

# H-GAC

Houston-Galveston Area Council

P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

Intergovernmental Agreement - Interlocal - City of Angleton - Community and Environmental - ID: 9112 ID: 9112

## INTERLOCAL AGREEMENT for HAZARD MITIGATION PLANNING

### AGREEMENT

This Interlocal Agreement, hereinafter referred to as “Agreement”, is made and entered by and between City of Angleton, hereinafter referred to as “Participant”, having its principal place of business at 121 S. Velasco, Angleton, TX 77515, and the Houston-Galveston Area Council, hereinafter referred to as “H-GAC”, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027.

### RECITALS

It is to the mutual benefit of the Participant and H-GAC that City of Angleton and all participating jurisdictions therein be eligible to apply for Federal Emergency Management Administration’s (FEMA) Hazard Mitigation Assistance Programs (HMA) funds to address hazard mitigation needs within their service areas. It is of mutual benefit to the Participant and H-GAC that a Hazard Mitigation Plan for City of Angleton be drafted for FEMA approval.

- A. Development of City of Angleton Hazard Mitigation Plan (hereinafter called the “Plan”) will include a public involvement process, risk assessment and hazard identification, creation of mitigation strategies, and local adoption of the plan by City of Angleton and all its participating jurisdictions. Specific tasks associated with the development of the Plan are included in Exhibit A, Scope of Work with the understanding that all activity within this process is to ensure compliance with 44 CFR 201.6.
- B. H-GAC will be applying on behalf of City of Angleton and will be responsible for administering the Texas General Land Office – Local Hazard Mitigation Plans Program (GLO - LHMP) Grant. City of Angleton and H-GAC shall jointly develop the Plan and share in decisions regarding scope and product.
- C. The project timeframe is Aug 19 2022 and end on Feb 19 2024.

**NOW THEREFORE**, for and in consideration of the mutual covenants, agreements, and benefits to the parties herein named, it is agreed as follows:

### TERMS

#### Article 1: Legal Authority

Both Parties mutually agree that they each possess adequate legal authority to enter into this Agreement. City of Angleton and H-GAC warrants and represents that it is not in breach of any other contract, obligation or covenant that would affect City of Angleton or H-GAC’s ability to perform hereunder and, as a result of entering into this Agreement, will not breach any such contract, obligation, or covenant,

## **Article 2: Applicable Laws**

H-GAC and City of Angleton agree to conduct all activities under this Agreement in accordance with all applicable rules, regulations, ordinances, and laws in effect or promulgated during the term of this Agreement.

## **Article 3: Period of Performance**

This Agreement shall be effective on the date the last party executes this Agreement and, except as provided in Article 4, shall terminate upon the completion of the Plan, adoption by participating jurisdictions, and conclusion of H-GAC's contract with the Texas General Land Office (GLO), but shall not exceed a period of eighteen (18) months from the effective date. Upon completion or termination of this Agreement, all data prepared for the Plan shall be made available by H-GAC to City of Angleton, as provided by applicable law, without restriction or limitation on its further use.

## **Article 4: Termination**

H-GAC and City of Angleton acknowledge that this Agreement may be terminated for Convenience or Default.

### *A. Convenience*

Either Party may terminate this Agreement at any time, in whole or in part, with or without cause, whenever the Parties determines that for any reason such termination is in the best interest, and by providing written notice by certified mail to the other Party. Upon receipt of notice of termination, all services hereunder shall cease to the extent specified in the notice of termination.

Either Party may cancel or terminate this Agreement upon submission of thirty (30) days written notice, presented to the other Party via certified mail. Neither Party may give notice of cancellation after it has received notice of default from the other Party.

### *B. Default*

In the event of default, this Agreement may be terminated for the following scenarios:

- (1) If the performing Party fails to perform the services herein specified within the time specified herein or any extension thereof; or
- (2) If the performing Party fails to perform any of the other provisions of this Agreement for any reason whatsoever, or so fails to make progress or otherwise violates the Agreements that completion of services herein specified within the Agreement term is significantly endangered, and in either of these two instances the performing Party does not cure such failure within a period of ten (10) business days (or such longer period of time as may be authorized and agreed upon by the Parties in writing) after receiving written notice by certified mail of default.

The termination of this Agreement shall extinguish all rights, duties, obligations, and liabilities of H-GAC and City of Angleton under this Agreement. If this Agreement is terminated prior to completion of the Study, H-GAC shall, within thirty (30) days of termination of this Agreement, prepare an accounting of the costs of the Plan through termination of this Agreement, which

accounting shall reflect the amount representing City of Angleton's share of required match costs through termination.

