

AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

**PART I - AGREEMENT**

THIS AGREEMENT, entered into the \_\_\_\_\_ day of \_\_\_\_\_, by and between the CITY OF BAY CITY, TEXAS, hereinafter called the “City”, acting herein by \_\_\_\_\_, hereunto duly authorized, and LYNN ENGINEERING LLC DBA JOHN D. MERCER & ASSOCIATES hereinafter called “Firm”, acting herein by John D. Mercer, PE, Authorized Representative.

WITNESSETH THAT:

WHEREAS, the City of Bay City desires to enter into an engineering services agreement for the design and construction contract management for the construction of the Hardeman Park Soccer Field Lighting (hereinafter called “Project”) under the general direction of the American Rescue Plan Act (hereinafter called ARPA) administered by the United States Department of the Treasury (USDT or Treasury); and

WHEREAS, the City desires to engage Firm to render certain services in connection with ARPA Projects.

NOW THEREFORE, the parties do mutually agree as follows:

1. Scope of Services  
The Firm will perform the services set out in Part II, Scope of Services
2. ARPA Compliance  
The Firm agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing.
3. Time of Performance  
The services of the Firm shall commence on the date first above written. In any event, all of the services required and performed hereunder shall be completed no later than the project’s administrative closure date of December 31, 2026, as defined by the USDT. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury’s implementing regulations, City may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
4. Local Program Liaison  
For purposes of this Agreement, the GrantWorks project manager or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the Firm. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.
5. Maintenance of and Access to Records

AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

The Firm shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of the Firm in order to conduct audits or other investigations.

Records shall be maintained by the Firm for a period of five (5) years after all funds have been expended or returned to USDT, whichever is later.

6. Compensation and Method of Payment

The Firm shall be compensated with a negotiated fixed fee of \$21,000.00. Payment to the Firm shall be made on a monthly basis not to exceed the amounts specified for the identified milestones presented in Part III, Payment Schedule, of this Agreement.

7. Indemnification

The Firm shall comply with the requirements of all applicable laws, rules, and regulations, and shall exonerate, indemnify, and hold harmless the City and its agency members from an against any and all claims, costs, suits, and damages, including attorney's fees arising out of the Firm's performance or nonperformance of the activities, services or subject matter called for in this Agreement, and shall assume full responsibility for payments of Federal, State, and local taxes on contributions imposed or required under the Social Security, worker's compensation, and income tax laws.

8. Miscellaneous Provisions

- This Agreement shall be construed under and according to the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Matagorda County, Texas.
- This Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.
- In any case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.
- This Agreement may be amended by mutual agreement of the parties hereto and a writing to be attached to be incorporated into this Agreement.



AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

**PART II - SCOPE OF SERVICES**

The Firm shall render the following professional services necessary for the development of the project.

Design and construction contract management as required for the bidding, award and construction of Hardeman Park Soccer Field Lighting.

**SCOPE OF SERVICES**

1. Attend preliminary conferences with the City regarding the requirements of the project.
2. Complete acquisition of any additional real property/easements/rights-of-way determined necessary in a manner that complies with the Uniform Relocation Assistance and Real Property Acquisition Act (URA) .
  - a. Acquisitions of land for the ARPA project and, if applicable, furnish to the City:
    - i. Name and address of property owners;
    - ii. Legal description of parcels to be acquired; and
    - iii. Map showing entire track with designation of part to be acquired.
3. Make any necessary surveys or existing rights-of-way, topography, utilities, or other field data required for proper design of the project. Provide consultation and advice as to the necessity of the City providing or obtaining other services such as auger borings, core borings, soil tests, or other subsurface explorations; laboratory testing and inspecting of samples or materials; other special consultations. The Firm will review any tests required and act as the City's representative in connection with any such services.
4. Prepare railroad/highway permits
5. Prepare all environmental permits and clearances required for the project
6. Prepare preliminary engineering/architectural drawings and specification for the project in sufficient detail to indicate clearly the intent of the design, to include preliminary layouts, sketches and Firm's preliminary estimate of Project cost and to be completed within 100 days of execution of this Agreement.
7. Furnish the City three (3) copies of the preliminary design documents (additional copies will be furnished to the City at direct cost of reproduction).
8. Furnish the City a written monthly status report at least seven (7) days prior to the regularly scheduled council meeting until the project is closed.
  - a. Submit detailed drawings and plans/specifications to appropriate regulatory agencies and obtain clearance.
  - b. Prepare bid packet/contract documents/advertisement for bids. At the time, the bid packet is completed, the Firm shall also furnish to the City an updated written Estimate of Probable Costs for the Project.

AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

- c. Participate in Pre-Bid Conferences as requested, and provide technical advice to assist in answering bidders' questions.
  - d. Make a 10-day call to confirm prevailing wage decisions if the value of the construction contract exceeds ten million dollars.
  - e. Incorporate any and all wage rate modifications or supersedes via bid addendum (if applicable).
  - f. Conduct bid opening and prepare minutes.
  - g. Tabulate, analyze, and review bids for completeness and accuracy.
  - h. Accomplish construction contractor's eligibility verification through [www.SAM.gov](http://www.SAM.gov). This verification shall be completed at time of solicitation and repeated immediately prior to award.
  - i. Conduct a pre-construction conference and prepare a copy of the report/minutes.
  - j. Coordinate with the City to issue a Notice to Proceed to construction contractor.
  - k. Provide all proposed construction contracts deductive alternatives where feasible, so that should the lowest responsive base bid for construction exceed the funds available, deductive alternatives can be taken to reduce the bid price.
  - l. Design for access by persons with disabilities for those facilities to be used by the public in accordance with Public Law 504.
  - m. Use locally approved forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond if applicable.
9. Make periodic visits, no less than every 30 days during the construction period, to the site to observe the progress and quality of the work, and to determine, in general, if the work is proceeding in accordance with the Agreement.
  10. Consult with and advise the City during construction; issue to contractors all instructions requested by the City; and prepare routine change orders if required, at no charge for engineering services to the City when the change order is required to correct errors or omissions by the Firm; provide price analysis for change orders; process change orders approved by City and the Firm and submit to GrantWorks for approval prior to execution with the construction contractor.
  11. Review shop and working drawings furnished by contractors for compliance with design concept and with information given in contract documents (contractors will be responsible for dimensions to be confirmed and correlated at the job site).
  12. Validate all contractors' payment requests and submit to the City within 14 days of receipt.
  13. Validation of payment requests shall include documentation of the Firm's on-site observations and review of the contractor's applications for payment, determine the amount owed to the contractor in such amounts; such approvals of payment to constitute a representation to the City, based on such observations and review, that the work has progressed to the point indicated and that the quality of work is in accordance with the plans, specifications and contract documents.

AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

14. Ensure that any retainage provision specified in the Construction contract is reflected in payment requests.
15. The City may require the Firm to assist in collection of Final Bills Paid Affidavits from Contractors and/or subcontractors.
16. Conduct interim/final inspections.
17. Prepare Certificate of Construction Completion
18. Revise contract drawings to show the work as actually constructed, and furnish the City with a set of "record drawings" plans.
19. The Firm will provide a copy of the final project record drawing(s) engineering schematic(s), as constructed using funds under this contract. These maps shall be provided in digital format containing the source map data (original vector data) and the graphic data in files on machine readable media, such as compact disc (CD), which are compatible with computer systems owned or readily available to the owner. The digital copy provided shall not include a digital representation of the engineer's seal but the accompanying documentation from the Firm shall include a signed statement of when the map was authorized, that the digital map is a true representation of the original sealed document, and that a printed version with the seal has been provided to the City. In addition, complete documentation as to the content and layout of the data files and the name of the software package(s) used to generate the data and maps shall be provided to the owner in written form.

