

**PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
ENGINEERING & PLANNING PROJECT NO. 2025-10006
CITY OF TOMBALL
S. PERSIMMON & TIMKIN STREET IMPROVEMENTS
(CPF GRANT)**

**THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §**

THIS AGREEMENT is made, entered into, and executed by and between the CITY OF TOMBALL, TEXAS (the "City"), a municipal corporation of the State of Texas, and Gradient Group ("Engineer").

WITNESSETH:

WHEREAS, the City desires to design street improvements along S. Persimmon Street and Timkin Street (the "Project"); and

WHEREAS, the services of a professional engineering firm are necessary to project planning and design, and

WHEREAS, the Engineer represents that it is fully capable and qualified to provide professional services to the City related to professional engineering;

NOW, THEREFORE, the City and Engineer, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**SECTION I.
SCOPE OF AGREEMENT**

Engineer agrees to perform certain professional services as outlined and defined in the Proposal attached hereto as Exhibit A, and made a part hereof for all purposes, hereinafter sometimes referred to as "Scope of Work," and for having rendered such services, the City agrees to pay Engineer compensation as stated in the Section VII.

**SECTION II.
CHARACTER AND EXTENT OF SERVICES**

Engineer shall do all things necessary to render the engineering services and perform the Scope of Work in a manner consistent with the professional skill and care ordinarily provided by competent engineering practicing in the same or similar locality and under the same or similar circumstances and professional license. It is expressly understood and

agreed that Engineer is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Engineer shall not have the authority to obligate or bind the City, or make representations or commitments on behalf of the City or its officers or employees without the express prior approval of the City. The City shall be under no obligation to pay for services rendered not identified in Exhibit "A" without prior written authorization from the City.

SECTION III. OWNERSHIP OF WORK PRODUCT

Engineer agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Engineer pursuant to this Agreement. The City shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired pursuant to this Agreement with the same force and effect as if the City had prepared or acquired the same. It is further understood and agreed that ownership and usage rights associated with the above referenced documents and analyses, hereinafter referred to as instruments, are contingent upon Engineer's completion of the services which will result in the production of such instruments and Engineer's receipt of payment, in full, for said services. Additionally, City understands and agrees that the rights described and provided hereunder shall not preclude or prevent Engineer from continuing to use those processes, analyses and data. If the City modifies and/or uses the instruments for any reason other than their intended use, without Engineer's authorization, the Engineer shall be released from any liability as a result of such action.

SECTION IV. TIME FOR PERFORMANCE

The time for performance is an estimated 540 calendar day duration beginning from the execution date of this Agreement. Upon written request of the Engineer, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Engineer has no control.

SECTION V. COMPLIANCE AND STANDARDS

Engineer agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the applicable profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and Engineer's performance.

SECTION VI. INDEMNIFICATION

To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify, hold harmless and defend (except for Professional Liability claims) the City, its officers, agents, and employees against liability for damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.

SECTION VII. ENGINEER'S COMPENSATION

For and in consideration of the services rendered by Engineer pursuant to this Agreement, the City shall pay Engineer only for the actual work performed under the Scope of Work, on the basis set forth in Exhibit "A," up to an amount not to exceed **\$2,873,000**, including reimbursable expenses as identified in Exhibit "A".

SECTION VIII. INSURANCE

Engineer shall procure and maintain insurance for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness, disease, or death, claims or damages because of injury to or destruction of property, including loss of use resulting therefrom, and claims of errors and omissions.

SECTION IX. TERMINATION

The City may terminate this Agreement at any time by giving seven (7) days prior written notice to Engineer. Upon receipt of such notice, Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Engineer shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Engineer that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed maps, studies, reports, documents and other work product prepared under this Agreement shall be delivered to

the City when and if this Agreement is terminated.

**SECTION X.
ADDRESSES, NOTICES AND COMMUNICATIONS**

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

Gradient Group
Attention: Stephanie Anderson, PE
3151 Briarpark Drive, Suite 225
Houston, Texas 77042

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

City of Tomball
Attn: Project Manager
501 James Street
Tomball, Texas 77375

**SECTION XI.
LIMIT OF APPROPRIATION**

Prior to the execution of this Agreement, Engineer has been advised by the City and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available only those sums as expressly provided for under this Agreement to discharge any and all liabilities which may be incurred by the City and that the total compensation that Engineer may become entitled to hereunder and the total sum that the City shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

**SECTION XII.
SUCCESSORS AND ASSIGNS**

The City and Engineer bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the City nor Engineer shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

**SECTION XIII.
DISCLOSURE OF INFORMATION**

Engineer shall under no circumstances release any material or information developed in the performance of its services hereunder without the express written permission of the City.

**SECTION XIV.
MODIFICATIONS**

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

**SECTION XV.
ADDITIONAL SERVICES OF ENGINEER**

If authorized in writing by the City, Engineer shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the portions of the Project designed or specified by the Engineer, as defined in Exhibit "A". These Additional Services, plus reimbursable expenses, will be paid for by the Owner on the basis set forth in Exhibit "A," up to the amount authorized in writing by the City.

**SECTION XVI.
CONFLICTS OF INTEREST**

Pursuant to the requirements of the Chapter 176 of the Texas Local Government Code, Engineer shall fully complete and file with the City Secretary a Conflict of Interest Questionnaire.

**SECTION XVII.
PAYMENT TO ENGINEER FOR SERVICES AND
REIMBURSABLE EXPENSES**

Invoices for Basic and Additional Services and reimbursable expenses will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to the City by Engineer at least monthly. Invoices are due and payable thirty (30) days after receipt by the City.

