

Galveston County W.C.I.D. No. 1
Board of Directors
Agenda Transmittal Memo



Meeting Date	November 15, 2021	General Manager	Ivan Langford
Department			
Contact			

Agenda Caption

Discuss and take action on approval of a contract with GLO for a Community Development Block Grant, Mitigation Program Infrastructure Project in the amount of \$8,189,000.00 for various water systems improvements.

Background

The District initiated this Grant application in early 2020; and filed the application in Jan 2021. We were notified of our selection last summer. This federally funded grant is administered through the Texas General Land Office (GLO). The attached agreement was drafted by the GLO and has been reviewed both by legal and our grant coordinator, Patrick Wiltshire. Patrick will be on hand to review the project and agreement.

You may recall this grant is for the rehabilitation of both Hollywood water tanks, new pump station, new Falco warehouse, as well as new water well lines from wells #6 & #8 to Hollywood.

Funding Summary

Projects are 100% funded with the grant and there is no local match required.

Staff Recommendation

Staff recommends your approval of the Agreement with the GLO.



GLO CONTRACT NO. 22-085-035-D279
COMMUNITY DEVELOPMENT BLOCK GRANT
MITIGATION PROGRAM INFRASTRUCTURE PROJECTS
NON-RESEARCH & DEVELOPMENT
MITIGATION FUNDING

The **GENERAL LAND OFFICE** (the “GLO”), a Texas state agency, and **GALVESTON COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO 1**, Texas Identification Number (TIN) **17460030947** (“Subrecipient”), each a “Party” and collectively the “Parties,” enter into this Subrecipient agreement (the “Contract”) under the U.S. Department of Housing and Urban Development’s Community Development Block Grant Mitigation (“CDBG-MIT”) program to provide financial assistance with funds appropriated under the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Public Law 115-123), enacted on February 9, 2018, for necessary expenses for Activities authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, mitigation, and affirmatively furthering fair housing, in accordance with Executive Order 12892, in the most impacted and distressed areas resulting from major declared disasters that occurred in 2015, 2016, and 2017 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121 et seq.).

Through CDBG-MIT Federal Award Number B-18-DP-48-0002, awarded January 12, 2021, as may be amended from time to time, the GLO administers grant funds as Community Development Block Grants (Catalog of Federal Domestic Assistance Number 14.228, “Community Development Block Grants/State’s program and Non-Entitlement Grants in Hawaii”), as approved by the Texas Land Commissioner and limited to use for facilitating recovery efforts in Presidentially-declared major disaster areas.

ARTICLE I - GENERAL PROVISIONS

1.01 SCOPE OF PROJECT AND SUBAWARD

(a) Scope of Project

The purpose of this Contract is to set forth the terms and conditions of Subrecipient’s participation in the CDBG-MIT program. In strict conformance with the terms and conditions of this Contract, Subrecipient shall perform, or cause to be performed, the Infrastructure Activities defined in **Attachment A** (the “Project”). Subrecipient shall conduct the Project in strict accordance with this

Contract, including all Contract Documents listed in **Section 1.02**, below, and any Amendments, Revisions, or Technical Guidance Letters issued by the GLO.

(b) Subaward

Subrecipient submitted a Grant Application under the Program. The GLO enters into this Contract based on Subrecipient's approved Grant Application.

Subject to the terms and conditions of this Contract and Subrecipient's approved Grant Application, the GLO shall issue a subaward to Subrecipient in an amount not to exceed **\$8,107,920.79**, payable as reimbursement of Subrecipient's allowable expenses, to be used in strict conformance with the terms of this Contract and the Performance Statement, Budget, and Benchmarks in **Attachment A**.

The GLO is not liable to Subrecipient for any costs Subrecipient incurs before the effective date of this Contract or after the expiration or termination of this Contract. The GLO, in its sole discretion, may reimburse Subrecipient for allowable costs incurred before the effective date of this Contract, in accordance with federal law.

1.02 CONTRACT DOCUMENTS

This Contract and the following Attachments, attached hereto and incorporated herein in their entirety for all purposes, shall govern this Contract:

- ATTACHMENT A:** Performance Statement, Budget, and Benchmarks
- ATTACHMENT B:** Federal Assurances and Certifications
- ATTACHMENT C:** General Affirmations
- ATTACHMENT D:** Nonexclusive List of Applicable Laws, Rules, and Regulations
- ATTACHMENT E:** Special Conditions
- ATTACHMENT F:** Monthly Activity Status Report
- ATTACHMENT G:** GLO Information Security Appendix (CDBG)
- ATTACHMENT H:** Public Law 113-2 Contract Reporting Template

1.03 GUIDANCE DOCUMENTS

Subrecipient is deemed to have read and understood, and shall abide by, all Guidance Documents applicable to the CDBG-MIT program, including, without limitation, the following:

- (a) 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- (b) the relevant Federal Register publications;
- (c) the Action Plan;
- (d) the Method of Distribution (as applicable);

- (e) Other guidance posted at: <https://recovery.texas.gov/action-plans/mitigation-funding/index.html>; and
- (f) Other guidance posted at: <https://www.hudexchange.info/>.

All Guidance Documents identified herein are incorporated herein in their entirety for all purposes.

1.04 DEFINITIONS

“Acquisition” means the purchase by Subrecipient of residential real property in a floodplain or Disaster Risk Reduction Area for any public purpose, as further defined in 42 U.S.C. § 5305(a)(1). Subrecipient may acquire property through the property owner’s voluntary relinquishment of the property upon Subrecipient’s purchase of it or through Subrecipient’s eminent domain authority.

“Act” means Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. § 5301, et seq.).

“Action Plan” means the State of Texas CDBG Mitigation (CDBG-MIT) Action Plan, as amended, found at <https://recovery.texas.gov/action-plans/mitigation-funding/index.html>.

“Activity” means a defined class of works or services eligible to be accomplished using CDBG-MIT funds. Activities are specified in Subrecipient’s Performance Statement and Budget in **Attachment A**.

“Administrative and Audit Regulations” means all applicable statutes, regulations, and other laws governing administration or audit of this Contract, including Title 2, Part 200, of the Code of Federal Regulations and Chapters 321 and 2155 of the Texas Government Code.

“Advance Payment” means any payment issued by the GLO to Subrecipient before Subrecipient disburses awarded funds for Program purposes, as further defined at 2 C.F.R. § 200.1 and 2 C.F.R. § 200.305.

“Amendment” means a written agreement, signed by the Parties hereto, that documents alterations to the Contract other than those permitted by Technical Guidance Letters or Revisions, as herein defined.

“Application” or “Grant Application” means the information Subrecipient provided to the GLO that is the basis for the award of funding under this Contract.

“As-Built Plans” means the revised set of drawings submitted by a contractor upon completion of a project or a particular job that reflects all changes made in the specifications and working drawings during the construction process and show the exact dimensions, geometry, and location of all elements of the work completed under the project.

“Attachment” means documents, terms, conditions, or additional information physically added to this Contract following the execution page or included by reference.

“Audit Certification Form” means the form, as specified in the GLO Guidance Documents, that Subrecipient will complete and submit to the GLO annually, in

accordance with **Section 4.01** of this Contract, to identify Subrecipient's fiscal year expenditures.

"AUGF" means HUD Form 7015.16, *Authority to Use Grant Funds*.

"Benchmark" means the milestones identified in **Attachment A** that define actions and Deliverables required to be completed by Subrecipient for release of funding by the GLO throughout the life of the Contract.

