times to the District's right to enter upon and use its land for flood control purposes, as is more fully provided for in Article VIII. hereof, and is expressly limited to the extent of the District's right, title, or interest, if any, in and to the land or right-of-way used by the Contractor, and the District makes no representation or warranty regarding its right, title, or interest, if any, in and to the land or right-of-way used by the Contractor for constructing the Project. If, and in the event that, additional rights, title, and interest in and to property are needed to carry out any or all of the activities under this Agreement, the acquisition of such rights, title, and interest shall be at the sole expense and obligation of the Contractor.

IV.

During the term of this Agreement, Contractor will maintain general liability insurance on the Project Site in amounts not less than One Hundred Thousand and No/100 Dollars (\$100,000.00) for injuries or death to any one person and not less than Three Hundred Thousand and No/100 Dollars (\$300,000.00) for injuries or death to more than one person and not less than One Hundred Thousand and No/100 Dollars (\$100,000.00) for an injury to or destruction of property in any one accident or occurrence, or in the amounts of the District's maximum limitations of liability under the Texas Tort Claims Act, as amended, whichever amounts shall be greater. Within fifteen (15) days after the commencement of the Project, Contractor shall deliver a copy of each such insurance policy to the District's Executive Director or his designee, hereafter, the Director, as well as a certificate of insurance as proof of said insurance in a form satisfactory to the Director. Not later than thirty (30) days after the expiration date of each policy, Contractor shall furnish a copy of a renewal insurance policy to the Director, as well as a certificate of insurance as proof of said insurance in a form satisfactory to the Director.

V.

The District retains the right to enter the Project Site for any reason, including but not limited to the purpose of having the Director observe the Contractor's performance under this Agreement, and to order corrections to or modifications of the activities of the Contractor that are, within the sole discretion of the Director, inconsistent with the Plans or the terms of this Agreement.

VI.

The Contractor or Contractor's designee shall establish and maintain at all times construction staking clearly identifying the area to be affected and its limits as specified by the Plans. The Contractor agrees to complete the Project in a good and workmanlike manner and in accordance with the Plans and generally accepted standards pertinent thereto, while taking any steps necessary to keep the Project Site in good order and to remove any spoil dropped or otherwise deposited during its activities on public streets and bridges in the area. The Contractor, furthermore, agrees to properly and lawfully dispose of all spoil removed from the Project Site in

accordance with all other applicable federal, state, and local laws, regulations, and ordinances, and in such manner that the same shall not, after disposal, constitute a nuisance. **THE CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE PROPER DISPOSAL OF THE SPOIL REMOVED FROM THE SITE AND HEREBY EXPRESSLY INDEMNIFIES AND AGREES TO HOLD THE DISTRICT, ITS OFFICIALS, AGENTS, SERVANTS, EMPLOYEES, REPRESENTATIVES, AND OTHER CONTRACTORS HARMLESS FROM ANY AND ALL LIABILITY FOR ANY FAILURE TO PROPERLY TRANSPORT AND DISPOSE OF THE SAME.**

The Contractor will exercise all reasonable care and caution while carrying out any or all of the activities under this Agreement. The Contractor shall cause to be included in all subcontracts for work on the Project language substantially similar to the Release of Liability (Release) in the form attached hereto as Exhibit "B," and shall furnish a copy of same to the District upon request. The Contractor understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that the execution and delivery of said subcontract Release is a condition of another person's participation in the performance of services under this Agreement and the Contractor warrants that no person will enter the Site unless the Contractor has obtained and delivered an executed subcontract Release covering that person. Any individual entering the Site in violation of Contractor's warranty is and shall be deemed a trespasser.

The Contractor has been advised by the District and the Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that disposal of material in the base flood elevation (BFE) or the 500-year flood plain as determined by the latest FEMA approved FIRM maps is prohibited and shall be deemed a breach of agreement. Furthermore, in the event of this determination, the Contractor understands that the District will immediately terminate this Agreement and the Contractor may be disqualified from participating in any future Excavation and Removal agreements.

The Contractor agrees to submit a monthly report indicating the location of disposal sites utilized in the prior month and approximate cubic yards of spoil in accordance with the Material Disposal Guidelines attached hereto as "Exhibit A". The District, at their discretion, may complete a Disposal Site Review to confirm the location of a disposal site. If a disposal site is determined to be located within a flood plain, the Contractor, at their discretion, can submit a variance request with an explanation why the disposal of material is not considered fill in the flood plain. The District will consider the request and respond accordingly. The decision of the District shall be final.