XVIII.
MISCELLANEOUS PROVISIONS

A. This Agreement is subject to the provisions of the Texas Prompt Payment Act, Chapter 2250 of the Texas Government Code. The approval or payment of any invoice shall not be considered to be evidence or performance by Engineer or of the receipt of or acceptance by the City of the work covered by such invoice.

B. Venue for any legal actions arising out of this Agreement shall lie exclusively in the federal and state courts of Harris County, Texas.

C. This Agreement is for sole benefit of the City and Engineer, and no provision of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

D. Engineer further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States, or (b) authorized by law to be employed in that manner in the United States.

E. In accordance with Chapter 2270, Texas Government Code, a government entity may not enter into a contract with a company for goods or services unless the Engineer covenants and agrees that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Furthermore, the Engineer is prohibited from engaging in business with Iran, Sudan or Foreign Terrorist Organizations.

F. In accordance with Chapter 2274 of the Texas Government Code, Engineer covenants that it: (1) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of this contract against a firearm entity or firearm trade associations.

IN WITNESS WHEREOF, the City of Tomball, Texas, has lawfully caused this Agreement to be executed by its Mayor; and Engineer, acting by its duly authorized officer/representative does now sign, execute and deliver this instrument.

EXECUTED on this ____ day of _____, _____.

Company Name: Gradient Group



Name: Stephanie Anderson, PE

Title: President

CITY OF TOMBALL, TEXAS

David Esquivel, City Manager

ATTEST:

Thonmas Harris III, City Secretary

EXHIBIT A

Project: South Persimmon and South Timkin Street (Extension)
Roadway, Utility & Drainage Improvements
Grant Number: B-24-CP-TX-2140
EXHIBIT A

SCOPE OF PROFESSIONAL SERVICES

Road Name: South Persimmon and South Timkin Street (Extension)

Road Classification: Minor Arterial

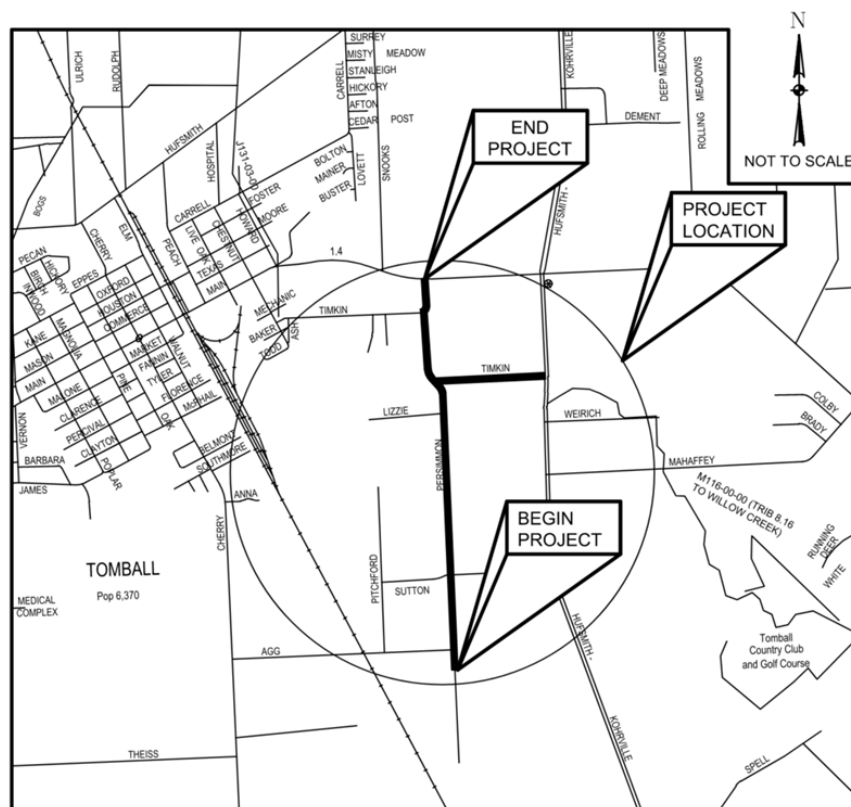
Project Limits: South Persimmon from FM 2920 to Medical Center Drive; South Timkin Street (Extension) from South Persimmon to Huffsmith-Kohrville Road

Project Length: 6,800 Linear Feet

Adjacent/Affected Agencies: TxDOT at FM 2920

Project Description: South Persimmon and South Timkin Street (Extension) - Roadway, Utility, and Drainage Improvements and Extension project in City of Tomball city limits.

Project Map:



VICINITY MAP
KEY MAP NO 289 E, 289 J & 289 N

Project: South Persimmon and South Timkin Street (Extension)
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CONDITIONS:

	Existing	Proposed
Roadway Type	Asphalt	Curb and gutter, Concrete or Asphalt
ROW Width	55 to 60 ft (varies)	80 ft
Travel Lanes	2-Lane	3 Lane with continuous left turn lane
Median	N/A	N/A
Cross Streets	Timkin Road Lizzie Lane Wild Bluebonnet Way Sutter Lane	Timkin Road Lizzie Lane South Timkin Street (Extension) Wild Bluebonnet Way Sutter Lane
Drainage System	Roadside Ditch with Storm Sewer on West Side of ROW	Storm Sewer
Outfalls	FM 2920 Medical Complex Drive	FM 2920 Medical Complex Drive Hufsmith - Kohrville Road
Detention Method	(Modified Rational or SCS TR 20/55) Detention Pond at South Persimmon & Timkin	If applicable SCS TR 20/55 Eliminate existing detention pond allowing for 90-degree intersection
Bridge	N/A	N/A
Traffic Signals	FM 2920 Medical Complex Drive	(1) South Timkin Street (Extension) @ South Persimmons Street (2) South Timkin Street (Extension) @ Huffsmith-Kohrville Road
Left Turn Lanes	N/A	FM 2920 Timkin Road Lizzie Lane Wild Bluebonnet Way Medical Complex Drive
Right Turn Lanes	N/A	N/A
Sidewalks or Trails	N/A	5 ft wide on NB South Persimmons Street 5 ft wide on WB & EB South Timkin Street (Extension)
Bike Lanes	N/A	N/A