"Budget" means the budget for the Activities funded by the Contract, a copy of which is included in **Attachment A**.

"Buyout" means an Acquisition of real property in a floodplain or Disaster Risk Reduction Area that Subrecipient makes with the intent to reduce risk of real and personal property damage from future flooding events. Real property purchased under a local Buyout program is subject to post-acquisition land-use restrictions, which require that any structures on the property be demolished or relocated and the land be reverted to a natural floodplain, converted into a retention area, or retained as green space for recreational purposes.

"CDBG-MIT" means the Community Development Block Grant Mitigation Program administered by the U.S. Department of Housing and Urban Development, in cooperation with the GLO.

"Certificate of Construction Completion" or **"COCC"** means a document to be executed by Subrecipient, Subrecipient's construction contractor, and Subrecipient's engineer for each construction project that, when fully executed, provides final performance measures for the project and indicates acceptance of the completed project.

"C.F.R." means the United States Code of Federal Regulations, the codification of the general and permanent rules and regulations (sometimes called administrative law) published in the Federal Register by the executive departments and agencies of the federal government of the United States.

"Contract" means this entire document; any Attachments, both physical and incorporated by reference; and any Amendments, Revisions, or Technical Guidance Letters the GLO may issue, to be incorporated by reference herein for all purposes as they are issued.

"Contract Documents" means the documents listed in **Section 1.02**.

"Contract Period" means the period of time between the effective date of the Contract and its expiration or termination date.

"Deliverable" means a work product required to be submitted to the GLO as set forth in the Performance Statement and Benchmarks, which are included in **Attachment A**.

"Disaster Risk Reduction Area" means a clearly delineated area established by Subrecipient in which real property suffered damage from a disaster for which CDBG-MIT funding has been awarded to Subrecipient and in which the safety and well-being of area residents are at risk from future flooding events.

"Environmental Review Record" or **"ERR"** means the cumulative documentation required for each Activity or project to certify whether or not the Activity or project was found to have significant impacts on the environment and certify that, in order to reach

said conclusion, the required environmental review process was completed in accordance with HUD's environmental regulations.

“Equipment” means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by Subrecipient for financial statement purposes or \$5,000, as further defined at 2 C.F.R. § 200.313.

“Event of Default” means the occurrence of any of the events set forth in **Section 3.03**, herein.

“Federal Assurances” means Standard Form 424B (for non-construction projects) or Standard Form 424D (for construction projects), as applicable, in **Attachment B**, attached hereto and incorporated herein for all purposes.

“Federal Certifications” means the document titled “Certification Regarding Lobbying – Compliant with Appendix A to 24 C.F.R. Part 87” and Standard Form LLL, “Disclosure of Lobbying Activities,” also in **Attachment B**, attached hereto and incorporated herein for all purposes.

“Federal Register” means the official journal of the federal government of the United States that contains government agency rules, proposed rules, and public notices, including U.S. Department of Housing and Urban Development's Federal Register Notice 84 Fed. Reg. 45838 (August 30, 2019) and any other publication affecting CDBG-MIT funding allocations.

“Fiscal Year” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“FWCR” means Final Wage Compliance Report, a report Subrecipient will prepare at the completion of each federally funded project to certify that all workers on the project have been paid contract-specified prevailing wages and that any restitution owed to workers has been paid.

“GAAP” means “generally accepted accounting principles.”

“GASB” means accounting principles as defined by the Governmental Accounting Standards Board.

“General Affirmations” means the affirmations in **Attachment C**, which Subrecipient certifies by signing this Contract.

“GLO” means the Texas General Land Office and its officers, employees, and designees, acting in their official capacities.

“GLO Implementation Manual” means the manual created by the GLO for subrecipients of CDBG-MIT grant allocations to provide guidance and training on the policies and procedures required so that subrecipients can effectively implement CDBG-MIT programs and timely spend grant funds.

“Grant Completion Report” or **“GCR”** means a report containing an as-built accounting of all Activities completed under the Project and all information required for final acceptance of Deliverables and Contract closeout.

“[Grant Manager](#)” means the authorized representative of the GLO responsible for the day-to-day management of the Project and the direction of staff and independent contractors in the performance of work relating thereto.

“[Guidance Documents](#)” means the documents referenced in **Section 1.03**.

“[HUD](#)” means the United States Department of Housing and Urban Development.

“[Implementation Schedule](#)” means the schedule that establishes the Project milestones Subrecipient will utilize to ensure timely expenditures and Project completion.

“[Infrastructure](#)” means a project involving the creation of, repairs to, or replacement of public-works facilities and systems, including roads, bridges, dams, water and sewer systems, railways, subways, airports, and harbors. The term “Infrastructure” may also include a Planning Study project that relates to or affects Infrastructure facilities or systems.

“[Intellectual Property](#)” means patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights and all applications and worldwide registration of such, schematics, industrial models, inventions, know-how, trade secrets, computer software programs, other intangible proprietary information, and all federal, state, or international registrations or applications for any of the foregoing.

“[Method of Distribution](#)” or “[MOD](#)” means a document developed for a specific region that outlines the distribution of CDBG-MIT funding to counties, cities, and local government entities in the region.

“[MID](#)” means “most impacted and distressed,” referencing a geographical area identified by the State of Texas or HUD as an area that sustained significant damage from a major disaster.

“[Monthly Activity Status Report](#)” means a monthly Project Benchmark status report, as required under **Section 4.02**, for which a template is included as **Attachment F** of this Contract.

“[NTP](#)” means “notice to proceed,” a written authorization from the GLO to Subrecipient that allows Subrecipient to commence the work described in the NTP.

“[Performance Statement](#)” means the statement of work for the Project in **Attachment A**, which includes specific Benchmarks and Activities, provides specific Project details and location(s), and lists Project beneficiaries.

“[Planning](#)” means an Activity performed to assist in determining community disaster recovery needs such as urban environmental design, flood control, drainage improvements, surge protection, or other recovery responses. Planning services cannot include engineering design.

“[Program](#)” means the CDBG-MIT program, administered by HUD and the GLO.

“[Project](#)” means the work to be performed under this Contract, as described in **Section 1.01(a)** and **Attachment A**.

“[Prompt Pay Act](#)” means Chapter 2251 of the Texas Government Code.

“[Public Information Act](#)” or “[PIA](#)” means Chapter 552 of the Texas Government Code.

“Revision” means the GLO’s written approval of changes to Deliverable due dates, movement of funds among budget categories, and other Contract adjustments the GLO may approve without a formal Amendment.

“Start-Up Documentation” means the documents identified in Section 2.8.1 of the GLO Implementation Manual that must be completed and/or submitted to the GLO as specified in **Section 4.01**, below, before the GLO may reimburse Subrecipient for any invoiced expenses.

“Subrecipient” means Galveston County Water Control & Improvement District No 1, a recipient of federal CDBG-MIT funds through the GLO as the pass-through funding agency. Subrecipient may also be referred to as “Provider” herein.

“Technical Guidance Letter” or “TGL” means an instruction, clarification, or interpretation of the requirements of this Contract or the CDBG-MIT Program that is issued by the GLO and provided to Subrecipient, applicable to specific subject matters pertaining to this Contract, and to which Subrecipient shall be subject as of a specific date.

“Texas Integrated Grant Reporting System” or “TIGR” means the GLO system of record for documenting and reporting the use of grant funding.

“U.S.C.” means the United States Code.

