

**PROFESSIONAL CONSULTING SERVICES AGREEMENT**  
**CONTRACT NUMBER: 217-310**

This Agreement is effective the 1st day of August, 2017, between the City of San Marcos, Texas, (the "City"), 630 East Hopkins, San Marcos, Texas 78666 and AECOM Technical Services, Inc. (the "Contractor"), 7389 Florida Boulevard, Suite 300, Baton Rouge, Louisiana 70806, for the Contractor's provision of professional services related to the Community Development Block Grant Disaster Recovery ("CDBG-DR") Homeowner Rehabilitation Program (the "Services" or the "Project").

**RECITALS**

1. The City was inundated with historic flash and river flooding in Hays County on two separate occasions within six months of each other in 2015. The two flood events are known as the Memorial Day Flood and All Saints Day Flood ("the Floods").
2. As a result of the massive flooding causing tragic loss of life during the Memorial Day Flood and extreme property damage during both Floods, the City received \$25,080,000 in Community Development Block Grant Disaster Recovery funds from the United States Department of Housing and Urban Development ("HUD") through the Disaster Relief Appropriations Act of 2016 (Public Law 114-113, Approved Dec. 18<sup>th</sup>, 2015) to assist with ongoing recovery needs.
3. Of the funds received, \$7,524,000 was allocated for the Homeowner Rehabilitation Program. The City Council prioritized \$5,000,000 for Owner-Occupied dwellings and \$2,524,000 for Rental Units.
4. The City has completed and HUD has accepted the required Needs Assessment and Action Plan and is now ready to submit a request to the local HUD Office requesting release of the funds reserved for the Owner-Occupied Rehabilitation/Reconstruction Housing Program and the Rental Unit Reconstruction Housing Program.

**NOW, THEREFORE**, the City and the Contractor agree as follows:

**ARTICLE 1**  
**CONTRACTOR'S SERVICES AND RESPONSIBILITIES**

**1.0     STANDARDS OF PERFORMANCE**

1.0.1 The Contractor submitted a Proposal to Provide CDBG-DR Housing Case Management and Pre-Construction Services in response to the City's Request for Proposal 217-310 ("Proposal") addressing the U.S. Department of Housing and Urban Development Community Development Block Grant Disaster Recovery Program (Grant) through the Disaster Relief Appropriations Act of 2016 (Public Law 114-113, Approved Dec. 18<sup>th</sup>, 2015). The representations and commitments made in the Proposal are hereby incorporated into this Agreement. As represented in the Proposal, the Contractor promises to deliver an efficient and

effective recovery in the area of Housing Rehabilitation and Reconstruction for San Marcos citizens impacted by the Floods who qualify for the Project.

**1.0.2** The Contractor understands that the City has issued a Notice of Intent to Request Release of Funds for Tiered Projects and Programs for the CDBG-DR Owner-Occupied Rehabilitation/Reconstruction Housing Program and the CDBG-DR Rental Unit Reconstruction Housing Program. This funding will be awarded directly to the City. The Contractor understands and agrees that its services will be performed contingent upon the City's receipt of the expected funding.

**1.0.3** The Contractor's Basic Services consist of the services described in Sections 1.1 through 1.3.2 below and includes Housing Case Management Services, Pre-Construction Services and Program Marketing Services.

**1.0.4** The performance of all services by the Contractor in connection with this Agreement will be by persons appropriately licensed or registered under the State of Texas, local and Federal laws governing their respective consulting disciplines as applicable. In performing all services under this Agreement, the Contractor will use that degree of care and skill normally exercised for similar projects by professional Contractors who possess special expertise in the types of services included in this Agreement.

**1.0.5** The Contractor understands and agrees that it will comply with the Federal Register notice as issued, all HUD, CDBG-DR, and cross-cutting federal requirements. In particular, the Contractor's performance under this agreement shall comply with the Supplemental Conditions required by HUD contained in Attachment A attached hereto and incorporated for all purposes. The Contractor further agrees to comply with all local, State and other applicable federal rules, laws, regulations, ordinances and policies.

**1.0.6** The Contractor will not subcontract any work under this Agreement without prior written approval from the City. The Contractor will specify any work or services subcontracted under this Agreement by separate written Agreements and those Agreements will be subject to each provision of this Agreement.

**1.0.7** Any provisions in this Agreement pertaining to the City's review, approval and/or acceptance of written materials prepared by the Contractor and/or its subcontractors in connection with this Agreement will not diminish the Contractor's responsibility for the materials.

**1.0.8** The Contractor will perform all of its services in coordination with the City. The Contractor will advise the City of data and information the Contractor needs to perform its services and the Contractor will meet with City representatives at mutually convenient times to assemble this data and information.

**1.0.9** Sydney Brown, MPA, is the Contractor's Project Representative assigned to this Project. The Contractor will not substitute another representative for this Project unless approved in writing by the City in advance of such proposed substitution. In the event the City and the

Contractor cannot agree to the substitution of the Project Representative, the City may terminate this agreement in accordance with Article 7. The Contractor's Project Representative shall assign all necessary personnel including Case Managers and Intake Specialists and establish Goals and Performance Measures. The Contractor will provide Case Management and Pre-Construction Services for up to 80 applicant households that submitted an application for one of the CDBG-DR Housing Programs.

## **1.1 TASK 1 - HOUSING CASE MANAGEMENT SERVICES**

### **AGENCY RELATIONS**

The Contractor will:

**1.1.1** Using the appropriate Policy and Procedures Manual: Single Family Owner-Occupied Rehabilitation and Reconstruction Housing Program Policy and Procedures Manual or the Rental Property Housing Reconstruction Policy and Procedures Manual assist the City with Applicant Relations by securing the necessary personnel and equipment to be able to process applications in-person and over the phone within fifteen (15) days of the contract start date in accordance with Housing Programs Guidelines, policies, procedures, and business processes involving determination of eligibility, benefits and a prioritization of applications.