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Impacted Parcels	N/A	~ 70
Railroad crossings	N/A	N/A
Pipeline Crossings	6" East - Medical Complex Blvd, North 1,000' 6" West - FM 2920 to 300' South of Lizzie Lane	N/A
Waterline	6" West - FM 2920 to Lizzie Lane 12" East - Lizzie Lane to 100' North of Sutter Lane 12" East - Medical Complex Blvd, North 300' to Lizzie Lane 8" South - 60' Center of the intersection of FM 2920 and South Persimmon 8" East - 60' from center of the intersection of FM 2920 and South Persimmon 6" South - 100' from Lizzy Lane and South Persimmon ~10 service connections ~4 commercial fire service lines	12" East - FM 2920 to Lizzie Lane <i>Possible looped system through South Timkin Street Extension.</i>
Sanitary Sewer	3" FM East - FM 2920 to Timkin Road 8" East - Timkin Road to Lizzie Lane 4" FM East - 2,200' South Lizzie Lane 18" West - Medical Complex Blvd, North 675' 18" West - Medical Complex Blvd, North 675' 8" south of Timkin Road intersection with South Persimmon. 8" East - 1,400' south of Timkin Road and South Persimmon Existing Lift Station at Lizzie & South Persimmon	8" Tie-in at Raven Reserve Development 18" West Tie in North of Medical Complex Drive and starting 680' North to new location (TBD) Bypass Lift Station pumping New gravity sewer at Lizzie & South Persimmon Eliminate existing lift Station at Lizzie Ln & South Persimmon

1.0 PROJECT MANAGEMENT & ADMINISTRATION

Gradient Team as the Team Lead shall provide project management and oversight for the project with emphasis on geometric layout/alignment of South Persimmon and South Timkin Street (Extension). Project Management for the project shall include as a minimum:

- Coordination with Subconsultants
- Schedule and timeline for the project milestones
- Invoicing
- TxDOT coordination
- QA/QC

2.0 PRELIMINARY ENGINEERING PHASE

The preliminary engineering phase shall include current COT Guidelines, standards, and specifications unless otherwise directed by the COT. Preliminary Engineering shall include:

A. Alignment Study:

- Alignment Roll Plot
- Curve data
- Existing ROW
- Proposed ROW
- Outfall structures and channel crossings
- Typical roadway sections
- 1 - Meeting with COT, Meeting agendas, meeting minutes, & action items in electronic format prior to meeting with COT

B. Preliminary Drainage (OEI):

The preliminary drainage design shall include the following:

- Review of COT documents, Master Drainage Plan, existing watershed and sub-basins, FEMA criteria, HCFCD requirements, previous studies in the area, as-built plans of infrastructure, roads, drainage, and other significant physical structures
- Evaluate existing conditions
- Review hydrological & hydraulic data
- LiDAR data for the project area
- Drainage options and all identified routing issues
- Conflicts with obstructions
- Defined Watershed and sub-basins within the watershed
- Design storm events 5, 10, 25, 100 & 500-year storms as applicable
- Preliminary Profile review of storm sewer and inlet locations
- Preliminary storm sewer trunk line sizing

Project: South Persimmon and South Timkin Street (Extension)

Roadway, Utility & Drainage Improvements

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EXHIBIT A

- Review of existing 54-inch storm sewer and sizing
- Flood plain mitigation
- Data gathering, research, and review from previous studies, master plans, reports, as-built plans, and other agencies with data and knowledge of the project area
- Review existing conditions and structures within the watershed and sub-basins
- Determine from previous reports the soil types and coefficients of runoff
- Review alignment of the proposed storm sewer for ROW clearances
- Prepare flow table for the watershed and sub-basins
- Determine drainage option for detention pond at South Persimmon & South Timkin Street (Extension) intersection
- Determine inlet sizes for RCB & 54-inch storm sewers laterals & verify trunkline size
- Select best hydraulic Model for the project watershed & sub-basins in accordance with HCFCD requirements
- Prepare model data and input criteria
- Compare drainage calculations to Master Drainage Plan data for consistency
- Adjust the profile of storm sewer as necessary to match the tie-in elevations at Sutton Lane
- Review the existing storm sewer along Timkin

Deliverables:

- Roll plot of the preliminary drainage plan
- Existing & Proposed ROW
- Outfall structures/tie-in locations to existing storm sewers
- Alignment of storm sewer
- Identified known conflicts
- Preliminary profile of storm sewer
- 1- Meeting with COT, Meeting agendas, meeting minutes & action items in electronic format submitted to COT prior to meeting.

C. Right-of-Way (ROW) Meeting:

- Proposed ROW
- Identify the parcels of land to be acquired for ROW
- Existing ROW including existing utility easements
- Identify structures impacted by ROW
- Temporary Construction easements
- Proposed unobstructed visual easements (UVE's) & corner clips
- Critical structure impacts
- 1-Meeting with COT, Meeting agendas, meeting minutes & action items in electronic format submitted to COT prior to distribution.