1.05 INTERPRETIVE PROVISIONS

- (a) The meaning of a defined term applies to its singular and plural forms.
- (b) The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- (c) The term “including” means “including, without limitation.”
- (d) Unless otherwise expressly provided, a reference to a contract includes subsequent amendments and other modifications thereto that were executed according to the contract’s terms and a reference to a statute, regulation, ordinance, or other law includes subsequent amendments, renumbering, recodification, and other modifications thereto made by the enacting authority.
- (e) The captions and headings of this Contract are for convenience of reference only and shall not affect the interpretation of this Contract.
- (f) The limitations, regulations, and policies contained herein are cumulative and each must be performed in accordance with its terms without regard to other limitations, regulations, and policies affecting the same matter.
- (g) Unless otherwise expressly provided, reference to any GLO action by way of consent, approval, or waiver is deemed modified by the phrase “in its sole discretion.” Notwithstanding the preceding, the GLO shall not unreasonably withhold or delay any consent, approval, or waiver required or requested of it.
- (h) All due dates and/or deadlines referenced in this Contract that occur on a weekend or holiday shall be considered as if occurring on the next business day.

- (i) All time periods in this Contract shall commence on the day after the date on which the applicable event occurred, report is submitted, or request is received.
- (j) Time is of the essence in this Contract.
- (k) In the event of conflicts or inconsistencies between this Contract, its Attachments, federal and state requirements, and any documents incorporated herein by reference, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: all applicable laws, rules, and regulations, including, but not limited to, those included in **Attachment D**; the Contract; **Attachment A**; **Attachment E**; **Attachment B**; **Attachment C**; **Attachment F**; **Attachment G**; **Attachment H**; applicable Guidance Documents; and the GLO Implementation Manual. Conflicts or inconsistencies between GLO Implementation Manual and this Contract; any laws, rules, or regulations; or any of the Guidance Documents should be reported to the GLO for clarification of the GLO Implementation Manual.

ARTICLE II – REIMBURSEMENT, ADVANCE PAYMENT, BUDGET VARIANCE, AND INCOME

2.01 REIMBURSEMENT REQUESTS

Each invoice submitted by Subrecipient shall be supported by actual receipts, cancelled checks, and/or such other documentation that, in the judgment of the GLO, allows for full substantiation of the costs incurred. Requests for payment must be submitted via the GLO's Texas Integrated Grant Reporting (TIGR) system of record or as otherwise specified in a Technical Guidance Letter issued under this Contract.

Subrecipient will be paid in accordance with the Contract Budget and the Benchmarks described in **Attachment A**. Failure by Subrecipient to perform any action or submit any Deliverable as described in **Attachment A** could result in the GLO placing a hold on further Subrecipient draws, conducting an official monitoring risk assessment, or requiring repayment, in part or in full, by Subrecipient of drawn funds in addition to other remedies provided to the GLO under this Contract.

A draw request for an Advance Payment must be supported with documentation clearly demonstrating that the Advance Payment is required by Subrecipient in order for Subrecipient to continue carrying out the purpose of the Project.

2.02 TIMELY EXPENDITURES

In accordance with the Federal Register and to ensure timely expenditure of grant funds, Subrecipient shall submit reimbursement requests under this Contract, at a minimum, quarterly.

THE GLO MUST RECEIVE A REIMBURSEMENT REQUEST FOR AN INCURRED EXPENSE NOT LATER THAN ONE HUNDRED TWENTY (120) DAYS FROM THE DATE SUBRECIPIENT OR ANY OF ITS SUBCONTRACTORS INCUR THE EXPENSE. THE GLO MAY, IN ITS SOLE DISCRETION, DENY REIMBURSEMENT REQUESTS THAT DO NOT MEET THIS REQUIREMENT, ISSUE DELINQUENCY NOTICES, WITHHOLD CAPACITY POINTS ON FUTURE FUNDING COMPETITIONS, IMPOSE A MONITORING REVIEW OF SUBRECIPIENT'S ACTIVITIES, OR IMPLEMENT OTHER CORRECTIVE ACTIONS.

Subrecipient shall make timely payments to its subcontractors in accordance with Chapter 2251 of the Texas Government Code.

Subrecipient shall submit final reimbursement requests to the GLO prior to Contract expiration or termination. The GLO, in its sole discretion, may deny payment and de-obligate remaining funds from the Contract upon expiration or termination of the Contract. The GLO's ability to de-obligate funds under this **Section 2.02** notwithstanding, the GLO shall pay all eligible reimbursement requests that are timely submitted.

2.03 VARIANCE

Amendments to decrease or increase the subaward amount or to add or delete an Activity may be made only by written agreement of the Parties, under the formal Amendment process described in **Section 8.16**, below. The GLO may, in its sole discretion and in conformance with federal law, approve other adjustments required during Project performance through a Revision or Technical Guidance Letter. Such approvals must be in writing and may be delivered by regular or electronic mail.

SUBRECIPIENT SHALL SUBMIT A FINAL BUDGET AND ACTUAL EXPENDITURES AS PART OF THE GRANT COMPLETION REPORT TO THE GLO PRIOR TO CONTRACT EXPIRATION OR TERMINATION OR AT THE CONCLUSION OF ALL CONTRACT ACTIVITIES, WHICHEVER OCCURS FIRST. THE GRANT COMPLETION REPORT SHALL BE IN A FORMAT PRESCRIBED BY THE GLO AND SHALL CONFIRM ELIGIBILITY AND COMPLETION OF ALL ACTIVITIES PERFORMED UNDER THIS CONTRACT. FAILURE TO SUBMIT THE FINAL BUDGET AND ACTUAL EXPENDITURES TO THE GLO AS PART OF THE GRANT COMPLETION REPORT PRIOR TO CONTRACT EXPIRATION OR TERMINATION WILL RESULT IN FORFEITURE AND DE-OBLIGATION OF REMAINING, UNREQUESTED FUNDS.

Upon completion of the Project, the GLO shall formally close out the Project by issuing a closeout letter to Subrecipient.

2.04 PROGRAM INCOME

In accordance with 24 C.F.R. § 570.489(e), Subrecipient shall maintain records of the receipt and accrual of all program income, as "program income" is defined in that section. Subrecipient shall report program income to the GLO in accordance with **Article IV** of this Contract. Subrecipient shall return all program income to the GLO at least quarterly.

2.05 SUBAWARD OFFER SUBJECT TO CANCELLATION

IF SUBRECIPIENT DOES NOT RETURN THE ORIGINAL SIGNED CONTRACT TO THE GLO WITHIN SIXTY (60) DAYS OF TRANSMITTAL OF THE CONTRACT TO SUBRECIPIENT, SUBAWARD FUNDING FOR THE PROJECT MAY BE SUBJECT TO CANCELLATION, IN THE SOLE DISCRETION OF THE GLO.

ARTICLE III - DURATION, EXTENSION, AND TERMINATION OF CONTRACT

3.01 DURATION OF CONTRACT AND EXTENSION OF TERM

This Contract shall become effective on the date on which it is signed by the last Party and shall terminate on **January 31, 2025**, or upon the completion of all Benchmarks listed in **Attachment A** and required closeout procedures, whichever occurs first. **Subrecipient must meet all Project Benchmarks identified in Attachment A. Subrecipient's failure to meet any Benchmark may result in suspension of payment or termination under Sections 3.02, 3.03, or 3.04, below.**

Upon receipt of a written request and acceptable justification from Subrecipient, the GLO, at its discretion, may agree to amend this Contract to extend the Contract Period one time for a period of up to two years. **ANY REQUEST FOR EXTENSION MUST BE RECEIVED BY THE GLO AT LEAST SIXTY (60) DAYS BEFORE THE ORIGINAL TERMINATION DATE OF THIS CONTRACT AND, IF APPROVED, SUCH EXTENSION SHALL BE DOCUMENTED IN A WRITTEN AMENDMENT.**

3.02 EARLY TERMINATION

The GLO may terminate this Contract by giving written notice specifying a termination date at least thirty (30) days after the date of the notice. Upon receipt of such notice, Subrecipient shall cease work, terminate any subcontracts, and incur no further expense related to this Contract. Such early termination shall be subject to the equitable settlement of the respective interests of the Parties, accrued up to the date of termination.