**1.1.2** Assist applicants with application completion and submission.

**1.1.3** Perform in accordance with the City's program guidelines reviews of application and determining eligibility.

#### **1.1.4 Safeguarding Sensitive Information**

Maintain the privacy of applicant information as allowed under the Texas Public Information Act, Chapter 552 of the Texas Government Code.

Safeguarding Sensitive Information. The Contractor shall comply with The Privacy Act of 1974, 5 U.S.C. § 552a, The Freedom of Information Act 5 U.S.C. § 552, and Section 208 of The E-Government Act regarding the disclosure of information about clients. Compliance for CDBG-funded projects is also spelled out in 24 C.F.R. § 5.212.

- i. The collection, maintenance, use, and dissemination of SSN's, Employer Identification Numbers (EINs), any information derived from SSN's and EINs, and income information under this subpart shall be conducted, to the extent applicable, in compliance with the Privacy Act and all other provisions of Federal, State, and local law.
- ii. All assistance applicants shall be provided with a Privacy Act notice at the time of application.
- iii. All records, both electronic and paper copies, shall be maintained in systems that have the appropriate administrative, technical, and physical safeguards to protect the information, however current.

**1.1.5** Secure data sources in partnership with the City and verify sources of funds (eg. SBA & NFIP) that were paid to applicant as compensation or other settlements or write-offs in connection with the applicant's disaster-related property losses, which must be deducted from the amount of the City's assistance, namely: property and hazard insurance payments, flood insurance payments, SBA loans, and the portion of any FEMA Individual (household) Assistance Payments received by applicants to compensate for real property losses

**1.1.6** Coordinate with applicants to resolve issues impacting previous and/or future grant disbursements.

**1.1.7** Provide technical assistance to applicants concerning the results of the damage estimate and eligibility for a housing project.

**1.1.8** Provide personnel acting as Case Managers or Intake Specialists to provide information and answer questions about the program to applicants and advise applicants on the implications of Program participation.

**1.1.9** Communicate with the applicants regarding the status of their application, requests for additional information, or problems that may arise in conjunction with the application. Explain online solutions for applicants to view status and progress of their project; and assist applicants with the calculation of costs for rehabilitation or reconstruction; and assist applicants meet all reporting requirements.

**1.1.10** Generate closing documents and schedule closings/acknowledgment of grant award meetings for eligible projects.

**1.1.11** Assemble adequate and effective key personnel and staffing;

**1.1.12** Apply all CDBG rules and regulations as they apply to the program;

**1.1.13** Obtain and verify all required calculation inputs that are to be captured system of record as required by the City, for each remaining applicant.

#### **LIMITED LEGAL SERVICES**

**1.1.14** If applicable and allowable under federal law, and upon meeting Threshold and Priority and Ranking phases, the Contractor may perform tasks to clear property title.

**1.1.15** Verify the ownership and occupancy of each property subject to the application. Ensure that the owner has right title and interest to the property (using tax assessor and home exemption data), identify all lien holders, and assist the owner in preparing a plan of action to satisfy all lien holders (for buyout option only).

**1.1.16** Work with one or more legal service providers, subject to City approval, to assist eligible

low and moderate income applicants by identifying remedial and curative title/ownership actions to be undertaken by the applicant. Separate legal service providers are required for limited legal services and legal services.

**1.1.17** Ensure that all limited legal services provided to an applicant are performed under the direction and supervision of one or more attorneys duly licensed and authorized to practice law in the State of Texas. Rates are subject to approval by the State Attorney General's Office.

**1.1.18** Such provider of limited legal services shall obtain from each applicant and homeowner(s) to whom it provides legal services a letter agreement establishing engagement for limited representation only and that the funding of legal services by the City under this contract does not establish an attorney/client relationship between the applicant and the Contractor or the City. The subcontract and templates of the engagement agreements must be approved in writing by the City.

## ENVIRONMENTAL REVIEWS

**1.1.19** With approval by the City, the Contractor will provide Tier 2 environmental reviews for eligible applicants upon the approval of the Housing and Community Development Manager.

## REPORTING

**1.1.20** The Contractor shall submit regular Progress Reports to the City in the form, content, and frequency as required by the City.

## DOCUMENT MANAGEMENT

**1.1.21** Store and retrieve applicant documents, applicant-related emails, written correspondence, training material, and Single Family Owner-Occupied Rehabilitation/Reconstruction Housing Program Policy and Procedures Manual; the Rental Property Reconstruction Housing Program Policy and Procedures Manual (along with information leading up to the policy and procedures decisions) in the City's electronic environment and the locked file cabinet located at the Community Development Office, 630 Hopkins Street, San Marcos, Texas 78666. All documents and materials are the City's property.

**1.1.22** Document all communications with the applicants regarding the status of their application and subsequent related processes, requests for additional information, or problems that may arise in conjunction with the application in the system of record.

**1.1.23** Calculate the amounts of assistance due to qualified applicants, prepare all documents related to the commitment and disbursement of this assistance by the City, and forward this documentation to the City.

**1.1.24** Process, scan and upload documentation into the respective systems of record.

**1.1.25** Perform periodic file inventory.

**1.1.26** Perform mail intake services.

**1.1.27** Document and store records electronically for every meeting between case managers, intake personnel, and applicants.

**1.1.28** Document compliance with low to moderate income national objective.

**1.1.29** Manage records including case files, computer records, weekly reports, monthly reports, and quarterly reports.

**1.1.30** Comply with Anti-Fraud, Waste, and Abuse (AFWA) policies.

**1.2    TASK 2 - PRE-CONSTRUCTION SERVICES:**

Pre-Construction services including:

**1.2.1** Calculate cost of rehabilitation, reconstruction, construction and/or elevation as appropriate, using Xactimate software by qualified personnel.