Material disposed of in the BFE or the 500-year flood plan without permits shall be removed and properly disposed of by the Contractor at no cost to the District. The Contractor shall restore the site at no cost to the District.

VII.

The Director retains the right to stop implementation of the Plans and to immediately terminate this Agreement, in the event that the Director determines, in his sole discretion, that the Plans or the terms of this Agreement have been violated or breached.

VIII.

The Contractor agrees that the Director, at all times, retains the right to demand immediate removal of any and all equipment, personal property, and personnel from the Project Site, or to take such steps as may be necessary to remove the same. The District, its officials, agents, servants, employees, representatives, licensees, invitees, and other contractors assume no responsibility for the well-being or disposition of any items of equipment or personal property removed hereunder. The District, furthermore, reserves the right to, at any time, enter upon and use the subject property for flood control purposes and to take such actions with respect to such property or any personal property located thereon as, in its Director's sole discretion, may be necessary or convenient for flood control purposes and the Contractor shall have no claim for damages of any character on account thereof against the District, its officials, agents, servants,

employees, representatives, licensees, invitees, or other contractors. The Director may also terminate this Agreement without cause upon thirty (30) days prior written notice to the Contractor and the Contractor shall have no claim for damages of any character on account thereof against the District, its officials, agents, servants, employees, representatives, licensees, invitees, or other contractors. Furthermore, the Director will terminate this Agreement if the Contractor does not excavate and remove the minimum average excavation requirement of **5,000** cubic yards of spoil every **30** days.

IX.

In the event of an early termination of the Agreement by the District, the District agrees to pay the Contractor a prorated share of the Agreement price based on the regrading completed and volume of spoil excavated, as determined by the Director.

X.

The Contractor agrees that the entire performance of the Agreement shall be completed to the satisfaction of the Director within three (3) years of the date fixed in the contract requisition when it shall have been issued, unless the Director determines in his sole discretion that good cause exists to extend the time of performance. Any extensions of time granted by the Director shall be in writing.

XI.

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

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

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

Apcon Services, LLC
200 River Pointe Drive, Suite 310
Conroe, Texas 77304
Attention: Mary McKaughan

XII.

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

XIII.

The Contractor represents that it shall conform fully with all applicable federal, state, and local laws, ordinances, and regulations, including applicable road usage regulations, specifically including, but not being limited to, laws, ordinances, and regulations of the U.S. Army Corps of Engineers, the Texas Historical Commission, the U.S. Environmental Protection Agency, the Texas Commission on Environmental Quality, and local permitting authorities. Evidence of any and all permits required by these laws, ordinances, or regulations shall be submitted to the District before the Contractor begins the Project. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD**

THE DISTRICT, ITS AGENTS, SERVANTS, EMPLOYEES, OFFICIALS, REPRESENTATIVES, LICENSEES, INVITEES, AND OTHER CONTRACTORS HARMLESS FROM ALL LIABILITY OR PENALTIES FOR FAILURE TO CONFORM FULLY WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, ORDINANCES, AND REGULATIONS.

In accordance with TEX. GOV'T CODE ANN. § 2270.002, the Contractor warrants and represents that it does not boycott Israel and agrees that it will not boycott Israel during the term of this contract.

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

XIV.

THE CONTRACTOR SHALL PERFORM ALL ENVIRONMENTAL MITIGATION REQUIRED FOR THE PROJECT, EXCLUDING WETLANDS MITIGATION, AND THE CONTRACTOR SHALL RELEASE, COVENANT NOT TO SUE, INDEMNIFY AND HOLD THE DISTRICT, ITS AGENTS, SERVANTS, EMPLOYEES, OFFICIALS, REPRESENTATIVES, LICENSEES, INVITEES, AND OTHER CONTRACTORS HARMLESS FROM ALL LIABILITY OR PENALTIES FOR FAILURE TO ADEQUATELY PERFORM SUCH MITIGATION, INCLUDING BUT NOT LIMITED TO, ANY FAILURE THAT MAY BE DUE, IN WHOLE OR IN PART, TO THE NEGLIGENCE OF THE DISTRICT, ITS OFFICIALS, AGENTS, SERVANTS, EMPLOYEES, REPRESENTATIVES, LICENSEES, INVITEES, OR OTHER CONTRACTORS, AND THAT MAY CAUSE THE BODILY INJURY OR DEATH OF THE CONTRACTOR OR OF AN EMPLOYEE OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENT OR SUBCONTRACTOR OF ANY TIER.

