

RESOLUTION NO. _____

WHEREAS, The City of Mission finds it in the best interest of the citizens of Mission, Texas that the City of Mission Spikes & Jupiter Drainage Engineering Design C&CB Project Scoping be operated for the 2024-2025 Fiscal Year; and

WHEREAS, The City of Mission agrees to provide applicable local matching funds for the said project as required by TWDB/FEMA; and

WHEREAS, The City of Mission agrees that in the event of loss or misuse of funds, The City of Mission assures that the funds will be returned to TWDB/FEMA in full.

WHEREAS, The City of Mission designates the Executive Director of Grants & Strategic Development as the subrecipient authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

NOW THEREFORE, BE IT RESOLVED that The City of Mission approves acceptance of the grant sub-application, designates and commits to provide applicable local matching funds for the City of Mission Spikes & Jupiter Drainage Engineering Design C&CB Project Scoping.

READ, CONSIDERED AND APPROVED, this 26th day of August 2024.

Norie Gonzalez Garza, Mayor

Attest:

Anna Carrillo, City Secretary

STATE OF TEXAS

TWDB Contract No. 2200012821

COUNTY OF TRAVIS

Flood Mitigation Assistance
Capability and Capacity Building
Project Scoping Grant
City of Mission

This Contract (hereinafter CONTRACT) is entered into by and between the TEXAS WATER DEVELOPMENT BOARD (TWDB), the RECIPIENT, serving as administrator of the Federal Emergency Management Agency (FEMA) Flood Mitigation Assistance Program, and **City of Mission**, the SUBRECIPIENT (CONTRACTOR). The RECIPIENT and CONTRACTOR may be referred to as "Party," or "Parties" to the CONTRACT.

**SECTION I. SPECIFIC CONDITIONS AND EXCEPTIONS
TO STANDARD AGREEMENT**

ARTICLE I. DEFINITIONS:

For the purposes of this CONTRACT, the following terms or phrases are defined as follows:

1. TWDB/RECIPIENT – The Texas Water Development Board, Unique Entity Identifier (UEI) No. JZFM39LKH51, or its designated representative.
2. FEMA – Federal Emergency Management Agency. FEMA is not a party to the CONTRACT and is not subject to any obligations or liabilities pertaining to any matter resulting from the CONTRACT.
3. FMA – Flood Mitigation Assistance Program, Catalog of Federal Domestic Assistance (CFDA) No. 97.029
4. 2 CFR PART 200 – Title 2 of the Code of Federal Regulations, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
5. CONTRACTOR/SUBRECIPIENT – **City of Mission**, UEI No. NB6GZTVY4BF7
6. EXECUTIVE ADMINISTRATOR – The Executive Administrator of TWDB or a designated representative.
7. PARTICIPANT(S) – N/A
8. REQUIRED INTERLOCAL AGREEMENT(S) – N/A
9. FEMA APPROVAL DATE – September 27, 2023

10. TWDB APPROVAL DATE – April 11, 2024
11. PROJECT SCOPING AREA – The project scoping area is more specifically defined in EXHIBIT B (the original grant application).
12. CONTRACT EFFECTIVE DATE – September 27, 2023
13. PROJECT SCOPING COMPLETION DATE – December 1, 2025
14. CONTRACT EXPIRATION DATE – March 31, 2026
15. TOTAL PROJECT SCOPING COST – \$320,000.00
16. FEDERAL SHARE OF THE TOTAL PROJECT SCOPING COST – Not to exceed \$288,000.00
17. TWDB SHARE OF THE TOTAL PROJECT SCOPING COST – Not to exceed \$0.00
18. LOCAL SHARE OF THE TOTAL PROJECT SCOPING COST – is estimated to be \$32,000.00
19. PAYMENT REQUEST SCHEDULE – Submit payment requests totaling a minimum of \$5,000 on a Federal quarterly basis, unless it is the final payment request being submitted.
20. OTHER SPECIAL CONDITIONS AND EXCEPTIONS TO STANDARD AGREEMENT
 - A. CONTRACTOR must meet with TWDB's designated Project Manager for monthly progress reports as well as any delays or concerns.

SECTION II. STANDARD AGREEMENT

ARTICLE I. RECITALS

WHEREAS, CONTRACTOR applied through TWDB for a FEMA project scoping grant under the FMA program to mitigate specific flood problems as identified in EXHIBIT B, the original grant application, which is incorporated herein and made a permanent part of this CONTRACT; and

WHEREAS, CONTRACTOR and PARTICIPANTS will commit cash and/or in-kind services to pay the LOCAL SHARE OF THE TOTAL PROJECT SCOPING COST, if applicable; and

WHEREAS, CONTRACTOR will receive grant funds and will be responsible for the execution of this CONTRACT and compliance with the FMA requirements; and

WHEREAS, on the FEMA APPROVAL DATE, FEMA approved CONTRACTOR's application for financial assistance;

NOW, THEREFORE, TWDB and CONTRACTOR agree as follows:

ARTICLE II AGREEMENTS

1. The United States of America, through the Director of FEMA, has agreed to provide funds to CONTRACTOR, through TWDB, for the FEDERAL SHARE OF THE TOTAL PROJECT SCOPING COST. By acceptance of the funds awarded, CONTRACTOR agrees to abide by the terms and conditions of this CONTRACT as set forth in this document and the documents identified herein and made a part hereof by reference.
2. Services and activities provided under this CONTRACT must be in strict compliance with the requirements of Texas Government Code Chapter 742 as well as EXHIBIT A, the FEMA Award Package.
3. CONTRACTOR will provide Flood Mitigation Assistance to the PROJECT SCOPING AREA as delineated and described in EXHIBIT B, the original grant application, and according to the implementation plan contained in EXHIBIT C.