**1.2.2** Perform lead inspections and tests, if applicable.

**1.2.3** Provide Pre-Construction Topographical surveying services, if applicable.

**1.2.4** Provide quality and timely inspections and work write-ups, and cost-estimation.

**1.2.5** Confirm in accordance with Program Duplication of Benefits policy that pre-Program construction that homeowners have had performed has been completed.

**1.2.6** Provide architectural and design services on an as-needed basis.

**1.2.7** The Contractor will conduct initial inspection and analysis on each home to establish the damage assessment and/or home's scope of work required to repair/replace damage from the floods. The scope of work may determine if it should be replaced/rebuilt or rehabilitated in accordance with established policies.

**1.2.8** The inspectors and estimators will use both the Xactimate software and the Housing Program guidelines, the repair scopes of work and cost estimates based on the site assessment results. The Contractor and the City will jointly develop the base model for Xactimate and mutually agree to all optional and site specific factors.

**1.2.9** The Contractor will explain to the homeowner what damages are eligible for the program and will obtain all necessary documentation which may include pre-construction pictures demonstrating the flood related damages and the pre-construction condition of elements identified for inclusion in the proposed scope of work.

**1.2.10** The Contractor will track and record GPS readings for all inspections.

### **1.3 TASK 3 – PROGRAM MARKETING SERVICES**

At the discretion of the City it may request the Contractor perform Program Marketing Services for a Round Two Application Intake. This activity will include the following:

**1.3.1** Two (2) applicant workshops in the neighborhoods cited in the Action Plan

**1.3.2** Door-to-door canvassing for applicants in the neighborhoods cited in the Action Plan

### **1.4 ADDITIONAL SERVICES/CHANGE OR DELAY IN SERVICES/PROJECT ASSUMPTIONS**

**1.4.1** The City may direct the Contractor to perform services outside of the scope of the Basic Services described in Sections 1.1 through 1.3.2 above. The Contractor will submit a written estimate of fees to the City and obtain the City's authorization before initiating any additional services. The Contractor will submit a written estimate of fees to the City and obtain the City's authorization before initiating any additional services.

**1.4.2** Each material change (deletion or addition) in the services to be provided by the Contractor must be authorized by the City. Compensation for additional services will be in addition to that specified for Basic Services. The approval of the San Marcos City Council is necessary for all additional services the compensation for which exceeds \$50,000.00.

**1.4.3** The Contractor, will complete its Services in accordance with the schedule negotiated with the City and has taken into consideration and made allowance for all hindrances and delays incident to such work, whether growing out of delays in securing material, workers, weather or otherwise. No charge will be made by the Contractor for any hindrance or delay from any cause whatever during the progress of any portion of its work that can reasonably be contemplated by the scope of work, but the City may grant an extension of time for the completion of the work, provided it has satisfied that such delays or hindrances were due to extraordinary causes or to the acts of omission or commission by the City.

## **ARTICLE 2 THE CITY'S RESPONSIBILITIES**

The City will:

**2.1** Provide full information to the Contractor regarding the City's requirements for the Contractor's services under this Agreement. The City will furnish the Contractor with copies of data and information in the City's possession needed by the Contractor at the Contractor's request. The City will provide this information and render decisions expeditiously for the orderly progress of the Contractor's services. Consistent with the professional standard of care and unless otherwise expressly stated herein, Contractor shall be entitled to rely upon the accuracy and completeness of data and information provided by the City or others, without

independent review or evaluation.

**2.2** Designate Stacy Brown or her designee as the City's Project Manager and authorized representative to act on the City's behalf with respect to this Agreement. The City will examine the documents and information submitted by the Contractor and promptly render responses to the Contractor on issues requiring a decision by the City.

**2.3** Provide access to and make all necessary provisions for the Contractor to enter public and private property as required for the Contractor to perform its services under this Agreement.

**2.4** Be responsible for securing all federal and state required permits required for the construction of this Project with the assistance of the Contractor.

**2.5** Bear all other costs incidental to this Article.

### **ARTICLE 3 REIMBURSABLE EXPENSES**

**3.1** Reimbursable expenses, including such things as expenses for plotting, reproduction of documents, auto travel mileage (at the prevailing IRS rate), delivery charges, long distance communications, freight, and state accessibility review are included in the Contractor's basic services compensation.

### **ARTICLE 4 PAYMENTS TO THE CONTRACTOR**

#### **4.1 PAYMENTS FOR BASIC SERVICES**

The City will pay the Contractor for Basic Services on a monthly basis following receipt by the City of the Contractor's invoices showing direct and indirect labor costs, expenses for materials and supplies and any other reimbursable expenses if applicable, and appropriate payment requisitions. The Contractor will base its invoices upon the extent of work it has completed on an hourly basis within each task of services less any disputed amounts, pending resolution thereof.

The total not-to-exceed amount the City will pay the Contractor for the professional services described in this Agreement is \$642,605. The costs of the services are described in the Price Proposal attached to this Agreement as Attachment B and incorporated for all purposes.

#### **4.2 PAYMENTS FOR ADDITIONAL SERVICES**

The City will pay the Contractor for Additional Services as those are defined in Section 1.6, monthly upon presentation of the Contractor's statement of services rendered or expenses incurred, less any disputed amounts, pending resolution thereof and an Authorization of Change in Services form executed by the Contractor and the City.



### **4.3 TAXES**

The Contractor will not include Federal taxes or State of Texas limited sales excise and use taxes in its invoices or vouchers and statement of costs. The City is exempt from payment of such taxes and the Contractor may retrieve a resale certificate for use on this Project from the State of Texas Comptroller's website.