**Article 5: Use of Funding**

H-GAC hereunder shall not use any cash payment by City of Angleton to H-GAC for any purpose other than paying costs incurred in Plan development.

**Article 6: Limitation of Liability**

Each Party shall have no liability whatsoever for the actions of, or failure to act by, any employees, contractors, subcontractors, agents, representatives, or assigns of the other Party in connection with the Agreement, and the Parties covenants and agree, to the extent permitted by law, that each shall be solely responsible for, and with respect to any claim or cause of action arising out of or with respect to any act, omission, or failure to act by its respective employees, contractors, subcontractors, agents, representatives, or assigns, in connection with the Agreement.

**Article 7: Independent Parties**

H-GAC acknowledges that it is not an agent, servant, or employee of City of Angleton, and that it is responsible for its own acts and deeds during the performance of the work during the term of the Plan. City of Angleton acknowledges that it is not an agent, servant, or employee of H-GAC, and that it is responsible for its own acts and deeds during the performance of the work during the term of the Plan.

**Article 8: Amendments**

Any changes in the Agreement provisions or obligations of the parties hereto shall be enacted by written amendment executed by both City of Angleton and H-GAC.

**Article 9: Records Retention**

City of Angleton and H-GAC shall maintain all records pertinent to this Agreement, and all other financial, programmatic, statistical, property, and supporting documentation for a period of no less than seven (7) years from the later of the date of acceptance of the final contract closeout. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the seven (7) years, whichever is later, and until any outstanding litigation, audit, or claim has been fully resolved.

**Article 10: Audit**

Notwithstanding any other audit requirement, H-GAC and City of Angleton agree that expenditures of cumulative state or federal funds exceeding seven-hundred fifty thousand dollars (\$750,000) in a fiscal year shall be subjected to audit in compliance with 2 CFR 200.

**Article 11: Severability**

The Parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

**Article 12: Force Majeure**

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the performing party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. In the event of force majeure, the affected Party must provide the other Party written notice of force majeure and the estimated impact to performance of this Agreement.

**Article 13: Notices**

Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to H-GAC or City of Angleton at the following addresses:

City of Angleton  
121 S. Velasco  
Angleton, TX 77515  
Attention: Jason Perez, Mayor

Houston-Galveston Area Council  
P.O. Box 22777  
Houston, Texas 77227  
Attention: Chuck Wemple, Executive Director

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

**Article 14: Federal Compliance**

City of Angleton agrees to comply with all federal statutes relating to nondiscrimination, labor standards, and environmental compliance. Additionally, for work to be performed under the Agreement or subcontract thereof, including procurement of materials or leases of equipment, City of Angleton shall notify each potential subcontractor or supplier of City of Angleton's federal compliance obligations. These may include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) the Fair Labor Standards Act of 1938 (29 USC 676 et. seq.), (d) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990; (e) the Age Discrimination in Employment Act of 1967 (29 USC 621 et. seq.) and the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (f) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination

on the basis of drug abuse; (g) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (h) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (i) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (j) any other nondiscrimination provisions in any specific statute(s) applicable to any Federal funding for this Agreement; (k) the requirements of any other nondiscrimination statute(s) which may apply to this Agreement; (l) applicable provisions of the Clean Air Act (42 U.S.C. §7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.), Section 508 of the Clean Water Act (33 U.S.C. 1251), Executive Order 11738, and the Environmental Protection Agency regulations at 40 CFR Part 15; (m) applicable provisions of the Davis Bacon Act (40 U.S.C. 276a - 276a-7), the Copeland Act (40 U.S.C. 276c), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), as set forth in Department of Labor Regulations at 20 CFR 5.5a; (n) 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 (P.L. 94-163).

#### **Article 15: Texas Public Information Act**

The Parties expressly acknowledge that this Agreement is subject to the Texas Public Information Act, Tex. Gov't Code Ann. §§ 552.001 et seq., as amended (the "Act"). Since both Parties are subject to the Act, each shall be entitled to release any and all information necessary to comply with Texas law without the prior written consent of the other. In the event a Party to this Agreement receives a written request for information pursuant to the Act that affects one right, title to, or interest in any information or data or a part thereof under this Agreement, then the Party receiving the request shall promptly notify the other Party to this Agreement of such request. The Party receiving the request may, at its own option and expense, prepare comments and submit information directly to the Attorney General stating why the requested information is exempt from disclosure pursuant to the requirements of the Act. The Party receiving the request is solely responsible for submitting the memorandum brief and information to the Attorney General within the time period prescribed by the Act. The Party receiving the request solely responsible for seeking any declaratory or injunctive relief regarding the disclosure of information that it deems confidential or privileged.