**SUBCONTRACTS**

1. No work under this Agreement shall be subcontracted by the Firm without prior approval, in writing from the City.
2. The Firm shall, prior to proceeding with the work, notify the City in writing of the name of any subcontractors proposed for the work, including the extent and character of the work to be done by each.
3. If any time during the progress of the work, the City determines that any subcontractor is incompetent or undesirable, the City will notify the Firm who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the City.
4. The Firm will include in all contracts and subcontracts in excess of \$150,000 a provision which requires compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). The provisions shall require reporting of violations to the US Department of Treasury, TECQ, and the Regional Office of the Environmental Protection Agency (EPA).

AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

5. The Firm will include in all contracts and subcontracts in excess of \$250,000 provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
6. The Firm will include in all contracts and subcontracts in excess of \$10,000 provisions addressing termination for cause and for convenience by the City including the manner by which it will be effected and the basis for settlement.
7. The Firm will include in all contracts and subcontracts provisions requiring compliance with the following, if applicable:
  - a. Prime construction contracts in excess of \$10,000,000, as stated in the Coronavirus State and Local Fiscal Recovery Funds Compliance and Reporting Guidance Section B Project and Expenditure Report, number 8 j 1 on page 21 must be in compliance with the Davis-Bacon Act, as amended (40 U.S.C.3141-3144, 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5);
  - b. Prime construction contracts in excess of \$2,000, compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3)
  - c. Contracts greater than \$10,000, the inclusion of the Equal Opportunity clause provided under 41 CFR 60-1.4(b) (Executive Order 11246);
  - d. Contracts exceeding \$100,000, compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
  - e. For contracts in excess of \$10,000,000 that involve the employment of mechanics or laborers, compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), including work week requirements and safety conditions for workers, as supplemented by Department of Labor regulations (29 CFR Part 5); and
  - f. For procurement of recovered materials 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, compliance with 2 CFR 200.322 and section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, which requires procuring only items designated in guidelines of the EPA at 40 CFR part 247 that contain the highest percentage of recovered materials practicable.
  - g. Recipients and contractors will comply with CFR 200.216 which prohibits obligating or expending loan or grant funds to procure, obtain, extend or contract with services or systems 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. As described in Public Law 115-232, section 889, covered telecommunications

AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- h. Recipients and contractors will comply with CFR 200.322 which requires as appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, 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 section must be included in all subawards including all contracts and purchase orders for work or products under this award.
8. The Firm will include in all negotiated contracts and subcontracts a provision which indicates that funds will not be awarded under this contract to any party listed on the governmentwide 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), "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.
9. The Firm will include in all negotiated contracts and subcontracts a provision to the effect that the City, the Texas Comptroller of Public Accounts, the Comptroller General of the United States, the U.S. Department of Treasury, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.
10. The Firm will include in all contracts and subcontracts a requirement that the contractor maintain all relevant project records for five (5) years after the City has made final payment to the contractor and all other pending matters are closed.



AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

**STANDARD OF PERFORMANCE AND DEFICIENCIES**

1. All services of the Firm and its independent professional associates, consultants and subcontractors will be performed in a professional, reasonable and prudent manner in accordance with generally accepted professional practice. The Firm represents that it has the required skills and capacity to perform work and services to be provided under this Agreement.
2. The Firm represents that services provided under this Agreement shall be performed within the limits prescribed by the City in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances.
3. Any deficiency in Firm's work and services performed under this contract shall be subject to the provisions of applicable state and federal law. Any deficiency discovered shall be corrected upon notice from City and at the Firm's expense if the deficiency is due to Firm's negligence. The City shall notify the Firm in writing of any such deficiency and provide an opportunity for mutual investigation and resolution of the problem prior to pursuit of any judicial remedy. In any case, this provision shall in no way limit the judicial remedies available to the City under applicable state or federal law.
4. The Firm agrees to and shall hold harmless the City, its officers, employees, and agents from all claims and liability of whatsoever kind or character due to or arising solely out of the negligent acts or omissions of the Firm, its officers, agents, employees, subcontractors, and others acting for or under the direction of the Firm doing the work herein contracted for or by or in consequence of any negligence in the performance of this Agreement, or by or on account of any omission in the performance of this Agreement.

AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

**PART III - PAYMENT SCHEDULE**

City shall reimburse the Firm monthly for basic engineering professional services on the basis of the Firm's estimated percentage completion of the following Milestones, not to exceed the maximum amount of each milestone.

<b>MILESTONES</b>	<b>PERCENTAGE OF CONTRACT FEES</b>	<b>FEE AMOUNT</b>
Completion and Acceptance of Preliminary Engineering Plans & Specifications by City	25%	\$5,250
Approval of Final Plans & Specifications	30%	\$6,300
Completion of Bid Advertisement & Contract Award	15%	\$3,150
Completion of Final Closeout Assessment & Submittal of "As Builts" to City	25%	\$5,250
Completion of Final Inspection & Acceptance by City	5%	\$1,050
<b>TOTAL</b>	<b>100%</b>	<b>\$21,000</b>

Special Engineering Services shall be invoiced monthly based on the accumulated hours accrued by the Firm at the hourly rates by personnel classification given on Exhibit 1.

AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

**PART IV - TERMS AND CONDITIONS**

**1. USE OF FUNDS**

- a. Recipient, Subrecipients, and Contractors understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the “Act”), Treasury’s regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.

**2. PERIOD OF PERFORMANCE**

The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury’s implementing regulations, Recipients may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021 and ends on December 31, 2024.

**3. REPORTING**

Firm agrees to provide timely information aiding the City with any reporting obligations established by the Treasury as they relate to this award.

**4. ACCESS TO RECORDS**

In accordance with 2 CFR 200.337, during the Agreement’s time of performance the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives will have access to any books, documents, papers, and records maintained by the Consultant which are directly pertinent to the Contract for the purpose of making audit, examination, excerpts, and transcriptions.

**5. PRE-AWARD COSTS**

Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

**6. ADMINISTRATIVE COSTS**

Recipients may use funds provided under this award to cover both direct and indirect costs.

**7. COST SHARING**

Cost sharing or matching funds are not required to be provided by the Recipient.

**8. CONFLICTS OF INTEREST**

Recipient, Sub-Recipients, and Contractors understands and agrees it must maintain a conflict-of-interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict-of-interest policy is applicable to each activity funded under this award. Recipients and subrecipients must disclose in writing to the Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

9. COMPLIANCE WITH APPLICABLE RULES AND REGULATIONS.

- a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- b. Federal regulations applicable to this award include, without limitation, the following:
  - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine, are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
  - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
  - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
  - iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury’s implementing regulation at 31 C.F.R. Part 19.
  - v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
  - vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
  - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
  - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
  - ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
  - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury’s implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
  - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
  - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
  - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury’s implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of

AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

age in programs or activities receiving federal financial assistance; and v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. REMEDIAL ACTIONS

In the event of Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.

11. HATCH ACT

Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12. FALSE STATEMENTS

Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

13. PUBLICATIONS

Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."

14. DEBTS OWED THE FEDERAL GOVERNMENT

- a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.
- b. Any debts determined to be owed to the federal government must be paid promptly by Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been

AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

made or if the Recipient knowingly or Agreement for ARPA Administration Services. The Treasury will take any actions available to it to collect such a debt.

15. DISCLAIMER

- a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
- b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. PROTECTIONS FOR WHISTLEBLOWERS

- a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, 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.
- b. The list of persons and entities referenced in the paragraph above includes the following:
  - i. A member of Congress or a representative of a committee of Congress;
  - ii. An Inspector General;
  - iii. The Government Accountability Office;
  - iv. A Treasury employee responsible for contract or grant oversight or management;
  - v. An authorized official of the Department of Justice or other law enforcement agency;
  - vi. A court or grand jury; or
  - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. INCREASING SEAT BELT USE IN THE UNITED STATES

Pursuant to Executive Order 13043, 62 FR19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

18. REDUCING TEXT MESSAGING WHILE DRIVING

Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving.