3.03 EVENTS OF DEFAULT

Each of the following events shall constitute an Event of Default under this Contract: (a) Subrecipient fails to comply with any term, covenant, or provision contained in this Contract; (b) Subrecipient makes a general assignment for the benefit of creditors or takes any similar action for the protection or benefit of creditors; or (c) Subrecipient makes a materially incorrect representation or warranty in a Performance Statement, a reimbursement request for payment, or any report submitted to the GLO under the Contract. Prior to a determination of an Event of Default, the GLO shall allow a thirty (30) day period to cure any deficiency or potential cause of an Event of Default. The GLO may extend the time allowed to cure any deficiency or potential cause of an Event of Default. The GLO shall not arbitrarily withhold approval of an extension of the time allowed to cure a deficiency or potential cause of an Event of Default. In no event shall the amount of time allowed to cure a deficiency or potential cause of an Event of Default extend beyond the Contract Period.

3.04 REMEDIES; NO WAIVER

Upon the occurrence of any Event of Default, the GLO may avail itself of any equitable or legal remedy available to it, including without limitation, withholding payment, disallowing all or part of noncompliant Activities, or suspending or terminating the Contract.

The Parties' rights or remedies under this Contract are not intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Contract, or hereafter legally existing, upon the occurrence of an Event of Default. The GLO's failure to insist upon the strict observance or performance of any of the provisions of this Contract or to exercise any right or remedy provided in this Contract shall not impair, waive, or relinquish any such right or remedy with respect to another Event of Default.

3.05 REVERSION OF ASSETS

Upon expiration or termination of the Contract and subject to this Article:

- (a) If applicable, Subrecipient shall transfer to the GLO any CDBG-MIT funds Subrecipient has in its possession at the time of expiration or termination that are not attributable to work performed on the Project and any accounts receivable attributable to the use of CDBG-MIT funds awarded under this Contract; and
- (b) If applicable, real property under Subrecipient's control that was acquired or improved, in whole or in part, with funds in excess of \$25,000 under this Contract shall be used to meet one of the CDBG-MIT National Objectives pursuant to 24 C.F.R. § 570.208, as identified in the Action Plan, until five (5) years after the expiration of this Contract or such longer period of time as the GLO deems appropriate. If Subrecipient fails to use the CDBG-MIT funded real property in a manner that meets a CDBG-MIT National Objective for the prescribed period of time, Subrecipient shall pay the GLO an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG-MIT funds for acquisition of, or improvement to, the property. Subrecipient may retain real property acquired or improved under this Contract after the expiration of the five-year period or such longer period of time as the GLO deems appropriate.

ARTICLE IV - CONTRACT ADMINISTRATION

4.01 SUBMISSIONS – GENERALLY

Except for legal notices that must be sent by specific instructions pursuant to **Section 8.10** of the Contract, any report, form, document, or request required to be submitted to the GLO under this Contract shall be sent in the format prescribed by the GLO.

If Subrecipient fails to submit to the GLO any required Program documentation in a timely and satisfactory manner as required under this Contract, the GLO, in its sole discretion, may issue a delinquency notification and withhold any payments, pending Subrecipient's correction of the deficiency.

(a) Start-Up Documentation

Not later than the close of business sixty (60) calendar days after the effective date of this Contract, Subrecipient must submit its Start-Up Documentation to the GLO.

(b) **Audit Certification Form**

Not later than the close of business sixty (60) calendar days after the end of Subrecipient's fiscal year for each year during the Contract term, Subrecipient must submit a **completed** Audit Certification Form to the GLO.

(c) **Other Forms**

In conformance with required state and federal laws applicable to the Contract:

- (i) Subrecipient **certifies**, by the execution of this Contract, all applicable statements in **Attachment C**, General Affirmations;
- (ii) Subrecipient must execute Standard Form 424D, Federal Assurances for Construction Programs, found at Page 1 of **Attachment B**;
- (iii) Subrecipient must execute the "Certification Regarding Lobbying Compliant with Appendix A to 24 C.F.R. Part 87," found at Page 3 of **Attachment B**; and
- (iv) If any funds granted under this Contract have been used for lobbying purposes, Subrecipient must complete and execute Standard Form LLL, "Disclosure of Lobbying Activities," found at Page 4 of **Attachment B**.

4.02 MONTHLY ACTIVITY STATUS REPORTS

Subrecipient must provide monthly Activity status reporting, in the format prescribed in **Attachment F** (Monthly Activity Status Report) or as otherwise instructed by the GLO Grant Manager, for each individual Activity identified in **Attachment A**. The Monthly Activity Status Report is due on the fifth day of the month following the month in which the reported Activities were performed for the duration of the Contract. Subrecipient shall submit the Monthly Activity Status Reports to the GLO through the TIGR system as prescribed in **Attachment F** or as specified by the GLO Grant Manager.

4.03 HUD CONTRACT REPORTING REQUIREMENT

HUD requires the GLO to maintain a public website that accounts for the use and administration of all GLO-administered CDBG-MIT grant funds. To assist the GLO in meeting this requirement, Subrecipient must prepare and submit monthly to the GLO a written summary of all contracts procured by Subrecipient using grant funds awarded under this Contract. Subrecipient shall only report contracts as defined in 2 C.F.R. § 200.1. Subrecipient must use a template developed by HUD to prepare the monthly reports, attached hereto as **Attachment H** and accessible online at <https://www.hudexchange.info/resource/3898/public-law-113-2-contract-reporting-template/>. On or before the fifth day of each month during the Contract Period, reports summarizing required information for the preceding month shall be submitted through the TIGR system as prescribed in **Attachment H** or as specified by the GLO Grant Manager. Additional information about this reporting requirement is available in Federal Register publications governing the CDBG-MIT funding allocation.

4.04 SECTION 3 REPORTING REQUIREMENTS

In accordance with 24 C.F.R. § 75.25, Subrecipient is required to submit to the GLO quarterly reports documenting actions taken to comply with the employment, training, and contracting requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended ([12 U.S.C. § 1701u](#)), the results of such actions taken, and impediments encountered (if any) to such actions. Subrecipient should maintain records of job vacancies, solicitations of bids or proposals, selection materials and contracting documents (including scopes of work and contract amounts), in accordance with procurement laws and regulations. Records should demonstrate Subrecipient's efforts to achieve the Section 3 numerical goals.

Section 3 quarterly reports are due on the 10th of the month following the quarter's close. The schedule is as follows:

Quarter 1 (Sept-Nov): Due **December 10th**

Quarter 2 (Dec-Feb): Due **March 10th**

Quarter 3 (Mar-May): Due **June 10th**

Quarter 4 (Jun-Aug): Due **September 10th**

Subrecipient is also required to submit an annual report, due on **September 30** of each year during the Contract Period. Forms for the Section 3 quarterly and annual reports may be found at <https://recovery.texas.gov/local-government/resources/infrastructure/index.html>. Subrecipient must submit completed forms to the GLO through the TIGR system, as instructed by the GLO Grant Manager.