## **ARTICLE 5 CONTRACTOR'S RECORDS**

**5.1** The Contractor will keep all of its expense records in a recognized accounting format acceptable to the City and these records will be available to the City at mutually convenient times.

**5.2** The City, its auditors, federal auditors, and state agencies that have monitoring or auditing responsibilities for this Agreement will have access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, copying and transcriptions.

**5.3** The Contractor will furnish to the City at such time and in such form as the City may require, financial statements including audited financial statements, records, reports, data and information, as the City may request pertaining to the matters covered by this Agreement.

## **ARTICLE 6 OWNERSHIP AND USE OF DOCUMENTS**

**6.1** All documents prepared by the Contractor in connection with this Agreement become the property of the City upon proper payment for the Contractor's services, whether any project related to this Agreement is executed or not. The Contractor shall provide all documents to the City upon request by the City at no charge. Notwithstanding the foregoing, Contractor shall bear no liability or responsibility for deliverables that have been modified post-delivery or used for a purpose other than that for which they were prepared under this Agreement.

**6.2** The Contractor will retain all of its records and supporting documentation relating to this Agreement for a period of four years after completion of the Project except in the event that the Contractor goes out of business during that period, it will turn over to the City all of its records relating to the Project.

**6.3** As applicable, the Contractor will pay all license fees, royalties, and other costs incident to the use of any invention, design, process, product or device subject to a patent right or copyright held by others in performing the work or in the completed project.

## **ARTICLE 7 TERM; TERMINATION OF AGREEMENT**

**7.1** The term of this Agreement begins on August 1, 2017 and will end no later than July 31,

2019. The term may end earlier with the completion of all services and the City's acceptance of all services described in this Agreement unless this Agreement is terminated under Sections 7.2 or 7.3 below.

**7.2** This Agreement may be terminated by either party upon 15 calendar days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination. The Contractor will provide the City with at least a 30 calendar day period of opportunity to cure before the Contractor initiates termination.

**7.3** The City may terminate this Agreement for convenience and without cause upon at least 15 calendar days written notice to the Contractor. In the event of termination for convenience the City may require the Contractor to transfer title and deliver to the City in the manner and to the extent directed by the Purchasing Manager: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing material") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of the agreement. Upon such termination, the Contractor will (a) stop work to the extent specified (b) terminate any subcontractors as they relate to the terminated work, and (c) be paid the following amounts without duplication, subject to the other terms of this contract: (i) contract prices for supplies or services accepted under the agreement (ii) costs incurred in performing the terminated portion of the work, and (iii) any other reasonable costs that the Contractor can demonstrate to the satisfaction of the City, using its standard record keeping system, have resulted from the termination. The Contractor will not be paid for any work performed or costs incurred that reasonably could have been avoided. As a condition of payment, the Contractor will submit within three months of the effective date of the termination a claim specifying the amounts due because of the termination. The absence of an appropriate termination for convenience clause in any subcontract will not increase the obligation of the City beyond what it would have been had the subcontract contained such a clause.

## **ARTICLE 8 INSURANCE AND INDEMNITY**

**8.1** The Contractor will indemnify, hold harmless and defend the City and its employees, authorized agents, officers from lawsuits, claims, demands and causes of action arising solely from the negligent or intentional wrongful acts or omissions of the Contractor, its officers, employees or agents in the performance of this Agreement. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, expert witness fees and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims demands and causes of action for personal injuries, death or damages to property, alleged or actual infringement of patents, copyrights and trademarks in the performance of the work or the incorporation in the work of any invention, design, process, product or device and without limitation by enumeration, all other claims, demands, or causes of action to the extent caused by any negligent or intentional wrongful act, error or omission of the Contractor and/or its agents and/or employees. This obligation by Contractor will not be limited because of the specification of any particular insurance coverage in this Agreement.

**8.2** The Contractor will procure and maintain at Contractor's expense insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by Contractor or Contractor's agents, subcontractors or employees. Before commencing the work, the Contractor will furnish to the City a certificate or certificates in form satisfactory to the City, showing that Contractor has complied with this paragraph. All certificates will provide that the policy will not be changed or canceled until at least 30 calendar days written notice has been given to the City. Failure of the Contractor to demand a certificate or other sufficient evidence of full compliance with these insurance requirements or failure of the Contractor to identify a deficiency from the evidence that is provided as proof of insurance will not be construed as a waiver of the Contractor's obligation to maintain the required insurance coverage specified herein. Commercial general liability insurance and motor vehicle insurance will be written with the City of San Marcos, Texas as an additional insured and will be endorsed to provide a waiver of the carrier's right of subrogation against the City. The kinds and amounts of insurance required are as follows:

Workers' Compensation Insurance and/or Employer's Liability: In accordance with the provisions of the Workers' Compensation Act of the State of Texas and/or \$500,000.00/\$500,000.00 for Employer's Liability.

Liability Insurance: (1) Commercial general liability insurance (standard ISO version) with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate, providing coverage for, but not limited to, bodily injury and property damage, premises/operations, products/completed operations, independent Contractors as applicable (2) Business Motor Vehicle liability insurance (standard ISO version) in an amount not less than \$1,000,000 per occurrence (3) professional liability coverage to cover lawful claims arising in connection with the Project in the combined single limit amount of at least \$1,000,000.00 per claim as applicable. Should the Contractor not own any automobiles, the business auto liability requirement will be amended to allow the Contractor to agree to maintain only Hired and Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability or separate Business Auto Policy.

The stated limits of insurance required by this Paragraph are **minimum only**—they do not limit the Contractor's indemnity obligation, and it will be the Contractor's responsibility to determine what limits are adequate. These limits may be basic policy limits shown in this Article 8 or any combination of basic limits and umbrella limits. The City's acceptance of Certificates of Insurance that do not comply with these requirements in any respect does not release the Contractor from compliance with these requirements.

