



City of San Marcos

Request for Qualifications
2025-173
for
ON-CALL APPRAISAL SERVICES

Issued: Sunday, September 28, 2025

ISSUED BY:
City of San Marcos
Purchasing & Contracting Division
630 East Hopkins Street, Building 3
San Marcos, Texas 78666

RESPONSES DUE:
October 30, 2025,
Prior to 2:00 PM, Local Time

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I. REQUESTS FOR QUALIFICATIONS

The City of San Marcos (“the City”) requests Qualifications from interested qualified Respondents to provide real estate appraisal services in Hays, Caldwell, Comal, and Guadalupe Counties and other parts of Central Texas on an as-needed basis for the City, in accordance with the terms and Scope of Services specified herein.

The terms “Respondent”, “Contractor”, “Vendor”, and “Company” have the same meaning and shall be used interchangeably.

From the proposals received, the City will develop a list (“On-Call”) of successful respondents for the provision of real estate appraisal services. This list will be in effect for a period of six (6) years from the date of approval. The City will utilize this list to assign agreements including real estate appraisal for Capital Improvements Projects (“CIP”) or other projects as needed (the “Project(s)”). The City anticipates selecting and entering into agreements with up to five (5) on-call firms to provide Services for all City departments.

The City will award Master Agreements (the “Agreement(s)”) for the provision of these services on a per project basis as needed. The City will award Projects to the firms using separate Fund Allocations.

All appraisals must be completed by a certified Master Appraiser Institute (“MAI”).

Funding sources for the Services may include, but are not limited to, the City of San Marcos Capital Improvements Plan (“CIP”), Capital Area Metropolitan Planning Organization (“CAMPO”), Texas Department of Transportation (“TxDOT”), Community Development Block Grant – Disaster Recovery (“CDBG-DR”), the Texas Water Development Board’s (“TWDB”) Clean Water State Revolving Fund (“CWSRF”), FEMA Hazard Mitigation Grant funding and Community Development Block Grant – Mitigation (“CDBG-MIT”), American Rescue Plan Act (“ARPA”). All services must comply with funding requirements established by the funding sources, even if multiple funding sources are used.

The successful proponent(s) will have a thorough understanding of the U.S. Department of Housing and Urban Development (“HUD”) guidelines and regulations for compliance, as well as all cross-cutting regulations required for the CDBG-DR program and CDBG-MIT program. In addition, the successful proponent will be cognizant of all other external requirements for each of the program components, including but not limited to Federal Emergency Management Agency (“FEMA”), United States Environmental Protection Agency (“EPA”), Federal Highway Administration (“FHWA”) and other federal and state agency requirements.

This solicitation complies with applicable City Policy and state of Texas law, including Texas Government Code 2254. The City will select the successful Respondent that is determined to be the most highly qualified based on the published Evaluation Criteria, its final ranking, and a finally negotiated fair and reasonable price.

II. SCOPE OF SERVICES AND RESPONSIBILITIES

The successful Respondent(s) will submit their proposals for real estate appraisal services. The City will consider the award of a five-year Master Agreement of On-Call Services based on the firm’s competence and ability to perform the work on a per project basis.

Services may include, but are not limited to, the following:

1) REQUESTED SERVICES:

- a. Provide real estate appraisal services on an as-needed basis throughout the contract period.

- b. Provide a cost estimate for the requested appraisal report based on contracted rates within two (2) business days after a request from the City. City requests may be made via telephone, facsimile, or email.
 - c. Disclose any potential conflict of interest that it may have prior to commencing any appraisal services.
 - d. Conduct all appraisals based on the guidelines in Section 2 below.
 - e. Submit an invoice for each appraisal conducted, per Master Agreement.
 - f. Draft all appraisals within twenty-one (21) calendar days, and deliver all final appraisals within two (2) business days of notice, unless specifically agreed to otherwise in writing by the City.
 - g. Provide appraisal review reports on appraisals prepared by others.
- 2) **SELF-CONTAINED APPRAISAL REPORTS AND SUMMARY APPRAISAL REPORTS:** Each appraisal report will be delivered to the City within the agreed upon schedule after authorization to proceed. Each report will be based on the Uniform Standards of Professional Appraisal Practice (“USPAP”), as amended, and will include the following:
- a. License/Certification: Provide a copy of the required appraiser license and a list of the appraiser’s qualifications and experience with each appraisal.
 - b. Appraisal Type: The appraisal report will indicate whether it is a Complete Self-Contained or Summary Appraisal Report (whichever the City requests) and that it is performed in compliance with the most current edition of the USPAP, as amended. For Eminent Domain Appraisals, see Section 2.h below.
 - c. Subject Property: The appraisal will be performed specifically to value property and property rights and will include the following at a minimum:
 - 1. A tax map of the subject property;
 - 2. A location map of the subject property;
 - 3. A legal description of the subject property;
 - 4. Photographs of the subject property; and
 - 5. Specific information regarding any future developments within a three (3) mile radius of the subject property.
 - d. Use Limitations:
 - 1. Describe in the report the impact of the existence or lack of a permanent access right-of-way to the subject property and its impact on value;
 - 2. Describe and incorporate into the report the legal limitations of the subject property and comparable sales including, but not limited to, local land use regulations and easements (conservation or otherwise); and
 - 3. Describe and incorporate into the report the physical limitations of the subject property and comparable sales including, but not limited to, soils and topography.
 - e. Maps:
 - 1. The subject property and comparable sales will be displayed and identified on a locator map; and
 - 2. If the valuation conclusion is based on potential future development other than permitted by right, or future development that is not consistent with the general soils characteristics of the subject property, an approved subdivision plan map that represents the basis for the proposed development plan will be included.
 - f. Valuation:
 - 1. The valuation will be of the fee simple interest of the subject property, based upon market value.
 - 2. The valuation will be for the purpose of property acquisition by the City, unless otherwise instructed by the City.

3. The appraisal value will not be based on speculative development potential or hypothetical development scenarios. The appraised value will be based on the subject property's existing development rights and status (unimproved or improved with roads and utilities; approved for subdivision or not approved for subdivision; etc.) and
 4. The valuation will include any application currently submitted or approved by the City on the parcel itself along with the adjacent parcels, within a three (3) mile radius of the subject property.
- g. Comparable: Provide a minimum of five (5) comparables with each property appraisal utilizing the comparable sales approach.
- h. Eminent Domain Appraisals:
1. Phases of Work:
 - i. Phase I: For Phase I of this assignment, the successful proponent agrees to provide a written summary appraisal report of its findings and conclusions. The written report must be in compliance with USPAP. This appraisal will be the value of the land acquired and damage, if any, used in the bona fide offer to the landowner. At the time these services are requested, the proponent will provide the City with its estimate for these services.
 - ii. Phase II: If requested by the City, Phase II of this assignment will be an updated appraisal based on the date of the take, which is generally the date the certificate of take is filed. The successful proponent agrees to provide a written summary appraisal report of its findings and conclusions similar to that provided pursuant to Phase I. At the time these services are requested, the proponent will provide the City with its estimate for these services.
 - iii. Phase III: The successful proponent agrees to provide litigation support services as an expert witness as part of Phase III of this assignment, if requested by the City. The services requested may include testifying at trial as an expert witness, testifying as a rebuttal witness, and providing technical support with evaluating opposing counsel's expert witness, and providing technical support with evaluating opposing counsel's expert witness work product (e.g., responses to interrogatories, depositions, and written appraisal reports as well as evaluating their testimony at trial). At the time the services are requested, the successful proponent will provide the City with its hourly rate for these services.
 - i. Scope of Work:
 1. Site Visit and Property Viewing: The successful proponent will personally complete an exterior view of the captioned property, and if allowed, complete and verify the measurements of all improvements. If allowed (and necessary), the successful proponent will complete an interior viewing of all the improvements.
 2. Evaluating the Property, the Acquisition, and any Damages and/or Enhancements: The successful proponent will review the project and plan sheets specific to the property and gain a thorough understanding about the property in the "before" situation without considering any project influence. If a partial acquisition is being made, the successful proponent will evaluate the impact of the acquisition on the remaining property. In addition, the successful proponent will evaluate the effects of the project improvements on the remaining property. If the success proponent cites damages to the remaining property that result from the project, they will contact the City's Legal Department to ensure that the damages identified are compensable by law. Any enhancements to the remaining property, irrespective of whether or not damages may be present, will be identified and evaluated.
 3. Valuation Approaches: The successful proponent will use all valuation approaches required to provide a reliable and credible estimate of value. If the appraiser excludes any approach to value, they will state which approach was excluded and the reason(s) why. It will be noted that when completing the income approach, a discounted cash flow analysis will not be relied upon. However, it may be used as a test of reasonableness when determining the property value when using the

income approach. The capitalization rate selected will be supported and explained. Cost estimate sources will be cited, and whenever possible and practical, estimates from consultants and/or developers will be considered.

4. **Market Analysis and Highest and Best Use:** The successful proponent will complete a market analysis that examines the supply and demand of properties that have the same highest and best use as the subject property. The successful proponent will fully develop and report on the properties; highest and best use, including providing relevant information with respect to soil conditions and/or any physical limitations that may impede site development. If the successful proponent requires additional expertise (e.g., engineers, land planners, etc.), then the successful proponent will make a request to the City. The successful proponent will fully develop and explain potential uses that are legally permissible and comment upon their financial feasibility prior to concluding which use is maximally productive for the site as if vacant and available for its highest and best use. If the appraiser concludes that the site should be held for future development, the appraiser is expected to estimate the amount of holding time anticipated before the property can be developed to its highest and best use.
5. **Research:** The successful proponent will conduct an exterior inspection of all comparables used to derive a value estimate, and if possible, conduct an interior inspection. Whenever possible, the successful proponent will verify all comparables with a party to the transaction. Alternatively, the successful proponent may state secondary sources of verification if a party to the transaction will not comment or is otherwise unavailable. The successful proponent will list all resources used to find and evaluate sales comparables, if applicable lease/rent comparables, if applicable direct capitalization rates, if applicable support cost estimates, and if applicable interview and/or survey market participants.
6. **Adjustments:** When completing quantitative and qualitative adjustments, the successful proponent will explain and provide a basis for making the adjustment.
7. **Definition of Market Value:** Unless otherwise instructed by the client in writing, the appraiser will use the following definition of Market Value:
 - i. **Market Value** – the most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming neither is under undue duress (The Appraisal of Real Estate, 15th edition); and
 - ii. The price which one, under no compulsion, is willing to take for property which he has for sale, and for which another, under no compulsion being desirous and able to buy is willing to pay for the article (*I'albot vs Norfolk 158 va, 387, 163S.E. 100; 1932*). For purposes of this report, Market Value and Fair Market Value are synonymous and can be used interchangeably.
8. **Date of Valuation:** For the initial appraisal to be made with the offer, it will be within three (3) weeks of the City's approval of the proponent for the project. For post-certificate cases, it will be the date of the certificate of take.
 - i. **Hypothetical conditions and extraordinary assumptions:** When estimating the "after value", it is assumed that the project is completed as of the effective date of the appraisal. In the event that the successful proponent uses any other hypothetical condition or extraordinary assumption, it will be clearly defined within the appraisal report and will be approved in advance by contacting the City's Legal Department.
 - ii. **Applicable requirements:** The appraisal report submitted will comply with the following:
 - 1) The Uniform Standards of the Professional Appraisal Practice ("USPAP");
 - 2) The Code of Professional Ethics and Standards of Professional Appraisal Practice

of the Appraisal Institute if the appraiser is a member of the Appraisal Institute; and

3) If the Appraiser is a member of the Appraisal Institute, they will comply with the Appraisal Institute's Code of Professional Ethics and Standards of Professional Appraisal Practice.

iii. Confidentiality: The successful proponent will not provide a copy of the written appraisal report to or disclose the results of the appraisal prepared in accordance with this agreement within any party other than the City, unless the City authorizes in writing, except as stipulated in the Confidentiality Section of the ethics rule of the USPAP.

3) Appraisal Review:

a. Review appraisal and prepare report in format required per agency requirements.

4) General Requirements:

a. The successful proponent will provide the City with three (3) copies of the final appraisal report and one (1) digital copy. The report will become the exclusive property of the City. Cost for delivery/shipping of the reports will be included in the quoted rates. Additional delivery/shipping charges are not permitted.

b. All documentation supporting the appraisal process will be included in Complete Self-Contained Reports. All documentation supporting the appraisal process will be available for City inspection, if requested, with regard to Summary Appraisal Reports.

III. EVALUATION CRITERIA

The City will evaluate and rank each Response based on the following factors. The City reserves the right to request additional information or clarifications from all Respondents and to allow corrections of errors or omissions.

EVALUATION CRITERIA		Maximum Number of Points Per Criteria
The following point values are assessed per evaluation criteria by each evaluation team member.		
1	FIRM'S PRIOR EXPERIENCE WITH PROJECTS OF SIMILAR SIZE, SCOPE, AND SCALE <ul style="list-style-type: none"> • Years in business • Capacity to perform • Quality of work • Maintaining schedule • Client satisfaction 	30 points
2	PRIOR EXPERIENCE OF FIRM'S KEY PERSONNEL MANAGING PROJECTS OF SIMILAR SIZE, SCOPE, AND SCALE <ul style="list-style-type: none"> • Relevant projects • Ability to maintain project schedule • Client Satisfaction 	30 points
3	PROJECT APPROACH AND SCHEDULE <ul style="list-style-type: none"> • Detailed project approach • Schedule and schedule strategies to minimize delays and areas for possible time savings 	25 points
4	COMPLETENESS OF RESPONSE Proposal is comprehensive, clearly and concisely written, and includes all required information.	15 points
TOTAL POINTS		100 points

Optional Interviews: The shortlisted Respondents may be requested to participate in an interview and provide a presentation that is worth up to an additional twenty-five (25) points. Any additional points earned will be added to the points the Respondent received in the first round of the evaluation.

Final Decision: In responding to this Solicitation, the Respondents understand that the decision of the selection committee is final. All Responses will be reviewed and ranked according to the criteria above, and Respondents may be selected for interviews or oral presentations as may be necessary. The City makes no commitment to any Respondent to this Solicitation beyond consideration of the Response.

IV. REQUIREMENTS FOR RESPONSE

The following items are required to be submitted with the Response. In order to expedite the evaluations, interested Respondents will organize their Responses in the sequence provided below. These instructions are designed to ensure the submission of information essential to the understanding and comprehensive evaluation of the Response.

1) Executive Summary:

Provide an Executive Summary of the major features of the Response, including any conclusions, assumptions, and general recommendations the Respondent desires to make. In addition, provide the following information. The Executive Summary section is limited to a length of two (2) pages.

- The name of the project lead who will work on the contract and relevant project experience. Identify a Point of Contact and/or Project Manager and provide contact information for questions, notice of selection/non-selection, etc.
- Verification statement that the proposed team individuals are currently employed by the Respondent.
- Confirmation that the general liability insurance, workers' compensation, and professional liability insurance will be provided within ten (10) calendar days of the Contract Award.
- Brief statement providing assurances that the Respondent will be cognizant of, comply with, and enforce all applicable Federal, State, and local laws, regulations, and ordinances, and a description of your Respondent's methodology for handling errors and omissions in the materials developed as part of this Project.
- Acknowledgment of Addenda.

2) Relevant Experience Information:

The Relevant Experience Information section is limited to a length of two (2) pages and will include the following information:

- Identification of the Respondent/team and a brief description of each key team member including a brief summary of their experience including the following information:
 - Position in firm and on project team;
 - Responsibilities
 - Number of years with the firm and any relevant work the team has completed on similar past projects; and
 - Master Appraiser Institute ("MAI") certification expiration date.
- Year established (including former Respondent names and year established, if applicable). State the size of the Respondent and the number and nature of the professional staff to be assigned to the project.
- Location of the headquarters office, as well as the location of each the office where work will be performed for the project.
- Provide information on experience and confirmation that key personnel are registered or licensed to practice in Texas, if applicable.