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D. Initial Utility Coordination Meeting (OEI):

Initial discussion of utility conflicts within the project area.

- Identification of conflicts
- Catalog of conflicts with identifying number & name of utility
- Type of utility with contact name, address & phone number
- How conflict can best be cleared
- Review existing as-builts plans and COT GIS for existing utility locations
- Conduct an agency review form surveying topo data to locate all pipelines in the project area, verify through Railroad Commission
- Identify utility conflicts with proposed storm sewer(s) & ROW for required clearances
- Prepare demo plan for lift station at Lizzie Lane & Timkin
- Preliminary design of sanitary sewer connection to eliminate lift station
- Review utility relocates from Lizzie Lane north to FM 2920
- Prepare OPCC's for utility extensions, relocations and lift station demo

Deliverables:

- Existing & Proposed ROW with conflicts shown
- Temporary proposed construction easements
- Existing utilities with conflicts identified
- Recommended SUE locations if required
- Utility conflict table
- Meeting agendas, meeting minutes & action items in electronic format submitted to COT prior to distribution.

E. Traffic Signal Warrant Study

Included shall be a Traffic Warrant Study for South Timkin Street (Extension) & Huffsmith Kohrville. Traffic warrant studies shall include:

- Existing traffic counts
- Projected opening day traffic volumes (calculated)

Deliverable:

- Traffic Signal Warrant Study

Project: South Persimmon and South Timkin Street (Extension)
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F. Sight Distance Triangle Evaluations & Exhibits

- Engineer shall evaluate the public street intersections in the project limits.
- Create exhibits that depict 15' & 25' setbacks to evaluate need & area required for Unobstructed Visibility Easements (UVE's)
- Evaluate the need for Road/ROW.
- At signals, sight distance triangles to be used to evaluate for right turn on red

Deliverable:

- Sight Distance Triangle Exhibits

G. Drainage Report (OEI)

- Data Collection & review of the existing Master Drainage Master Plans, studies, and as-built drawings for drainage-related information pertaining to the project area and watershed.
- Review FEMA data along with hydrologic and hydraulic data for the project area.
- Harris County Flood Control District (HCFCD) Policy, Criteria and Procedures Manual (PCPM) Interim Guidelines and Criteria for Atlas 14 Implementation, July 2019 (or later version if applicable)
- HCFCD PCPM (July 2019 Interim Version), Appendix A-10 - Roadway Impacts and Mitigation Example
- HCFCD Memorandum dated October 21, 2019 - Roadway Detention Estimates with Atlas 14 Rainfall Updates, PCPM Appendix A, Example A.10.
- HCFCD Memorandum dated March 19, 2020 - Review of Conditional Letters of Map Revision (CLOMRs) for Harris County Bridge Projects
- HCFCD Hydrology & Hydraulics Guidance Manual (HHGM), December 2009 (or later version if applicable).
- Other local references as applicable.
- Select the best methodology for drainage calculations within the watershed.
- Review and obtain LiDAR data along with topo data collected in the survey of the project area
- Prepare a preliminary drainage report for the watershed and sub-basins contributing to the proposed drainage collection system

Pre-Project Condition Analysis:

- Prepare a pre-project condition drainage map depicting overland flow directions, including any offsite contributing area
- Determine pre-project impervious drainage area and calculate volumes
- Model the pre-project conditions
- Create a hydrograph for the primary outfalls within the project area

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Post-Project Condition Analysis:

- Modify pre-project drainage area map as necessary to reflect post-project conditions
- Determine post-project impervious area contribution, including full ROW width as impervious for drainage calculations
- Calculate time of concentration using velocity-based methodology for sheet flow 7 conveyance systems
- Calculate peak flows for post-project conditions at the outfalls
- Create a hydrograph for post-project conditions at the major outfalls of the project
- Calculate a preliminary estimate of the floodplain that the project will generate

Mitigation Alternatives:

- Review possible mitigation by use of detention ponds as necessary
- Prepare a schematic as needed for detention ponds during project construction to mitigate drainage impacts
- Prepare a draft Detention Alternatives client presentation (PPT) for review by HCED PM, respond to comments, and prepare final presentation
- Present alternatives and respond to client comments

Selected Alternative Analysis & Report

- Client approved mitigation alternative, complete the assumptions in preliminary evaluation, for all flows contributing to the project area, review proposed roadway contribution, storm water conveyance system, floodplain fill mitigation, and other project conditions in the analysis.
- Route the post-project flow through the basin for full design conditions, for the required storm events. Verify compliance with HCFCD requirements for a "no adverse effect" certificate.
- Prepare a preliminary drainage report for HCFCD review in accordance with HCFCD PCPM Section 19.
- Respond to HCFCD & HCED comments and for HCFCD approval.

Deliverable:

- Approved Drainage Report HCFCD

H. Preliminary Engineering Layout:

This preliminary engineering layout shall be the equivalent of a 30% design submittal. The effort shall present the items as enumerated in A through D above.

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- Preliminary alignment from all previous meetings with plan & profile shown
- Approved alignment
- Existing & Proposed ROW as approved by COT
- Alignment of proposed storm sewer
- Temporary construction easements
- ROW parcels to be acquired by COT
- Utilities and conflicts identified
- Typical roadway sections to be used in final design
- 1-Meetign with COT, Meeting agendas, meeting minutes & action items in electronic format submitted to COT prior to distribution.