## **ARTICLE 9 FEDERALLY REQUIRED PROVISIONS**

### **9.1 NATIONAL OBJECTIVES**

All activities funded with CDGB-DR funds must meet one of the CDBG-DR 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.

## **9.2 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.

## **9.3 CONFLICTS OF INTEREST (24 CFR 570.611; 2 cfr 200.112 AND 200.318©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 Contractors (*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 570.611(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:

(a) 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:

- 1) An employee, officer, or agent of the Contractor;
- 2) Any member of an employee’s, officer’s, or agent’s immediate family;
- 3) An employee’s, agent’s, or officer’s partner; or
- 4) An organization which employs or is about to employ any of the persons listed in the preceding sections.

(b) 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.

(c) Provide for disciplinary actions to be applied for any violations of such standards by employees, agents or officers of the Contractor.

With respect to all other CDBG-assisted activities, the general standard is that no employee, agent or officer of the Contractor, 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:

- 1) 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 Contractor, and to their immediate family members and business partner(s).
- 2) The requirement applies for such persons during their tenure and for a period of one year after leaving the grantee or Contractor organization.
- 3) Upon written request, exceptions may be granted by HUD on a case-by-case basis.

#### **9.4 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".

(a) 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.

(b) 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.

(c) 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.

(d) 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](http://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.

#### **9.5 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.

## **9.6 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.

## **9.7 SECTION 3 COMPLIANCE**

Compliance with Section 3 [These provisions are applicable to projects for which the amount of HUD assistance exceeds \$200,000 and the contract or subcontract exceeds \$100,000.]

- (a) The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this Contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, 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 135 regulations.
- (c) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. 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 C.F.R. Part 135.

- (e) 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 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. Part 135.
- (f) Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.
- (g) When required, Contractor shall furnish the City or HUD with satisfactory proof of its compliance herewith.

## **9.8 COMPLIANCE WITH RULES & REGULATIONS**

Funding for the Project has been made available by HUD through the CDBG-DR 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:

### **9.8.1 Workers Compensation laws;**

- (a) Minimum and maximum salary and wage statutes and regulations, including but not limited to:

**9.8.1.1** Fair Labor Standards Act of 1938, as amended;

**9.8.1.2** Equal Pay Act of 1963, PL 88-38; and

**9.8.1.3** All applicable regulations implementing the above laws;

- (b) Non-discrimination statutes and regulations, including but not limited to:

**9.8.1.4** Title VII of the Civil Rights Act of 1964, as amended;

**9.8.1.5** Section 504 of the Rehabilitation Act of 1973, as amended;

**9.8.1.6** The Age Discrimination Act of 1975, as amended; and

**9.8.1.7** all applicable regulations implementing the above laws;

- (c) Licensing laws and regulations;

**9.8.1.8** 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;

**9.8.1.9** Requirements under the Architectural Barriers Act and the Americans with Disabilities Act set forth in 24 C.F.R. Section 570.614;

**9.8.1.10** 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, and Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended

**9.8.1.11** 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.;

**9.8.1.12** 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; 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.

**9.8.2 AFFIRMATIVE ACTION – WOMEN-AND MINORITY-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.

### **9.8.3 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 (18 U.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.

### **9.8.4 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.

### **9.8.5 PROGRAM INCOME**

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

#### **9.8.6 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.

#### **9.8.7 LOBBYING**

The Contractor hereby certifies that:

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

### **9.8.8 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-DR-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.

### **9.8.10 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).

### **9.8.11 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.

### **9.8.12 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(j), 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.

### **9.8.13 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.

## **ARTICLE 10 MISCELLANEOUS PROVISIONS**

**10.1** This Agreement is governed by the laws of the State of Texas. This Agreement is to be performed in Hays County and exclusive venue for any dispute arising under this Agreement is in Hays County, Texas. In the event of a dispute in federal court, venue will be in the United States District Court for the Western District of Texas, Austin Division.

**10.2** As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued when the party commencing the cause of action knew or should have known of the existence of the subject act(s) or failure(s) to act.

**10.3** The Contractor will not use funds received by it directly or indirectly under the terms of this Agreement for any partisan political activity or to further the election or defeat of any candidate for public office.

**10.4** The Contractor hereby affirms that neither the Contractor, the Contractor's firm nor any of its associates or employees have made or agreed to make any valuable gift whether in the form of service, loan, thing, or promise to any person or any of his/her immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of Contractors to provide consulting services to the City within the two years preceding the execution of this Agreement. A campaign contribution, as defined by the Texas Election Code or the San Marcos City Code is not considered a valuable gift for the purposes of this Agreement. The Contractor further agrees that none of its paid personnel will be employees of the City or have any contractual relationship with the City. All activities, investigations, and other efforts made by Contractor pursuant to the Agreement will be conducted by employees, associates, or independent contractors of the Contractor.

**10.5** In performing the services required under this Agreement, the Contractor will not discriminate against any person on the basis of race, color, religion, sex, national origin, age, disability or ancestry. The Contractor agrees not to engage in employment practices, which have the purpose or effect of discriminating against employees or prospective employees because of race, color, sex, religion, national origin, age, disability or ancestry. A breach of this covenant by the Contractor may be regarded as a default of the Agreement.

**10.6** All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. The term "will" is mandatory in this Agreement.

**10.7** Should any provision in this Agreement be found or deemed invalid, this Agreement will be construed as not containing the provision and all other provisions, which are otherwise lawful, will remain in full force and effect, and to this end, the provisions of this Agreement are declared severable. Paragraph and Section headings included in the Agreement are for convenience only and are not intended to define or limit the scope of any provisions of the Agreement.

**10.8** All services provided pursuant to this Agreement are for the exclusive use and benefit of the City and this Agreement does not create rights in third parties.