3) Reference List of Projects of Similar Scope, Size, and Complexity:

The Reference List of Projects of Similar Scope, Size, and Complexity section is limited to two (2) pages and will include the following information:

- A reference list of clients with contact names, telephone numbers, and email addresses. Projects listed should encompass minimum of **three (3) years** of experience.
- List at least five (5) similar projects the firm has completed using federal requirements by TxDOT, TWDB, EPA, HUD, etc., including the project name, location, key personnel responsible for the project, scope of services provided and coordination with key agencies.

4) Proposed Project Schedule, Strategy and Approach:

The Project Approach and Schedule section is limited to one (1) page and will include the following:

- Process used for compliance with required regulation including average response time for teams in the field and

average time to create and deliver reports.

- Knowledge of the San Marcos area and how that knowledge affects project approach.
- Experience dealing with Federal and State requirements, and how that experience relates to the services provided by the firm.
- Summary of process used in dealings with public infrastructure projects that include successful land owner dealings or eminent domain to meet project schedule.

5) Information Questionnaire and Assurances:

- Submit Vendor Information Questionnaire and Assurances (Attachment “A”) with the Response.

6) House Bill 89 Verification Affidavit:

- Submit the completed and notarized House Bill 89 Verification Affidavit (Attachment “B”) with the Response, if applicable.

7) Conflict of Interest Questionnaire (CIQ):

- Submit the completed and notarized Conflict of Interest Questionnaire (Attachment “C”) with the Response.

8) Federal Forms:

- Submit the completed federal forms (Attachment “D”) with the Response:
 - Federal Funding and Accountability Transparency Act Contractor Form (Exhibit 5B),
 - MBE/WBE/Section 3 (Exhibit 5C),
 - F.2: Statement of Intent of MOB/WOB/Section 3 Utilization,
 - Disclosure of Lobbying Activities (0348-0046), and
 - Contractor Certification.
- The following federal forms will be requested from the most highly qualified firm(s) during the negotiation process. **NOTE: Do not** include any personnel rate information in your submission:
 - Section 3 Labor Form (Attachment B),
 - Section 3 Business Concern Certification Form for Contracting (Attachment F),
 - Section 3 Certification Form One: Will Follow Prioritization of Effort for Bid Packet

• **SUBMISSION OF RESPONSE**

Interested and qualified Respondents or teams are invited to submit one (1) original of their Response, and one (1) USB flash drive containing the Response in a single file PDF document. **Documentation should be limited to page limits as specified in each section.** The page limits do not include tabs or other document portions unless the tabs or other document portions provide information noted in this solicitation (photos, client testimonials, etc.). Responses must be written entirely on 8 ½” X 11” paper and may be spiral, staple, or clip bound. Responses must be submitted in a manner that does not carry any benefit, keepsake, or value for members of the evaluation committee.

To the extent permitted by law, all documents pertaining to this Solicitation will be kept confidential until a contract is awarded. Any information deemed confidential by the submitted Respondent must be clearly marked as such. No information about any Response will be released to the public until a contract is awarded. The City is under no obligation to return Responses.

It is the sole responsibility of the Respondent to ensure that its submittal reaches the Office of the Purchasing Manager, Purchasing & Contracting. Deliver Responses, unless otherwise specified, to the address on the label no later than the submittal deadline. Therefore, if your Response is delivered by an express mail carrier or by any other means, it is your responsibility to ensure delivery to the address below. **The City is not responsible for deliveries**

made to any place other than the Office of the Purchasing Manager, for reasons including the lack of or improper labeling of the outermost sealed shipping container to indicate the Solicitation number, title, and deadline.

Responses may be dropped off in-person in the Bid/Proposal drop box at the Office of the Purchasing Manager, Purchasing & Contracting, Building 3, prior to the submittal deadline. Responses received after the submittal deadline will not be accepted.

Responses shall be mailed or delivered to:

**Office of the Purchasing Manager
630 East Hopkins Street, Building 3
San Marcos, Texas 78666**

The outermost envelope/container must be sealed and will be labeled as such to ensure delivery to the Office of the Purchasing Manager prior to the submission deadline:

SEALED RFQ RESPONSE - DO NOT OPEN	
SEALED PROPOSAL NO.:	2025-173
PROPOSAL TITLE:	On-Call Appraisal Services RFQ
DUE DATE/TIME:	October 30, 2025, Prior to 2:00 PM, Local Time
SUBMITTED BY:	_____
(Firm Name and City/State of Respondent)	

Acknowledgement of Responses will be broadcast live via video conference by reading aloud the Respondent's name, city, and state in the Conference Room, Building 3, 630 East Hopkins Street, San Marcos, Texas 78666, at 2:00 PM, on the Due Date. Link to view the video conference submittal acknowledgement can be located below:

Microsoft Teams
[Join the meeting now](#)

Meeting ID: 259 131 314 065 7
Passcode: rh9iz2GN

Dial in by phone
[+1 430-205-2151,,629403502#](#) United States, Tyler
[Find a local number](#)

Phone conference ID: 629 403 502#

VI. AWARD OF CONTRACT

1) Negotiations: After evaluation and ranking based on the evaluation criteria, the City may then enter into negotiations with the top ranked Respondent as to the terms of the agreement and all aspects of the project to reach an agreement.

2) **Inability to Reach an Agreement:** In the event the negotiations between the top ranked Firm and the City cannot be completed as a result of an inability to reach agreement, the City may formally end negotiations with that Firm and attempt to negotiate a contract with the next ranked Respondent until a contract is entered.

3) **Successful Firm's Documents:** The successful Respondent will provide its Response and any negotiated amendments to the Office of the Purchasing Manager as an electronic Microsoft Office Word file.

4) **Contract Award:** The selection of a Respondent and the execution of a contract, while anticipated, are not guaranteed by the City. The City reserves the right to determine which Response is in the City's best interest and to award the contract on that basis, to reject any and all Responses, and waive any irregularities of any Response.

5) **City Council Approval:** The City Council will consider the final contract for approval in the event the final contract amount is anticipated to exceed \$100,000.

6) **Final Contract:**

a. The selected Respondent will assume responsibility for all services offered in its Response, whether or not such services are provided by a subconsultant or joint venture arrangement. The successful Respondent will be considered the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

b. The successful Respondent will be required to enter into a written contract with the City, Attachment "E", which includes the City's Standard Terms and Conditions found at sanmarcostx.gov/termsandconditions. Where conflicts exist between the provisions of Attachment "E" and the provisions of this Solicitation, the provisions imposing greater responsibility on the successful Respondent will control.

c. This Solicitation and the successful Response, or any part thereof, may be incorporated into and made a part of the final contract. The City reserves the right to negotiate the terms and conditions of the contract with the successful Respondent.

d. Respondents are advised that exceptions to any portion of the Solicitation, the City's Agreement, and/or the City's Standard Terms and Conditions may jeopardize acceptance of your Response. If any exceptions are taken, those exceptions will be clearly indicated and a full explanation given for each exception within the proposal submitted. It is required that the Response enumerate the specific document and specific clauses that the Respondent wishes to amend or delete and suggest alternative wording in the Response. If no exceptions are included in the Response, it will be understood the Respondent accepts the City's Standard Terms and Conditions. In view of the length of time involved in obtaining the approval of legal counsel, Respondents are cautioned not to state that the Respondent's Response is subject to the Respondent's standard terms and conditions or that the final terms and conditions are subject to negotiation after award. This may result in the Response being deemed non-responsive, in which no further consideration or evaluation will be made.

VII. **INSURANCE AND LIABILITY**

During the period of the resulting contract, the Respondent will maintain, at its expense, insurance with limits not less than those prescribed below. Insurance underwriters will be acceptable to the City. With respect to required insurance, the Respondent will:

- 1) Name the **City of San Marcos, c/o Purchasing & Contracting Division, 630 East Hopkins Street, San Marcos, Texas 78666** as an additional insured.
- 2) Provide the City with a thirty (30) days' written notice to the Certificate Holder prior to cancellation or material change of any insurance referred to in the certificate.
 - a. Failure of Certificate Holder to demand a certificate or other evidence of full compliance with these insurance requirements or failure of Certificate Holder to identify a deficiency from evidence that is provided will not be construed as a waiver of Insured's obligation to maintain such insurance.
- 3) Provide the City of San Marcos, Purchasing & Contracting Division, 630 East Hopkins Street, San Marcos, Texas 78666, a Certificate of Insurance evidencing required coverage before execution of contract.
- 4) Submit a Certificate of Insurance reflecting coverage as follows:

Business automobile liability insurance with minimum limits of liability for bodily injury and property damage combined of not less than \$1,000,000 per occurrence. Contractor will maintain a standard ISO version of Business automobile liability insurance or its equivalent providing coverage for all owned, non-owned and hired automobiles. Owner will be included as an additional insured party.

Commercial General Liability Insurance: Including Bodily Injury and Property Damage Liability, Independent Contractors Liability, Contractual Liability, Product Liability and Completed Operations Liability in an amount not less than \$1,000,000 combined single limit, per occurrence, and \$2,000,000 aggregate. City will be included as an additional insured party.

Umbrella or Excess Liability Coverage: Not less than \$1,000,000 per occurrence and in the aggregate. This coverage typically sits above the underlying General Liability, Automobile Liability and Professional Liability policies. Depending upon the scope and work to be performed in the proposed agreement, this policy may be required in order for the vendor to be able to meet the minimum insurance requirements.

Workers' compensation insurance in accordance with and as required by the Workers' Compensation Act of the State of Texas in amounts sufficient to satisfy statutory requirements or \$500,000.00/\$500,000.00 for Employer's Liability.

Certificate of coverage or certificate means a copy of a certificate of insurance, a certificate of authority to self-insure issued by the Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

Professional Liability: Not less than \$1,000,000 per claim and aggregate to be maintained for the duration of the agreement and three years following its termination.

This insurance requirement applies when a supplier has a professional designation or license and/or is providing professional services. The minimum limit for architects and engineers is \$2,000,000 per occurrence and in the aggregate and may be increased depending upon the nature of the services to be provided to the City.

VIII. SPECIAL PROVISIONS

- 1) **Selected Response:** The City reserves the right to include the selected Response or any part or parts thereof in the final contract.
- 2) **Reimbursement:** The City makes no commitment to any Respondent of this Solicitation beyond consideration of the written Response. The City will not reimburse Respondents for the costs incurred in response to this solicitation.
- 3) **Collusion:** By submission of a Response, the Respondent certifies, and in the case of a joint submission each party certifies as to its own organization, that in connection with any cost proposal submitted by the Respondent, the prices which are quoted are not the product, direct or indirect, of any collusion with any other Respondent, and have not been knowingly disclosed by the Respondent directly or indirectly to any other Respondent prior to submission to the City.
- 4) **Lobbying:** Respondents are prohibited from directly or indirectly communicating with City Council members regarding their qualifications or any other matter related to the eventual award of a contract for the services requested in this Solicitation. Respondents are prohibited from contacting City staff or evaluation committee members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff or committee member through the Purchasing Manager. **Any violation will result in immediate disqualification of the Respondent from the selection process.**
- 5) **City of San Marcos Artwork:** Use of the City seal or the City brand on Responses is **not** permitted on non-City-generated work product.
- 6) **Taxpayer Identification Form:** Prior to the execution of a contract for these services, the selected Respondent will complete a Request for Taxpayer Identification Number and Certification Form (IRS Form W-9). The City will not make payment against the contract until it has received the properly completed form. The selected Respondent will invoice the City for services rendered accompanied by the City's required documentation. The City's representative and the appropriate staff in the City's Finance Department must approve payments.
- 7) **"Green" Procurement:** It is the City's objective to be proactive with regard to the environment. The City encourages "Value Purchasing" of environmentally friendly products. Respondents are encouraged to clearly identify any green solution in their Responses, or a Respondent may propose a separate alternative "Green" solution in a separate envelope marked "Green Solution". The Green solution alternative Response will meet the minimum performance and delivery standards.
- 8) **Protest Procedures:** The purpose of the protest procedures is to protect the public interest in the purchasing process. This section is intended to give a bidder, proposer, respondent, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract the opportunity to protest. The City's objective is to resolve protests as soon as practical.

Any protest or complaint to the City's consideration must be submitted in writing and received by the Purchasing Manager no later than 5:00 PM on the fifth (5th) calendar day after the City notifies the bidder or proposer: 1) that it is deemed non-responsive; 2) that it is deemed not responsible; 3) the name of the apparent winning bidder; or 4) the City's intent to award a contract. If the protest or complaint does not contain the following information, it may be dismissed by the Purchasing Manager:

- Protestor's name, address, telephone number, and email address;
- The solicitation number;

- Identification of the statute or policy that is alleged to have been violated;
- A precise statement of the relevant facts;
- Identification of the issues to be resolved; and
- Supporting documentation.

The protest must be concise and presented logically and factually to help with the City’s review and determination as to whether the grounds for the protest are sufficient. The Purchasing Manager will notify the protesting party that the protest has been received and make every effort to resolve the protest before contract award.

If it is determined that the grounds for the protest are insufficient and no violation of a statute or policy has occurred, the Purchasing Manager will provide a written decision to the protesting party setting forth the reasons for the determination.

If, after conferring with the City Attorney’s Office, it is decided that the grounds for the protest are sufficient and it is determined that a violation of a statute or policy has occurred, the Purchasing Manager will inform the protesting party by letter setting forth the reasons for the determination and the remedial action that will be taken.

When a protest is filed, the City will not make an award until a decision on the protest is made except, as determined by the City Manager, when a delay would jeopardize urgently needed goods or services, or a delay in making an award will unduly delay delivery or performance of urgently needed services.

- 9) **Smoking Prohibition:** Pursuant to San Marcos Ordinance No. 2013-57, as amended, all City of San Marcos-owned and rented/leased properties are smoke-free properties. All contractors, vendors, subcontractors, and their employees are prohibited from smoking while on City property. This prohibition includes the enclosed areas of public places and workplaces and within ten (10) feet of doors and windows of City-owned or rented buildings, all City parks and the grounds outside of any City building. This prohibition includes e-cigarettes and other inhaled vapor devices. The City may terminate the contract for noncompliance with this ordinance.
- 10) **Certificate of Interested Parties:** A contract greater than \$100,000 or that is approved by the City Council regardless of contract amount requires the vendor to electronically create a Certificate of Interested Parties Form 1295 through the Texas Ethics Commission (“TEC”) website (https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and submit a signed copy of the form to the City prior to the award of the contract. A contract, including a City-issued purchase order, will not be enforceable or legally binding until the City receives and acknowledges receipt of the properly completed Form 1295 from the vendor.
- 11) **Prohibition on Contracts with Companies Boycotting Israel:** Pursuant to Chapter 2271 and 808, *Texas Government Code*, Contractor certifies that is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate. Vendors will submit the House Bill 89 Verification Affidavit with their Response. Failure to meet or maintain the requirements under this provision will be considered a material breach.
- 12) **2252 Compliance:** Section 2252 of the *Texas Government Code* restricts the City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. Contractor hereby certifies that is not ineligible to receive the award of or payments under this Agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.
- 13) **Non-Discrimination:** The Respondent understands and certifies that it is an Equal Opportunity Employer and does not and will not discriminate in employment and in subcontracts based on race, color, sexual orientation,

gender identity, national origin, sex, age, disability, or economic condition and prohibits retaliation, discharge, or discrimination against any employee or applicant for employment or against any subcontractor or supplier.