ARTICLE III. PERIOD OF PERFORMANCE

The period of performance of this CONTRACT is from the CONTRACT EFFECTIVE DATE to the PROJECT SCOPING COMPLETION DATE, unless otherwise amended.

ARTICLE IV. APPLICABLE FEDERAL LAWS AND RULES

FEMA requires all grant recipients and subrecipients to comply with federal laws and rules. These federal laws and rules are listed in Article VIII of the FEMA Award Package (EXHIBIT A), which is incorporated herein and made a permanent part of this CONTRACT. CONTRACTOR must comply with all federal laws and rules listed in EXHIBIT A. All FEMA grants are also subject to the following requirements:

1. TWDB will reimburse CONTRACTOR for costs determined by FEMA to be allowable, allocable, necessary and reasonable in accordance with 2 CFR Part 200.
2. CONTRACTOR must follow applicable matching or cost-sharing requirements found in 2 CFR Part 200, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as required (EXHIBIT A).
3. The grant will be administered by CONTRACTOR following the Hazard Mitigation Assistance (HMA) Program and Policy Guide in effect when the application (EXHIBIT B) was submitted to FEMA, which is available at www.fema.gov.
4. CONTRACTOR must notify TWDB of any funds transferred to FEMA arising from the performance of this CONTRACT, along with accrued interest, if any.
5. TWDB will recoup project scoping funds that do not meet deliverables criteria in EXHIBIT A and EXHIBIT B.
6. Publication Rights. Any publication resulting from work performed under this CONTRACT must include an acknowledgement of FEMA financial support and a statement that the publication does not constitute an endorsement nor reflect the views of FEMA or TWDB.
7. Contract Amendments. No subsequent grants, monetary increase amendment, or time extension amendment will be approved unless all overdue financial or quarterly reports have been submitted to TWDB by CONTRACTOR. Exceptions to this policy can be approved only by FEMA.
8. Registration and Reporting Requirement. Pursuant to the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, CONTRACTOR is required to obtain a Data Universal Numbering System (DUNS) number and register with the System of Award Management (www.sam.gov) to receive Unique Entity Identifier (UEI). Registration and reporting requirements must be maintained during the life of this CONTRACT.

ARTICLE V. INTELLECTUAL PROPERTY: OWNERSHIP, PUBLICATION, AND ACKNOWLEDGEMENT

1. For purposes of this Article, "Contractor Works" are work products developed by CONTRACTOR and any Subcontractors using funds provided under this CONTRACT or otherwise rendered in or related to the performance in whole or part of this CONTRACT, including but not limited to reports; drafts of reports; material, data, drawings, studies, analyses, notes, plans, computer programs and codes; or other work products, whether final or intermediate.
 - A. It is agreed that all Contractor Works are the joint property of TWDB, FEMA, and CONTRACTOR.
 - B. The parties hereby agree that, if recognized as such by applicable law, the Contractor Works are intended to and will be works-made-for-hire with joint ownership between TWDB, FEMA, and CONTRACTOR as such works are created in whole or part.
 - C. If Contractor Works do not qualify as works-made-for-hire under applicable law, CONTRACTOR hereby conveys co-ownership of such works to TWDB and FEMA as they are created in whole or part. If present conveyance is ineffective under applicable law, CONTRACTOR agrees to convey a co-ownership interest of Contractor Works to TWDB and FEMA after creation in whole or part of such works, and to provide written documentation of such conveyance upon request by TWDB or FEMA.
 - D. TWDB and CONTRACTOR acknowledge that the copyright in and to copyrightable Contractor Works subsists upon creation of the Contractor Works and its fixing in any tangible medium. CONTRACTOR or TWDB may register the copyrights to such Works jointly in the names of CONTRACTOR, TWDB and FEMA.
 - E. TWDB, FEMA and CONTRACTOR each have full and unrestricted rights to use Contractor Works with no compensation obligation.
2. "Use" of a work product, whether Contractor Works, Subcontractor Works or otherwise, means and includes, without limitation hereby, any lawful use, copying or dissemination of the work product, or any lawful development, use, copying or dissemination of derivative works of the work product, in any medium or form, whether now known or later existing.
3. "No Compensation Obligation" means there is no obligation on the part of one co-owner or licensee of a work, whether Contractor Works, Subcontractor Works or otherwise, to compensate other co-owners, licensees or licensors of the work

for any use of the work by the using co-owner or licensee, including but not limited to compensation for or in the form of: royalties; co-owner or licensee accounting; sharing of revenues or profits among co-owners, licensees or licensors; or any other form of compensation to the other co-owners, licensees or licensors on account of any use of the work.