XV.

The Contractor shall be responsible for the execution of any Storm Water Pollution Prevention Plan prepared by the District, and the submittal of requisite Notice of Intent from the District and the Contractor to the Texas Commission on Environmental Quality ("TCEQ"). Evidence of those procedures shall be submitted to the Director before the Contractor begins construction of the Project. The Contractor shall comply with the District's format for filing a Storm Water Pollution Prevention Plan. A copy of the submitted Notice of Termination (NOT) to TCEQ is required for approval of final payment.

XVI.

The District and the Contractor bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement to all covenants of this Agreement. Neither the District nor the Contractor shall assign, sublet, or transfer its or his interest in this Agreement without the prior written permission of the other. Nothing herein shall be construed as creating any personal liability on the part of any official, agent, or representative of any public body that may be a party hereto.

XVII.

The Contractor has been advised by the District and the Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the District shall have available the total maximum sum of One Thousand and No/100 Dollars (\$1,000.00) specifically allocated to fully discharge any and all liabilities that may be incurred by

the District pursuant to the terms of this Agreement, and that the total maximum compensation the Contractor may become entitled to hereunder and the total maximum sum the District shall become liable to pay to the Contractor hereunder shall not under any conditions, circumstances, or interpretations exceed the said total maximum sum provided for in this Article and certified as available therefor by the County Auditor as evidenced by the issuance of a purchase order from the Harris County Purchasing Agent.

XVIII.

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

XIX.

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

XX.

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

XXI.

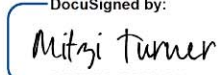
This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this Agreement shall be of no force or effect, excepting a subsequent modification in writing signed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

EXECUTED on _____.

APPROVED AS TO FORM:

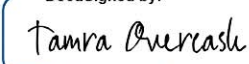
CHRISTIAN D. MENEFEE
Harris County Attorney

HARRIS COUNTY FLOOD CONTROL
DISTRICT

DocuSigned by:

By MITZI TURNER
Assistant County Attorney

By LINA HIDALGO
County Judge

ATTEST:

DocuSigned by:

By B7F1C23ACD3D45B...
TAMRA OVERCASH
Title Accounting Manager

APCON SERVICES, LLC

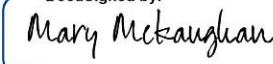
DocuSigned by:

By 1954E90A857946F...
MARY MCKAUGHAN
Managing Partner

EXHIBIT “A”

MATERIAL DISPOSAL GUIDELINES

SUMMARY

Disposal of material in the base flood elevation (BFE) or the 500-year flood plain as determined by the latest FEMA approved FIRM maps is prohibited. These guidelines include documentation requirements to determine the location of the disposal sites relative to the 500-year flood plain.

SUBMITTALS

- A. For disposal of excavated material, the Contractor shall submit a monthly report indicating sites utilized the prior month. The report shall include:
 - 1. Physical address of the disposal location.
 - 2. Aerial map with boundary of fill location identified.
 - 3. Estimated total number of cubic yards of excavated material to be disposed at the location.
 - 4. If requested, the fill permit, or demonstration of compliance with any local jurisdictional requirements for material disposal.