- 14) Conflict of Interest Questionnaire (Form CIQ):** In accordance with Chapter 176 of the Texas Local Government Code, “Disclosure of Certain Relationships with Local Government Officers,” persons, or their agents who seek to contract for the sale or purchase of property, goods, or services with the City, will file a Conflict of Interest Questionnaire (Form CIQ) with the City Secretary if the vendor has a business relationship as defined by Section 176.001(1-a) with the City and the vendor meets requirements under Section 176.006(a).

The Conflict-of-Interest Questionnaire (Form CIQ) is required to be filed within seven (7) business days of:

- a. Beginning of discussions or negotiations to enter into a contract with the City; or
- b. Submission of an application, response to a request for Responses or bids, correspondence or other writing related to a potential agreement with the City.

If the above is applicable in accordance with LGC Chapter 176, Bidder is requested to submit a completed Conflict of Interest Questionnaire (Form CIQ), with their bid in addition to submitting a completed Form CIQ to the City Clerk’s Office, 630 E. Hopkins Street, San Marcos, Texas 78666.

By law, Form CIQ must be filed with the City Clerk no later than the seventh (7th) business day after the date the Vendor/Contractor becomes aware of facts that require the statement to be filed as per Section 176.006(a-1). A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

Form CIQ is available from the Texas Ethics Commission by accessing the following web address:

<https://www.ethics.state.tx.us/data/forms/conflict/CIS.pdf>

- 15) Prohibition on Contracts with Certain Foreign-Owned Companies:** Section 2274 of the Texas Government Code (SB2116) restricts the City from contracting with companies that do business with certain foreign-owned companies in connection with critical infrastructure if the company is granted direct or remote access; and if the company is owned by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a “designated country”, or headquartered in China, Iran, North Korea, Russia, or a designated country. Designated country is Governor-designated country as a threat to critical infrastructure. By signing below as an authorized signer, the Bidder hereby certifies that it does not do business with certain foreign-owned companies in connection with critical infrastructure as described herein. Failure to maintain the requirements under this provision will be considered a material breach.

- 16) Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries:** Section 2274 of the Texas Government Code (SB19) restricts the City from contracting with companies that discriminate against firearm and ammunition industries. By signing below as an authorized signer, the Respondent certifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate against the same during the term of this contract. (Only applies to companies with ten (10) or more full-time employees and for a contract value greater than \$100,000.) Failure to maintain the requirements under this provision will be considered a material breach.

- 17) Prohibition on Contracts with Companies Boycotting Certain Energy Companies:** Section 2274 of the Texas Government Code (SB13) restricts the City from contracting with companies that boycott energy companies. By signing below as an authorized signer, the Respondent certifies that it does not have a practice, policy, guidance, or directive boycotting energy companies, and will not discriminate against the same during the term of this contract. (Only applies to companies with ten (10) or more full-time employees and for a contract

value greater than \$100,000.) Failure to maintain the requirements under this provision will be considered a material breach.

- 18) Inquiries and Other Information:** All questions and other communication from Respondents will be permissible until 5:00 P.M., fifteen (15) business days prior to the solicitation due date. All responses to this Request for Responses, as well as any questions, clarifications, or requests for general information are to be directed to the following Point of Contact in writing and must include the solicitation number in the subject line.

Rachel Shelton, CTCD, CTCM
Procurement Program Administrator
Purchasing & Contracting Division
City of San Marcos
Email: RShelton@sanmarcostx.gov
Subject line will include solicitation: RFQ #2025-173

Communications outside this prescribed protocol jeopardizes the integrity of this procurement process and may disqualify your response.

- 19) Addenda:** Any changes resulting from the questions submitted affecting the scope of services, or which may require an extension to the solicitation due date will be reduced to writing in the form of an addendum to this solicitation. Addenda may only be viewed at www.sanmarcostx.gov/eprocurement. It is the Respondent's responsibility to check the above site to determine if the City has issued any addenda. Addenda will be issued no later than ten (10) business days prior to the solicitation due date.

IX. ANTICIPATED SCHEDULE

The following is the anticipated schedule for the selection process:

- **September 28, 2025** – Advertise, mail, or email Solicitation
- **October 15, 2025** – Deadline for submission of questions to RShelton@sanmarcostx.gov
- **October 20, 2025** – Deadline for addendum to be posted at www.sanmarcostx.gov/eprocurement
- **October 30, 2025** – Deadline for receipt of responses
- **December 15, 2025** – Selection Committee selects its recommendation for the most highly qualified Respondent(s)
- **January 20, 2026** – City Council for consideration and contract

ATTACHMENT A



VENDOR INFORMATION QUESTIONNAIRE AND ASSURANCES

Name of Company:	
Primary Office Address (City/State/Zip):	
Telephone Number:	
Email Address:	
DUNS Number (if applicable):	
Company has been in business since:	

Form of Ownership (check one):

- State Incorporated/Registered _____ / Date Incorporated/Registered _____
- LLC
- Joint Venture
- Partnership: If Partnership, select one: Limited or General
- Individual

List of Partners, Principals, Corporate Officers or Owners:

Name	Title

List of Corporate Directors:

Name	Title

1. Have you had any contracts terminated for default or other performance reasons? Yes No If yes, explain:

2. Has your company been convicted of a criminal offense involving fraud, theft, bribery, kickbacks, or unlawful gifts to a public official? Yes No If yes, has the conviction occurred within three (3) years immediately preceding either the date of submission of a bid/proposal, or the date of award of the contract?

If yes, explain:

3. Is your company involved in pending investigation or criminal prosecution of a criminal offense involving fraud, theft, bribery, kickbacks, or unlawful gifts to a public official?

Yes No If yes, explain:

4. Does your company have pending claims, investigations, or civil litigation involving allegations of fraud, misrepresentation, or conversion?

Yes No If yes, explain:

5. Does your company have previous final judgments against the City for breach of contract, fraud misrepresentation or conversion?

Yes No If yes, explain:

6. Has your company failed to timely pay/remit sales tax, property tax, or utility payments to the City of San Marcos?

Yes No If yes, explain:

7. Has your company refused to execute a contract following an award by the San Marcos City Council?

Yes No If yes, explain:

8. Has your company violated the anti-lobbying provisions in a current or previous City of San Marcos procurement process by contacting a member of the San Marcos City Council prior to the award of a contract?

Yes No If yes, explain:

9. Has your company furnished unauthorized substitutions of materials not meeting contract specifications in a current or previous contract with the City of San Marcos?

Yes No If yes, explain:

10. Non-Collusion Certification: By signing below as an authorized signer, the Bidder certifies that ALL items below are true and correct concerning its bid.

- 1) You are fully informed of the contents of the bid and the circumstances of its preparation.
- 2) Your bid is genuine and is not a collusive or sham bid.
- 3) Neither you nor anyone else acting on behalf of your company has agreed, colluded, or conspired in any manner with any other bidder, firm, or person to submit a collusive or sham bid, or to refrain from bidding, or sought by communication or conference with any other bidder, firm, or person to fix the prices, overhead, profit, or any cost element in your bid or in any other bid, or to secure through any collusion, conspiracy, or agreement any advantage against the City of San Marcos or any other bidder.
- 4) The prices quoted in your bid are fair and proper and are not affected by any collusion, conspiracy, connivance, or unlawful agreement on the part of your company or anyone acting on its behalf.

11. Prohibition on contracts with companies that boycott Israel. Chapter 2271 and 808, Texas Government Code restricts the City from contracting with companies that boycott Israel. By signing below and submission of the HB89 Verification form, the Bidder certifies that it does not boycott Israel and will not during the term of this contract. Failure to maintain the requirements under this provision will be considered a material breach. (HB89 Verification form required if contract value is greater than \$100,000.)

ATTACHMENT B

HOUSE BILL 89 VERIFICATION

(This affidavit must be completed and submitted with bid/proposal.)

Pursuant to Sections 2271.001, 2271.002, 808.001, Texas Government Code:

- 1. "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; and
2. "Company" has the meaning assigned by Section 808.001, except that the term does not include a sole proprietorship.
3. Section only applies to a contract that is between a governmental entity and a company with 10 or more full-time employees; and has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

As the undersigned legal representative of _____, (Business Name)

after being duly sworn by the undersigned notary, do hereby depose and verify under oath that the company named above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2271:

- a. Does not boycott Israel currently; and
b. Will not boycott Israel during the term of the contract City of San Marcos, Texas.

(Business Representative Signature)

(Date)

(Title)

STATE OF _____ §
COUNTY OF _____ §

On this day, BEFORE ME, _____ personally appeared and personally-known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual executed the instrument for purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20_____.

[SEAL]

NOTARY PUBLIC in and for the State of _____

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or
(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

ATTACHMENT D

EXHIBIT 5A FEDERAL, STATE, AND LOCAL REQUIRED PROVISIONS

A. NATIONAL OBJECTIVES

All activities funded with CDBG funds must meet one of the CDBG program's National Objectives: (a) benefit low- and moderate- income persons; (b) aid in the prevention or elimination of slums or blight; or (c) meet community development needs having a particular urgency, as defined in 24 CFR 570.208. The Contractor certifies that the activities carried out under this Agreement will meet a National Objective.

B. COPELAND ANTI-KICKBACK ACT COMPLIANCE

The Contractor will comply with the requirements of 29 CFR Part 3 (the Copeland Act). The "Anti-Kickback" section of the Act precludes a contractor or subcontractor from inducing an employee -- in any manner -- to give up any part of his/her compensation to which he/she is entitled under his/her contract of employment.

C. CONFLICTS OF INTEREST (24 CFR 570.611; 2 CFR 200.112 AND 200.318(c); 24 CFR 85.35; AND 24 CFR 84.42

There are two sets of conflict of interest provisions applicable to activities carried out with CDBG funding. The first set, applicable to the procurement of goods and services by subrecipients (*funded applicants*), is the procurement regulations located at 24 CFR 84.42 and 85.36. The second set of provisions is located at 24 CFR 570.61 l(a)(2). These provisions cover situations not covered by parts 84 and 85.

With respect to procurement activities, the Contractor must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. At a minimum, these standards must:

- 1) Require that no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the firm selected for an award:
 - a) An employee, officer, or agent' of the Contractor;
 - b) Any member of an employee's, officer's, or agent's immediate family;
 - c) An employee's, agent's, or officer's partner; or
 - d) An organization which employs or is about to employ any of the persons listed in the preceding sections.
- 2) Require that employees, agents, and officers of the Contractor neither solicit nor accept gratuities, favors, or anything of value from contractors, or parties to sub-agreements. However, Contractors may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
- 3) Provide for disciplinary actions to be applied for any violations of such standards by employees, agents or officers of the subrecipient.

With respect to all other CDBG-assisted activities, the general standard is that no employee, agent or officer of the subrecipient, who exercises decision-making responsibility with respect to CDBG funds and activities is allowed to obtain a financial interest in or benefit from CDBG activities, or have a financial interest in any contract, subcontract, or agreement regarding those activities or in

the proceeds for the activities. Specific provisions include that:

- a) This requirement applies to any person who is an employee, agent, Contractor, officer, or elected or appointed official of the City, a designated public agency, or a subrecipient, and to their immediate family members and business partner(s).
- b) The requirement applies for such persons during their tenure and for a period of one year after leaving the grantee or subrecipient organization.
- c) Upon written request, exceptions may be granted by HUD on a case-by-case basis.

D. CERTIFICATION OF ELIGIBILITY

By submitting a proposal in response to the Invitation for Bids, the Contractor certifies that at the time of submission, he/she/it is not listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p 189) and 12689 (3 CFR part 1989 Comp., p 235), "Debarment and Suspension".

- 1) In the event of placement on the list between the time of bid/proposal submission and time of contract award, the bidder/proposer will immediately notify the City.
- 2) Contractor certifies that its subcontractors are not presently debarred, suspended, or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program.
- 3) Placement of Contractor on the federal government's list of suspended, ineligible, or debarred contractors, false certification, or failure to notify City as required may result in City's termination of this Contract for default.
- 4) Contractor will furnish a copy of the certification in accordance with 24 C.F.R. Part 24 (Debarment and Suspension). The Contractor and all subcontractors will be active and not debarred on the website, www.sam.gov. and provide a copy of the certification to the City before the entity performs work under this contract.

The Contractor must ensure that awards are not made 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" and the UAR. Contractor will have each contractor and subcontractor complete a contractor eligibility form in a format that is provided or approved by the City. This form will provide the information necessary to verify contractor eligibility.

E. NON-COLLUSION CERTIFICATION

The Contractor certifies that, if a proposal was provided that resulted in a contract, that proposal was made without collusion with any other person, firm or corporation.

F. BYRD ANTI-LOBBYING AMENDMENT

(31 U.S.C. 1352) Contractors that bid for an award exceeding \$100,000 must file the required certification that it will not and has not used Federal appropriated funds to pay any persons or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any

Federal contract, grant or any other award covered by 31 U.S.C. 1352.

G. SECTION 3 TERMS AND CONDITIONS CLAUSE

Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

- 1) The work to be performed under this Contract is subject to the requirements of section 3 of the Housing and Urban Development (HUD) 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 person, particularly persons who are recipients of HUD assistance for housing.
- 2) The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 75, which implement section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
- 3) The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, 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 75. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.
- 4) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 75. Minimum expectations of effort to direct employment opportunities to such workers are identified in the Section 3 Plan.
- 5) Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.

H. COMPLIANCE WITH RULES AND REGULATIONS

Funding for the Project has been made available by HUD through the CDBG Program. The Contractor will comply with all of the applicable uniform administrative regulations related to the application, acceptance and use of federal funds as contained in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The Contractor is encouraged to obtain the necessary information but failure to do so will not relieve it from compliance with the applicable regulations. The Contractor will be responsible for compliance and conformance with applicable federal and state laws, rules, regulations and codes, City permitting requirements, and City ordinances currently in effect. Federal and state laws, rules, regulations and codes include but are not limited to:

a. WORKERS COMPENSATION LAWS:

- 1) Minimum and maximum salary and wage statutes and regulations, including but not limited to:
 - a) Fair Labor Standards Act of 1938, as amended;

- b) Equal Pay Act of 1963, PL 88-38; and
 - c) All applicable regulations implementing the above laws;
- 2) Non-discrimination statutes and regulations, including but not limited to:
- a) Title VII of the Civil Rights Act of 1964, as amended;
 - b) Section 504 of the Rehabilitation Act of 1973, as amended;
 - c) The Age Discrimination Act of 1975, as amended; and
 - d) all applicable regulations implementing the above laws;
- 3) Licensing laws and regulations;
- a) Compliance with Texas Accessibility Standards ("TAS") and ADA requirements, issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, or other applicable Texas law;
- 4) Requirements under the Architectural Barriers Act and the Americans with Disabilities Act set forth in 24 C.F.R. Section 570.614;
- 5) All applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C.7401-7671q), and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.
- 6) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PUB L 94-163, 89 Stat. 871) codified at 42 U.S.C.A. Section 6321 et seq.;
- 7) National Environmental Policy Act ("NEPA") including Environmental Protection Agency regulations (40 C.F.R. Part 15), applicable HUD regulations set forth in 24 C.F.R. Parts 50 and 58 including authorities cited therein, and National Historic Preservation Act of 1966, including Federal Historic Preservation Regulations (36 C.F.R. Part 800), which require environmental clearance of federal aid projects; and in connection with NEPA requirements, Contractor is responsible for the preparation of NEPA documents required for environmental clearance of the Project covered hereunder; G) 24 C.F.R. Section 5.105, including applicable authorities cited therein, as well as applicable provisions of 24 C.F.R. Part 58, including Section 58.5 and applicable authorities cited therein and Section 58.6 and applicable authorities cited therein.

b. AFFIRMATIVE ACTION-WOMEN-ANDMINORITY-OWNED BUSINESSES (W/MBE)

The Contractor will take all necessary affirmative steps to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro- Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Contractor may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

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. 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;
- iv. 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.
- v. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

c. LABOR STANDARDS

The Contractor agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement.