If Subrecipient conducts no hiring or contracting efforts during a quarter, Subrecipient must report zeros in the quarterly report fields for such and add a note in the "other efforts, see remarks below" field that states that fact.

Subrecipient is not required to develop and implement a Section 3 Plan and assign a Section 3 Coordinator, but these actions are considered best practices.

ARTICLE V - FEDERAL AND STATE FUNDING, RECAPTURE OF FUNDS, AND OVERPAYMENT

5.01 FEDERAL FUNDING

- (a) Funding for this Contract is appropriated under the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018) (Public Law 115-123), enacted on February 9, 2018, for necessary expenses for Activities authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, mitigation, and affirmatively furthering fair housing, in accordance with Executive Order 12892, in the most impacted and distressed areas resulting from major declared disasters that occurred in 2015, 2016, and 2017 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121 et seq.). The fulfillment of this Contract is based on those funds being made available to the GLO as the lead administrative state agency. All expenditures under this Contract must be made in accordance with this Contract, the rules and regulations promulgated

under the CDBG-MIT Program and any other applicable laws. **All funds disbursed under this Contract are subject to recapture and repayment for non-compliance.**

- (b) **Subrecipient must have a Data Universal Numbering System (DUNS) number and a Commercial and Government Entity (CAGE) code. Subrecipient shall report its DUNS number and CAGE code to the GLO for use in various grant-reporting documents.** A DUNS number may be obtained by visiting the Dun & Bradstreet website: <https://www.dnb.com>. A CAGE code will be assigned when the obtained DUNS number is registered with the System for Award Management at <https://www.sam.gov>. Assistance with the System for Award Management website may be obtained by calling 866-606-8220. **Subrecipient is responsible for renewing its registration with the System for Award Management annually and maintaining an active registration status throughout the Contract Period.**

5.02 STATE FUNDING

- (a) This Contract shall not be construed as creating any debt on behalf of the State of Texas or the GLO in violation of Article III, Section 49, of the Texas Constitution. The GLO's obligations hereunder are subject to the availability of state funds. If adequate funds are not appropriated or become unavailable, the GLO may terminate this Contract. In that event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their interests accrued up to the date of termination.
- (b) Any claim by Subrecipient for damages under this Contract may not exceed the amount of payment due and owing Subrecipient or the amount of funds appropriated for payment but not yet paid to Subrecipient under this Contract. Nothing in this provision shall be construed as a waiver of the GLO's sovereign immunity.

5.03 RECAPTURE OF FUNDS

Subrecipient shall conduct, in a satisfactory manner as determined by the GLO, the Activities as set forth in the Contract. The discretionary right of the GLO to terminate for convenience under **Section 3.02** notwithstanding, the GLO may terminate the Contract and recapture, and be reimbursed by Subrecipient for, any payments made by the GLO (a) that exceed the maximum allowable HUD rate; (b) that are not allowed under applicable laws, rules, and regulations; or (c) that are otherwise inconsistent with this Contract, including any unapproved expenditures. **This recapture provision applies to any funds expended for the Project or any Activity that does not meet a CDBG-MIT Program National Objective as specified in the Performance Statement in Attachment A or that is not otherwise eligible under CDBG-MIT regulations.**

5.04 OVERPAYMENT AND DISALLOWED COSTS

Subrecipient shall be liable to the GLO for any costs disallowed pursuant to financial and/or compliance audit(s) of funds Subrecipient received under this Contract. Subrecipient shall reimburse the GLO for such disallowed costs from funds that were not

provided or otherwise made available to Subrecipient under this Contract. Subrecipient must refund disallowed costs and overpayments of funds received under this Contract to the GLO within 30 days after the GLO issues notice of overpayment to Subrecipient.

5.05 FINAL BENCHMARK

(a) Construction Activities

To ensure full performance of each construction Activity and the Project, the GLO has set aside an amount equal to five percent (5%) of Subrecipient's construction budget per Activity until completion and acceptance by the GLO of all actions and Deliverables for the Activity, as identified in **Attachment A**.

The GLO shall make the final disbursement to Subrecipient only upon the GLO's receipt and acceptance of the Deliverables identified in **Attachment A** as required for the completion of construction phase.

If Subrecipient has multiple construction subcontracts, an amount equal to five percent (5%) of Subrecipient's construction budget per construction subcontract shall be withheld by the GLO until completion and acceptance by the GLO of all actions and Deliverables identified in **Attachment A** for the particular project. Separate Deliverables are required per construction subcontract, and associated costs are pro-rated in accordance with budget details in the final GLO-approved Application. If a project includes more than one Environmental Review Record, associated costs are pro-rated in accordance with budget details in the final GLO-approved Application.

(b) Project Delivery – Grant Administration

To ensure full performance of this Contract, the GLO has set aside an amount equal to five percent (5%) of Subrecipient's project delivery – grant administration budget until completion and acceptance by the GLO of all actions and Deliverables identified in **Attachment A**.

ARTICLE VI - INTELLECTUAL PROPERTY

6.01 OWNERSHIP AND USE

- (a) The Parties shall jointly own all right, title, and interest in and to all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this Contract, and/or any copyright or other intellectual property rights, and any material or information developed and/or required to be delivered under this Contract, with each Party having the right to use, reproduce, or publish any or all of such information and other materials without obtaining permission from the other Party, subject to any other restrictions on publication outlined in this Contract, and without expense or charge.
- (b) Subrecipient grants the GLO and HUD a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for U.S. Government purposes, all reports, drafts of reports, or other material, data, drawings, computer programs, and codes associated with this

Contract, and/or any copyright or other intellectual property rights, and any material or information developed and/or required to be delivered under this Contract.

6.02 NON-ENDORSEMENT BY STATE AND THE UNITED STATES

Subrecipient shall not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, still or motion pictures, articles, manuscripts, or other publications) that states or implies the GLO, the State of Texas, U.S. Government, or any government employee, endorses a product, service, or position Subrecipient represents. Subrecipient may not release information relating to this Contract or state or imply that the GLO, the State of Texas, or the U.S. Government approves of Subrecipient's work products or considers Subrecipient's work product to be superior to other products or services.

6.03 DISCLAIMER REQUIRED

On all public information releases issued pursuant to this Contract, Subrecipient shall include a disclaimer stating that the funds for this Project are provided by Subrecipient and the Texas General Land Office through HUD's CDBG-MIT Program.

ARTICLE VII - RECORDS, AUDIT, AND RETENTION

7.01 BOOKS AND RECORDS

Subrecipient shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary for fully disclosing to the GLO, the Texas State Auditor's Office, the United States Government, and/or their authorized representatives sufficient information to determine Subrecipient's compliance with this Contract and all applicable laws, statutes, rules, and regulations, including the applicable laws and regulations provided in **Attachment D** and **Attachment E**.