4. "Dissemination" includes, without limitation hereby, any and all manner of: physical distribution; publication; broadcast; electronic transmission; internet streaming; posting on the Internet or world wide web; or any other form of communication, transmission, distribution, sending or providing, in any forms or formats, and in or using any media, whether now known or later existing.
5. TWDB has an unlimited, unrestricted, perpetual, irrevocable, non-exclusive royalty-free right to access and receive in usable form and format, and to use all technical or other data or information developed by CONTRACTOR and Subcontractor in, or otherwise resulting from, the performance of services under this CONTRACT.
6. For purposes of this Article, "Subcontractor Works" includes all work product developed in whole or part by or on behalf of Subcontractors engaged by CONTRACTOR to perform work for or on behalf of any CONTRACTOR under this CONTRACT (or by the Subcontractors' Subcontractors hereunder, and so on). CONTRACTOR must secure in writing from any Subcontractors so engaged:
 - A. unlimited, unrestricted, perpetual, irrevocable, royalty-free rights of TWDB (and, if desired, of CONTRACTOR) to access and receive, and to use any and all technical or other data or information developed in or resulting from the performance of services under such engagement, with No Compensation Obligation; and either:
 - B. assignment by the Subcontractor to TWDB (and, if desired by them, jointly to CONTRACTOR) of ownership (or joint ownership with the Subcontractor) of all Subcontractor Works, with No Compensation Obligation; or
 - C. grant by Subcontractor of a non-exclusive, unrestricted, unlimited, perpetual, irrevocable, world-wide, royalty-free license to TWDB (and, if desired by them, CONTRACTOR) to use any and all Subcontractor Works, including the right to sublicense use to third parties, with No Compensation Obligation.
7. No unauthorized patents. Contractor Works and Subcontractor Works or other work product developed or created in the performance of this CONTRACT or otherwise using funds provided hereunder must not be patented by CONTRACTOR or their Subcontractor(s) unless Executive Administrator consents in writing to submission of an application for patent on such works; and provided that, unless otherwise agreed in writing:

- A. any application made for patent must include and name TWDB (and, as applicable and desired by them, CONTRACTOR) as co-owners of the patented work;
 - B. no patent granted will in any way limit, or be used by CONTRACTOR or Subcontractor to limit or bar TWDB's rights hereunder to access and receive in useable form and format, and right to use, any and all technical or other data or information developed in or resulting from performance pursuant to this CONTRACT or the use of funds provided hereunder; and
 - C. TWDB (and, if applicable, CONTRACTOR) will have no compensation obligation to any other co-owners or licensees of any such patented work, unless otherwise expressly agreed in writing.
8. CONTRACTOR must include terms and conditions in all contracts or other engagement agreements with any Subcontractors as are necessary to secure these rights and protections for TWDB and must require that Subcontractors include similar such terms and conditions in any contracts or other engagements with their Subcontractors. For the purposes of this section, "Subcontractors" includes independent contractors (including consultants) and employees working outside the course and scope of employment.
9. Any work products subject to a TWDB copyright or joint copyright and produced or developed by CONTRACTOR or its Subcontractor(s) pursuant to this CONTRACT or using any funding provided by TWDB may be reproduced in any medium, form or format by TWDB or CONTRACTOR at their own cost, and be disseminated in any medium, format or form by any party at its sole cost and in its sole discretion. CONTRACTOR may utilize such work products it deems appropriate, including dissemination of such work products or parts thereof under their own name, provided that any TWDB copyright is noted on the materials.
10. CONTRACTOR agrees to promptly notify TWDB regarding any media requests or inquiries relating to the work performed under this CONTRACT.

ARTICLE VI. GENERAL TERMS AND CONDITIONS

1. GENERAL TERMS
- A. **Disaster Recovery Plan.** Upon request of TWDB, CONTRACTOR must provide descriptions or copies of its business continuity and disaster recovery plans.
 - B. **Dispute Resolution.** The dispute resolution process provided for in Texas

Government Code Chapter 2009 is available to the parties to resolve any dispute arising under the CONTRACT.

- D. **Funding Limitation.** CONTRACTOR understands that all obligations of TWDB under the CONTRACT are subject to the availability of grant funds. The CONTRACT is subject to termination or cancellation, either in whole or in part, without penalty to TWDB if such funds are not appropriated or become unavailable.
- E. **Force Majeure.** Neither CONTRACTOR nor TWDB will be liable to the other for any delay in or failure of performance of any requirement contained in this CONTRACT caused by force majeure. The existence of such causes of delay or failure will extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.
- F. **Governing Law and Venue.** This CONTRACT is governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under this CONTRACT is fixed in any court of competent jurisdiction in Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to TWDB.
- G. **Indemnification.** CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TWDB, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE MUST BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT, AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND TWDB AGREE TO FURNISH TIMELY

WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- H. **Liability.** CONTRACTOR agrees to be fully responsible for its negligent acts or omissions or tortious acts. Nothing herein will be construed as consent by the State of Texas, TWDB or any state agency or entity as consent to be sued in any matter arising out of this CONTRACT.
- I. **Public Information Act.** CONTRACTOR understands that TWDB will comply with the Texas Public Information Act, Texas Government Code Chapter 552, as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation and other material in connection with this CONTRACT may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Texas Government Code § 2252.907, CONTRACTOR is required to make any information created or exchanged with the State pursuant to this CONTRACT, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- J. **Right to Audit.**
 - 1. The state auditor and the EXECUTIVE ADMINISTRATOR may conduct an audit or investigation of any entity receiving funds from the state directly under the CONTRACT or indirectly through a subcontract under the CONTRACT. The acceptance of funds directly under the CONTRACT or indirectly through a subcontract under the CONTRACT acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
 - 2. CONTRACTOR must make such documents and records available for examination and audit by the Federal government and records must be kept and maintained in accordance with generally accepted accounting principles and for a minimum of seven years following the submission of the final Federal Financial Report.
- K. **Severability.** Should any one or more provisions of this CONTRACT be held to be null, void, voidable, or, for any reason whatsoever, of no force and effect, such provision(s) will be construed as severable from the remainder of this CONTRACT and will not affect the validity of all other provisions of this CONTRACT, which will remain in full force and effect.