The Contractor agrees to comply with the Copeland Anti-Kick Back Act (18U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

The Contractor agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Contractor of its obligation, if any, to require payment of the higher wage. The Contractor shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

d. USE OF ASSETS AND ASSET REVERSION

City assets used by the Contractor during the contract shall be given back to the City at the conclusion of the contract.

e. PROGRAM INCOME

The City will accept and report program income to the federal government.

f. FEDERAL FUNDING AND ACCOUNTABILITY TRANSPARENCY ACT (FFATA)

Contracts equal to or greater than \$25,000 must be entered into the Federal Service Reporting System. Contractor information is needed to complete the compliance reporting for the Federal Funding and Accountability Transparency Act. The Contractor will complete the Federal Funding and Accountability Transparency Act form attached to this Contract.

g. LOBBYING

The Contractor hereby certifies that:

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

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

(iii.) It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Contractors shall certify and disclose accordingly:

(iv.) Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

h. LEAD-BASED PAINT

The Contractor agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

i. FLOOD DISASTER PROTECTION

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001),

the Contractor shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

j. HISTORIC PRESERVATION

The Contractor agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

k. RELIGIOUS ACTIVITIES

The Contractor agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(G), such as worship, religious instruction, or proselytization. The acquisition, construction, or rehabilitation of structures used for inherently religious activities is not allowable under this program.

l. COPYRIGHT

If this contract results in any copyrightable material or inventions, the City and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

m. EQUAL EMPLOYMENT OPPORTUNITY

The Contractor will comply with Executive Order 11246 of 9/24/65, entitled "Equal Employment Opportunity," (30 FR 12319, 12935, 3 CFR Part, 1964-65 Comp., p. 339) as amended by Executive Order #11375 of 10/13/67, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).

Bidder/Respondent will submit this completed document with Bid/Proposal.

EXHIBIT 5B
FEDERAL FUNDING AND ACCOUNTABILITY TRANSPARENCY ACT
CONTRACTOR FORM

Contracts equal to or greater than \$25,000 must be entered into the Federal Service Reporting System. The following Contractor information is needed to complete the compliance reporting for the Federal Funding and Accountability Transparency Act:

Contractor EIN _____

Contractor Unique Entity ID Number _____

Contractor Legal Name _____

Subawardee Address _____

Subawardee Principal Place of Performance (including congressional district)

Has the Contractor met all of the following conditions? _____

- **80% or more** of prior year annual gross revenues are from Federal awards;
- **\$25 million or more** in annual gross revenues are from Federal awards; **and**
- The public does **not** have access to compensation information filed under *Securities and Exchange Commission (SEC)* and IRS requirements.

If the Contractor has met **ALL** of the above conditions, please provide the total compensation and names of top five executives of the Contractor.

Number	Total Compensation	Name of Executive (Top 5)
1		
2		
3		
4		
5		

Bidder/Respondent will submit this completed document with Bid/Proposal.

EXHIBIT 5C
MBE/WBE/Section 3

Instructions: If the Respondent/Bidder is a Minority Owned Business (MOB) or Women Owned Business (WOB) or qualifies as a Section 3 business, the Respondent completes Form F.1., and if the Respondent/Bidder intends to utilize a MOB/WOB or Section 3 business in the performance of the proposed contract, the respondent /bidder completes Form F.2

F.1: CERTIFICATION AS A MINORITY OWNED, WOMEN OWNED OR SECTION 3 BUSINESS

I, _____ certify that _____ () is / () is not a Minority Owned, Women Owned or Section 3 Business.

Business Registered Name

Business Registered Address 1

State of Registration: _____

Certificate or Registration Number: _____

Certifying Agency: _____

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. The City reserves the right to withdraw or terminate the proposed contract should the representation of fact be false.

Signature and Date: _____

Printed Name: _____

Position: _____

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: 4c	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Bidder/Respondent will submit this completed document with Bid/Proposal.

CONTRACTOR CERTIFICATIONS

U.S. Department of Housing and Urban Development

CERTIFICATION OF BIDDER REGARDING CIVIL RIGHTS LAWS AND REGULATIONS

INSTRUCTIONS

CERTIFICATION OF BIDDER REGARDING Executive Order 11246 and Federal Laws Requiring Federal Contractor to adopt and abide by equal employment opportunity and affirmative action in their hiring, firing, and promotion practices. This includes practices related to race, color, gender, religion, national origin, disability, and veterans' rights.

NAME AND ADDRESS OF BIDDER (include ZIP Code)

CERTIFICATION BY BIDDER

Bidder has participated in a previous contract or subcontract subject to Civil Rights Laws and Regulations.

- Yes No

The undersigned hereby certifies that:

- The Provision of Local Training, Employment, and Business Opportunities clause (Section 3 provision) is included in the Contract.
- The Equal Opportunity clause is included in the Contract (if bid equals or exceeds \$10,000).

Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?

- Yes No

NAME AND TITLE OF SIGNER (Please type)

SIGNATURE

DATE

Project: _____

ATTACHMENT B - SECTION 3 LABOR FORM

This form must be filled out and returned with your bid.

Business Information

Name of Business: _____

Address of Business: _____

Name of Business Owner: _____

Phone Number of Business Owner: _____

Email Address of Business Owner: _____

EXPECTED LABOR FORCE

At the time of the pre-construction meeting, the following information is known or estimated:

1. Projected Positions Available:
 - a. Number of Available Positions
 - b. Attach a list of positions that will be available (vacant) due to this contract, with job titles and descriptions, and wage rates.
2. Current employees
 - a. Attach a list of all current employees including administrative, clerical, planning, and construction, including job title and wage rate for each.

Affirmation

I affirm that the above statements are true, complete, and correct to the best of my knowledge and belief. I understand that businesses who misrepresent themselves and report false information to the City of San Marcos, Texas, may have their contracts terminated as default and be barred from ongoing and future considerations for contracting opportunities. I hereby certify, under penalty of law, that this information is correct to the best of my knowledge.

Printed Name: _____ Signature: _____ Date: _____

ATTACHMENT F - SECTION 3 BUSINESS CONCERN CERTIFICATION FORM FOR CONTRACTING

To certify your business' Section 3 status, enter the following information and select applicable criteria:

Business Information

Name of Business: _____

Address of Business: _____

Name of Business Owner: _____

Phone Number of Business Owner: _____

Email Address of Business Owner: _____

Preferred Contact Information

Same as above, or:

Name of Preferred Contact: _____

Phone Number of Preferred Contact: _____

Email Address of Preferred Contact: _____

Type of Business (select from the following options):

Corporation Partnership Sole Proprietorship Joint Venture

Select from ONE of the following three options below that applies:

At least 51 percent of the business is owned and controlled by low- or very low-income persons (Refer to income guidelines below).

At least 51 percent of the business is owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 Workers (Refer to definition below).

Business Concern Affirmation

I affirm that the above statements are true, complete, and correct to the best of my knowledge and belief. I understand that businesses who misrepresent themselves as Section 3 Business Concerns and report false information to the City of San Marcos, Texas, may have their contracts terminated as default and be barred from ongoing and future considerations for contracting opportunities. I hereby certify, under penalty of law, that this information is correct to the best of my knowledge.

Printed Name: _____ Signature: _____ Date: _____

Certification expires 12 months after date of signature

Information regarding Section 3 Business Concerns can be found at 24 CFR 75.5

FOR ADMINISTRATIVE USE ONLY

Is the business a Section 3 business concern based upon their certification? YES NO

EMPLOYERS MUST RETAIN THIS FORM IN THEIR SECTION 3 COMPLIANCE FILE FOR FIVE YEARS.

The City of San Marcos, Texas Section 3 Income Limits – Effective April 18, 2022

Section 3 Business Concern Definition:

“Section 3 Business Concern” means a business concern meeting at least one of the following criteria, documented within the last six-month period:

- The business is at least 51 percent owned and controlled by low- or very low-income persons; or
- The business is at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing; or
- More than 75 percent of the labor hours performed for the business over the prior three-month period were performed by Section 3 workers.

The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.

Eligibility Guidelines:

The worker’s income must be at or below the amount provided below for an individual (household of 1) regardless of actual household size.

Extremely Low Income (30%)	\$23,200
Very Low Income (50%)	\$38,650
Low Income (80%)	\$61,800

Section 3 Worker Definition:

- A low or very low-income resident (the worker’s income for the previous or annualized calendar year is below the income limit established by HUD); or
- Employed by a Section 3 business concern; or
- A YouthBuild participant.

Targeted Section 3 Worker Definition (for housing and community development):

A Section 3 Worker who is:

- Employed by a Section 3 business concern or
- Currently meets or when hired met at least one of the following categories as documented within the past five years:
 - Living within the service area or the neighborhood of the project, as defined in 24 CFR 75.5
 - A YouthBuild participant.

Project: _____

SECTION 3 CERTIFICATION FORM ONE: WILL FOLLOW PRIORITIZATION OF EFFORT FOR BID PACKET

This form must be filled out and returned with your bid.

Business Information

Name of Business: _____

Address of Business: _____

Name of Business Owner: _____

Phone Number of Business Owner: _____

Email Address of Business Owner: _____

PRIORITIZATION OF EFFORT FOR EMPLOYMENT, TRAINING, AND CONTRACTING

It is not intended for contractors and subcontractors to terminate existing employees, but to make every effort feasible to meet Section 3 benchmark goals by utilizing existing qualified workforce and by considering qualified eligible Section 3 workers and Targeted Section 3 workers, per the prioritization of effort outlined in this section, before any other person, when hiring additional employees is needed to complete proposed work to be performed with all HUD CDBG programs.

1. EMPLOYMENT AND TRAINING

- 1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, the City, contractors, and subcontractors shall ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the county in which the project is located.**
- 2) Where feasible, priority for such employment opportunities and training should be given to:**
 - a. Section 3 workers residing within the service area or the neighborhood of the project (that is, Targeted Section 3 Workers), and**
 - b. Participants in YouthBuild programs.**

Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

2. CONTRACTING

- 1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, the City, contractors, and subcontractors shall ensure contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the county in which the project is located.**
- 2) Where feasible, priority for such contracting opportunities should be given to:**
 - a. Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project (that is, Targeted Section 3 Workers), and**
 - b. YouthBuild programs.**

Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

Project: _____

Affirmation

I affirm that I understand the above requirements and I certify that I will make my best effort to follow the above priority order when hiring or contracting.

I affirm that the above statements are true, complete, and correct to the best of my knowledge and belief. I understand that businesses who misrepresent themselves and report false information to the City of San Marcos, Texas, may have their contracts terminated as default and be barred from ongoing and future considerations for contracting opportunities. I hereby certify, under penalty of law, that this information is correct to the best of my knowledge.

Printed Name: _____ Signature: _____ Date: _____

The City of San Marcos, Texas Section 3 Income Limits – Effective April 18, 2022

Eligibility Guidelines

The worker’s income must be at or below the amount provided below for an individual (household of 1) regardless of actual household size.

Extremely Low Income (30%)	\$23,200
Very Low Income (50%)	\$38,650
Low Income (80%)	\$61,800

Section 3 Worker Definition:

- A low or very low-income resident (the worker’s income for the previous or annualized calendar year is below the income limit established by HUD); or
- Employed by a Section 3 business concern; or
- A YouthBuild participant.

Targeted Section 3 Worker Definition (for housing and community development):

A Section 3 Worker who is:

- Employed by a Section 3 business concern or
- Currently meets or when hired met at least one of the following categories as documented within the past five years:
 - Living within the service area or the neighborhood of the project, as defined in 24 CFR 75.5
 - A YouthBuild participant.

The benchmark goals are as follows:

- 1) Twenty-five percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;

Section 3 Labor Hours/Total Labor Hours = 25%

And

- 2) Five percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers, as defined at 24 CFR Part 75.21.

Targeted Section 3 Labor Hours/Total Labor Hours = 5%



**U. S. Department of Housing and Urban Development
Office of Community Planning and Development**

Special Attention of:

NOTICE: CPD-2023-12

All Secretary's Representatives
All State/Area Coordinators
All CPD Division Directors
HUD Field Offices
HUD Regional Offices

Issued: **November 2, 2023**

Expires: Effective until amended, superseded,
or rescinded

Cross Reference:

Sections 70901-52 of Pub. L. No. 117-58

Subject: CPD Implementation Guidance for the Build America, Buy America Act's domestic content procurement preference as part of the Infrastructure Investment and Jobs Act.

This Notice provides initial implementation guidance for programs administered by the U.S. Department of Housing and Urban Development's (HUD) Office of Community Planning and Development (CPD) for the "Buy America Preference" (BAP) imposed by the Build America, Buy America Act (BABA) enacted under Division G, Title IX of the Infrastructure Investment and Jobs Act (IIJA, Pub. L. No. 117-58) signed into law on November 15, 2021.

This Notice provides CPD grantees and participating jurisdictions, collectively referred to as grantees, an overview of BABA, including key terms, HUD actions to implement BABA, guidance on HUD's general waivers, the phased implementation schedule for the BAP on CPD programs, and proposed next steps. The attached addenda include answers to frequently asked questions, examples of when the BAP applies for CPD grantees, and sample BAP language for agreements.

Purpose of the Notice

This Notice is intended to notify grantees of the “Buy America Preference” (BAP) requirement under the Build America, Buy America Act (BABA) as they apply to CPD programs. This Notice identifies the CPD programs and activities that must comply with BABA along with the timeline for the application of the BAP. It also highlights issues that grantees will want to consider when preparing for HUD’s full implementation of the BAP, as described in “Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance” (88 Fed. Reg. 17001, effective March 15, 2023). This Notice refers to 88 Fed. Reg. 17001 as the “Phased Implementation Waiver” which establishes BAP implementation points according to a schedule across HUD programs.

Note: The guidance provided in this Notice is subject to change if the Office of Management and Budget (OMB) updates guidance on the application of BABA for Federal financial assistance (FFA) programs for infrastructure.

I. Overview of Build America, Buy America Act

The Build America, Buy America Act (BABA)

The Build America, Buy America Act (BABA) was signed into law by President Biden on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA) as Sections 70901-52 of Pub. L. No. 117-58. In addition to providing funding for roads, bridges, rails, and high-speed internet access, it created an incentive to increase domestic manufacturing across the country through the inclusion of BABA’s “Buy America Preference” (BAP). In general, the BAP requires that all iron, steel, manufactured products, and construction materials used in infrastructure projects funded with Federal financial assistance (FFA), as outlined in Section 70914(a) of BABA, must be produced in the United States. The intent of the BAP in BABA is to stimulate private-sector investments in domestic manufacturing, bolster critical supply chains, and support the creation of well-paying jobs for people in the United States. The preference is also intended to bolster American firms’ ability to compete and lead globally for years to come by requiring entities that receive Federal infrastructure funds to use American materials and products.

The BABA preference for American materials and products applies to all spending on infrastructure projects by Federal agencies, including HUD. In BABA and for purposes of this Notice, the Federal infrastructure spending with a BAP is referred to as “Federal financial assistance” or “FFA.” Under Section 70912(7), FFA for infrastructure “projects” includes the “construction, alteration, maintenance, or repair of infrastructure in the United States”. Under Section 70914(a), the use of American iron and steel, construction materials, and manufactured products applies to funding from CPD programs for infrastructure projects. However, the BAP does not apply to “pre and post disaster or emergency response expenditures” under Section 70912(4)(B). A list of CPD disaster or emergency funding meeting these criteria can be found in Section III.