**10.9** 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).

**10.10** The City will have the right to declare the Contractor in breach of the Agreement for cause when the City determines that this Agreement has not been performed in accordance with its written terms and conditions.

**10.11** In the event of a default or breach of this Agreement by the Contractor, the City reserves the right to choose among the remedies for the default or breach available to the City. These remedies may be used in conjunction with one another or separately, and together with any other statutory or common law remedies available to the City. Any failure by the City to enforce this Agreement with respect to one or more defaults by the Contractor will not waive the City's ability to enforce the Agreement after that time.

**10.12** The City's execution of and performance under this Agreement will not act as a waiver by the City of any immunity from suit or liability to which it is entitled under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

**10.13** The City of San Marcos is governed by the Texas Public Information Act (the "Act"), Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this agreement may be subject to release under the Act. The Contractor will not make any reports, information, data, etc. generated under this Agreement available to any individual or organization without the written approval of the City.

**10.14** In the event that the performance by either the City or the Contractor of any of its obligations under this Agreement is interrupted or delayed by events outside of their control such as acts of God, war, riot or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of such events.

**10.15** If applicable, the Contractor will pay all license fees, royalties and other costs incident to the use of any invention, design, process, product or device subject to a patent right or copyright held by others in performing the work or in the completed Project.

**10.16** It is expressly agreed that the Contractor is an independent contractor and not an employee, agent partner or joint venturer with the City. The Contractor will not pledge or attempt to pledge the credit of the City.

**10.17** It is the City's intent to be proactive with regard to the environment. The City encourages "value purchasing" of environmentally friendly products. The Contractor is encouraged to utilize green solutions in performing any services under the Agreement, as appropriate.

**10.18** The Contractor's attention is called to the fact that 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, their subcontractors and employees are prohibited from smoking while on City property. This prohibition includes the enclosed areas of public places and workplaces and within 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 this Agreement for noncompliance with this ordinance.

**10.19** If City funds are utilized to fund any part of this Agreement, the Contractor understands that those City funds for the payment for work performed by the Contractor under this Agreement have been provided through the City's budget approved by City 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 City cannot guarantee the availability of funds, and enters into this Agreement only to the extent such funds are made available. The Contractor acknowledges and agrees that it will have no recourse against the City 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 City extends from October 1st of each calendar year to September 30th of the following calendar year.

**10.20** The Contractor is required to electronically generate 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](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)) and submit a signed and notarized copy of the form to the City prior to the award of the contract. This 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.

## **ARTICLE 11 SUCCESSORS AND ASSIGNS**

**11.1** The City and the Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The City and the Contractor will not assign, sublet or transfer any interest in this Agreement without the prior written consent of the other.

**11.2** The Contractor will notify the City, in writing, of any change in its partnership/ownership within 30 calendar days of such change.

## **ARTICLE 12 EXTENT OF AGREEMENT**

**12.1** This Agreement, including appendices and referenced attachments represents the entire and integrated Agreement between the City and the Contractor and supersedes all prior proposals, negotiations, representations or agreements either written or oral between the parties. In the event of a dispute between the City and Contractor regarding the intent of this Agreement, both parties agree that they will construe this Agreement in a manner consistent with the City's Request for Proposals, the Contractor's proposal response and the public record of the City Council's approval of this agreement as applicable. The Contractor's expenses for travel, office, production and other expenses associated directly or indirectly with this Agreement are included as part of the total fee. This Agreement may be amended only by written instrument, which must be signed by both the City and the Contractor. The San Marcos City Council must approve any such authorization of change in services or amendment if the compensation for which exceeds \$50,000.00.

**12.2** Any exhibits and/or attachments attached to this Agreement are incorporated by reference into this Agreement as though included verbatim herein.

**12.3** In the event of any conflict between this Agreement and the provisions of any exhibit or attachment to this Agreement, this Agreement will govern and control.

## **ARTICLE 13 NOTICES**

**13.1** Notices required under this Agreement will be provided by the parties to one another by certified mail, return receipt requested, or by confirmed facsimile transmission, to the following addresses:

To the City:

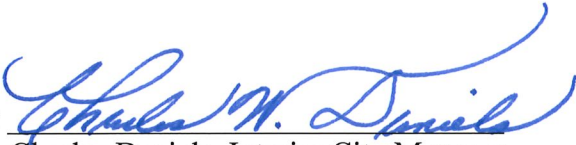
City Manager  
City of San Marcos  
630 E. Hopkins  
San Marcos, Texas 78666

To the Contractor:

Michael J. Richardson, PE  
AECOM Technical Services, Inc.  
7389 Florida Boulevard, Suite 300  
Baton Rouge, Louisiana 70806

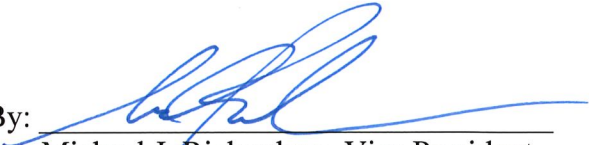
Each of the persons executing this Agreement represents that he or she has full power and authority to execute this Agreement on behalf of the party that person represents. This Agreement will be effective as of the day and year established in the first paragraph of this Agreement.

**City of San Marcos**

By:   
Charles Daniels, Interim City Manager

Date: 08.02.17

**AECOM Technical Services, Inc.**

By:   
Michael J. Richardson, Vice President

Date: 26 JUL 17



## **ATTACHMENT A**

**Attachment "A"**  
**Supplemental Conditions for**  
**Community Development Block Grant- Disaster Recovery Contracts**

**Compliance with Applicable Laws and Acts.** This Project is being partially funded with Community Development Block Grant funds provided to the City of San Marcos, hereinafter known as "the City" by the United States Department of Housing and Urban Development ("HUD").