#### **Article 16: Universal Identifier and System for Award Management (SAM)**

In accordance with 2 CFR Title 2, Subtitle A, Chapter I, Part 25 as it applies to a Federal awarding agency's grants, cooperative agreements, loans, and other types of Federal financial assistance as defined in 2 CFR 25.406. The Local Government Authority understands and as it relates to 2 CFR 25.205(a), a Federal awarding agency may not make a Federal award or financial modification to an existing Federal award to an applicant or recipient until the entity has complied with the requirements described in 2 CFR 25.200 to provide a valid unique entity identifier and maintain an active SAM registration ([www.SAM.gov](http://www.SAM.gov)) with current information (other than any requirement that is not applicable because the entity is exempted under § 25.110). 2 CFR 25.200(b) requires that registration in the SAM prior to submitting an application or plan; and maintain an active SAM registration with current information, including information on a recipient's immediate and highest level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency; and provide its unique entity identifier in each application

or plan it submits to the Federal awarding agency. To remain registered in the SAM database after the initial registration, the applicant is required to review and update its information in the SAM database on an annual basis from the date of initial registration or subsequent updates to ensure it is current, accurate and complete. At the time a Federal awarding agency is ready to make a Federal award, if the intended recipient has not complied with an applicable requirement to provide a unique entity identifier or maintain an active SAM registration with current information, the Federal awarding agency: (1) May determine that the applicant is not qualified to receive a Federal award; and (2) May use that determination as a basis for making a Federal award to another applicant.

#### **Article 17: Procurement of Recovered Materials**

In accordance with 2 CFR 200.323, the Houston-Galveston Area Council and the City of Angleton must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include: (1) procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (2) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (3) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Pursuant to the Federal Rule above, as required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6962(c)(3)(A)(i)), the Contractor or Subrecipient certifies that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the Agreement will be at least the amount required by the applicable contract specifications or other contractual requirements.

**Article 18: Indemnification** Each Party agrees to indemnify and hold harmless, to the fullest extent allowed by law, the other Parties and their officers, their elected officials, agents, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments, and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of the elected officials, officers, or employees of the indemnifying Party in the performance of this Agreement. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this Agreement that results in any claim by a third party for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom. Further, each Party shall maintain a policy or policies of insurance (or a self-insurance program), in an amount sufficient to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this Agreement shall require any Party to indemnify or hold harmless the other Parties from liability for the negligent or wrongful acts or omissions of the other Parties or their officers, agents, or employees. No portion of this Agreement shall be construed to constitute a waiver of the sovereign immunity of any Party. This Paragraph survives any termination of this Agreement

#### **Article 19: Definitions**

Unless otherwise stated in this Agreement, words which have well-known technical, or industry meanings are used in accordance with such recognized meaning.

**Article 20: Choice of Law - Venue**

This Agreement shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with the Agreement shall lie exclusively in Harris County, Texas.

**Article 21: Entire Agreement**

The parties agree that this Agreement contains all the terms and conditions of the understanding of the parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the parties and others relating hereto are superseded by this Agreement.

**SIGNATURES:**

H-GAC and the Participant have read, agreed, and executed the whole Agreement as of the date first written above, as accepted by:

**City of Angleton**

**H-GAC**

Signature

Signature

Name Jason Perez

Name Chuck Wemple

Title Mayor

Title Executive Director

Date

Date

## **Exhibit A: Scope of Work, Roles and Responsibilities**

### **Overview**

H-GAC has a proven track record for developing comprehensive and effective plans based on input from local leaders and community members. The Plan will be based on comprehensive conversations with City of Angleton staff and extensive public input through a series of workshops and an advertised public comment period, a widely recognized approach that meets the requirements of FEMA.

H-GAC and City of Angleton staff will identify hazards based on previous planning efforts, community surveys, and input from local and regional experts. H-GAC and City of Angleton staff will work together during workshops and one-on-one meetings to prepare an overall strategy including specific hazard mitigation activities. City of Angleton and participating jurisdictions are committed to not only adopting the Plan, but also to assigning responsibility for implementation and maintaining the Plan through annual updates, including, but not limited to changes requested by the Texas General Land Office (GLO) and FEMA.

H-GAC acknowledges and agrees that City of Angleton's obligations are limited to the expressed responsibilities in this Agreement.