2. AFFIRMATIONS AND CERTIFICATIONS

- A. **Child Support Obligation.** CONTRACTOR represents and warrants that it will include the following clause in the award documents for every subaward and subcontract and will require subrecipients and contractors to certify accordingly: "Under Texas Family Code § 231.006, the contractor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2) of the Texas Family Code. The Social Security number will be used to identify persons that may owe child support and will be kept confidential to the fullest extent allowed under Section 231.302(e) of the Texas Family Code."
- B. **Clean Air Act.** CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42. U.S.C. Section 7401 et seq., and will report each violation to the TWDB. The TWDB will in turn report each violation as required to assure notification to FEMA, and the appropriate regional office of the Environmental Protection Agency. The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole, or part, with Federal Assistance provided from FEMA, the substance of this CONTRACT.
- C. **Contract Oversight.** CONTRACTOR represents and warrants that it will maintain oversight to ensure that CONTRACTOR and Subcontractor(s) perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- D. **Cybersecurity.** CONTRACTOR represents and warrants that its compliance with Section 2054.5191, Texas Government Code, relating to the cybersecurity training program for local government employees who have access to a local government computer system or database.
- E. **Debts and Delinquencies.** CONTRACTOR agrees that any payments due under the CONTRACT will be applied towards any debt or delinquency that is owed to the State of Texas, including but not limited to delinquent taxes, delinquent student loan payments and delinquent child support.

- F. Disclosure Protections for Certain Charitable Organizations, Charitable Trusts and Private Foundations.** CONTRACTOR represents and warrants that it will comply with Texas Government Code § 2252.906, relating to disclosure protections for certain charitable organizations, charitable trusts, and private foundations.
- G. Excluded Parties.** CONTRACTOR certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
- H. Executive Head of a State Agency.** In accordance with Texas Government Code § 669.003, relating to contracting with the executive head of a state agency, CONTRACTOR certifies that it is not: 1) the executive head of TWDB; 2) a person who at any time during the four years before the date of this CONTRACT was the executive head of TWDB; or 3) a person who employs a current or former executive head of TWDB.
- I. Federal Water Pollution Control Act.** CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and agrees to report each violation to the TWDB, and understands that the TWDB will, in turn, report each violation as required to assure notification to FEMA and the appropriate regional office of the Environmental Protection Agency. The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole, or part, with Federal Assistance provided from FEMA, the substance of this CONTRACT.
- J. Legal Authority.** CONTRACTOR represents that it possesses legal authority to apply for the grant. A resolution, motion or similar action has been duly adopted or passed as an official act of CONTRACTOR's governing body, authorizing the filing of the application or response, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative, or the designee of CONTRACTOR to act in connection with the application or response and to provide such additional information as may be required.
- K. Lobbying Expenditure Restriction.** CONTRACTOR represents and warrants that TWDB's payments to CONTRACTOR and CONTRACTOR's receipt of appropriated or other funds under the contract or grant are not prohibited by Texas Government Code §§ 403.1067 or 556.0055, which restrict lobbying expenditures.

- L. **No Conflicts of Interest.** CONTRACTOR represents and warrants its compliance with the Federal awarding agency's conflict of interest policies in accordance with 2 CFR § 200.112.
- M. **No Waiver of Sovereign Immunity.** The Parties expressly agree that no provision of the grant or contract is in any way intended to constitute a waiver by TWDB or the State of Texas of any immunities from suit or from liability that TWDB or the State of Texas may have by operation of law.
- N. **Open Meetings.** If CONTRACTOR is a governmental entity, CONTRACTOR represents and warrants its compliance with Texas Government Code Chapter 551, which requires all regular, special, or called meetings of a governmental body to be open to the public, except as otherwise provided by law.
- O. **Political Polling Prohibition.** CONTRACTOR represents and warrants that it does not perform political polling and acknowledges that appropriated funds may not be granted to, or expended by, any entity which performs political polling.
- P. **Procurement of Recovered Materials.** CONTRACTOR represents that it will make maximum use of products containing recovered materials that are EPA-designated items, as applicable for performance of the CONTRACT, unless the product cannot be acquired (i) competitively within a timeframe providing for compliance with the CONTRACT or its performance requirements, or (ii) at a reasonable price.
- Q. **Records Retention.** CONTRACTOR represents and warrants its compliance with the records retention requirements of 2 CFR § 200.333. TWDB reserves the right to direct a contractor to retain documents for a longer period of time or transfer certain records to TWDB custody when it is determined the records possess longer term retention value. CONTRACTOR must include the substance of this clause in all subawards and subcontracts.
- R. **Reporting Compliance.** Respondent represents and warrants that it will submit timely, complete, and accurate reports in accordance with the grant and maintain appropriate backup documentation to support the reports.
- S. **Subaward Monitoring.** CONTRACTOR represents and warrant that it will monitor the activities of any subcontractor as necessary to ensure that subcontracts are used for authorized purposes, in compliance with applicable statutes, regulations, and the terms and conditions of the subaward, and that subaward performance goals are achieved.
- T. **Suspension and Debarment.** CONTRACTOR certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List*

maintained by the Texas Comptroller of Public Accounts and the *System for Award Management* (SAM) maintained by the General Services Administration.