3.0 DESIGN PHASE

A. Traffic Control Plan (TCP) Planning Meeting

Meet with COT to discuss and agree on the construction sequencing overall construction zones, and the temporary drainage as needed.

TCP Meeting Discussions:

- Overall TCP Plan by Phase in Roll Plot format
- Construction sequencing patterns
- Proposed TCP phasing
- Preliminary TCP typical sections
- Temporary drainage structures as applicable
- 1-Meetign with COT, Meeting agendas, meeting minutes & action items in electronic format submitted to COT prior to distribution.

B. Traffic Signal Design

New traffic signal at South Persimmons & South Timkin Street (Extension) and Huffsmith Kohrville & South Timkin Street (Extension)

1. Design Plans include 2 traffic signals
 - Basis of Estimate
 - Existing Conditions Layout
 - Proposed Traffic Signal Layout including Wiring Chart
 - Standard Drawing Details with design tables shall be complete
 - Mast Arm Assembly Details (100 mph Wind Zone)
 - Mast Arm Foundation (100 mph Wind Zone)
 - Luminaire Arm Details (100 mph Wind Zone)
 - Pedestrian Signal and Pole Installation Details

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2. Service outlet location and data statement from the electrical provider

Deliverable:

- Signal Plans, SOLS

C. Drainage and Utility Design (OEI)

The drainage design shall follow the latest approved version of the guidelines of the HCFCD Policy Criteria Manual.

- All final comments and reviews shall be incorporated into the final design drawings
- All modeling of the watershed shall be compiled and provided to Owner in electronic format and in the final drainage report
- Complete final plans and profile sheets
- Complete details of tie-in to structures and lateral tie-ins
- Complete details and sizes for all inlets
- Final approval of HCFCD on drainage design
- Complete all utility relocation plans and details
- Complete elimination of the lift station and extension of the gravity sewer
- Complete water line relocations and extensions
- Complete specifications for drainage and utilities

D. Construction Drawings

Engineer shall respond to comments provided by COT and shall prepare design documents as shown below:

- First Submittal 95%
 - Complete plans ready for final seal by a P.E.
 - KMZ of project, alignment, ROW, TCP, drainage & utilities
 - Opinion of Probable Construction Cost (OPCC)
 - Utility conflict table
- Second Submittal 100% signed and sealed plans and specifications
 - Complete project documents
 - Final KMZ of the project
 - OPCC
 - Final Utility conflict table

This task includes the effort from tasks B and C above.

4.0 GEOTECHNICAL (Geotest Engineering)

A. Roadway - Report

The purposes of this investigation are to evaluate the soil and water level conditions within the project alignment and to provide geotechnical recommendations for the pavement, storm sewer improvements, and detention pond. The scope of this study will consist of the following:

- Call Texas 811 and coordinate with utility locators to get areas for the proposed borings cleared.
- Perform pavement coring on the existing pavement.
- Drill and sample ten (10) soil borings to a depth of 30 feet for South Persimmon from FM 2920 to Lizzie Lane and South Timkin Road (extension) from South Persimmon Street to Huffsmith-Kohrville Road.
- Drill and sample nine (9) 30-foot borings for South Persimmon from Lizzie Lane to Medical Complex Drive.
- Measure water levels 24 hours after completion of drilling in all the borings
- Install two (2) Piezometers along the roadway and one (1) within the existing 30-foot borings for long-term water level measurements.
- Perform Desktop Fault Study to identify any documented faults in the area.
- Grout all boreholes, except piezometer borings and detention pond borings, using non-shrink cement bentonite grout after completion of drilling and water level measurements. The use of cement bentonite grout will eliminate the potential problems and safety hazards associated with surface settlements that might occur if boreholes are backfilled with soil cuttings.
- Perform appropriate laboratory tests on selected representative samples to develop the engineering properties of the soil.
- Perform engineering analyses to develop geotechnical recommendations for the open-cut excavation for the proposed storm sewer, and pavement recommendations, including subgrade stabilization recommendations.

Deliverable:

- Geotechnical Report

5.0 SURVEYING (Ellis Surveying)

All surveying activities and deliverables performed by **Ellis Surveying**, for **City of Tomball (COT)** shall be performed in accordance with the most current laws and minimum standards of practice as promulgated by the Texas Board of Professional Engineers and Land Surveyors (TBPELS). This

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document shall not reduce or minimize state laws in any way. TBPELS minimum standards of practice shall be applicable, wherein this document does not cover scoped work.

The survey for the design of South Persimmons Street and South Timkin Road (extension) will include complete topographic surveys for project limits.

Project Limits are outlined as:

- Existing right-of-way varies from 55 feet to 60 feet
- Proposed 80-foot right of way
- South Persimmons Street from FM 2920 to Medical Complex Blvd
- South Timkin Steet (Extension) from South Persimmons Street to Huffsmith-Kohrville Road

5.1 Existing Right-of-Way Maps (Cat. 1B, Cond. 2)

- A. Survey will be performed to Category 1B Condition 2, minimum.
- B. Tie in property corners and block corners to define the existing rights-of-ways.
- C. Prepare a right-of-way map of the existing right-of-way in accordance with TSPS Category 1B, Condition 2 standards and conform to COT standards

Deliverable:

- Signed, Sealed, and dated right-of-way map of existing rights-of-way.