### **Roles and Responsibilities:**

- H-GAC will provide staff and resources to develop the Plan, including designated staff member assigned to Plan development. H-GAC will also provide support from its finance and operational staff to ensure compliance with the requirements of the grant.
- City of Angleton municipal staff are an integral part of the development of the Plan and will be involved throughout the community workshops, capabilities surveys, and mitigation strategy development. Responsibility for each mitigation action will be assigned to a specific department at the City of Angleton. City of Angleton will assure that the City of Angleton and participating jurisdictions adopt the Plan.

## **Scope of Work**

### **Task 1 Participation of Agencies, Stakeholders, and the Public:**

H-GAC will leverage its relationships in the emergency management community with flood plain managers, academic institutions, public safety officers, county and municipal employees, and elected officials in the development of the Plan. City of Angleton will enter into an inter-local agreement stating their commitment to participate in the planning process, including attending mitigation planning workshops, completing a Local Capability Assessment Survey, and identifying completed mitigation projects from past plans, as applicable.

City of Angleton will be given the opportunity to review the Plan and consider it for approval and adoption. The community-based hazard mitigation planning process will consist of a series of three workshops in City of Angleton. The first community workshop will include capability assessment and hazard identification and risk assessment. The second will identify mitigation strategies, plan maintenance procedures, and plan documentation. The third and final community workshop will focus on Plan adoption and approval.

Roles and Responsibilities:



- H-GAC will be responsible for providing workshop materials and conducting the workshops.
- City of Angleton will be responsible for developing stakeholder lists, distributing workshop information and hosting the event. Additionally, responsibilities include completing assessment surveys, and identifying completed mitigation projects.

**Task 2 Hazard Identification and Risk/Vulnerability Assessment:**

H-GAC will work with the City of Angleton to collect risk and vulnerability survey responses and evaluate the survey responses in light of past hazard mitigation planning efforts. H-GAC will use HAZUS software to identify the risk of flooding, hurricanes, and costal surge. H-GAC will seek input from members of the regional academic community specializing in national disasters, hazard mitigation, and resiliency on the Plan and incorporate their insight on the current state of vulnerabilities.

Roles and Responsibilities:

- H-GAC will be responsible for developing and evaluating the hazard identification and risk vulnerability assessment: running HAZUS software and best practices research.
- City of Angleton will be responsible for completing the individual hazard identification and risk vulnerability assessments.

**Task 3 Mitigation Strategy:**

Based on the information collected from the public, stakeholders, and agencies in the first community workshop and the Local Capability Assessment Survey, H-GAC will work with the City of Angleton and stakeholders to develop mitigation strategies. During the second community workshop, H-GAC will review the mitigation actions and solicit additional actions from participants. H-GAC will additionally coordinate one-on-one meetings to gather mitigation actions and form a comprehensive mitigation strategy.

Roles and Responsibilities:

- H-GAC will be responsible for developing individual mitigation strategies and developing compiling a comprehensive mitigation strategy.
- City of Angleton will be responsible for completing the Local Capability Assessment Survey and developing and reviewing mitigation strategies.

**Task 4 Plan Adoption:**

The final community workshop will focus on plan approval and adoption. As part of the inter-local agreement, the City of Angleton and participating jurisdictions will adopt the Plan following FEMA acceptance. The City of Angleton and participating jurisdiction will assign each action identified in the Plan to a specific person or local government office to increase accountability and the likelihood of implementation.

Roles and Responsibilities:

- H-GAC will be responsible for submitting the Plan for FEMA approval. H-GAC will responsible and revise Plan accordingly.
- City of Angleton and participating jurisdictions will be responsible for adopting the Plan.

**Task 5 Plan Maintenance:**

Maintenance procedures ensure that the Plan remains a dynamic and functional document. Following plan adoption, H-GAC will host an annual meeting to provide technical assistance and ensure that the Plan is revised as necessary on an annual basis. City of Angleton and participating jurisdictions will review, evaluate, and update the Plan to submit to the State Hazard Mitigation Officer every five years in accordance with 44 CFR, Section 201.6. Evaluation criteria for ongoing plan maintenance will include new developments in identified hazard areas; increased exposure to hazards; an increase or decrease in capability to address hazards; and changes to federal or state legislation. Updates will also be made to reflect lessons learned from recently declared federal disasters.

**Roles and Responsibilities:**

- H-GAC will be responsible for hosting annual meeting.
- City of Angleton and participating jurisdictions will be responsible for the review, evaluate, and update the Plan and submittal to the State Hazard Mitigation Officer every five years in accordance with state and federal regulations.