7.02 INSPECTION AND AUDIT

- (a) All records related to this Contract, including records of Subrecipient and its subcontractors, shall be subject to the Administrative and Audit Regulations. Accordingly, such records and work product shall be subject, at any time, to inspection, examination, audit, and copying at Subrecipient's primary location or any location where such records and work product may be found, with or without notice from the GLO or other government entity with necessary legal authority. Subrecipient shall cooperate fully with any federal or state entity in the conduct of inspection, examination, audit, and copying, including providing all information requested. Subrecipient will ensure that this clause concerning federal and state entities' authority to inspect, examine, audit, and copy records and work product, and the requirement to fully cooperate with the federal and state entities, is included in any subcontract it awards.
- (b) The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract

or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. **The Office of the Comptroller General of the United States, the Government Accountability Office, the Office of Inspector General, or any authorized representative of the U.S. Government shall also have this right of inspection.** Subrecipient shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Subrecipient and the requirement to cooperate is included in any subcontract it awards.

- (c) Subrecipient will be deemed to have read and know of all applicable federal, state, and local laws, regulations, and rules pertaining to the Project, including those identified in **Attachment D**, governing audit requirements.
- (d) At any time, the GLO may perform, or instruct a for-profit Subrecipient to perform, an annual Program-specific, fiscal, special, or targeted audit of any aspect of Subrecipient's operation. Subrecipient shall maintain financial and other records prescribed by the GLO or by applicable federal or state laws, rules, and regulations.

7.03 PERIOD OF RETENTION

All records relevant to this Contract shall be retained for a period of three (3) years subsequent to the final closeout of the overall State of Texas CDBG-MIT grant, in accordance with federal regulations. **The GLO will notify all Program participants of the date upon which local records may be destroyed.**

ARTICLE VIII - MISCELLANEOUS PROVISIONS

8.01 LEGAL OBLIGATIONS

For the duration of this Contract, Subrecipient shall procure and maintain any license, authorization, insurance, waiver, permit, qualification, or certification required by federal, state, county, or city statute, ordinance, law, or regulation to be held by Subrecipient to provide the goods or services required by this Contract. Subrecipient shall pay all costs associated with all taxes, assessments, fees, premiums, permits, and licenses required by law. Subrecipient shall pay any such government obligations not paid by its subcontractors during performance of this Contract. **Subrecipient shall maintain copies of such licenses and permits as a part of its local records in accordance with Section 7.01 of this Contract or as otherwise specifically directed by the GLO. Subrecipient shall provide Monthly Activity Status Reports via the GLO system of record in accordance with Section 4.02 of this Contract.**

8.02 INDEMNITY

As required under the Constitution and laws of the State of Texas, each Party understands that it is solely liable for any liability resulting from its acts or omissions. No act or

omission of a Party shall be imputed to the other Party. Neither Party shall indemnify or defend the other Party.

8.03 INSURANCE AND BOND REQUIREMENTS

- (a) Unless Subrecipient is authorized by Chapter 2259 of the Texas Government Code to self-insure, Subrecipient shall carry insurance for the duration of this Contract in types and amounts necessary and appropriate for the Project.
- (b) Subrecipient shall require all contractors, subcontractors, vendors, service providers, or any other person or entity performing work described in **Attachment A** to carry insurance for the duration of the Project in the types and amounts customarily carried by a person or entity providing such goods or services. Subrecipient shall require any person or entity required to obtain insurance under this section to complete and file the declaration pages from the insurance policies with Subrecipient whenever a previously identified policy period expires during the term of Subrecipient's contract with the person or entity, as proof of continuing coverage. Subrecipient's contract with any such person or entity shall clearly state that acceptance of the insurance policy declaration pages by Subrecipient shall not relieve or decrease the liability of the person or entity. **Persons or entities shall be required to update all expired policies before Subrecipient's acceptance of an invoice for monthly payment from such parties.**
- (c) Subrecipient shall require performance and payment bonds to the extent they are required under Chapter 2253 of the Texas Government Code.
- (d) **Subrecipient shall require any person or entity performing work on any construction Activity under the Contract to complete form SF-424D, entitled "Assurances – Construction Programs," and Subrecipient shall maintain such documentation.**

8.04 ASSIGNMENT AND SUBCONTRACTS

Subrecipient must not assign, transfer, or delegate any rights, obligations, or duties under this Contract without the GLO's prior written consent. Any attempted assignment, transfer, or delegation in violation of this provision is void and without effect. Notwithstanding this provision, it is mutually understood and agreed that Subrecipient may subcontract with others for some or all of the services to be performed under this Contract. In any approved subcontracts, Subrecipient must legally bind the subcontractor to perform and make such subcontractor subject to all the duties, requirements, and obligations of Subrecipient as specified in this Contract. Nothing in this Contract shall be construed to relieve Subrecipient of the responsibility for ensuring that the goods delivered and/or the services rendered by Subrecipient and/or any of its subcontractors comply with all the terms and provisions of this Contract.

For subcontracts to which Federal Labor Standards requirements apply, Subrecipient shall submit to the GLO all documentation required to ensure compliance. Subrecipient shall retain five percent (5%) of the payment due under each of Subrecipient's construction or rehabilitation subcontracts until the GLO determines that the Federal

Labor Standards requirements applicable to each such subcontract have been satisfied, as outlined in Section 5.05 above.

8.05 PROCUREMENT

Subrecipient must comply with the procurement procedures stated at 2 C.F.R. §§ 200.318 through 200.327 and all other applicable federal, state, and local procurement procedures and laws, regulations, and rules. Failure to comply with 2 C.F.R. §§ 200.318 through 200.327 and all other applicable federal, state, and local procurement procedures and laws, regulations, and rules could result in recapture of funds. Subrecipient must confirm that its vendors and subcontractors are not debarred from receiving state or federal funds at each of the following web addresses:

- (a) the Texas Comptroller's Vendor Performance Program at <https://comptroller.texas.gov/purchasing/>; and
- (b) the U.S. General Services Administration's System for Award Management at <https://www.sam.gov/>.

8.06 EQUIPMENT AND COMPUTER SOFTWARE

Any purchase of Equipment or computer software made pursuant to this Contract shall be made in accordance with all applicable laws, regulations, and rules, including those defined in 2 C.F.R. § 200.313.

In accordance with 24 C.F.R. § 570.502(a), if Equipment is acquired, in whole or in part, with funds under this Contract and is then sold, the proceeds shall be considered program income, as defined in **Section 2.04** above. Equipment not needed by Subrecipient for Activities under this Contract shall be (a) transferred to the GLO for the CDBG-MIT Program or (b) retained by Subrecipient after compensating the GLO an amount equal to the current fair market value of the Equipment less the percentage of non-CDBG-MIT funds used to acquire the Equipment.

8.07 COMMUNICATION WITH THIRD PARTIES

The GLO and the authorities named in **Article VII**, above, may initiate communications with any subcontractor of Subrecipient, and may request access to any books, documents, personnel, papers, and records of a subcontractor which are pertinent to this Contract. Such communications may be required to conduct audits, examinations, Davis-Bacon Labor Standards interviews, and gather additional information as provided in **Article VII** herein.

8.08 RELATIONSHIP OF THE PARTIES

Subrecipient is associated with the GLO only for the purposes and to the extent specified in this Contract. Subrecipient is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract creates a partnership or joint venture, an employer-employee or principal-agent relationship, or any liability whatsoever with respect to the indebtedness, liabilities, or obligations of Subrecipient or any other party. Subrecipient

shall be solely responsible for, and the GLO shall have no obligation with respect to, the following: the withholding of income taxes, FICA, or any other taxes or fees; industrial or workers' compensation insurance coverage; participation in any group insurance plans available to employees of the State of Texas; participation or contributions by the State of Texas to the State Employees Retirement System; accumulation of vacation leave or sick leave; or unemployment compensation coverage provided by the State of Texas.