19. TERMINATION OF AGREEMENT FOR CAUSE

In accordance with 2 CFR 200 APPENDIX II (B), if the Consultant shall fail to fulfill in a timely and proper manner his/her obligations under this Agreement, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the Client shall provide written notice to Consultant reasonably specifying the failure or violation. If Consultant fails to cure such failure or violation within five (5) business days of receiving such notice or, if the failure or violation is incapable of cure within such time frame, to begin to take actions to cure such failure or violation and to diligently pursue them to completion, Client thereupon shall have the right to terminate this Agreement immediately by giving written notice to the Consultant.

Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. In such an event, all finished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Consultant under this Agreement shall, at the option of the Client, become its property.

20. TERMINATION OF AGREEMENT FOR CONVENIENCE

Either the Client or the Consultant may terminate this Agreement at any time by providing at least ten (10) days' notice in writing to the other party to this Agreement. If the Agreement is terminated as provided herein, the Consultant will be paid for the time provided and expenses incurred up to the termination date. In such an event, all finished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Consultant under this Agreement shall, at the option of the Client, become its property.

21. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689, 2 CFR part 180)

The Consultant certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally assisted programs under Executive Orders 12549 1986) and 12689 (1989). The term "principal" for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Consultant. The Consultant understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

22. FEDERAL COMPLIANCE

During the term of this Agreement, the parties shall comply with all Federal laws, regulations, and rules including the following:

- a. CIVIL RIGHTS ACT OF 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- b. Section 504 Rehabilitation Act of 1973, as amended. The Consultant agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.
- c. AGE DISCRIMINATION ACT OF 1975. The Consultant shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- d. SECTIONS 106(b), 102(a)(4) and A109 OF THE HOUSING & COMMUNITY DEVELOPMENT ACT OF 1974. i. Under Title VI of the Civil Rights Act of 1964, no person shall on the ground of race, color, religion, national origin or sex 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 funds made available under this Title.
- e. EQUAL OPPORTUNITY CLAUSE. During the performance of this Agreement, the Consultant agrees as follows:
  - i. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant 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 Consultant 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.
  - ii. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive



AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- iii. The Consultant will not discourage 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 Consultant's legal duty to furnish information.
- iv. The Consultant 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 Consultant's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- vi. The Consultant 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.
- vii. In the event of the Consultant'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 Consultant 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

AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- viii. The Consultant will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) 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 Consultant 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 Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

23. CONTRACTING WITH SMALL AND MINORITY BUSINESS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.

- a. The Consultant must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- b. Affirmative steps must include:
  - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - iii. 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;
  - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  - v. 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; and
  - vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (i) through (v) of this section.

AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

24. PATENT RIGHTS AND INVENTIONS

The Consultant shall comply with the requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract. (2 CFR 200 Appendix II (f) and Rights to Inventions in 37 CFR Part 401).

25. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of “funding agreement” under 37 CFR §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 37 CFR Part 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. (2 CFR 200 Appendix II (B))

26. ENERGY EFFICIENCY

The Consultant shall 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 (Pub. L. 94A 163, 89 Stat. 871). (2 CFR 200 APPENDIX II (H) and 42 U.S.C. 6201).

27. VERIFICATION NO BOYCOTT ISRAEL

As required by Chapter 2271.002, Texas Government Code, the Consultant hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, “boycott Israel”, as defined by §808.001(1) of the Texas Government Code, 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.

28. NO FOREIGN TERRORIST ORGANIZATIONS

Pursuant to Chapter 2252.152, Texas Government Code, the Consultant represents and certifies that, at the time of execution of this Agreement neither the Consultant, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same

- i. 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
- ii. 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. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code

AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

29. COMBATING TRAFFICKING IN PERSONS

Pursuant to Chapter 52.222-50 of the F.A.R. the consultant agrees to comply with all provisions of the Combating Trafficking in Persons Act.