The Contractor shall comply with all applicable federal, state and local laws, regulations and ordinances related in any way to this Contract. Without limiting the foregoing, the Contract is subject to 24 C.F.R. Part 5 and all applicable legal authorities cited therein. Contractor shall notify the City in writing of any failure to comply with applicable laws, regulations, or ordinances, where such failure affects in any way Contractor's ability to provide service(s) under this Contract.

Without limiting the foregoing, Contractor shall comply with the following statutes and regulations as they may apply:

- A. Workers Compensation laws.
- B. 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;
  - c. The Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor Regulations (29 C.F.R. Part 5);
  - d. Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29 C.F.R. Part 5); and
  - e. All other applicable regulations implementing the above laws.
- C. 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.

**Section 1. Required Registrations.** The Federal Funding Accounting and Transparency Act requires any consultant or contractor providing services in connection with projects receiving CDBG-DR funding to obtain a Data Universal Numbering System ("DUNS")

**Section 2. Termination for Cause and for convenience.**

- A. The contract, when executed, may be terminated by either party upon 10 calendar days prior written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
- B. The City may terminate this Contract for convenience and without cause upon at least 7 calendar days prior written notice to the Contractor. In the event of termination for convenience, the City may require the Contractor to transfer title and deliver to the City in the manner and to the extent directed by the Purchasing Manager:

- a. Any completed supplies and/or partially completed supplies and materials that the Contractor has specifically produced or specially acquired for the performance of the terminated part of the agreement.
- b. Upon such termination the Consultant will:
  - i. Stop work to the extent specified; ii. Terminate any subcontractors as they relate to the terminated work; iii. Be paid for all work performed to date;
- c. The Contractor will not be paid for any work performed or costs incurred that reasonably could have been avoided.

**Section 3. Copeland Anti-Kickback Act Compliance.** The Contractor shall comply with the requirements of 40 U.C.S. 3145, as supplemented by 29 C.F.R. Part 3 (the Copeland Act). The "Anti-Kickback" section of the Act precludes a contractor or subcontractor from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. All suspected or reported violations must be reported to HUD.

**Section 4. Civil Rights / ADA Compliance.** The Contractor shall provide all work required under this Contract in a manner that complies with the Civil Rights Act of 1964, as amended, Title VII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title 1 of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063 as amended by Executive Order 12259, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 120107, and 12086.

- A. The Contractor shall not discriminate against any employee or applicant for employment based on race, color, sex, age, religion, national origin or disability. Contractor also agrees that Contractor will not discriminate against any individual or group based on race, color, sex, age, religion, national origin, or disability and in accordance with 42 U.S.C.A. Section 53.09, 24 C.F.R. Parts 1, 6 and 8 as they relate to discrimination, 41 C.F.R. Part 60 and Executive Order No. 11246 as amended by Executive Order 11375, and all other applicable federal, state, and local Equal Employment Opportunity and Affirmative Action rules, regulations and laws.
- B. The Contractor shall comply with 42 U.S.C.A. Section 53.09 and 24 C.F.R. Parts 1, 6 and 8 as they relate to no discrimination, Executive Order 11246 titled "Equal Employment Opportunity" as amended by Executive Order 11375 (41 C.F.R. Part 60); and all other applicable federal, state and local Equal Employment Opportunity and affirmative action rules, regulations and laws.
- C. The Contractor, with regard to work performed by it during the term of this Contract, shall not discriminate on the grounds of race, color, sex, age, religion, national origin or disability.
- D. The contractor agrees to comply with all Federal regulations issued pursuant to compliance with 504 of the Rehabilitation Act of 1973 (29 U.S.C. 7940 which prohibits discrimination against individuals with disabilities or handicaps in any Federally assisted program.
- E. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the regulations relevant to non-discrimination on the grounds of race, color, sex, age, religion, national origin, or disability.

- F. The Contractor shall provide all information and reports necessary for the City to comply with applicable HUD regulations and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by HUD or the City to be pertinent to ascertain compliance with HUD regulations.
- G. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to the City and shall set forth what efforts it has made to obtain the information.

**Section 5. Equal Opportunity:** The Contractor hereby agrees to comply with Equal Opportunity Laws, except as otherwise provided under 41 CFR Part 60, for all work that meets the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3.

Contractor agrees that it will incorporate or cause to be incorporated into any contract [with subcontractors] for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- D. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the said labor union or workers' representatives of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant order of the Secretary of Labor.

- F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Contractor will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Section 6. Certification of Eligibility.** Contract awards cannot be made to parties 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 and 12689. SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

By submitting a bid or proposal in response to the Request for Quote/Proposals, the Contractor certifies that at the time of submission, he/she/it is not on the federal government's list of suspended, ineligible, or debarred contractors.

- A. In the event of placement on the list between the time of bid/proposal submission and time of contract award, the bidder/proposer shall immediately notify the City.
- B. Contractor certifies that its contractors and subcontractors are not presently debarred, suspended, or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program.
- C. Placement of Contractor on the federal government's list of suspended, ineligible, or debarred contractors, false certification, or failure to notify the City as required may result in the termination of this Contract for default.
- D. The Contractor shall furnish a copy of the certification in accordance with 24 C.F.R Part 24 (Debarment and Suspension) to the City of San Marcos with the bid packet.

#### **Section 7. "Section 3" Clause**

Provisions are applicable to covered projects for which the amount of HUD assistance exceeds \$200,000 and/or the contract or subcontract exceeds \$100,000.