5.2 Topographic Survey (Cat. 6, Cond. 1)

- A. Perform survey to Category 6, Condition 1.
- B. Perform topographic survey for 6,800 linear feet with all intersections along this route, and for additional side streets as noted:
 - i. FM 2920 - 300 ft each direction
 - ii. Timkin Road
 - iii. Lizzie Lane
 - iv. Wild Bluebonnet Way
 - v. Sutton Lane
 - vi. Medical Complex Blvd - 300 ft each direction
 - vii. South Persimmons Street 300 ft south at Medical Complex Blvd
- C. Perform a topographic survey at the following intersections for traffic signals:
 - i. Proposed South Timkin Road (extension) at South Persimmons Street
 - ii. Proposed South Timkin Road (extension) at Huffsmith-Kohrville Road (500 ft each direction)

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EXHIBIT A

- D. Extend survey minimum of 200 feet into all intersecting streets, unless otherwise noted. In addition, the survey to include 25 feet outside of the right-of-way and up to 60 feet outside right-of-way for objects (obstructions), except those that are behind brick walls and buildings.
- E. Establish elevation, type, and locations of physical features, including buildings, structures, signs, power poles, curbs, driveways, water meters, manholes, pedestals, ponds, light poles, etc., within proposed and existing right-of-way. Overhead crossing utilities will be limited to the low chord elevation.
- F. Provide pipe flow line elevations, size, and directions of flow for all sanitary sewer lines, storm sewer lines, and driveway culverts. Top of north rim or top of grate and flow line elevations shall be recorded on all inlets, manholes, and drainage structures.
- G. Locate Ornamental trees or landscape trees with a diameter of 4" and larger shall be located. Wooded/brushed areas shall be limited to an outlined area only. No Individual Trees shall be located on natural vegetation areas.
- H. Provide SUE Level C per ASCE SUE Guidelines
 - i. Perform Texas One Call for underground utility locations to mark utilities within the existing right-of-way and existing easements within the take area.
 - ii. Locate markings provided by One-Call and "visible" utilities within 25 feet of the proposed and/or existing right-of-way.
 - iii. Include locations of electrical risers as a CAD callout and layer in the survey deliverable.
- I. Locate soil borings
 - i. Provide points in a point file or as part of the larger point file
- J. Attend Field Topo Verification Meeting to visibly check that all topo items are currently located as per the field notes. Objectives to be achieved during the field topo verification meeting include impacts that could affect the alignment alternatives have on the Right of Way, existing structures such as signals, utilities, and property, environmental impacts, and impacts to existing and proposed improvements.
- K. Survey will locate all public and private utilities, storm sewer outfalls, manholes, inlets, culverts, pipeline markers, utility markers, valve boxes, power poles, down guys, overhead cables, elevations of overhead cables and low points, pedestals, fences, bridge crossings, pavement stripes, signs, trees 4 inches and larger, and shrubs. Sufficient information needs to be collected for the preparation of encroachment exhibits for the project.
- L. Survey will include detailed existing driveway elevations, culverts, existing detention pond and obtain required spot elevations.
- M. Perform cross sections at 100-foot intervals, including spot shots and break lines.
- N. Cross sections shall be obtained at 100-foot intervals along the detention basin and shall extend 25 feet beyond the existing right-of-way lines and 60 feet for structures as applicable.
- O. If applicable, include the following items for intersections at a traffic signal: Illumination poles, power poles & guy wires, signs (location & type), sprinkler heads, potholes, memorial markers, school zone striping & equipment location, existing bus stop signs & ramps, lane striping and sample of striping size, crosswalk striping, construction joint & expansion joints,

Project: South Persimmon and South Timkin Street (Extension)

Roadway, Utility & Drainage Improvements

Grant Number: B-24-CP-TX-2140

EXHIBIT A

water valves and meters, utility markers, backflow preventer, traffic pole and mast arm length, cabinet location, meter & disconnect location, height of lowest cable attached to power pole at intersection, pedestrian poles, pedestrian push button location, pedestrian signal head location, luminaires, loops and ground boxes. See attached checklist for detailed survey checklist required related to traffic signals.

- P. Provide scale factor in DWG file and final PDF file.
- Q. CAD file will utilize the standard Gradient layers, to be provided.

Deliverable:

- CAD file (AutoCAD.dwg format) align with ASCII point file, DTM with 1-foot contours, and TIN file and XML file with break lines; 11"x17" at 1"=40' plan sheets for topo field walk (6 copies)

5.3 Control

- A. Horizontal Survey Control shall be referenced to the Texas State Plane Coordinate System, South Central Zone, NAD83.
- B. Vertical Control shall be based on the nearest existing Harris County Reference Marker, NAVD 1988, 2001 Adj.
- C. Establish survey baselines and temporary benchmarks.
- D. Provide adequate number of control points that are set and recoverable.
- E. Provide scale factor in DWG file and final PDF file.

Deliverable:

- Survey Control Map and three-point sketches, signed and sealed by a Texas RPLS.

6.0 RISK MITIGATION

The following are risks that will require COT input to mitigate possible conflicts in design:

- Oil field pipeline locations
- Existing easements within the project area
- Any correspondence concerning drainage issues with HCFCD
- As-built plans for all utilities and storm sewer in the project area
- Any known property owner's issues with drainage, utility locations, and services
- Flooding in adjacent areas adjoining the project area
- Owner access for commercial deliveries along South Persimmon

7.0 NOT INCLUDED

Construction Administration

- Respond to RFI's and questions from contractor
- Periodic on-site observation with City Inspector
- Review of Contractor Pay Requests & Approval
- Update timeline as required for City
- Update City GIS with constructed improvements
- Meetings with City during construction online
- Final walk through & punch list

Project Closeout

- Prepare As-constructed drawings from contractor redlines
- Prepare final constructed report with final design criteria
- Approve final utilities and storm water drainage system
- Close project & notify TCEQ & HCFCD of completion