30. **Texas Ethics Commission** (10 TAC 2252)

A governmental entity or state agency may not enter into a contract described by Subsection (b) with a business entity unless the business entity, in accordance with this section and rules adopted under this section, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission that includes:

- (1) a list of each interested party for the contract of which the contracting business entity is aware; and
- (2) the signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

AMERICAN RESCUE PLAN ACT (ARPA)  
CONTRACT FOR ENGINEERING SERVICES

**PART V - APPENDICES**

CONFLICT OF INTEREST

DISCLOSURE OF LOBBYING ACTIVITIES

CERTIFICATION REGARDING LOBBYING

CERTIFICATE OF INTERESTED PARTIES FORM 1295

REQUIRED CONTRACT PROVISIONS

**EXHIBIT 1 – SCHEDULE OF HOURLY CHARGES**

# CONFLICT OF INTEREST


<b>CONFLICT OF INTEREST QUESTIONNAIRE</b> For vendor doing business with local governmental entity	<b>FORM CIQ</b>		
<p><b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b></p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="padding: 2px;">OFFICE USE ONLY</th> </tr> <tr> <td style="padding: 2px;">Date Received</td> </tr> </table>	OFFICE USE ONLY	Date Received
OFFICE USE ONLY			
Date Received			
<p><b>1 Name of vendor who has a business relationship with local governmental entity.</b></p> <p style="text-align: center;">N/A</p>			
<p><b>2</b> <input type="checkbox"/> <b>Check this box if you are filing an update to a previously filed questionnaire.</b> (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>			
<p><b>3 Name of local government officer about whom the information is being disclosed.</b></p> <p style="text-align: center;">N/A</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p>			
<p><b>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</b></p> <p style="margin-left: 40px;">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="margin-left: 80px;"> <input type="checkbox"/> Yes      <input type="checkbox"/> No                 </p> <p style="margin-left: 40px;">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p style="margin-left: 80px;"> <input type="checkbox"/> Yes      <input type="checkbox"/> No                 </p>			
<p><b>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</b></p>			
<p><b>6</b> <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>			
<p><b>7</b></p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;"> <p>Signature of vendor doing business with the governmental entity</p> </div> <div style="text-align: center;"> <p>5/10/22</p> <p>Date</p> </div> </div>			

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB  
0348-0046

## Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure)

<b>Type of Federal Action:</b> <u>  b  </u> a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	<b>Status of Federal Action:</b> <u>  a  </u> a. bid/offer/application b. initial award c. post-award	<b>Report Type:</b> a. initial filing <u>  a  </u> b. material change
<b>Name and Address of Reporting Entity:</b> ___ Prime     ___ Subawardee Tier___, if Known:		<b>If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>
<b>Congressional District, if known:</b>		<b>Congressional District, if known:</b>
<b>Federal Department/Agency:</b>		<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____
<b>Federal Action Number, if known:</b>		<b>9. Award Amount, if known:</b>  \$
<b>10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):</b>		<b>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</b> John D. Mercer & Associates 118 E. Main St. Edna, TX 77957
<b>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>		<b>Signature:</b>  <b>Print Name:</b> John D. Mercer <b>Title:</b> PE, Authorized Representative <b>Telephone No.:</b> 361-782-7121 <b>Date:</b> 5/10/22
Federal Use Only		Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)

# **CERTIFICATION REGARDING LOBBYING**



# CERTIFICATION REGARDING LOBBYING

## Certification Regarding Lobbying

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The undersigned shall require that the language paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995).


The Contractor, John D. Mercer & Assoc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

  
\_\_\_\_\_  
Signature of Contractor's Authorized Official

John D. Mercer, PE, Authorized Representative  
\_\_\_\_\_  
Printed Name and Title of Contractor's Authorized Official