- U. **Compliance with Federal Laws, Rules and Requirements.** CONTRACTOR represents and warrants that it will comply with and assure the compliance of all its subrecipients and subcontractors, with all applicable federal and state laws, rules, regulations, and policies in effect or hereafter established. In addition, CONTRACTOR represents and warrants that it will comply with all requirements imposed by the awarding agency concerning special requirements of law, program requirements, and other administrative requirements. In instances where multiple requirements apply to CONTRACTOR, the more restrictive requirement applies.
- V. **Disclosure of Violations of Federal Criminal Law.** CONTRACTOR represents and warrants its compliance with 2 CFR § 200.113, which requires the disclosure in writing of violations of federal criminal law involving fraud, bribery, and gratuity and the reporting of certain civil, criminal, or administrative proceedings to SAM.
- W. **Byrd Anti-Lobbying Amendment.** CONTRACTOR certifies that no federal appropriated funds have been paid or will be paid to any person or organization 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 on its behalf to obtain, extend, or modify this contract or grant. If non-federal funds are used by CONTRACTOR to conduct such lobbying activities, Contractor must promptly file the prescribed disclosure form. In accordance with 31 U.S.C. § 1352(b)(5), CONTRACTOR acknowledges and agrees that it is responsible for ensuring that each subrecipient and subcontractor certifies its compliance with the expenditure prohibition and the declaration requirement.

ARTICLE VII. STANDARDS OF PERFORMANCE.

1. **Personnel.** CONTRACTOR must assign only qualified personnel to perform the services required under this CONTRACT. CONTRACTOR is responsible for ensuring that any Subcontractor utilized also assigns only qualified personnel. Qualified personnel are persons who are properly licensed to perform the work and who have sufficient knowledge, skill and ability to perform the tasks and services required herein according to the standards of performance and care for their trade or profession.
2. **Professional Standards.** CONTRACTOR must provide the services and deliverables in accordance with applicable professional standards. CONTRACTOR represents and warrants that it is authorized to acquire

Subcontractors with the requisite qualifications, experience, personnel and other resources to perform in the manner required by this CONTRACT.

3. **Procurement Laws.** CONTRACTOR must comply with applicable State of Texas procurement laws, rules and policies, as well as 2 CFR §§ 200.319 – 200.326, Methods of Procurement, including but not limited to competitive bidding and the Professional Services Procurement Act, Texas Government Code, Chapter 2254, relating to contracting with persons whose services are within the scope of practice of: accountants, architects, landscape architects, land surveyors, medical doctors, optometrists, professional engineers, real estate appraisers, professional nurses, and certified public accountants.

CONTRACTOR must comply with all regulations listed in 2 CFR Part 200 and state law and procedure for the purchase of equipment and supplies.

4. **Independent Contractor.** Both parties hereto, in the performance of this CONTRACT, act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party will not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
5. **Proprietary and Confidential Information.** CONTRACTOR warrants and represents that any information that is proprietary or confidential and is received by CONTRACTOR from TWDB or any governmental entity will not be disclosed to third parties without the written consent of TWDB or applicable governmental entity, whose consent will not be unreasonably withheld.
6. **Contract Administration.** TWDB will designate a project manager for this CONTRACT. The project manager will serve as the point of contact between TWDB and CONTRACTOR. TWDB's project manager will supervise TWDB's review of CONTRACTOR's technical work, deliverables, draft reports, the FINAL REPORT, payment requests, schedules, financial and budget administration, and similar matters. The project manager does not have any express or implied authority to vary the terms of the CONTRACT, amend the CONTRACT in any way or waive strict performance of the terms or conditions of the CONTRACT.
7. **Nepotism.** CONTRACTOR must comply with Texas Government Code Chapter 573 by ensuring that no officer, employee or member of CONTRACTOR's governing body votes or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition does not prohibit the employment of a person who has been continuously employed for a period of two years prior to the election or appointment of the officer, employee or governing body member

related to such person in the prohibited degree.

8. **Remedies for Nonperformance.** If CONTRACTOR fails to comply with any requirement of the CONTRACT, TWDB may terminate or cancel all or any part of the contract, may obtain substitute requested items, may withhold acceptance and payments to CONTRACTOR, may revoke any prior acceptance, may require CONTRACTOR to refund amounts paid prior to revocation of acceptance and may pursue all rights and remedies against CONTRACTOR under the contract and any applicable law. Remedies for nonperformance may also include suspension or debarment. No provision of the CONTRACT will constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to TWDB as an agency of the State of Texas or otherwise available to TWDB. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in the contract or otherwise available to TWDB by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

ARTICLE VIII. DISTRIBUTING GRANT FUNDS

1. TWDB agrees to compensate and reimburse CONTRACTOR in a total amount not to exceed the FEDERAL SHARE OF THE TOTAL PROJECT SCOPING COST and the TWDB SHARE OF THE TOTAL PROJECT SCOPING COST, if applicable, for costs incurred and paid by CONTRACTOR pursuant to performance of this CONTRACT. If applicable, CONTRACTOR will contribute local matching funds in sources and amounts defined as the LOCAL SHARE OF THE TOTAL PROJECT SCOPING COST. TWDB will reimburse CONTRACTOR for one hundred percent (100%) of FEDERAL SHARE OF THE TOTAL PROJECT SCOPING COST and, if applicable, the TWDB SHARE OF THE TOTAL PROJECT SCOPING COST of each invoice up to ninety percent (90%) pending CONTRACTOR's performance. Upon TWDB's review and approval of project completion according to the specific close-out requirements for FMA, TWDB will pay the remaining ten percent (10%) to CONTRACTOR.