Effective May 14, 2022, the BAP applies to infrastructure spending unless an agency issues a waiver in three limited situations: 1) when applying the domestic content procurement preference

would be inconsistent with the public interest, 2) when types of iron, steel, manufactured products or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality, or 3) where the inclusion of those products and materials will increase the cost of the overall project by more than 25 percent. Before issuing a waiver, under Section 70914(c), the head of a Federal agency, including HUD, must make publicly available a detailed written explanation for the proposed determination to issue the waiver and provide a period of not less than 15 days for public comment on the proposed waiver. Additional details on waivers can be found in Section IV.

A. Federal Government-wide Guidance on BABA

As a part of the Federal government's support of domestic production and manufacturing through infrastructure investments, OMB and HUD have taken several steps to implement the BAP by providing guidance and issuing HUD general waivers.

On August 23, 2023, OMB issued final rules for 2 CFR Parts 184 and 200 and provided further guidance on implementing the statutory requirements and improving FFA management and transparency (88 Fed. Reg. 57750, effective October 23, 2023). These government-wide regulations apply to HUD programs and provide direction on implementing a BAP waiver process. The new and revised regulations also provide additional guidance on construction material standards, the cost components of manufactured products, and their definitions.

On October 25, 2023, OMB issued guidance to all Federal agencies on how to implement BABA consistently across the government. The [“Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure” \(M-24-02\)](#) (OMB Guidance) directs Federal agencies, including HUD, on how to apply the BAP and provides an overview of the BAP waiver requirements. OMB may also issue additional or updated guidance in the future, and HUD will update its guidance as necessary.

B. HUD Actions and Guidance on BABA

BABA is a new and complex statute, which became effective in 2022. As such, establishing governmentwide guidance on these new statutory requirements has been an iterative process. Since the passage of BABA, HUD has worked diligently to implement the BAP for all HUD programs. Before the law became effective on May 14, 2022, HUD established a Department-wide BABA leadership committee. Beginning in June 2022, HUD issued a Request for Information (RFI) and collected public comments on potential BABA implications for HUD grantees. Based on these comments and to ease the transition in complying with the BAP, HUD proposed and received four general waivers for covered FFA, which includes CPD programs. These waivers and other BABA information are available on HUD's website at [BABA | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#). Further details on these waivers and their application to CPD programs are provided in Section IV of this Notice.

CPD has taken several actions to notify and communicate with stakeholders and grantees on BABA requirements and their impact on CPD programs. All CPD Fiscal Year (FY) 2022 grant transmittal letters and notices of funding opportunities (NOFOs) included a reference to the BAP

under BABA. For the FY2023 funding allocations, all CPD grant agreements with covered FFA included a clause to require that the grantee must comply with BABA, as applicable. Throughout 2023, CPD has held BABA information sessions for CPD grantees and has a dedicated email box at CPDBABA@hud.gov to answer questions from individual grantees and stakeholders.

HUD is continuing to work towards implementing BABA across its covered FFA programs. Next steps include establishing a centralized waiver process for all HUD covered programs. CPD is incorporating BABA in its existing reporting systems and processes. To assist grantees, CPD is also developing additional guidance materials and support as the phased implementation of BABA progresses.

II. Definitions

Key terms that have relevance to the interpretation and implementation of the BAP for CPD programs are defined in the BABA statute and may be found in 2 CFR part 184 and OMB guidance.

- A. Build America, Buy America Act is defined in 2 CFR § 184.3 and means division G, title IX, subtitle A, parts I–II, sections 70901 through 70927 of the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58)
- B. Buy America Preference is defined in 2 CFR § 184.3 and means the “domestic content procurement preference” set forth in section 70914 of BABA, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.
- C. Categorization of Articles. The term “categorization of articles” refers to the requirement that articles, materials, and supplies should only be classified into one of the following categories:
 - i. Iron or steel products;
 - ii. Manufactured products;
 - iii. Construction materials; or
 - iv. Section 70917(c) materials.

An article, material, or supply should not be classified into more than one category and must be made based on the status of the article, material, or supply upon arrival to the work site for use in an infrastructure project. Articles, materials, or supplies must meet the Buy America Preference for only the single category in which they are classified and, in some cases, may not fall under any of the categories listed above.

- D. Component is defined in 2 CFR § 184.3 and means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into: a manufactured product; or, where applicable, an iron or steel product.
- E. Construction Materials is defined in 2 CFR § 184.3 and means articles, materials, or

supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

(1) The listed items are:

- i. Non-ferrous metals;
- ii. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- iii. Glass (including optic glass);
- iv. Fiber optic cable (including drop cable);
- v. Optical fiber;
- vi. Lumber;
- vii. Engineered wood, and
- viii. Drywall.

(2) Minor additions of articles, materials, supplies or binding agents to a construction material do not change the categorization of the construction material.

- F. Covered Materials includes the following when used in connection with an Infrastructure Project:
- (A) all iron and steel;
 - (B) all Manufactured Products; and
 - (C) all Construction Materials.
- G. Covered CPD Programs. The term “covered CPD programs” means any Federal financial assistance administered by CPD that is used for infrastructure purposes, excepting expenditures related to pre and post disaster or emergency response.
- H. Grantee. The term “grantee,” as defined at 24 CFR 5.100, means the person or legal entity to which a grant is awarded and that is accountable for the use of the funds provided.
- I. Federal Financial Assistance (FFA) has the meaning given to the term in 2 CFR 200.1 (or successor regulations) and includes all expenditures by a Federal agency to a Non-Federal Entity for an Infrastructure Project, except that it does not include:
- (A) expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191); or
 - (B) pre and post disaster or emergency response expenditures.
- J. Infrastructure is described in 2 CFR 184.4(c) and encompasses public infrastructure projects in the United States, which includes, at a minimum: the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other

maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging. See also 2 CFR 184.4(d).

- K. Infrastructure Project. The term “infrastructure project” is defined in 2 CFR 184.3 and means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project.
- L. Iron and Steel Products. The term “iron and steel products” is defined in 2 CFR 184.3 and means an article, material, or supply that consists wholly or predominantly of iron or steel, or a combination of both.
- M. Predominantly of iron or steel or a combination of both is defined in 2 CFR 184.3 and means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.
- N. Made in America Office. The term “Made in America Office” or “MIAO” means the office at the Office of Management and Budget, established by section 70923 of BABA, that is charged with, among other things, enforcing compliance with the BAP and establishing the procedures to review waiver requests proposed by a Federal awarding agency.
- O. Manufactured Products is defined in 2 CFR 184.3 and means:
 - (1) Articles, materials, or supplies that have been:
 - (i) Processed into a specific form and shape; or
 - (ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
 - (2) If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in this section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials.
- P. Manufacturer is defined in 2 CFR 184.3 and means the entity that performs the final manufacturing process that produces a manufactured product.
- Q. Non-Federal Entity means a State, local government, Indian Tribe, Institution of Higher Education (IHE), or nonprofit organization, as provided in 2 CFR 200.1. Public Housing Agencies are Non-Federal Entities.

- R. Not Listed Construction Materials. The term “not listed construction materials” refers to the category of construction materials that are subject to the BAP, but not included in HUD’s specifically listed construction materials, as defined in the Phased Implementation Waiver. This includes:
- i. plastic and polymer-based products other than composite building materials or plastic and polymer-based pipe or tube;
 - ii. glass (including optic glass); and
 - iii. drywall.
- S. Obligate. The term “obligate,” for purposes of HUD’s phased implementation of BABA, means the date that HUD executed the legal instrument creating the relationship between HUD and the grantee for an award of Federal financial assistance. The milestone that establishes an obligation date depends on each program but for many CPD programs, such as CDBG, the obligation date occurs upon HUD’s execution of the grant agreement.
- T. OMB Guidance. The term “OMB guidance” refers to 2 CFR Part 184, the "[Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#)” (M-24-02), issued October 25, 2023, by the Office of Management and Budget, and any subsequent guidance to rescind or replace M-24-02. This guidance is applicable to the heads of all Federal agencies for the implementation of BABA’s Buy America Preference.
- U. Pre and Post Disaster or Emergency Response Expenditures. The term “pre and post disaster or emergency response expenditures” means Federal funding authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively. The BAP does not apply to pre and post disaster or emergency response expenditures authorized by statutes other than the Stafford Act and made in anticipation of or in response to an event that qualifies as an emergency or major disaster within the meaning of the Stafford Act.
- V. Produced in the United States is defined in 2 CFR 184.3 and means:
- i. In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - ii. In the case of manufactured products:
 1. The product was manufactured in the United States; and
 2. The cost of components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product. See 2 CFR 184.2(a). The costs of components of a manufactured product are determined according

to 2 CFR 184.5.

- iii. In the case of construction materials, all manufacturing processes for the construction material occurred in the United States. See 2 CFR 184.6 for more information on the meaning of “all manufacturing processes” for specific construction materials.

W. Project. The term “project” means the construction, alteration, maintenance, or repair of infrastructure in the United States. (Section 70912(7) of BABA).

X. Section 70917(c) Materials. The term “section 70917(c) materials” is defined in 2 CFR 184.3 and means cement and cementitious materials; aggregates such as stone, sand, or gravel, or aggregate binding agents or additives. These materials are not considered “construction materials” for the purpose of BABA implementation.

Y. Specifically listed construction materials. The term “specifically listed construction materials” for HUD programs includes:

- a. non-ferrous metals;
- b. lumber;
- c. composite building materials; and
- d. plastic and polymer-based pipe and tube.

III. Applicability of the BAP on CPD Programs

Under Sections 70912 and 70914, the BAP applies to the purchase of iron, steel, manufactured products, and construction materials for Covered CPD Programs when funds are used for the construction, alteration, maintenance, or repair of infrastructure, as defined by BABA. Covered CPD Programs currently include:

- Community Development Block Grant Formula Programs (CDBG)
- Section 108 Loan Guarantee
- HOME Investment Partnerships Program (HOME)
- HOME Investment Partnerships American Rescue Plan Program (HOME-ARP)
- Housing Trust Fund (HTF)
- Recovery Housing Program (RHP)
- Emergency Solutions Grants (ESG)
- Continuum of Care (CoC)
- Housing Opportunities for Persons With AIDS (HOPWA)
- Self-Help Homeownership Opportunity Program (SHOP)
- Special NOFA for unsheltered and rural homeless
- Veterans Housing Rehabilitation and Modification Program (VHRMP)
- Community Project Funding (CPF)/Economic Development Initiatives (EDI)
- Section 4 Capacity Building
- Rural Capacity Building
- Pathways to Removing Obstacles to Housing (PRO Housing)
- Preservation and Reinvestment Initiative for Community Enhancement (PRICE)

- FY23 Permanent Supportive Housing (PSH) Funds

This list of Covered CPD Programs is subject to change if there are any changes to the eligible uses of funds or the establishment of new programs that fund infrastructure and are covered by BABA.

CPD Programs Not Covered by BAP:

Under Section 70912(4)(B), the BAP does not apply to Federal funds for “pre and post disaster or emergency response.” The following CPD funds are administered for disaster or emergency-related purposes and therefore the BAP does not apply:

- Community Development Block Grant – Disaster Recovery Funds (CDBG-DR)
- Community Development Block Grant – Mitigation (CDBG-MIT)
- Community Development Block Grant – National Disaster Resilience Competition (CDBG-NDR)
- Community Development Block Grant CARES Act (CDBG-CV)
- Housing Opportunities for Persons With AIDS CARES Act (HOPWA-CV)
- Emergency Solutions Grants CARES Act (ESG-CV)

Additionally, the Community Compass Technical Assistance program is excluded from the BAP as the program does not fund any covered infrastructure activities.

IV. Buy America Preference Waivers Currently in Effect for HUD Programs

Under Section 70914(b), HUD is able to issue, after consultation with OMB’s MIAO, general waivers, and project-specific waivers to the BAP if it is determined that a waiver falls into one of the following three categories: 1) when applying the domestic content procurement preference would be inconsistent with the public interest, 2) when types of iron, steel, manufactured product or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality, or 3) where the inclusion of those products and materials will increase the cost of the overall project by more than 25 percent. In order for HUD to consider either a general or project specific waiver request and be able to review it with OMB, the waiver must include a detailed written explanation and allow for the public to comment for at least 15 days, as required under Section 70914(c).

HUD’s General Waivers Applicable to Covered CPD Programs

Four general applicability waivers are currently in effect for HUD programs and apply to all Covered CPD Programs. Each waiver is outlined below.

General Waiver Type	Purpose	Effective Dates
Public Interest Phased Implementation	HUD issued a public interest waiver, <u>“Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance”</u> to allow for orderly implementation of the BAP across HUD programs. The Phased Implementation Waiver establishes a schedule for the phased implementation of the BAP across CPD programs and infrastructure materials.	The public interest waiver was issued in March 2023 and established a phased implementation schedule for the application of the BAP to HUD programs through FY2025. The BAP has been in effect since November 15, 2022, for the use of iron and steel for infrastructure projects funded with newly obligated FFA through the CDBG program.
Exigent Circumstances	HUD issued a public interest waiver for exigent circumstances, <u>“Public Interest Waiver of Build America, Buy America Provisions for Exigent Circumstances as Applied to Certain Recipients of HUD Federal Financial Assistance”</u> . This waiver applies when there is an urgent need by a CPD grantee to immediately complete an infrastructure project because of a threat to life, safety, or property of residents and the community.	The public interest waiver for exigent circumstances is effective from November 23, 2022, for a period of five years ending on November 23, 2027, or such shorter time as HUD may announce via Notice.
De Minimis, Small Grants, and Minor Components	HUD issued a public interest <i>de minimis</i> , small grants, and minor components waiver titled <u>“Public Interest De Minimis and Small Grants Waiver of Build America, Buy America Provisions as Applied to Certain Recipients of HUD Federal Financial Assistance”</u> . This waives the BAP for all infrastructure projects whose total cost (from all funding sources) is equal to or less than the simplified acquisition threshold at 2 CFR 200.1 which is currently \$250,000. This Notice also waives the application of the BAP for a	The public interest <i>de minimis</i> , small grants, and minor components waiver is effective from November 23, 2022, for a period of five years ending on November 23, 2027, or such shorter time as HUD may announce via Notice.

General Waiver Type	Purpose	Effective Dates
	<i>de minimis</i> portion of an infrastructure project, meaning a cumulative total of no more than five percent of the total cost of the iron, steel, manufactured products, and construction materials used in and incorporated into the infrastructure project, up to a maximum of \$1 million.	
Tribal Recipients Waiver	HUD issued a public interest waiver, “ <u>Extension of Public Interest, General Applicability Waiver of Build America, Buy America Provisions as Applied to Tribal Recipients of HUD Federal Financial Assistance: Final Notice</u> ” for the BAP as it applies to Tribal recipients. HUD will consult with Tribally Designated Housing Entities and other Tribal Entities on how to apply the BAP.	The waiver of the BAP as it applies to Tribal recipients is effective from May 23, 2023, until May 23, 2024.

HUD Project-Specific Waivers

Additionally, a CPD grantee may request a project-specific waiver from the BAP for covered FFA on a limited, case-by-case basis. HUD may grant a project specific waiver after consultation and review with the OMB’s MIAO. As with the general waivers, under Section 70914(b) HUD may issue a project-specific waiver to the BAP if it is determined that a waiver falls into one of the following three categories: 1) when applying the domestic content procurement preference would be inconsistent with the public interest, 2) when types of iron, steel, manufactured product or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality, or 3) where the inclusion of those products and materials will increase the cost of the overall project by more than 25 percent. A waiver for a specific project may vary depending upon the circumstances of the project, and specific items, products, or materials in question.