5/10/22  
\_\_\_\_\_  
Date

# CERTIFICATE OF INTERESTED PARTIES FORM 1295

CERTIFICATE OF INTERESTED PARTIES		FORM 1295	
		1 of 1	
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.		<b>OFFICE USE ONLY</b>	
<b>1 Name of business entity filing form, and the city, state and country of the business entity's place of business.</b> John D. Mercer & Associates Edna, TX United States		<b>CERTIFICATION OF FILING</b> Certificate Number: 2022-884496  Date Filed: 05/10/2022  Date Acknowledged:	
<b>2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.</b> City of Bay City			
<b>3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.</b> E2589 Hardeman Park Soccer Field Lighting Project			
4		Nature of interest (check applicable)	
Name of Interested Party	City, State, Country (place of business)	Controlling	Intermediary
Lynn, Stuart	Bay City, TX United States	X	
<b>5 Check only if there is NO Interested Party.</b> <input type="checkbox"/>			
<b>6 UNSWORN DECLARATION</b>  My name is <u>John D. Mercer</u> , and my date of birth is <u>8/4/1947</u> .  My address is <u>118 E. Main St.</u> , <u>Edna</u> , <u>TX</u> , <u>77957</u> , <u>USA</u> . <small>(street) (city) (state) (zip code) (country)</small>  I declare under penalty of perjury that the foregoing is true and correct.  Executed in <u>Jackson</u> County, State of <u>Texas</u> , on the <u>10th</u> day of <u>May</u> , 20 <u>22</u> . <small>(month) (year)</small>  <div style="text-align: center;">   <hr style="width: 30%; margin: auto;"/>                     Signature of authorized agent of contracting business entity  <small>(Declarant)</small> </div>			

The non-Federal entity's contracts should contain applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards. The non-Federal entity's contracts may contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards. \*Language as of May 21, 2021.

**All Contracts**

THRESHOLD	PROVISION	CITATION
>\$250,000 (Simplified Acquisition Threshold)	Contracts for more than the simplified acquisition threshold, 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, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.	2 CFR 200 APPENDIX II (A)
>\$10,000	All contracts in excess of \$10,000 must 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.	2 CFR 200 APPENDIX II (B)
None	<p>Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”</p> <p>41 CFR 60-1.4 Equal opportunity clause.</p> <p>(b) Federally assisted construction contracts. (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:</p> <p>The [recipient] hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program</p>	2 CFR 200 APPENDIX II (C) and 41 CFR §60-1.4(b)

THRESHOLD	PROVISION	CITATION
	<p>involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:</p> <p>During the performance of this contract, the contractor agrees as follows:</p> <p>(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:</p> <p>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.</p> <p>(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.</p> <p>(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.</p> <p>(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</p>	

THRESHOLD	PROVISION	CITATION
	<p>section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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:</p> <p>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.</p> <p>The [recipient] 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 [recipient] so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such</p>	

THRESHOLD	PROVISION	CITATION
	<p>government which does not participate in work on or under the contract.</p> <p>The [recipient] 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.</p> <p>The [recipient] 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 [recipient] 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 [recipient] under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such [recipient]; and refer the case to the Department of Justice for appropriate legal proceedings.</p>	
>\$10,000,000.00	<p>Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$10,000,000.00 awarded by non-Federal entities must include a provision for 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, contractors must be 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. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal</p>	<p>2 CFR 200 APPENDIX II (D)</p> <p>Threshold increased by ARPA for specific infrastructure projects as published in the Federal Register</p>

THRESHOLD	PROVISION	CITATION
	awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.	
>\$100,000	Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity 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. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.	2 CFR 200 APPENDIX II (E)
None	Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or recipient 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 recipient must comply with the requirements of 37 CFR Part 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.	2 CFR 200 APPENDIX II (F)
>\$150,000	Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended— Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and	2 CFR 200 APPENDIX II (G)

THRESHOLD	PROVISION	CITATION
	the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).	
None	Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide 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), “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.	2 CFR 200 APPENDIX II (H)
>\$100,000	Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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 non-Federal award.	2 CFR 200 APPENDIX II (I) and 24 CFR §570.303
	See 2 CFR §200.323.	2 CFR 200 APPENDIX II (J)
	See 2 CFR §200.316.	2 CFR 200 APPENDIX II (K)
	See 2 CFR §200.322.	2 CFR 200 APPENDIX II (L)
None	The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.	2 CFR 200.112