EXHIBIT "B"**RELEASE OF LIABILITY**

I HEREBY ASSUME ALL RISKS ASSOCIATED WITH ENTERING PROPERTY OWNED BY THE HARRIS COUNTY FLOOD CONTROL DISTRICT AND THE ACTIVITIES TAKING PLACE THEREON. I FURTHER RELEASE, COVENANT NOT TO SUE, INDEMNIFY AND HOLD HARMLESS THE HARRIS COUNTY FLOOD CONTROL DISTRICT, ITS EXECUTIVE DIRECTOR, OFFICIALS, SERVANTS, EMPLOYEES, AGENTS, REPRESENTATIVES, LICENSEES, INVITEES, AND CONTRACTORS FROM ALL CLAIMS OF ANY CHARACTER, TYPE, OR DESCRIPTION TO WHICH I OR ANOTHER PERSON MAY BE ENTITLED AS A RESULT OF ANY INJURY TO OR DEATH OF MYSELF OR ANOTHER PERSON, OR DAMAGE TO PROPERTY, OCCURRING AS A RESULT OF ACTIONS TAKING PLACE DURING THE PERFORMANCE OF PROJECT ACTIVITIES ON HCFCD UNIT U500-01-00 UNDER THE AGREEMENT BY AND BETWEEN THE HARRIS COUNTY FLOOD CONTROL DISTRICT AND APCON SERVICES, LLC.

I FURTHER AGREE TO RELEASE AND COVENANT NOT TO SUE THE HARRIS COUNTY FLOOD CONTROL DISTRICT, ITS EXECUTIVE DIRECTOR, OFFICIALS, SERVANTS, EMPLOYEES, AGENTS, REPRESENTATIVES, LICENSEES, INVITEES, AND CONTRACTORS FROM THE ABOVE-DESCRIBED CLAIMS, EVEN THOUGH SUCH INJURY OR DEATH OR DAMAGE TO PROPERTY IS CAUSED, IN WHOLE OR IN PART, BY ANY DEFECT IN OR CONDITION OF THE SITE, AND WHETHER OR NOT SUCH DEFECT OR CONDITION IS KNOWN OR SHOULD HAVE BEEN KNOWN TO THE HARRIS COUNTY FLOOD CONTROL DISTRICT, ITS EXECUTIVE DIRECTOR, OFFICIALS, SERVANTS, EMPLOYEES, AGENTS, REPRESENTATIVES, LICENSEES, INVITEES, OR CONTRACTORS, AND WHETHER OR NOT SUCH CLAIMS ARISE FROM NEGLIGENCE ATTRIBUTABLE TO THE HARRIS COUNTY FLOOD CONTROL DISTRICT, ITS EXECUTIVE DIRECTOR, OFFICIALS, SERVANTS, EMPLOYEES, AGENTS, REPRESENTATIVES, LICENSEES, INVITEES, OR CONTRACTORS.

Signature

Date

Printed Name

Address

Telephone Number

THE STATE OF TEXAS §
 §
 COUNTY OF HARRIS §

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

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

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

**ORDER APPROVING EXCAVATION AND REMOVAL AGREEMENT BETWEEN
 THE HARRIS COUNTY FLOOD CONTROL DISTRICT AND APCON SERVICES, LLC
 HCFCD PROJECT ID U500-01-00-E003
 HCFCD UNIT U500-01-00; PRECINCT 4**

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

	Yes	No	Abstain
Judge Lina Hidalgo	☐	☐	☐
Comm. Rodney Ellis	☐	☐	☐
Comm. Adrian Garcia	☐	☐	☐
Comm. Tom S. Ramsey, P.E.	☐	☐	☐
Comm. R. Jack Cagle	☐	☐	☐

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

WHEREAS, HCFCD Unit U500-01-00 is part of the District's regional detention program; and

WHEREAS, the District desires to have a specific portion of HCFCD Unit U500-01-00, hereinafter referred to as the "Site," cleared and excavated, the spoil removed and transported therefrom, and disposed of offsite, and a Storm Water Pollution Prevention Plan implemented, hereinafter referred to as the "Project," said Site being that certain 7.9-acre tract described in deed recorded at Clerk File No. RP-2021-465529 in the Official Real Property Records, Harris County, Texas; and

WHEREAS, the Contractor represents that it is capable and qualified to perform the various services that may be required.

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

Section 1: The recitals set forth in this order are true and correct.

Section 2: County Judge Lina Hidalgo is hereby authorized to execute for and on behalf of the Harris County Flood Control District, an Agreement by and between the Harris County Flood Control District and Apcon Services, LLC, for a maximum contribution to be paid by the District of One Thousand and No/100 Dollars (\$1,000.00), said Agreement being incorporated herein by reference for all purposes as though fully set forth verbatim herein.

Section 3: The Director of the District is hereby authorized to perform any and all necessary acts within the scope of the terms and conditions of the Agreement, which is incorporated herein by reference for all purposes as though fully set forth verbatim herein, to accomplish the purpose of this Order.