Understanding HUD’s Phased Implementation Approach

Under Section 70914(a), the BAP for covered FFA infrastructure projects, including those funded by CPD programs, was required to be in effect no later than 180 days after it was signed into law. Thus, starting May 14, 2022, all new awards of covered FFA for infrastructure projects obligated by HUD would have had a BAP under BABA. Due to the short implementation period of 180 days, and to allow for the domestic industry and FFA recipients to have the time and notice necessary to implement BABA efficiently and effectively, HUD issued several general public

interest waivers, including a Phased Implementation Waiver. Over the course of two years, under this waiver, HUD will implement the BAP in an incremental process for all HUD programs, including CPD programs, to come into compliance with BABA. This phased approach is also intended to reduce the burden on grantees due to the uncertain costs of compliance with the BAP. This approach is also intended to provide transparency concerning the full implementation plans in connection with HUD infrastructure projects. HUD wants to avoid any unnecessary and undue hardships that could jeopardize the timely and cost-effective completion of projects that previously were not subject to a BAP and to allow time for grantees to come into full compliance.

In the table below, the columns identify four separate categories of covered materials subject to the BAP (iron and steel, specifically listed construction materials, not listed construction materials, and manufactured products) and the rows identify covered HUD programs. To use the table, find the program that funds the project under consideration, then find the covered materials that will be used in the project. The cell in the table where the applicable row and column intersect indicates the date on which the BAP will begin applying to the specific materials used in the project under consideration. It is important to note that the date of obligation is the date on which HUD executed the legal instrument creating the relationship between HUD and the grantee for an award of FFA, commonly the date the grant agreement is signed by HUD.

Phased Implementation Schedule for HUD Programs

The table below outlines the phased implementation timeline for HUD’s covered programs published in the Phased Implementation Waiver.

BAP will apply to...	Iron and Steel	Construction Materials – Specifically Listed	Construction Materials – Not Listed	Manufactured Products
CDBG Formula Grants	All funds obligated on or after November 15, 2022	As of the date HUD obligates new FFA from Fiscal Year 2024 appropriations	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations
Choice Neighborhood, Lead Hazard Reduction, and Healthy Homes Production Grants	New FFA obligated by HUD on or after February 22, 2023	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024
Recovery Housing Program (RHP) Grants	New FFA obligated by HUD on or after August 23, 2023	As of the date HUD obligates new FFA from Fiscal Year 2024 appropriations	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations
All HUD other FFA except HOME, Housing Trust Fund, and Public Housing FFA used for maintenance projects	New FFA obligated by HUD on or after February 22, 2024	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024
HOME, Housing Trust Fund, and Public Housing FFA used for maintenance projects	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024

Phased Implementation Schedule for CPD Programs

Covered CPD programs began applying the BAP for infrastructure projects not covered under a general waiver for specific materials in phases beginning on November 15, 2022, and through FY2025. This section describes when the BAP applies to specific Covered CPD programs in accordance with HUD’s Phased Implementation Waiver.

Iron or Steel		
CPD Program	BAP Effective Date	Implementation Examples
CDBG	The BAP first applied to CDBG funds, obligated on or after November 15, 2022, and that will be used to purchase iron and steel for infrastructure projects.	This means CDBG grants obligated via a CDBG grant agreement signed by HUD on or after November 15, 2022, are subject to the BAP. CDBG grants obligated via a CDBG grant agreement signed by HUD prior to November 15, 2022, are not subject to the BAP.
RHP	The BAP will apply to RHP funds obligated on or after August 23, 2023, used to purchase iron or steel for infrastructure projects.	This means RHP grants obligated via a RHP grant agreement signed by HUD on or after August 23, 2023, are subject to the BAP. A RHP grant obligated via a grant agreement signed by HUD prior to August 23, 2023, is not subject to the BAP.
ESG, CoC, HOPWA, SHOP, VHRMP, CPF/EDI, Section 4, Rural Capacity Building, Pro Housing, PRICE, PSH, and NOFOs	The BAP will apply to funds from all other covered CPD programs, except HOME and HTF, obligated on or after February 22, 2024, used to purchase iron or steel for infrastructure projects.	Grantees should identify the execution date by HUD on the grant agreement or other legal instrument. The BAP applies to funds obligated by HUD on or after February 22, 2024. For HOPWA competitive grants, obligation is the date the award letter is signed. HOPWA competitive grantees should compare the date on its award letter to the February 22, 2024, to determine if its grant is subject to the BAP. EDI Community Project Funding has a different obligation determination. Grantees should consult their Congressional Grant Officer for more information.
HOME & HTF	The BAP will apply to HOME and HTF funds obligated on or after August 23, 2024, used to purchase iron or steel for infrastructure projects.	This means HOME and HTF grants obligated via grant agreements signed by HUD on or after August 23, 2024, are subject to the BAP. A HOME or HTF grant obligated via a grant agreement signed by HUD prior to August 23, 2024, is not subject to the BAP.

Materials Other Than Iron or Steel		
	CDBG & RHP Programs	All Other Covered CPD Programs
Specifically Listed Construction Materials (Non-Ferrous Metals, Lumber, Composite Building Materials, Plastic and Polymer Based Pipe and Tube)	The BAP will apply to FY2024 and subsequent CDBG and RHP awards used to purchase specifically listed construction materials as well as to purchase iron and steel.	The BAP will apply to funds from all other Covered CPD programs obligated on or after August 23, 2024, used for the purchase of specifically listed construction materials as well as iron and steel for infrastructure projects.
Not Listed Construction Materials	The BAP will apply to FY2025 and subsequent CDBG and RHP awards used to purchase not listed construction materials for infrastructure projects.	The BAP will apply to all Covered CPD program (except CDBG and RHP) funds obligated on or after August 23, 2024, used for the purchase of not listed construction materials, as well as specifically listed construction materials and iron and steel, for infrastructure projects.
Manufactured Products	The BAP will apply to FY2025 and subsequent CDBG and RHP awards used to purchase manufactured products as well as specifically listed construction materials and iron and steel, for infrastructure projects.	The BAP will apply to all Covered CPD program funds (except CDBG and RHP) obligated on or after August 23, 2024, used for the purchase of manufactured products for infrastructure projects.

Applying the BAP and HUD Waivers to CPD Programs

Once the BAP applies to an infrastructure project, a grantee must:

1. Comply with the BAP, or
2. Utilize one of HUD’s general waivers, or
3. Obtain a project-specific waiver to exclude the project from the BAP.

As a part of its record keeping, a CPD grantee should document its process to analyze if the BAP applies to a project using the approach below:

Step 1: Type of project/activity

Are the funds being used for an infrastructure project, as defined by BABA and explained in this notice?

- If yes, proceed to step 2.
- If no, the BAP does not apply. The BAP only applies to infrastructure projects.

Step 2: Funding source

Identify the source(s) of the project funding, including CPD funding, HUD funding or other Federal agency funding that must comply with BABA. Does the project funding include any Covered CPD Programs listed in this notice? (Note: The BAP does not apply to funds that are for pre- or post-disaster or emergency response.)

- If yes, and HUD contributes the largest portion of Federal funds to the project, proceed to step 3.
- If yes, and another Federal agency contributes the largest portion of Federal funds to the project, that Federal agency is the “Cognizant Agency for Made in America”, and the grantee should follow that agency’s guidance for applicability of the BAP to the project.
- If no, then the project does not need to comply with the BAP for CPD funds but may need to comply with the BAP due to the inclusion of other HUD or Federal funding sources.

Step 3: Materials

Identify the materials that will be used in this infrastructure project. Does the project use materials subject to the BAP (iron or steel, specifically listed construction materials, not listed construction materials, or manufactured products), identified in this Notice?

- If yes, proceed to step 4.
- If no, then the BAP does not apply. The BAP only applies to covered materials.

Step 4: Date of obligation

Consult the Phased Implementation Waiver schedule table. Identify the cell that corresponds to the Covered CPD Program funding and materials used in your project. This cell identifies the date on which the BAP will apply for the Covered CPD Program and the materials. Based on the date of obligation of the Covered CPD Program funds, does the BAP apply to the funding source and materials that will be used in your project?

- If yes, proceed to step 5.
- If no, the BAP does not apply.

Step 5: General waivers

Consider the available HUD General Waivers. As of this Notice, there are three general waivers that may be utilized as an alternative to compliance with the BAP under the Phased Implementation Waiver: 1) Exigent Circumstances Waiver, 2) the De Minimis, Small Grants, and Minor Components Waiver, and 3) the Tribal Recipients Waiver. Analyze each available HUD general waiver, based upon the specific requirements of that waiver.

1. *Exigent Circumstances Waiver*: Is there an urgent need to immediately complete the project because of a threat to life, safety, or property of residents and the community?
 - If yes, the Exigent Circumstances Waiver may apply, and the project would not be subject to the BAP.
2. *De Minimis, Small Grants, and Minor Components Waiver*: Is the total cost of the project equal to or less than \$250,000?
 - If yes, the *De Minimis*, Small Grants, and Minor Components Waiver may apply, and the project would not be subject to the BAP.

OR

This waiver can be applied to a portion of the products used in an infrastructure project if the cumulative cost of those products does not exceed five percent of the total cost of covered products used in the project (up to \$1 million).

- In that case, the BAP would be waived for part of the project, but the rest of the project would still need to comply with the BAP.

3. *Tribal Recipients Waiver*: Is the project being funded by a Tribal recipient?

- If yes, the Tribal Recipients Waiver may apply, and the project would not be subject to the BAP. (This is rare for CPD programs.)
- If no to General Waiver questions 1, 2, and 3, proceed to Step 6.

Step 6: Project-specific waivers

Consider the criteria for project-specific waivers. Project-specific waivers to the BAP may be available if it is determined that a waiver falls into one of the following three categories: 1) when applying the domestic content procurement preference would be inconsistent with the public interest, 2) when types of iron, steel, manufactured product or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality, or 3) where the inclusion of those products and materials will increase the cost of the overall project by more than 25 percent. Project-specific waivers are available on a limited, case-by-case basis, after HUD's consultation and review with OMB's MIAO.

1. Would applying the BAP to the project be inconsistent with the public interest?
 - If yes, a project-specific waiver may be considered.
2. Are the types of iron, steel, manufactured products, or construction materials used in the project not produced in the United States in sufficient and reasonable available quantities or of a satisfactory quality?
 - If yes, a project-specific waiver may be considered.
3. Would the inclusion of iron, steel, manufactured products, or construction materials produced in the United States increase the cost of the overall project by more than 25 percent?
 - If yes, a project-specific waiver may be considered.
 - If no to Project specific waiver questions 1, 2, and 3, the BAP likely applies to the project and the project should comply with the requirements of the BAP.

Grantees should consult the entirety of this Notice and other applicable BABA guidance before making a determination on BAP applicability to a specific project. Grantees should reach out to their local CPD field office if they require additional assistance with determining BAP applicability.

Federal Government-wide Guidance on Project/Product-Specific Waivers

Under Section 70914(b), BABA allows a Federal agency, such as HUD, to waive the BAP for covered FFA in three instances: 1) when applying the domestic content procurement preference would be inconsistent with the public interest, 2) when types of iron, steel, manufactured product or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality, or 3) where the inclusion of those products and materials will increase the cost of the overall project by more than 25 percent. To direct Federal agencies on how to implement this waiver process, OMB issued guidance that HUD will follow when reviewing a waiver request from a CPD grantee. According to OMB, agencies may reject or grant waivers in whole or in part. When an agency is considering a waiver, it should, to the greatest extent possible, be issued at the project level and be product specific. When that is not possible, an agency may issue a broader waiver. The agency should follow three principles before issuing any type of waiver:

- 1) The waiver may be time-limited, meaning it is issued for a certain period of time, rather than for a specific project. For example, a time-limited waiver may apply when an item that is “nonavailable” is widely used in projects funded by a particular program.
- 2) The waiver should be targeted, meaning it should only apply to specific item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s).
- 3) The waiver may be conditional with conditions that support the policies of BABA.

OMB guidance outlined the waiver review process for agencies to follow before issuing a waiver. Based on this guidance, HUD is developing its Department-wide project-specific waiver process. For HUD to consider a project or product-specific waiver it must:

- Have a detailed justification for the use of goods, products, or materials mined, produced, or manufactured outside the United States.
- A certification that there was a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with potential suppliers.
- In addition, at a minimum and to the greatest extent practicable, each proposed waiver submitted for consideration by the MIAO should include the following information, as applicable:
 - Waiver type (nonavailability, unreasonable cost, or public interest).
 - Recipient name and Unique Entity Identifier (UEI).
 - Federal awarding agency organizational information (e.g., Common Government-wide Accounting Classification (CGAC) Agency Code).
 - Financial assistance listing name and number.
 - Federal financial assistance program name.
 - Federal Award Identification Number (FAIN) (if available).
 - Federal financial assistance funding amount.

- Total estimated infrastructure expenditures, including all Federal and non-Federal funds (to the extent known).
- Infrastructure project description and location (to the extent known).
- List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from Buy America requirements, including name, cost, country(ies) of origin (if known), and relevant PSC and NAICS code for each.
- A certification that the Federal official or assistance recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
- A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach), by the Federal awarding agency and, in the case of a project or award specific waiver, by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
- Anticipated impact if no waiver is issued.
- Any relevant comments received through the public comment period.

The purpose of the information is to ensure that HUD has adequate information to perform due diligence, that MIAO has sufficient information to determine whether the proposed waiver is consistent with law and policy, and that sufficient information is available for public review. Information provided for public review should help interested manufacturers gauge the demand for products for which agencies are considering waiving a Buy America preference.

Once HUD has reviewed all required information, it will notify OMB's MIAO. The purpose of this consultation is for the MIAO to identify any opportunities to structure the waiver to maximize the use of goods, products, and materials produced in the United States to the greatest extent possible consistent with law. Following this consultation with MIAO, HUD is required to post the proposed waiver on its BABA website with a detailed written explanation of the proposed determination to issue the waiver and must provide at least 15 days for public comment. General applicability waivers require a minimum 30-day public comment period. Once the public comment period ends, HUD will submit the proposed waiver to MIAO to determine if the waiver is consistent with applicable law and policy. The MIAO will notify the agency of its determination of the proposed waiver. Only after this process has been completed may the HUD issue the waiver.

Applying for a HUD Specific Waiver

Prior to seeking a waiver, grantees should determine if and how BABA applies and follow measures to maximize compliance with the BAP based on the above guidance. At this time, HUD's BABA waiver process is as follows:

1. Contact CPDBABA@hud.gov for BABA technical assistance as needed.
2. Prepare a "[*Build America Buy America Waiver Request*](#)" with the information required by the MIAO.

3. Submit a waiver application with all necessary information to HUD at BuildAmericaBuyAmerica@hud.gov.
 - HUD is currently using email while an automated process is under development.
4. Provide additional information as requested by HUD during the review process to proceed with public comment in the Federal Register, and final approval by MIAO.
5. HUD reviews waivers before they are posted to the Federal Register for public comment and sent to the MIAO for approval. If approved, the waiver is posted on MadeInAmerica.gov.

CPD Grantees Receiving Funds from Multiple Federal Agencies

For CPD grantees that receive funds from multiple Federal agencies for an infrastructure project, the Federal agency contributing the greatest amount of covered FFA for the project will be considered the “Cognizant Agency for Made in America,” according to OMB Guidance. This lead agency should take responsibility for coordinating with the other Federal awarding agencies. Such coordination will provide uniform waiver criteria and adjudication processes, minimize duplicative efforts among Federal agencies, and reduce burdens on recipients. The Cognizant Agency for Made in America shall be responsible for consulting with the other Federal awarding agencies, publicizing the proposed joint waiver, and submitting the proposed joint waiver for review to MIAO.

CPD Record Keeping Requirements

To comply with BABA, the BAP must be included in the terms and conditions of all federal awards including subawards, contracts, and purchase orders for the work performed or products supplied for infrastructure projects. CPD grantees should document the process to analyze if the BAP applies to a project using the approach in this Notice and collect records to demonstrate compliance with BABA requirements. Records should be consistent with existing records retention requirements for each of the Covered CPD programs. If there are no CPD program-specific records requirements, the CPD grantee may follow “retention requirements for records,” under 2 CFR § 200.334 as applicable to Federal grants.