THRESHOLD	PROVISION	CITATION
None	<p>The <a href="#">Federal awarding agency</a> and the <a href="#">non-Federal entity</a> should, whenever practicable, collect, transmit, and store <a href="#">Federal award</a>-related information in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable legislative requirements. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a web browser or computer system. The <a href="#">Federal awarding agency</a> or <a href="#">pass-through entity</a> must always provide or accept paper versions of <a href="#">Federal award</a>-related information to and from the <a href="#">non-Federal entity</a> upon request. If paper copies are submitted, the <a href="#">Federal awarding agency</a> or <a href="#">pass-through entity</a> must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.</p>	2 CFR 200.336
None	<p>Contracting with HUB, small and minority businesses, women's business enterprises, and labor surplus area firms.</p> <p>(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.</p> <p>(b) Affirmative steps must include:</p> <p>(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;</p> <p>(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;</p> <p>(3) 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;</p> <p>(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;</p> <p>(5) 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; and</p>	2 CFR 200.321

THRESHOLD	PROVISION	CITATION
	(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.	
None	<p>Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a recipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:</p> <p>(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.</p> <p>(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.</p> <p>(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.</p> <p>(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.</p> <p>(e) Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.</p> <p>(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).</p>	2 CFR 200.334

THRESHOLD	PROVISION	CITATION
	<p>(1) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.</p> <p>(2) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.</p>	
None	<p>CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED. A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or <a href="#">2252.153</a>. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such a term in Section 2252.151(2) of the Texas Government Code.</p>	Texas Government Code 2252.152
>\$100,000	<p>PROVISION REQUIRED IN CONTRACT. (a) This section applies only to a contract that:</p> <p>(1) is between a governmental entity and a company with 10 or more full-time employees; and</p> <p>(2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.</p> <p>(b) A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:</p> <p>(1) does not boycott Israel; and</p> <p>(2) will not boycott Israel during the term of the contract.</p>	Texas Government Code 2271
Option Contract Language for contracts awarded prior to Grant Award	The contract award is contingent upon the receipt of ARPA funds. If no such funds are awarded, the contract shall terminate.	Optional
	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

# EXHIBIT 1

## JOHN D. MERCER & ASSOCIATES

Consulting Engineers  
118 E. Main St., Edna, Texas 77957

### **SCHEDULE OF HOURLY CHARGES BY PERSONNEL CLASSIFICATION EFFECTIVE SEPTEMBER 1, 2021**

The per diem and miscellaneous expense charges for Engineering, Drafting, Surveying, and Planning Services are based on the following hourly or daily rates:

#### Engineering, Planning:

Associate Engineer, Planner V (PE5).....	\$210.00/hr.
Associate Engineer, Planner IV (PE4) .....	\$180.00/hr.
Associate Engineer, Planner III (PE3).....	\$155.00/hr.
Associate Engineer, Planner II (PE2) .....	\$140.00/hr.
Associate Engineer, Planner I (PE1) .....	\$130.00/hr.
Engineer, Planner II (EIT2).....	\$115.00/hr.
Engineer, Planner I (EIT1).....	\$100.00/hr.
Engineer Tech IV (ET4).....	\$120.00/hr.
Engineer Tech III (ET3).....	\$110.00/hr.
Engineer Tech II (ET2).....	\$95.00/hr.
Engineer Tech I (ET1).....	\$90.00/hr.
Construction Observer II.....	\$95.00/hr.
Construction Observer I.....	\$90.00/hr.
Administrative Assistant.....	\$65.00/hr.

#### Drafting, CADD:

CADD Operator III .....	\$85.00/hr.
CADD Operator II.....	\$80.00/hr.
CADD Operator I.....	\$70.00/hr.

#### Survey:

Professional Surveyor.....	\$210.00/hr.
Director of Survey Parties.....	\$110.00/hr.
GPS & Field Crew (1 man).....	\$130.00/hr.
GPS & Field Crew (2 man).....	\$175.00/hr.
GPS & Field Crew (3 man).....	\$220.00/hr.