8.0 PROJECT COST SUMMARY

TASK	FEE
PROJECT MANAGEMENT & ADMINISTRATION	\$236,155.00
PRELIMINARY ENGINEERING PHASE	\$882,351.00
DESIGN PHASE	1,389,196.00
GEOTECHNICAL	\$100,198.00
SURVEYING	\$265,100.00
TOTAL PROJECT COST	\$2,873,000.00

HUD 2 CFR 200 Engineer Contract Requirements

Required Contract Provisions

1. Termination of Agreement for Cause.

If the Firm fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Firm violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the City/County shall have the right to terminate this Agreement by giving written notice to the Firm of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Firm pursuant to this Agreement shall, at the option of the City/County, be turned over to the City / County and become the property of the City / County. In the event of termination for cause, the Firm shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

Notwithstanding the above, the Firm shall not be relieved of liability to the City/County for damages sustained by the City/County by virtue of any breach of the Agreement by the Firm, and the City/County may set-off the damages it incurred as a result of the Firm's breach of the contract from any amounts it might otherwise owe the Firm.

2. Termination for Convenience of the City/County.

City/County may at any time and for any reason terminate Firm's services and work at City/County's convenience upon providing written notice to the Firm specifying the extent of termination and the effective date. Upon receipt of such notice, Firm shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Upon such termination, Firm shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement plus (2) such other costs actually incurred by Firm as are permitted by the prime contract and approved by City/County. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Firm prior to the date of the termination of this Agreement. Firm shall not be entitled to any claim or claim of lien against City/County for any additional compensation or damages in the event of such termination and payment.

3. Changes

The City/County map, from time to time, request changes in the services the Firm will perform under this Agreement. Such changes, including any increase or decrease in the Firm's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this agreement.

4. Resolution of Program Non-Compliance and Disallowed Costs.

In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or HUD program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Agreement and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. *[This section may also provide for the qualifications of the mediator(s), the locale of meetings, time limits, or any other item of concern to the parties.]* If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.

5. Personnel.

- a. The Firm represents that he/she/it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City/County.
- b. All of the services required hereunder will be performed by the Firm or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
- c. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City/County. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

6. Assignability.

The Firm shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City/County thereto; Provided, however, that claims for money by the Firm from the City/County under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City/County.

7. Reports and Information.

The Firm, at such times and in such forms as the City/County may require, shall furnish the City/County such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

8. Records and Audits.

The Firm shall insure that the City/County maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, 24 CFR 570.490, and this Agreement. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. The Firm and the City/County shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.

9. Findings Confidential.

All of the reports, information, data, etc., prepared or assembled by the Firm under this contract are confidential and the Firm agrees that they shall not be made available to any individual or organization without the prior written approval of the City/County.

10. Copyright.

No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Firm.

11. Compliance with Local Laws.

The Firm shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Firm shall save the City/County harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.

12. Conflicts of Interest.

- a. Governing Body. No member of the governing body of the City/County and no other officer, employee, or agent of the City/County, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of HUD award between HUD and the City / County, shall have any personal financial interest, direct or indirect, in the Firm or this Agreement; and the Firm shall take appropriate steps to assure compliance.
- b. Other Local Public Officials. No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the HUD award between HUD and the City/County, shall have any personal financial interest, direct or indirect, in the Firm or this Agreement; and the Firm shall take appropriate steps to assure compliance.
- c. The Firm and Employees. The Firm warrants and represents that it has no conflict of interest associated with the HUD award between HUD and the City/County or this Agreement. The Firm further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the HUD award

between HUD and the City/County or in any business, entity, organization or person that may benefit from the award. The Firm further agrees that it will not employ an individual with a conflict of interest as described herein.

13. Debarment and Suspension (Executive Orders 12549 and 12689)

The Firm 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 Firm. The Firm 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.”

Federal Compliance.

14. Equal Opportunity Clause (applicable to federally assisted construction contracts and subcontracts over \$10,000).

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

- a. The Firm will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Firm 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 Firm 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.
- b. The Firm will, in all solicitations or advertisements for employees placed by or on behalf of the Firm, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The Firm 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 contractor's legal duty to furnish information.

- d. The Firm 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 Firm's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The Firm 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.
- f. The Firm 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.
- g. In the event of the Firm'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 Firm 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.
- h. The Firm will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) 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 Firm 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 Firm becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Firm may request the United States to enter into such litigation to protect the interests of the United States.

15. Civil Rights Act of 1964.

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion, sex, 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.

16. Section 109 of the Housing and Community Development Act of 1974.

The Firm shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

17. Section 504 of the Rehabilitation Act of 1973, as amended.

The Firm 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.

18. Age Discrimination Act of 1975.

The Firm 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.

19. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) (if contract greater than or equal to \$100,000)

The Firm certifies 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 this contract. The Firm shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

20. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.

- a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- c. The Firm agrees to send to each labor organization or representative of workers with which the Firm has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Firm's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The Firm agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Firm will not subcontract with any subcontractor where the Firm has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

- e. The Firm will certify that any vacant employment positions, including training positions, that are filled (1) after the Firm is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Firm's obligations under 24 CFR part 135.
- f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

21. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

- 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.
- 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 (1) through (5) of this section.

22. Patent Rights and Inventions.

The Firm 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).

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 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 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 (f), Rights to Inventions).

23. Energy Efficiency.

The Firm 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 (42 U.S.C. 6201). (2 CFR 200 Appendix II (h)).