8.09 COMPLIANCE WITH OTHER LAWS

In the performance of this Contract, Subrecipient must comply with all applicable federal, state, and local laws, statutes, ordinances, and regulations, including those listed in **Attachments B, C, and D**. Subrecipient is deemed to know of and understand all applicable laws, statutes, ordinances, and regulations affecting its performance under this Contract.

8.10 NOTICES

Any notices required under this Contract shall be deemed delivered when deposited either in the United States mail (certified, postage paid, return receipt requested) or with a common carrier (overnight, signature required) to the appropriate address below.

GLO

Texas General Land Office
1700 N. Congress Avenue, 7th Floor
Austin, TX 78701
Attention: Contract Management Division

Subrecipient

Galveston County Water Control & Improvement District No 1
2750 FM 517 Rd. E
Dickinson, Texas 77539
Attention: John Mitchiner

Notice given in any other manner shall be deemed effective only if and when received by the Party to be notified. Either Party may change its address for notice by written notice to the other Party sent in accordance with this section.

8.11 GOVERNING LAW AND VENUE

This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Subrecipient irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of *forum non conveniens*, that it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction with respect to this Contract or any related document. **NOTHING IN THIS CONTRACT SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.**

8.12 SEVERABILITY

If a court of competent jurisdiction determines any provision of this Contract is invalid, void, or unenforceable, the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

8.13 DISPUTE RESOLUTION

Except as otherwise provided by statute, rule or regulation, Subrecipient shall use the dispute resolution process established in Chapter 2260 of the Texas Government Code and related rules to attempt to resolve any dispute under this Contract, including a claim for breach of contract by the GLO, that the Parties cannot resolve in the ordinary course of business. Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of such a claim constitutes grounds for Subrecipient to suspend performance of this Contract. Notwithstanding this provision, the GLO reserves all legal and equitable rights and remedies available to it. **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF THE GLO'S SOVEREIGN IMMUNITY.**

8.14 CONFIDENTIALITY

To the extent permitted by law, Subrecipient and the GLO shall keep all information, in whatever form produced, prepared, observed, or received by Subrecipient or the GLO, confidential to the extent that such information is: (a) confidential by law; (b) marked or designated "confidential" (or words to that effect) by Subrecipient or the GLO; or (c) information that Subrecipient or the GLO is otherwise required to keep confidential by this Contract. Subrecipient must not make any communications or announcements relating to this Contract through press releases, social media, or other public relations efforts without the prior written consent of the GLO.

8.15 PUBLIC RECORDS

The GLO shall post this Contract to the GLO's website. Subrecipient understands that the GLO will comply with the Texas Public Information Act (Texas Government Code Chapter 552, the "PIA"), as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas (the "Attorney General"). Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to the PIA. Subrecipient is required to make any information created or exchanged with the GLO or the State of Texas pursuant to the Contract, and not otherwise excepted from disclosure under the PIA, available to the GLO in portable document file (".pdf") format or any other format agreed upon between the Parties that is accessible by the public at no additional charge to the GLO or the State of Texas. By failing to mark any information that Subrecipient believes to be excepted from disclosure as "confidential" or a "trade secret," Subrecipient waives any and all claims it may make against the GLO for releasing such information without prior notice to Subrecipient. The Attorney General will ultimately determine whether any information may be withheld from release under the PIA. Subrecipient shall notify the GLO's Office of General Counsel within twenty-four (24) hours of receipt of any third-party written requests for information and forward a copy of said written requests to PIALegal@glo.texas.gov. If a

request for information was not written, Subrecipient shall forward the third party's contact information to the above-designated e-mail address.

8.16 AMENDMENTS TO THE CONTRACT

Amendments to decrease or increase the subaward, to add or delete an Activity as allowed by the Guidance Documents, to extend the term of the Contract, and/or to make other substantial changes to the Contract may be made only by written agreement of the Parties under the formal Amendment process outlined below, except that, upon completion of the Project, the GLO shall issue a closeout letter pursuant to **Section 2.03**. The formal Amendment process requires official request documentation from Subrecipient detailing all provisions to be amended and supporting documentation as required. The GLO Grant Manager will confirm and review the request and, as appropriate, submit the proposed amended language or amount to the GLO's Contract Management Division for the preparation of a formal Amendment and circulation for necessary GLO and Subrecipient signatures. In the sole discretion of the GLO and in conformance with federal law, the GLO may approve other adjustments required by the GLO during Project performance through a Revision or Technical Guidance Letter unilaterally issued by the GLO and acknowledged by Subrecipient. Such GLO approvals must be in writing and may be delivered by U.S. mail or electronic mail.

Pursuant to **Section 2.03** hereof, a final **Grant Completion Report** for all Activities performed under this Contract shall be submitted to the GLO for review and approval prior to expiration of the Contract and shall include all such informal Revisions approved by the GLO over the life of the Contract.

8.17 ENTIRE CONTRACT AND MODIFICATIONS

This Contract, its Attachments, and any Amendment(s), Technical Guidance Letter(s), and/or Revision(s) issued in conjunction with this Contract, if any, constitute the entire agreement of the Parties and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements made in connection with the subject matter hereof. Any additional or conflicting terms in issued Attachments, Technical Guidance Letters, and/or Revisions shall be harmonized with this Contract to the extent possible. Unless an Attachment, Technical Guidance Letter, or Revision specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language shall be construed consistently with the Contract.

8.18 PROPER AUTHORITY

Each Party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to legally bind its respective entity. Subrecipient acknowledges that this Contract is effective for the period of time specified in the Contract. Any work performed by Subrecipient after the Contract terminates is performed at the sole risk of Subrecipient.

8.19 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one and the same Contract.

8.20 SURVIVAL

The provisions of **Articles V, VI, and VII** and **Sections 1.01, 1.03, 2.05, 3.02, 3.04, 3.05, 8.02, 8.03, 8.07, 8.08, 8.09, 8.10, 8.11, 8.13, 8.14, 8.15, and 8.16** of this Contract and any other continuing obligations of Subrecipient shall survive the termination or expiration of this Contract.

8.21 CONTRACT CLOSEOUT

Upon completion of all Activities required for the Contract, and, pursuant to **Section 2.03** hereof, Subrecipient shall prepare a final **Grant Completion Report** confirming final performance measures, budgets, and expenses. The GLO will close the Contract in accordance with 2 C.F.R. §§ 200.344 through 200.346 and GLO CDBG-MIT guidelines consistent therewith.

SUBRECIPIENT SHALL SUBMIT A FINAL BUDGET AND ACTUAL EXPENDITURES TO THE GLO AS PART OF THE GRANT COMPLETION REPORT PRIOR TO CONTRACT EXPIRATION OR TERMINATION OR AT THE CONCLUSION OF ALL CONTRACT ACTIVITIES, WHICHEVER OCCURS FIRST. THE GRANT COMPLETION REPORT SHALL BE IN A FORMAT PRESCRIBED BY THE GLO AND SHALL CONFIRM ELIGIBILITY AND COMPLETION OF ALL ACTIVITIES PERFORMED UNDER THIS CONTRACT. FAILURE TO SUBMIT TO THE GLO THE FINAL BUDGET AND ACTUAL EXPENDITURES AS PART OF THE GRANT COMPLETION REPORT PRIOR TO CONTRACT EXPIRATION OR TERMINATION WILL RESULT IN FORFEITURE AND DE-OBLIGATION OF ALL REMAINING UNREQUESTED FUNDS.