Notwithstanding the above referenced paragraph, TWDB may provide advance funds to CONTRACTOR in order to minimize the time elapsing between the transfer of funds and their disbursement by CONTRACTOR. Such advance funds will be disbursed in compliance with FEMA regulations, including but not limited to 2 CFR Part 200. CONTRACTOR understands and agrees that it has no right to such advances, but that TWDB, in its sole discretion, may from time to time agree to advance payments before receiving any subcontractor invoices.

Depending upon availability of funds, TWDB may elect to fund the LOCAL SHARE OF THE TOTAL PROJECT SCOPING COST. If PARTICIPANT(S) have already paid some or all of the LOCAL SHARE OF THE TOTAL PROJECT

SCOPING COST, CONTRACTOR must submit evidence that PARTICIPANT(S) have been fully reimbursed before TWDB will release these funds to CONTRACTOR.

2. Before submitting any subcontractor's invoices and prior to reimbursement or advances of funds, CONTRACTOR must submit a copy of all procurement documents, the scoresheets for all respondents, and the official submittal of the selected subcontractor to TWDB for concurrence with 2 CFR Part 200.319-200.326.
3. CONTRACTOR must submit an implementation plan for review and approval by the TWDB. CONTRACTOR agrees that TWDB will approve any updates prior to commencement of grant activities. The approved implementation plan will then become a permanent part of this CONTRACT as EXHIBIT C.
4. Requests for advance or reimbursement of subcontractor expenses will only be considered where such subcontractor procurement(s) have been submitted and where such subcontracts or agreements have been determined acceptable by the EXECUTIVE ADMINISTRATOR as described herein. The EXECUTIVE ADMINISTRATOR must provide written review and acceptance of contracts or agreements between CONTRACTOR and subcontractor(s) and between such subcontractors and any other subcontractors prior to CONTRACTOR finalizing such subcontracts or agreements. All subcontract agreements must include the DUNS number for the subcontractor. The purpose of this review is solely to ensure that the subcontracts and agreements are consistent with this CONTRACT and that the rights of TWDB are protected. CONTRACTOR understands that CONTRACTOR should obtain its own legal review of subcontracts and agreements that CONTRACTOR enters into. CONTRACTOR agrees that TWDB assumes no legal obligations under its subcontracts or agreements. Each subcontract or agreement must include a detailed budget estimate with specific cost details for each task or specific item of work to be performed by the subcontractor and for each category of reimbursable expenses. The subcontracts must conform to the terms of the CONTRACT and include provisions which require subcontractor compliance with TWDB rules. CONTRACTOR must adhere to all requirements in state law and TWDB rules pertaining to the procurement of professional services. Subcontracts for surveying activities will not be required.
5. CONTRACTOR must submit advance or payment requests and the required documentation for reimbursement according to the PAYMENT REQUEST SCHEDULE and in accordance with the approved task and expense budgets contained in EXHIBIT D to this CONTRACT. For reimbursement, CONTRACTOR must submit a signed and completed Payment Request Checklist along with task and expense spreadsheet
(https://www.twdb.texas.gov/about/contract_admin/index.asp) and

documentation listed below, according to the PAYMENT REQUEST SCHEDULE. All required reports must be current as detailed in Article X and XI of this section. The Payment Request package must include the following:

- A. The completed Payment Request Checklist must include the total incurred and paid expenses along with the following information
 - (1) TWDB Contract Number;
 - (2) The reimbursement period; beginning (date) to ending (date);
 - (3) Total Expenses being requested for this period;
 - (4) Total In-kind services, if applicable;
 - (5) Total FEDERAL, TWDB, or LOCAL SHARE OF THE TOTAL PROJECT SCOPING COST for the billing period, as applicable;
 - (6) Total to be reimbursed by TWDB for the billing period; and
 - (7) Certification, signed by CONTRACTOR's authorized representative, that the expenses submitted for the billing period are a true and correct representation of amounts paid for work performed directly related to this CONTRACT.
- B. For direct expenses incurred by CONTRACTOR for subcontracted work:
 - (1) Copies of detailed, itemized invoices/receipts from the subcontractor to CONTRACTOR and proof of payment by CONTRACTOR. Credit card summary receipts or statement are not acceptable alone; they must be accompanied by the itemized invoice or receipt; and
 - (2) A spreadsheet showing the tasks that were performed; the percent and cost of each task completed; a total cost figure for each direct expense category contained in EXHIBIT D; and the total dollar amount paid to and due to the subcontractor(s). The spreadsheet should also include the expense budget and the cost of each expense item. Any payments of expenses which CONTRACTOR withholds from a subcontractor for the purposes of retainage, will be considered to have been paid by CONTRACTOR for purposes of determining expenses paid.
- C. For direct expenses incurred by CONTRACTOR other than subcontracted work:
 - (1) Copies of detailed, itemized invoices/receipts from expenses purchased by CONTRACTOR and proof of payment by CONTRACTOR. Credit card summary receipts or statement are not acceptable alone; they must be accompanied by the itemized invoice or receipt; and
 - (2) A spreadsheet showing the tasks that were performed, the percentage and cost of each task completed, and a total cost figure for each direct expense category contained in EXHIBIT D. The spreadsheet should also include the expense budget and the cost of each expense item.
- D. For travel expenses for CONTRACTOR(s) and/or subcontractors:

- (1) Names, dates, work locations, time periods at work locations, itemization of and receipts for subsistence expenses of each employee, limited, however, travel is limited to the maximum amounts authorized by the U.S. General Services Administration, as amended or superseded. Receipts required for lodging;
 - (2) Copies of invoices or receipts for transportation costs or, if mileage costs, names, dates, and points of travel of individuals; and
 - (3) All other reimbursable travel expenses i.e., invoices or purchase vouchers showing reason for expense with receipts to evidence the amount incurred.
6. CONTRACTOR has budget flexibility within task and expense budget categories to the extent that the resulting change in amount, in any one task or expense category, does not exceed ten (10%) percent of the total authorized amount by this CONTRACT. Larger deviations require approval by the EXECUTIVE ADMINISTRATOR or designee and FEMA (as per 2 CFR Part 200, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) which will be documented through an Approved Budget Memorandum to the TWDB contract file. CONTRACTOR will be required to provide written explanation for the overage and reallocation of the task and expense amount.

For all reimbursement requests, including any subcontractor's expenses, the EXECUTIVE ADMINISTRATOR must have determined that any REQUIRED INTERLOCAL AGREEMENT(s) and contracts or agreements between CONTRACTOR and subcontractors are consistent with the terms of this CONTRACT. CONTRACTOR is fully responsible for paying all charges by subcontractors prior to reimbursement by TWDB.
7. CONTRACTOR and its subcontractors must maintain timely, true, and accurate financial accounting documents and records, including copies of invoices and receipts, and must make them available for examination and audit by the EXECUTIVE ADMINISTRATOR. Accounting by CONTRACTOR and its subcontractors must be in a manner consistent with Generally Accepted Accounting Principles (GAAP).
8. If CONTRACTOR chooses and is authorized by TWDB for the advance method for distribution of grant funds under Section I, Article I, Paragraph 20 and submits a Request for Advance Checklist to the EXECUTIVE ADMINISTRATOR, TWDB will advance to CONTRACTOR a percentage of the amount shown in EXHIBIT D not to exceed the amount of the TOTAL PROJECT SCOPING COST.
9. When CONTRACTOR has incurred expenses sufficient to reconcile the advance received, CONTRACTOR must submit a Request for Advance to the EXECUTIVE ADMINISTRATOR before receiving another advance of the

FEDERAL SHARE OF THE TOTAL PROJECT SCOPING COST.

CONTRACTOR must attach the most recent written financial reports described in Section II, Article X and performance report described in Section II, Article XI, Paragraph 1 and the documentation listed in Section II, Article VIII, Paragraph 5 to the Request for Advance Checklist. Any expenses incurred by CONTRACTOR exceeding the amount of the previous advance will be reimbursed based on the percentage of the FEDERAL SHARE OF THE TOTAL PROJECT SCOPING COST of this CONTRACT.

10. Within 30 days of the EXECUTIVE ADMINISTRATOR's final accounting of the amounts expended by CONTRACTOR and the amounts advanced by TWDB to CONTRACTOR, CONTRACTOR must refund to TWDB any advances not used for expenses approved by the EXECUTIVE ADMINISTRATOR. If the amounts expended by CONTRACTOR exceed the amounts advanced by TWDB, the EXECUTIVE ADMINISTRATOR will provide such differences to CONTRACTOR, if not in excess of the FEDERAL SHARE OF THE TOTAL PROJECT SCOPING COST.
11. Reimbursement requests that lack required documentation will be denied or short paid if deficiencies are not resolved within 10 business days. Denied Reimbursement Requests or eligible expenses that were short paid must be resubmitted by CONTRACTOR with the required documentation within 30 days or prior to next reimbursement request (whichever sooner) to be reconsidered for reimbursement.
12. If for some reason a reimbursement request cannot be processed due to the need for an amendment to the CONTRACT, CONTRACTOR will be required to resubmit the Payment Request Checklist dated after the execution of the amendment.
13. CONTRACTOR is responsible for any food or entertainment expenses incurred by its own organization or that of its subcontractors, outside that of the travel expenses authorized and approved by the State of Texas under this CONTRACT.
14. CONTRACTOR is responsible for submitting any final payment request and documentation for reimbursement, along with a request to release any retained funds, no later than 45 days following the PROJECT SCOPING COMPLETION DATE. Failure to submit a timely final payment request may result in a lapse of funds and unavailability of the remaining funding under this CONTRACT.