24. Access to Records.

The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, and the City/County, or any of their authorized representatives, shall have access to any documents, papers, or other records of the Firm which are pertinent to the HUD award, in order to make audits, examinations, excerpts, and transcripts, and to closeout the City/County's HUD contract.

25. Retention of Records.

The Firm shall retain all required records for three years after the City/County makes its final payment and all pending matters are closed.

26. Verification No Boycott Israel.

As required by Chapter 2271, Government Code, the Firm 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" 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.

27. Foreign Terrorist Organizations.

Pursuant to Chapter 2252, Texas Government Code, the Firm represents and certifies that, at the time of execution of this Agreement neither the Firm, 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.

A copy of the service provider contract or agreement must be submitted to HUD, and must include the following at a minimum:

- Names of Both Parties - Grant Recipient and firm.
- Effective Dates - Starting and ending dates.
- Scope of Services - Either directly written into the contract or provided as an attachment that is incorporated into the contract.
- Compensation - Including the maximum amount of the contract as either a firm, fixed-price contract, or a not to exceed cost-reimbursable type contract.
- Local Program Liaison - Identification of a **local public official** as the consultant's primary contact.
- Amendments - Procedures for amending the scope of work and/or compensation section.
- Termination - Explaining circumstances under which the Grant Recipient or other party can cancel the contract (e.g., unsatisfactory performance).
- Required contract provisions - must contain the applicable provisions described in 2 CFR Appendix II to Part 200
- Section 3 Compliance

Instructions for Completing the Certificate of Interested Parties Form 1295

Please note that effective January 1, 2016, pursuant to Texas Government Code, Section 2252.908 (the "Interested Party Disclosure Act"), the County may not award a contract unless the vendor submits a Certificate of Interested Parties Form 1295 (the "Disclosure Form") to the City/County as prescribed by the Texas Ethics Commission.

This notification will serve as conditional acceptance of your proposal until the Disclosure Form is received.¹ The City/County must receive this prior to executing your contract but no later than 21 days after this notice. Please promptly submit the materials described below.

The Disclosure Form can be found at <https://www.ethics.state.tx.us/forms/1295.pdf>, and reference should be made to the following information in order to complete it:

- (a) item 2 – Name of City/County
- (b) item 3 – the identification number, and
- (c) item 3 – description of the goods or services assigned to this contract by the City/County

You must:

- (i) complete the Disclosure Form electronically at the TEC's "electronic portal", and
- (ii) print, sign and deliver a copy (scanned and emailed is fine) of the Disclosure Form and Certification of Filing that is generated by the TEC's "electronic portal."

The following link will take you to the electronic portal for filing:

<https://www.ethics.state.tx.us/TECCertInt/pages/login/certLogin.jsf>

Also, a detailed instruction video may be found here:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

¹ A completed Form 1295 is not required for:

- a sponsored research contract of an institution of higher education;
- an interagency contract of a state agency or an institution of higher education;
- a contract related to health and human services if:
 - the value of the contract cannot be determined at the time the contract is executed; and
 - any qualified vendor is eligible for the contract;
- a contract with a publicly traded business entity, including a wholly owned subsidiary of the business entity;
- a contract with an electric utility, as that term is defined by Section 31.002, Utilities Code; or
- a contract with a gas utility, as that term is defined by Section 121.001, Utilities Code.

Neither the City/County nor its consultants have the ability to verify the information included in a Disclosure Form, and neither have an obligation nor undertake responsibility for advising any business entity with respect to the proper completion of the Disclosure Form.

Sample Engineering Contract

THIS AGREEMENT, effective on the date of selection by the **Council/Court**, made on the ____ DAY OF _____, 2025 by and between the CITY/COUNTY OF _____, hereinafter called the "Client" and _____ hereinafter called "Firm," procured in conformance with Texas Government Code 2254 and 2 C.F.R. Part 200.

Firm agrees to render Client engineering/architecture/surveyor services for Client's U.S. Department of Housing and Urban Development Community Project Funding Grant, as provided in the provisions titled, "Part IV, Scope of Work" and attached hereto and incorporated by reference herein (the "Services").

The parties mutually agree as follows:

1. Scope of Services - The Firm will perform the services set out in Part IV, Scope of Work.
2. Time of Performance - Services shall commence no earlier than upon execution of this agreement. In any event, Firm shall use commercially reasonable efforts to perform all services required and performed hereunder within either ____ calendar days or the project's administrative closure date, as defined by HUD, whichever is later.
3. Local Program Liaison - For purposes of this Agreement, the [*e.g. City Manager/County*] 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.
4. Compensation and Method of Payment - The maximum amount of compensation and reimbursement to be paid hereunder is a fixed fee of \$ _____. Payment to the Firm shall be based on satisfactory completion of identified milestones in Part II - Payment Schedule of this Agreement.
5. Indemnification – The Firm shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the City/County and its agency members from and 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.
6. Miscellaneous Provisions
 - a. This Agreement shall be construed under and accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in _____ County, Texas.
 - b. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
 - c. 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.

- d. 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.
 - e. This Agreement may be amended by mutual agreement of the parties hereto and a writing to be attached to an incorporated into this Agreement.
7. Extent of Agreement - This Agreement, which **includes Parts I-V and Attachments A-E**, represents the entire and integrated agreement between the City/County and the Firm and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of both City/County and the Firm.

IN WITNESSETH WHEREOF, the parties have executed this Agreement by causing the same to be signed on the day and year first above written.

BY: _____

(Elected Official, Signature)

(Printed Name)

(Title)

BY: _____

(Firm/Contractor's Authorized Representative)

(Printed Name)

(Title)