HUD will issue guidance about reporting on BABA required activities under 24 CFR 91.520, at a later date. At this time, CPD is working to include the BAP into its existing CPD systems (Integrated Disbursement and Information System, Disaster Recovery Grant Reporting System) for grantees to generate reports to track progress and compliance with BABA. Additional details on record keeping requirements will be determined by HUD and shared with CPD grantees as it is available.

V. Contact Information

Grantees that have questions on this Notice should contact their assigned HUD Field Office Representative or send their request directly to CPDBABA@hud.gov. CPD Field Offices should direct inquiries and comments to their program desk officer.

Addendum 1

Frequently Asked Questions

General Information

1. What is BABA? What is the “Buy America Preference”?

The Build America, Buy America (BABA) Act was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. No. 117-58) also known as the Bipartisan Infrastructure Law. BABA establishes a domestic content procurement preference known as the “Buy America Preference” (BAP) for Federal infrastructure spending. The BAP requires that all iron, steel, manufactured products, and construction materials used in infrastructure projects funded with Federal financial assistance must be produced in the United States.

2. What types of Federal financial assistance (FFA) are subject to the BAP?

FFA subject to BABA includes all expenditures by a Federal agency to a non-Federal entity for an infrastructure project, including grants, cooperative agreements, non-cash contributions or donations of property, direct assistance, loans, loan guarantees, and other types of financial assistance.

3. What projects or activities does the BAP apply to?

The BAP applies to the iron, steel, construction materials, and manufactured products used in infrastructure projects funded by Federal financial assistance (FFA), which includes covered materials and covered activities. Infrastructure projects include construction, alteration, maintenance, or repair of any infrastructure in the United States as defined in the next paragraph and in the Definitions section of this Notice.

The term “infrastructure” includes the structures, facilities, and equipment for projects traditionally considered infrastructure, including buildings and real property. For CPD programs, this may include, but is not limited to, certain funding for:

- road and sidewalk improvement projects;
- water, sewer, and other utility projects;
- broadband infrastructure;
- housing construction and rehabilitation;
- community facility construction and rehabilitation;
- homeless shelter construction and rehabilitation;
- and other CPD-funded activities that are defined as infrastructure according to BABA (section 70912(5)).

4. What materials does the BAP apply to?

The BAP requires that all iron, steel, manufactured products, and construction materials used in infrastructure projects funded with Federal financial assistance must be produced in the United States.

5. What does “produced in the United States” mean for materials to which the BAP applies?

The term “produced in the United States,” as defined in 2 CFR 184.3, means:

- in the case of iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- in the case of manufactured products that:
 - the product was manufactured in the United States; and
 - the cost of components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
- in the case of construction materials, that all manufacturing processes for the construction material occurred in the United States.

CPD Program Specific

6. Which CPD programs are subject to the BAP?

Any CPD program that can be used for the purpose of infrastructure as defined by BABA. These programs are considered Covered CPD programs.

7. Which CPD funds or programs are NOT subject to the BAP?

The BAP does not apply to Federal funds for “pre and post disaster or emergency response” according to BABA. Therefore, at the time of publication of this notice, the BAP does not apply to the following CPD funds or programs that administer disaster related FFA:

- Community Development Block Grant Disaster Recovery Funds (CDBG-DR)
- Community Development Block Grant Mitigation (CDBG-MIT)
- Community Development Block Grant – National Disaster Resilience Competition (CDBG-NDR)
- Community Development Block Grant CARES Act (CDBG-CV)
- Housing Opportunities for Persons With AIDS CARES Act (HOPWA-CV)
- Emergency Solutions Grants CARES Act (ESG-CV)

The Community Compass Technical Assistance program is also excluded from the BAP as the program does not fund any covered infrastructure activities.

- 8. I am funding a project with CDBG funds that were obligated (i.e., the grant agreement was signed by HUD) before November 15, 2022. Does the BAP apply?**

No, the BAP does not apply to HUD funds that were obligated before November 15, 2022. HUD defines the date of obligation as the date that HUD signed the agreement with the grantee. The BAP will apply to CDBG funds used for iron or steel that were obligated on or after November 15, 2022.

There is an additional consideration. If FY funds for which BABA applies are added to this infrastructure project, BABA then will apply to the entire project.

- 9. I am a grantee funding a project with CDBG funds that were obligated (i.e., the grant agreement was signed by HUD) on or after November 15, 2022. Does the BAP apply?**

If the CDBG funds used in your infrastructure project were obligated on or after November 15, 2022, the BAP will apply to all iron or steel used in the project, unless a waiver applies to the project. If these BABA funds are applied to an infrastructure project that does not have a BAP, the addition of these funds will attach BABA to the entire project. BABA would apply as described in HUD's Phased Implementation Waiver unless there is a project-specific waiver approved by the MIAO.

- 10. I am funding a public facilities project with total FFA of \$2,500,000. \$400,000 of CDBG funds are being used for engineering and administration fees of a project. Other federal funding will pay for the remaining construction activities. Is the BAP applicable to this project?**

Yes, the total project cost is over \$250,000 and the project is construction of an infrastructure project. The total cost of a project must not exceed \$250,000 from all sources to qualify for an exemption of the BAP under HUD's general waiver for small projects.

Documentation and Grant Management

- 11. Does the BAP apply to subrecipients or contractors?**

In most cases, yes, the BAP requirements apply to subgrantees, including subrecipients, contractors, and developers who are awarded Federal financial assistance for use in public infrastructure projects. The BAP requirements apply to all FFA and do not distinguish between the end user of the federal funds. The BAP applies as long as the funding is derived from a Federal agency, even if they are a pass-through entity unless a particular section of the terms and conditions of the Federal award specifically indicates otherwise.

12. Is there standard language grantees can include in subrecipient/bid contract documents?

Grantees should include the BABA language from their grant agreement in any subrecipient and bid contract documents to ensure BABA compliance by subrecipients, developers and/or contractors. Please refer to Addendum 3 for the language used in CPD grant agreements.

Waivers

13. Are there any waivers available for the BAP?

There are currently four general applicability waivers in effect for HUD programs that apply to CPD programs: 1) Phased Implementation Waiver, 2) Exigent Circumstances Waiver, 3) *De Minimis*, Small Grants, and Minor Components Waiver, and 4) Tribal Recipients Waiver. The details of each of these waivers can be found in Section IV of this Notice, or by visiting HUD's BABA website to see the latest available HUD waivers at: https://www.hud.gov/program_offices/general_counsel/baba. Waivers, as they are approved by the MIAO, will be updated on HUD's website.

14. Will there be project or product specific waivers of the BAP?

In addition to HUD's general waivers, HUD may also grant "project-specific" waivers from the BAP for covered FFA on a limited, case-by-case basis, after consultation and review with the MIAO at OMB. HUD may issue a project-specific waiver to the BAP if it is determined that a waiver falls into one of the following three categories: 1) when applying the domestic content procurement preference would be inconsistent with the public interest, 2) when types of iron, steel, manufactured product or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality, or 3) where the inclusion of those products and materials will increase the cost of the overall project by more than 25 percent. A waiver for a specific project may vary depending upon the circumstances of the project, and specific items, products, or materials in question. HUD is currently developing the process through which a grantee may request a waiver. More information will be made available once that process is developed.

Addendum 2

Examples of BAP for CPD Programs

This appendix provides a selection of illustrative examples to assist grantees in determining if the BAP applies to their projects.

Example 1: A grantee funds a water and sewer project containing iron and steel. The project is funded using \$1 million in FY23 CDBG funding. The total Federal financial assistance for the project is \$3 million.

The BAP applies to this project because it is a CDBG project using funding obligated on or after November 15, 2022, the project contains iron or steel, and the total cost of the project is greater than the simplified acquisition threshold at 2 CFR 200.1 which is currently \$250,000.

Example 2: A grantee funds a water and sewer project containing iron and steel. The project is funded using \$100,000 in FY23 CDBG funding. The total Federal financial assistance for the project is \$2 million.

The BAP applies to this project because it is a CDBG project using funding obligated on or after November 15, 2022, the project contains iron or steel, and the total cost of the project is greater than \$250,000.

Example 3: A participating jurisdiction contributes \$2 million in HOME funds for construction of a multi-unit residential building, which includes iron or steel. The funds are obligated by HUD on July 15, 2023.

The BAP does not apply to this project because the BAP will not apply to HOME funds used for iron or steel until August 23, 2024.

Example 4: A participating jurisdiction contributes \$2 million in HOME funds for the construction of a multi-unit residential building, using iron or steel. The funds are obligated by HUD after August 23, 2024.

The BAP applies to this project because the project includes iron or steel, the total cost of the project is greater than \$250,000, and the project uses HOME funds obligated after the date on which the BAP begins to apply to HOME funds used for iron or steel.

Example 5: A grantee funds acquisition of land using \$300,000 in Recovery Housing Program (RHP) funds that were obligated on September 1, 2023. The acquisition is part of a multifamily housing construction project containing iron or steel.

The BAP applies because the purpose of the funding is a covered activity (construction) that includes iron or steel. The total cost of the project from all sources is greater than \$250,000 and the funds are obligated after the date on which the BAP applies to RHP funds used for iron or steel.

Example 6: A grantee purchases a fire engine which will serve a low- to -moderate-income neighborhood. The grantees uses \$300,000 in FY23 CDBG funding for the purchase.

The BAP does not apply because the funding is not used for a covered activity (construction, alteration, maintenance, or repair) for an infrastructure project.

Example 7: A grantee uses \$400,000 in Recovery Housing Program (RHP) funds to rehabilitate a multi-unit residential building, using iron or steel. The funds are obligated by HUD after August 23, 2023.

The BAP applies to this project because it uses iron or steel, the total cost of the project is greater than \$250,000, and the project uses RHP funding that is obligated after the date on which the BAP begins to apply to RHP funds used for iron or steel (August 23, 2023).

Addendum 3

Sample BABA Language in Grant Agreements

The language below is included in all CPD program NOFOs and grant agreements. Similar to other cross cutting requirements, grantees should include the following BABA language in all contracts and agreements with subrecipients, contractors, developers and subgrantees. Grantees and subrecipients should include this language in any NOFOs and procurement bid/contract documents to ensure BABA compliance by subgrantees, developers and/or contractors.

The Grantee must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

ATTACHMENT E



**CONTRACT NUMBER XXX-XXX
AGREEMENT BETWEEN
THE CITY OF SAN MARCOS AND
PROFESSIONAL {ARCHITECTURAL} {ENGINEERING} FIRM**

This Agreement (“Agreement”) is entered into by and between the Owner, City of San Marcos, Texas (“CITY”), and {vendor}, {City, State}, (“Professional {Architectural} {Engineering} Firm”), and is effective for all purposes as of the date of the last signature to this Agreement (“Effective Date”).

The Owner: The City of San Marcos, Texas

and

The Professional Firm (“Firm”): {A/E Name, City, State}

for

The Project: {Include “On-Call Agreement Project Title, Number, if applicable}
{Project Title and Contract Number}

Owner Standard Terms and Conditions: Parties have read and agree to be bound by the Standard Terms and Conditions, when not in conflict with the terms of this Agreement, found at sanmarcostx.gov/StandardTermsandConditions.

Further;

The Owner and the Professional Firm agree as follows:

ARTICLE 1
PROFESSIONAL FIRM’S SERVICES

Professional Firm agrees to perform the services specifically described in Exhibit 1 and all other professional services reasonably inferable from Exhibit 1 and necessary for complete performance of Firm’s obligations under this Agreement (collectively, “Services”). To the extent of any conflict between the terms in Exhibit 1 and this Agreement, the terms of this Agreement shall prevail.

ARTICLE 2
PROFESSIONAL FIRM’S RESPONSIBILITIES

Professional licensed engineer or registered architect will perform services:

- (1) with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license; and
- (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

The Firm shall at all times provide sufficient personnel to accomplish Services in a timely manner. The Firm shall manage its services, administer the Project and coordinate other professional services as necessary for the complete performance of its' obligations under this Agreement.

Professional Firm agrees to perform Services in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project.

The Firm's Services shall be reasonably accurate and free from material errors or omissions. The Firm shall promptly correct any known or discovered error, omission, or other defect in the plans, drawings, specifications, or other services provided by the Firm without any additional cost or expense to Owner.

The Firm shall designate a representative primarily responsible for Firm's Services under this Agreement. The designated representative shall act on behalf of Firm with respect to all phases of Professional Services and shall be available as required for the benefit of the Project and Owner. The designated representative shall not be changed without prior approval of the Owner, which approval shall not be unreasonably withheld.

The Firm shall carry such professional liability and errors and omissions insurance, covering the services provided under this Agreement, with a minimum limit of \$1,000,000 each claim and \$1,000,000 aggregate. The fees for such insurance will be at the expense of the Professional Firm. The Firm shall deliver a Certificate of Insurance indicating the expiration date, and existence, of the Firm's professional liability insurance before commencement or continuation of performance of the services under this Agreement.

For "On-Call" Agreements, use the paragraph below. Modify Exhibit # as appropriate. Otherwise delete.

On-Call Professional Services. The Professional Firm will perform assigned services as described in **Exhibit "6"**, On-Call Agreement Fund Allocation Request Form. The Fund Allocation Request Form serves to "assign" specific project related scopes of services and establishes the price for such services within the overall Master Agreement.

ARTICLE 3 **THE OWNER'S RESPONSIBILITIES**

The Owner shall provide the Professional Firm with a full description of the requirements of the Project.

The Owner shall furnish surveys, geotechnical reports or other special investigations of the Project site as requested by the Professional Firm and as reasonably necessary for the completion of Professional Firm's Services. The Owner shall furnish structural, mechanical, chemical, and other laboratory tests as reasonably required.

The Owner will review the drawings, specifications and other documents of service produced by Professional Firm in the performance of its obligations under this Agreement (collectively the "Design Documents") as required. Owner will notify Firm of any design fault or defect in Services or Design Documents of which Owner becomes aware.

The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of Professional Services.

The Owner designates **{name of PM}**, as its representatives authorized to act in the Owner's behalf with respect to the Project. The contact information for Owner's representative is listed below:

{Name and Title}
{Department}

630 East Hopkins Street
San Marcos, Texas 78666
Telephone.: 512-{xxx-xxxx}
Email: {email address}

For “On-Call” Agreements, use the paragraph below. Modify Exhibit # as appropriate. Otherwise delete.

Fund Allocation Request Form. As required, the Owner will issue specific project related scopes of services assignments utilizing the Fund Allocation Request Form, **Exhibit “6.”** The issuance of assigned services via the Fund Allocation Request Form shall be binding and in compliance with the terms of this Agreement.

ARTICLE 4

OWNERSHIP AND USE OF DOCUMENTS

The Design Documents prepared by Professional Firm as instruments of service are and shall remain the property of the Firm whether the Project for which they are created is executed or not. However, the Owner shall be permitted to retain copies, including reproducible copies, of the Design Documents for information and reference in connection with the Owner’s use and occupancy of the Project. In addition, Owner shall have an irrevocable, paid-up, perpetual license and right, which shall survive the termination of this Agreement, to use the Design Documents and the ideas and designs contained in them for any purpose, with or without participation of the Professional Firm.

ARTICLE 5

DISPUTE RESOLUTION

If a dispute arises out of or relates to the Agreement or these Terms and Conditions, or a breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the Owner and the Firm agree to act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The Owner and Firm will share the mediator’s fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

ARTICLE 6

PROJECT TERMINATION OR SUSPENSION

This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the terminating party and such failure is not fully cured in the seven (7) calendar days’ notice period. This Agreement may be terminated by the Owner’s City Manager or City Manager’s Designee for any reason upon fifteen (15) calendar days’ written notice to the Firm.