ARTICLE IX. SUBCONTRACTS

1. Each Subcontract entered into to perform required work under this CONTRACT must contain the following:

- A. A detailed budget estimate with specific cost details for each task or specific item of work to be performed by the Subcontractor and for each category of reimbursable expenses.
 - B. A clause stating the following: "Subcontractor agrees and acknowledges that it is subject to all applicable requirements of the master contract between City of Mission and Texas Water Development Board, TWDB Contract No. 2200012821. Subcontractor adopts by reference the requirements of Section II, Article IX of TWDB Contract No. 2200012821 for this Subcontract."
2. All Subcontracts entered into to perform required work under this CONTRACT are also subject to the following requirements:
- A. The Subcontract is subject to audit by the Texas State Auditor's Office, and EXECUTIVE ADMINISTRATOR, Federal government and-Subcontractor must cooperate with any request for information, as further described in Section II, Article VI, Paragraph 1, (General Terms) item I, (Right to Audit);
 - B. Payments under the Subcontract are contingent upon appropriation of funds by the Texas Legislature;
 - C. Ownership of data, materials, and work papers, in any media, that is gathered, compiled, adapted for use, or generated by Subcontractor or CONTRACTOR will become data, materials and work owned by TWDB, FEMA, and-Subcontractor will have no proprietary rights in such data, materials and work papers, except as further described in Section II, Article V;
 - D. Subcontractor must keep timely and accurate books and records of accounts according to generally accepted accounting principles;
 - E. Subcontractor is solely responsible for securing all required licenses and permits from local, state, and federal governmental entities and solely responsible for obtaining sufficient insurance in accordance with the general standards and practices of the industry or governmental entity; and
 - F. Subcontractor is an independent contractor and TWDB has no liability resulting from any failure of Subcontractor that results in breach of contract, property damage, personal injury, or death.

ARTICLE X. FINANCIAL REPORTS

1. CONTRACTOR must submit an original TWDB Quarterly Financial Report (TWDB QFR) and Federal Financial Report (FFR, SF-425) to the TWDB's quarterly report mailbox (FloodGrantQuarterlyReports@twdb.texas.gov) within 15

days following the end of each federal quarter of the PROJECT SCOPING with the exception of the final report, which is due 45 days after the PROJECT SCOPING COMPLETION DATE.

2. If applicable, CONTRACTOR must submit any other reports specified in EXHIBIT A of this CONTRACT.

ARTICLE XI. PERFORMANCE REPORTING

1. Quarterly. CONTRACTOR must submit an original Program Performance Report (SF-PPR) and any supporting documentation to the TWDB's quarterly report mailbox (FloodGrantQuarterlyReports@twdb.texas.gov) within 15 days following the end of each federal quarter in accordance with Section II, Article IV, Paragraph 3.
2. Final Report. CONTRACTOR must submit an original final Program Performance Report (SF-PPR), Federal Financial Report (FFR, SF-425), and any supporting documentation which details all the work performed under the CONTRACT according to the specific close-out requirements according to Section II, Article IV, Paragraph 3. The reports must be submitted to the TWDB Project Manager within 45 days following the PROJECT SCOPING COMPLETION DATE.

ARTICLE XII. AMENDMENT, TERMINATION, AND STOP ORDERS

1. Notice. TWDB, CONTRACTOR, or FEMA may terminate grant award agreements by giving written notice at least seven calendar days prior to the effective date of the termination. All notices are to be transmitted via registered or certified mail, return receipt requested. CONTRACTOR's authority to incur new costs will terminate on the date of receipt of the notice or the date set forth in the notice. Any costs incurred up to the earlier of the date of the receipt of the notice or the date of termination set forth in the notice will be negotiated for final payment. Closeout of the Grant Agreement will be commenced and processed as prescribed under Section II, Article IV, Paragraph 3.
2. Discontinuation of Work. Upon receiving notice of termination, CONTRACTOR must discontinue work in accordance with the EXECUTIVE ADMINISTRATOR's termination instructions and delay or terminate all applicable orders and subcontracts immediately.
3. Unpaid Balances. In the event that this CONTRACT is terminated, TWDB's only liability will be to pay CONTRACTOR the unpaid balance due CONTRACTOR for work actually performed.
4. The EXECUTIVE ADMINISTRATOR may issue a Stop Work Order to CONTRACTOR at any time. Upon receipt of such order, CONTRACTOR must

discontinue all work under this CONTRACT and cancel all orders pursuant to this CONTRACT, unless the order directs otherwise. If the EXECUTIVE ADMINISTRATOR does not issue a Restart Order within 60 days of the Stop Work Order, this CONTRACT is terminated in accordance with the foregoing provisions.

5. The EXECUTIVE ADMINISTRATOR can extend the PROJECT COMPLETION DATE upon written approval from FEMA. CONTRACTOR must notify the EXECUTIVE ADMINISTRATOR in writing within 90 days prior to the PROJECT SCOPING COMPLETION DATE if an extension is required.
6. If termination of the CONTRACT occurs, the procedures described in 2 CFR Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, will be followed.

ARTICLE XIII. CORRESPONDENCE, REPORTS, AND REIMBURSEMENTS

All correspondence, reports, and reimbursements related to this CONTRACT must be made to the following addresses:

For TWDB:

For City of Mission

Contract Matters:

Texas Water Development Board
Attention: Contract Administration
P.O. Box 13231
Austin, Texas 78711-3231
Email: contracts@twdb.texas.gov

Contract Matters:

Michael Elizalde
1201 E. 8th St.
Mission, TX 78572
Email: grants@missiontexas.us

Payment Request Submission:

Texas Water Development Board
Attention: Accounts Payable
P.O. Box 13231
Austin, Texas 78711-3231
Email: invoice@twdb.texas.gov

Payment Request Submission:

Michael Elizalde
1201 E. 8th St.
Mission, TX 78572
Email: grants@missiontexas.us

Physical Address:

Stephen F. Austin State Office Building
1700 N. Congress Avenue
Austin, Texas 78701

Physical Address:

1201 E. 8th St.
Mission, TX 78572

IN WITNESS WHEREOF, the PARTIES have caused this CONTRACT to be duly executed.

TEXAS WATER DEVELOPMENT BOARD

City of Mission

Bryan McMath
Interim Executive Administrator

Michael Elizalde
Executive Director of Grants & Strategic Development

Date: _____

Date: _____