- A. Compliance  
Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the City, the Contractor and any of the Contractor's Contractors and subcontractors. Failure to fulfill these

requirements shall subject the City, the Contractor and any of the Contractor's Contractors and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Contractor certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Contractor further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Contractor further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Contractor certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

#### **Section 8. Subcontractors.**

- A. The Contractor shall not permit any subcontractor to perform any work included in the Project until the Contractor has verified the Subcontractor as eligible to participate in federally funded contracts.
- B. No proposed contractor will be disapproved by the City except for cause.
- C. The Contractor will be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them.
- D. The Contractor will cause appropriate provisions to be inserted in all subcontracts relative to the work and required compliance by each subcontractor with the applicable provisions of the Contract.
- E. Nothing contained in the Contract will create any contractual relationship between any subcontractor and the Owner.

#### **Section 8. Non-Segregated Facilities.** [Applicable to contracts exceeding \$10,000.00]

- A. The Contractor certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments; and that it does not and will not permit its employees to perform any of

their services at any location, under its control, where segregated facilities are maintained. As used in this paragraph the term "segregated facilities" means waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or nation origin because of habit, local custom or otherwise.

- B. The Contractor further certifies that (except where it has obtained identical certification from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000.00 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:
- a) Obtain identical certifications from the proposed subcontractors;
  - b) Retain the certifications in its files; and
  - c) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods).

***Notice to Prospective Subcontractors of Requirement for Certifications of Non-Segregated Facilities***

*A Certification of Non-Segregated Facilities must be submitted before the award of a subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The Certification may be submitted either for each subcontract or for all subcontractors during a period (i.e. quarterly, semi-annually, or annually).*

**Section 9. Non-Collusion Certification.** The Contractor certifies that the bid covered in this Contract is made without collusion with any other person, firm or corporation.

**Section 10. Organizational Conflicts of Interest Certification.** The Contractor certifies that to the best of his/her knowledge and belief and except as otherwise disclosed, he/she does not have any organizational conflict of interest which is defined as a situation in which the nature of the work to be performed under this Contract and the Contractor's organizational, financial, contractual or other interests may, with some restriction on future activities:

- A. Result in an unfair competitive advantage to the Contractor; or B.
- Impair the Contractor's objectivity in performing the Contract work.

The Contractor agrees to abide by the provisions of 2 CFR 200.318(c) which states: *No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity [City] may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.*

**Section 11. Maintenance of and Right of Access to Records.**

- A. The Contractor shall maintain all books, documents, papers, accounting records, other records and other evidence directly pertaining to the work performed under this Contract, including the Exhibits and Attachments hereto, and costs and expenses of such work. With respect to accounting records, the Contractor shall maintain appropriate accounting records of costs, expenses, and payrolls of employees working on the Project, including

source documentation such as cancelled checks, paid bills, payrolls, time and attendance records, Contract award documents, and other documentation as required by the City.

- B. The records described in Paragraph 1 above shall be maintained during the Contract period and for four (4) years after receipt of final payment and all other pending matters are closed, whichever occurs last.
- C. At no expense to the Owner or the City of San Marcos, HUD, the Comptroller General of the United States or any of their duly authorized representatives shall have access to the records described in Paragraph 1 above for purposes of making audits, examinations, excerpts and transcripts.

## **Section 12. Miscellaneous Provisions.**

- A. The Project is subject to the Texas Public Information Act. All information submitted by bidders is subject to release under this Act.
- B. 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 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.
- C. Rights to Inventions. The Contractor shall comply with 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements."

**Section 13. Davis-Bacon and Related Acts (DBRA) Compliance.** Generally applicable to construction contracts at or above \$2,000. For contracts subject to compliance with DBRA, applicable conditions are found in the attached *"Supplementary Conditions for the Contract for Construction"* and *"HUD Form 4010"*, as well as the Wage Rates issued by the Department of Labor and attached hereto. 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 (18 U.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.

**Section 14. Federal Funding Accountability and Transparency Act.** The vendor agrees to report executive compensation



Information for the five most highly compensated executives in the preceding year if all of the following criteria are met:

1. The vendor received 80% or more of its annual gross revenues in federal awards.
2. Vendor revenues are greater than \$25 million annually,
3. The public does not have access to compensation of the executives through periodic reports filed under 13(a) or 14(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)), or Section 6104 of the Internal Revenue Code of 1986.

**Section 15. Lead-Based Paint Regulations.** 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-DR -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.

## **ATTACHMENT B**

## Attachment B: Price Proposal

PROPOSAL NAME: CDBG-DR HOUSING CASE MANAGEMENT AND  
PRE-CONSTRUCTION SERVICES

Item #	Description	Not to Exceed Cost	Pricing	Method
1	Application Relations	\$176,500	\$176,500.00	Lump Sum
2	Calculation of Cost of Rehabilitation/Reconstruction	\$67,250	\$840.63	Each
3	Reporting	\$14,375	\$14,375.00	Lump Sum
4	Environmental Review	\$78,160	\$977.00	Each
5	Document Management	\$25,000	\$25,000.00	Lump Sum
6	Legal Services	\$47,040	\$47,040	Lump Sum
7	Pre-Construction Services	\$204,480		
	Oversight and Design Services		\$81,420.00	Lump Sum
	Pre-Construction Topographical Survey		\$630.00	Each
	Initial Elevation Certificate		\$472.50	Each
	Foundation Engineering		\$420.00	Each
	Redesign		\$157.50	Each
8	Other Direct Costs	\$29,800	Per Receipts	Lump Sum
	<b>TOTAL</b>	<b>\$642,605</b>		

In light of a reduced population of 56 applications, AECOM respectfully submits the above price proposal for RFP #217-310. Per conversations with City of San Marcos staff, AECOM believes this hybrid model that combines lump sum and unit-based pricing would be a mutually beneficial arrangement to ultimately contain costs for both parties.

With regard to the City's desired additional services listed below, AECOM and our partnering firms will absorb the cost within our existing structure.

- Two (2) applicant workshops in the neighborhoods cited in the Action Plan
- Door-to-door canvassing for applicants in the neighborhoods cited in the Action Plan