In the event of termination through no fault of the Firm, the Firm shall be equitably compensated for all Professional Services performed and Reimbursable Expenses incurred prior to termination in accordance with this Agreement.

ARTICLE 7 MISCELLANEOUS PROVISIONS

Entire Agreement. This Agreement supersedes all prior agreements, written or oral, between the Firm and Owner and constitutes the entire and integrated Agreement and understanding between the parties with respect to the subject matter of the Agreement. This Agreement may only be amended by a written instrument signed by both parties.

Assignment. This Agreement is a personal service contract for the services of Professional Firm, and Professional Firm's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

Applicable Law. The Agreement will be governed by and construed under the laws of the State of Texas. Any controversy, claim or dispute arising out of or relating to this Agreement will be brought in a state court of competent jurisdiction in Hays County or, if in federal court, in the Federal Western District of Texas, Austin Division for trial.

Waiver. A delay or omission by either party in exercising any right or power under the Agreement shall not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement shall not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the Agreement.

Severability. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, that determination shall not affect any other provision of this Agreement which shall be interpreted as if the invalid or unenforceable provision had not been included.

Independent Contractor. Professional Firm recognizes that it is engaged as an independent contractor and acknowledges that Owner shall have no responsibility to provide Professional Firm or its employees with any benefits normally associated with employee status. The Firm will neither hold itself out as nor claim to be an officer, partner, employee or agent of Owner.

Family Code Child Support Certification. If State funds are being used in the procurement of the services described in Exhibit 1, pursuant to Section 231.006, Texas Family Code, Professional Firm certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Prohibition on Contracts with Companies Boycotting Israel. Pursuant to Chapter 2271 and 808, Texas Government Code, the Firm certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Section 2252 Compliance. Section 2252 of the Texas Government Code restricts the Owner from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. The Firm hereby certifies that it is not ineligible to receive the award of or payments under this Agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Certain Foreign-Owned Companies. Section 2274 of the Texas Government Code (SB2116) restricts the City from contracting with companies that do business with certain foreign-owned

companies in connection with critical infrastructure if the company is granted direct or remote access; and if the company is owned by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a “designated country”, or headquartered in China, Iran, North Korea, Russia, or a designated country. Designated country is Governor-designated country as a threat to critical infrastructure. By signing below as an authorized signer, the Bidder hereby certifies that it does not do business with certain foreign-owned companies in connection with critical infrastructure as described herein. Failure to maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. Section 2274 of the Texas Government Code (SB19) restricts the City from contracting with companies that discriminate against firearm and ammunition industries. By signing below as an authorized signer, the Bidder certifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate against the same during the term of this contract. (Only applies to companies with 10 or more full-time employees and for a contract value greater than \$100,000.) Failure to maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies. Section 2274 of the Texas Government Code (SB13) restricts the City from contracting with companies that boycott energy companies. By signing below as an authorized signer, the Bidder certifies that it does not have a practice, policy, guidance, or directive boycotting energy companies, and will not discriminate against the same during the term of this contract. (Only applies to companies with 10 or more full-time employees and for a contract value greater than \$100,000.) Failure to maintain the requirements under this provision will be considered a material breach.

Non-Discrimination. The Firm understands and certifies that it is an Equal Opportunity Employer and does not and will not discriminate in employment and in subcontracts based on race, color, sexual orientation, gender identity, national origin, sex, age, disability or economic condition and prohibits retaliation, discharge, or discrimination against any employee or applicant for employment or against any subcontractor or supplier.

Proprietary Interests. All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Professional Firm in the performance of services for Owner, which is not generally known to the public, shall be confidential and Professional Firm shall not disclose any such confidential information, unless required by law. The Firm shall not announce or advertise its engagement by Owner in connection with the Project or publicly release any information regarding the Project without the prior written approval of Owner.

Termination Due to Loss of Funding. If Owner funds are utilized to fund any part of this Agreement, the Firm understands that those Owner funds for the payment for work performed by the Firm under this Agreement have been provided through the Owner's budget approved by Owner Council for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. The Owner cannot guarantee the availability of funds and enters into this Agreement only to the extent such funds are made available. The Firm acknowledges and agrees that it will have no recourse against the Owner for its failure to appropriate funds for the purposes of this Agreement in any fiscal year other than the year in which this Agreement was executed. The fiscal year for the Owner extends from October 1st of each calendar year to September 30th of the following calendar year.

Ethics Matters; No Financial Interest. Firm and its employees, agents, representatives, and subcontractors have read and understand Owner's Ethics Policy available at <http://www.sanmarcostx.gov/380/Ethics>, and applicable state ethics laws and rules. Neither Professional Firm nor its employees, agents, representatives or subcontractors will assist or cause Owner employees to violate Owner's Conflicts of Interest Policy, provisions described by Owner's Standards of Conduct Guide, or applicable state ethics laws or rules. Professional Firm represents and warrants that no member of the City Council of San Marcos has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

Subcontracting. The Professional Firm will not subcontract any work under this Agreement without prior written approval from the Owner. In the event approval is given by the Owner, the Professional Firm will specify any work or services, the appropriate insurance requirements and miscellaneous provisions by separate written agreement with the subcontractor.

Mutual Waiver of Consequential Damages. In no event shall either party be liable, whether in contract or tort or otherwise, to the other party for loss of profits, delay damages, or for any special incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

Texas Tax Code 171.1011(g)(3). Notwithstanding anything in this agreement and for the purpose of complying with Texas Tax Code 171.1011(g)(3), the City agrees to the following:

- (1) Prior to commencing performance under this Agreement, Firm will provide the City with a list of proposed subconsultants, subcontractors, or agents to be used in Professional Firm's services under this Agreement. The City shall have the right to accept or reject the use of any subconsultant, subcontractor, or agent on the Professional Firm's list. Such acceptance or rejection shall be given within a commercially reasonable time from the date the Professional Firm delivers it, and;
- (2) Any payment made by the Owner to the Firm that includes fees payable to a subconsultant, subcontractor or agent of Professional Firm under this Agreement shall constitute an acceptance by the Owner of Firm's use of any such subconsultant, subcontractor or agent of the Firm under this Agreement.

Force Majeure. Professional Firm shall have no liability for any delay caused by an event of force majeure, the Owner or any of its consultant's or contractors, or circumstances outside of its reasonable control.

Termination for Convenience. The Owner's City Manager or the City Manager's designee may terminate the Agreement at any time upon thirty (30) calendar days' notice in writing to the Firm. Upon receipt of such notice, the Firm shall, unless the notice directs otherwise, discontinue all services in connection with the performance of the Agreement. As soon as practicable after the receipt of notice of termination, Professional Firm shall submit a statement to the appropriate department(s) showing in detail the services performed or items delivered under the Agreement to date of termination. The Owner agrees to compensate the Firm for that portion of the prescribed charges for which the services were actually performed or items delivered under the Agreement and not previously paid.

Notices. All notices referenced in this Agreement shall be provided in writing. Notices shall be deemed effective when delivered by hand delivery or on the third business day after the notice is deposited in the U.S. Mail. Notices shall be sent to the following addresses:

If to Owner: The City of San Marcos
630 East Hopkins Street
San Marcos, Texas 78666
Attn: City Purchasing Manager's Office
cosmpurchasing@sanmarcostx.gov

With Copies to: The City of San Marcos
630 East Hopkins Street
San Marcos, Texas 78666
Attn: City Attorney's Office
LegalInfo@sanmarcostx.gov

If to Professional Firm {Firm Name}
{Firm Mailing Address}
{Firm City, State, Zip Code}
Attn: {Department or Contact Name}
{Firm Email Address}

The parties may designate alternative persons or addresses for receipt of notices by written notice.

Changes in Service. If a Party requires a change or amendment to this Agreement or its Exhibits, the Parties agree to use the Authorization of Change in Services Form in **Exhibit 4** to do so. The Authorization of Change in Services Form must be agreed to and signed by both Parties before any change to this Agreement is effective.

ARTICLE 8 **REIMBURSABLE EXPENSES**

Reimbursable Expenses are in addition to Compensation for the Firm's Services and include actual and reasonable expenses incurred by the Firm, that are (i) outside the services listed in **Exhibit 1**; and (ii) solely and directly in connection with the performance of Professional Firm's Services. Such Reimbursable Expenses must be approved in writing by the Owner and may include the following:

Expense of transportation (coach class air travel only) and living expenses in connection with out-of-state travel as directed and approved in advance by the Owner. Transportation and living expenses incurred within the State of Texas are not reimbursable unless expressly approved by the Owner in advance.

Fees paid for securing approval of authorities having jurisdiction over the Project.

Professional models and renderings if requested by the Owner.

Reproductions, printing, binding, collating and handling of reports, and drawings and specifications or other project-related work product, other than that used solely in-house for the Firm.

Shipping or mailing of all reports, drawings, specifications, and other items in connection with the Project.

Expense of any additional insurance coverage or limits, excluding professional liability and errors and omissions insurance, required under this Agreement or requested by the Owner that is in excess of that normally carried by the Firm.

ARTICLE 9
ADDITIONAL SERVICES

Additional Services are services not included in the Professional Firm's Services and not reasonably inferable from its Services. Additional Services shall be provided only if authorized or confirmed in writing by the Owner. Prior to commencing any Additional Service, Professional Firm shall prepare for acceptance by the Owner an Additional Services Proposal detailing the scope of the Additional Services and the proposed fee for those services. Professional Firm shall proceed to perform Additional Services only after written acceptance of the Additional Services Proposal by Owner.

Upon acceptance by Owner, each Additional Services Proposal and the services performed by the Firm pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement.

ARTICLE 10
PAYMENTS TO PROFESSIONAL FIRM

The Firm shall present monthly Payment Requisitions to the Owner detailing the Firm's Services and approved Additional Services performed and the approved Reimbursable Expenses incurred for the Project in the previous month. With each application for payment, Firm shall submit payroll information, receipts, invoices and any other evidence of payment which Owner or its designated representatives shall deem necessary to support the amount requested.

Owner shall promptly review the Payment Requisition and notify Professional Firm whether the Payment Request is approved or disapproved, in whole or in part. Owner shall promptly pay Professional Firm for all approved services and expenses. For purposes of Texas Government Code § 2251.021(a)(2), the date performance of services is completed is the date when the Owner's representative approves the Payment Requisition.

Owner shall have the right to withhold from payments due the Firm such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Professional Firm or failure of the Firm to perform its obligations under this Agreement.

ARTICLE 11
PROFESSIONAL FIRM'S ACCOUNTING RECORDS

Records of the Firm costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for three (3) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Professional Firm in writing. The Firm's records shall be kept on the basis of generally accepted accounting principles.

ARTICLE 12
INSURANCE

For services performed on Owner's premises, Professional Firm shall furnish to Owner Certificates of Insurance as set forth below prior to the commencement of any work hereunder and shall maintain such coverage during the full term of the Agreement. On the Certificate of Insurance, name the **City of San Marcos, c/o Purchasing & Contracting Division, 630 East Hopkins Street, San Marcos, Texas 78666** as an additional insured. Required insurance shall not be cancelable without thirty (30) days' prior written notice to Owner.

Business automobile liability insurance with minimum limits of liability for bodily injury and property damage combined of not less than \$1,000,000 per occurrence. Contractor will maintain a standard ISO version of Business automobile liability insurance or its equivalent providing coverage for all owned, non-owned and hired automobiles. Owner will be included as an additional insured party.

Commercial General Liability Insurance: Including Bodily Injury and Property Damage Liability, Independent Contractors Liability, Contractual Liability, Product Liability and Completed Operations Liability in an amount not less than \$1,000,000 combined single limit, per occurrence, and \$2,000,000 aggregate. City will be included as an additional insured party.

Umbrella Form Excess Liability with minimum limits of \$1,000,000. Umbrella coverage must follow form with the primary coverage.

Workers' compensation insurance in accordance with and as required by the Workers' Compensation Act of the State of Texas in amounts sufficient to satisfy statutory requirements or \$500,000.00/\$500,000.00 for Employer's Liability. Worker's Compensation policy shall include a waiver of subrogation in favor of the Owner.

Certificate of coverage or certificate means a copy of a certificate of insurance, a certificate of authority to self-insure issued by the Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

Professional Liability: Not less than \$1,000,000 per occurrence and aggregate to be maintained for the duration of the agreement and three years following its termination. This insurance requirement applies when a supplier has a professional designation or license and/or is providing professional services. The minimum limit for architects and engineers is \$2,000,000 per occurrence and in the aggregate and may be increased depending upon the nature of the services to be provided to the City.

Upon request, the Firm shall furnish complete sets of its insurance policies to Owner for review. If additional insurance or changes to this article are required, they shall be explicitly laid out in **Exhibit 1**.

ARTICLE 13 **INDEMNITY**

PROFESSIONAL DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY, AND HOLD HARMLESS CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR PROPERTY, CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBPROFESSIONAL OR SUPPLIER COMMITTED BY PROFESSIONAL, ITS AGENTS, OR CONSULTANTS UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH PROFESSIONAL EXERCISES CONTROL, SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (b) AND PROFESSIONAL WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT CITY AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS.

THE INDEMNIFICATION UNDER THIS SECTION SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO PROFESSIONAL'S LIABILITY.

PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS SECTION (INDEMNIFICATION) SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE 14
COMPENSATION

The Professional Firm’s compensation for Professional Services shall be as follows:

Service Fees: The maximum fee for Professional Services shall not exceed **{spelled out} dollars (\$numbers)** as approved by the Owner set forth in **Exhibit 2**.

Reimbursable Expenses: For Reimbursable Expenses approved by the Owner (ref. Article 8 and **Exhibit 2**), Professional Firm shall be compensated for the actual expense incurred by the Firm. Notwithstanding the foregoing, Owner’s payment to the Firm for Reimbursable Expenses will not exceed a maximum of amount agreed upon in this Agreement and Exhibits without the prior written approval of the Owner.

Additional Services: The Firm’s Compensation for any approved Additional Services shall be as described in the Additional Services Proposal accepted by the Owner.

For “On-Call” Agreements, use Article 15 below and modify duration as required. Otherwise delete.

ARTICLE 15
TERM OF CONTRACT

Duration: The term of this On-Call Agreement will be for **{five (5)}** years from the established Effective Date. No additional work assignments through the Fund Allocation Request Form can be issued after this date; however, all assignments made prior to the expiration date, and which have not been completed, can be completed.

The Owner and the Professional Firm have entered into this Agreement as of the Effective Date.

OWNER:

THE CITY OF SAN MARCOS

By: _____
Name: _____
Title: _____
Date: _____

PROFESSIONAL FIRM:

{LEGAL NAME OF FIRM}

By: _____
Name: _____
Title: _____
Date: _____

Exhibits:

EXHIBIT 1 – Scope of Services and Deliverables

EXHIBIT 2 – Detailed Fee Schedule

EXHIBIT 3 – Project Schedule

EXHIBIT 4 – Authorization of Change in Service Form

*Include- Exhibit 5 if applicable for Federal funded projects. Otherwise delete.
Include Exhibit 6 if applicable for On-Call Agreements. Otherwise delete.*

EXHIBIT 5 – Any Federal Grant Terms and Conditions, as required

EXHIBIT 6 – On-Call Agreement Fund Allocation Request Form

SAMPLE

EXHIBIT 1
SCOPE OF SERVICES AND DELIVERABLES

SAMPLE

EXHIBIT 2
DETAILED FEE SCHEDULE

SAMPLE

EXHIBIT 3
PROJECT SCHEDULE

SAMPLE

EXHIBIT 4
AUTHORIZATION OF CHANGE IN SERVICE

SAMPLE