The GLO will notify Subrecipient via official closeout letter upon review and approval of the final Grant Completion Report.

8.22 INDIRECT COST RATES

Unless, under the terms of 2 C.F.R. Part 200, Appendix V, Subrecipient has negotiated or does negotiate an indirect cost rate with the federal government, subject to periodic renegotiations of the rate during the Contract Period, or is exempt from such negotiations and has developed and maintains an auditable central service cost allocation plan, Subrecipient's indirect cost rate shall be set by 2 C.F.R. § 200.414(f), i.e., ten percent (10%).

8.23 CONFLICT OF INTEREST

- (a) Subrecipient shall abide by the provisions of this section and include the provisions in all subcontracts. Subrecipient shall comply with all conflict-of-interest laws and regulations applicable to the Program.
- (b) Subrecipient shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts.

8.24 FORCE MAJEURE

Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as “Force Majeure”), then, while compliance is so prevented, the affected Party’s obligation to comply with such covenant shall be suspended, and the affected Party shall not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure must promptly notify the other Party of the Force Majeure event in writing, and, if possible, such notice must set forth the extent and duration of the Force Majeure. The Party claiming Force Majeure must exercise due diligence to prevent, eliminate, or overcome such Force Majeure event when it is possible to do so and must resume performance at the earliest possible date. However, if nonperformance continues for more than thirty (30) days, the GLO may terminate this Contract immediately upon written notification to Subrecipient.

8.25 ENVIRONMENTAL CLEARANCE REQUIREMENTS

- (a) Subrecipient is the responsible entity, as “responsible entity” is defined under 24 C.F.R. Part 58, and is accountable for conducting environmental reviews and for obtaining any environmental clearance necessary for successful completion of an Activity or the Project. Subrecipient shall prepare an environmental review or assessment of each Activity or the Project in accordance with applicable laws, regulations, rules, and guidance. Subrecipient shall maintain a written Environmental Review Record (“ERR”) for each Activity or the Project, including all supporting source documentation and documentation to support any project mitigation. Subrecipient shall provide a copy of the ERR and all related source documentation to the GLO.
- (b) Subrecipient shall address inquiries and complaints and shall provide appropriate redress related to environmental Activities. Subrecipient shall document each communication issued or received hereunder in the related ERR.
- (c) The GLO may, in its sole discretion, reimburse Subrecipient for certain exempt environmental Activities, as defined in federal regulations. Reimbursement requests for exempt environmental Activities must be supported by the proper HUD-prescribed form.
- (d) The Parties acknowledge and understand that the GLO may enter into interagency agreements with the Texas Historical Commission and other entities in order to facilitate any necessary environmental or historic review. The GLO may incorporate one or more interagency agreements into this Contract via a Technical Guidance Letter.

8.26 CITIZEN PARTICIPATION AND ALTERNATIVE REQUIREMENTS

- (a) Subrecipient must ensure that all citizens have equal and ongoing access to information about an Activity or the Project, including ensuring that Activity or

Project information is available in the appropriate languages for the geographical area served by Subrecipient. Information furnished to citizens shall include, without limitation:

- (i) The amount of CDBG-MIT funds expected to be made available;
 - (ii) The range of Activities or projects that may be undertaken with the CDBG-MIT funds;
 - (iii) The estimated amount of the CDBG-MIT funds proposed to be used for Activities or projects meeting the national objective of benefiting low-to-moderate income persons; and
 - (iv) A clear statement of such and the entity's anti-displacement and relocation plan if any proposed CDBG-MIT Activities or projects are likely to result in displacement.
- (b) Complaint Procedures: Subrecipient must have written citizen-complaint procedures for providing a timely written response (within fifteen [15] working days) to complaints and grievances. Subrecipient shall notify citizens of the location and the days and hours when the location is open for business so they may obtain a copy of these written procedures.
 - (c) Technical Assistance: If requested, Subrecipient shall provide technical assistance in completing applications under the Project to persons of low and moderate income.
 - (d) Subrecipient shall maintain a citizen participation file that includes a copy of Subrecipient's complaint procedures, documentation and evidence of opportunities provided for citizen participation (e.g., public notices, advertisements, flyers, etc.), documentation of citizen participation events (e.g., meeting minutes, attendance lists, sign-in sheets, news reports, etc.), and documentation of any technical assistance requested and/or provided.

8.27 SIGNAGE REQUIREMENTS

On any public building or facility funded under this Contract, Subrecipient shall place permanent signage. Signs shall be placed in a prominent, visible public location. Subrecipient shall format each sign to best fit the architectural design of the building or facility but the sign should be legible from a distance of at least three (3) feet.

For other construction projects (e.g., water transmission lines, sewer collection lines, drainage, roadways, housing rehabilitation) funded under this Contract, Subrecipient shall place temporary signage erected in a prominent location at the construction project site or along a major thoroughfare within the locality.

All signage required under this section shall contain the following:

"This project is funded by the Texas General Land Office of the State of Texas to provide for the restoration of infrastructure for communities impacted by Hurricane Harvey. The funds have been allocated by the United States Department of Housing and Urban Development through the Community Development Block Grant – Mitigation Program."

8.28 PREFERENCE AND PROCUREMENT OF MATERIALS

- (a) To the extent applicable, Subrecipient shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired in the following manner:
 - (i) competitively within a timeframe allowing compliance with the Contract's performance schedule;
 - (ii) in a way that meets the Contract's performance requirements; or
 - (iii) at a reasonable price.

To ensure maximum use of recovered/recycled materials pursuant to 2 C.F.R. § 200.323, information about this requirement, along with the list of EPA-designated items, is available at the EPA's Comprehensive Procurement Guideline Program website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

- (b) As appropriate and to the extent consistent with law, Subrecipient should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- (c) For purposes of section (b) above:
 - (i) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (ii) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

8.29 EQUAL OPPORTUNITY CLAUSE

Subrecipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. 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:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

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.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

Subrecipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if Subrecipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

Subrecipient agrees that it will assist and cooperate actively with the GLO and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the GLO and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the GLO in the discharge of the GLO's primary responsibility for securing compliance.

Subrecipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts, as defined in 41 C.F.R. § 60-1.3, and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Subrecipient agrees that if it fails or refuses to comply with these undertakings, the GLO may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this Contract; refrain from extending any further assistance to Subrecipient under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from Subrecipient; and refer the case to the Department of Justice for appropriate legal proceedings.

8.30 INFORMATION AND DATA SECURITY STANDARDS

Subrecipient shall comply with all terms specified in the **GLO Information Security Appendix (CDBG)**, incorporated herein for all purposes as **Attachment G**.

8.31 STATEMENTS OR ENTRIES

WARNING: ANY PERSON WHO KNOWINGLY MAKES A FALSE CLAIM OR STATEMENT TO HUD MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES UNDER 18 U.S.C. § 287, 18 U.S.C. § 1001, AND 31 U.S.C. § 3729.

Except as otherwise provided under federal law, any person who knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme, or device or who makes any materially false, fictitious, or fraudulent statement or representation or who makes or uses any false writing or document despite knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry shall be prosecuted under Title 18, United States Code, § 1001.

Under penalties of 18 U.S.C. § 287, 18 U.S.C. § 1001, and 31 U.S.C. § 3729, the undersigned Subrecipient representative hereby declares that he/she has examined this Contract and Attachments, and, to the best of his/her knowledge and belief, any statements, entries, or claims made by Subrecipient are true, accurate, and complete.

SIGNATURE PAGE FOLLOWS