

**GRANT ADMINISTRATION SERVICES FOR NON-HOUSING
UNDER THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
CONTRACT NO. GLO TBD**

THE County of Polk (the “Grant Recipient”) referred to as the Entity and David J. Waxman, Inc., Tax Identification Number 74-1880744 (“Provider”), each a “Party” and collectively, “the Parties,” enter into the following contract for grant administration services (the “Contract”) pursuant to Local Govt. Code 252 and 2 C.F.R. Part 200.

WHEREAS, the Grant Recipient has received U.S. Department of Housing and Urban Development Community Development Block Grant – CDBG-MIT Regional Mitigation funds (HUD MID and State MID) administered by the Texas General Land Office (“GLO”); and

WHEREAS, the CDBG-MIT Regional Mitigation program is funded under the U. S. Department of Housing and Urban Development (HUD) further additional supplemental appropriations for Disaster Relief Requirements Act, 20 84 FR 45838 (August 30, 2019).

NOW, THEREFORE, the Parties agree to the following terms and conditions:

I. DEFINITIONS / INTERPRETIVE PROVISIONS / PROJECT DESCRIPTION

1.01 DEFINITIONS

“Activity” means a defined class of works or services authorized to be accomplished using CDBG-MIT Regional Mitigation grant funds. Activities are specified in Grant Recipient Budgets as ‘Category,’ and the terms are interchangeable under this Contract.

“Administrative and Audit Regulations” means the regulations included in Title 2, CFR, Part 200. Chapter 321 of the Texas Government Code; Subchapter F of Chapter 2155 of the Texas Government Code; and the requirements of Article VII herein. With regard to any federal funding, agencies with the necessary legal authority include: the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of Inspector General, and any of their authorized representatives. In addition, state agencies and/or designee’s with the authority to audit and inspect include, the Grant Recipient, the GLO, the GLO’s contracted examiners, the State Auditor’s Office, the Texas Attorney General’s Office and the Texas Comptroller of Public Accounts.

“Activity” means a defined class of works or services authorized to be accomplished using CDBG-MIT Regional Mitigation grant funds. Activities are specified in Grant Recipient Budgets as ‘Category,’ and the terms are interchangeable under this Contract.

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

“Amendment” means a written agreement, signed by the parties hereto, which documents alterations to the Contract.

“Benchmark” or “Billing Milestone” means a clearly defined set of incremental services that must be performed; or an interim level of accomplishment that must be met by Provider in order to receive periodic incremental and final reimbursement for services under this Contract.

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

“Certificate of Construction Completion” means a document submitted by an engineer or, if none, a construction contractor, to a Grantee which, when executed by the Grantee, indicates acceptance of the non-housing project, as built.

“Contract” means this entire document, along with any Attachments, both physical and incorporated by reference; and any Amendments.

“Contract Period” means the period of time between the effective date of a contract and its expiration or termination date.

“Deliverable” means a unit or increment of work to include, any item, report, data, document, photograph, or other submission required to be delivered under the terms of this Contract, in whatever form =.

“Federal Assurances” means Standard Form 424B (Rev. 7-97) (non-construction projects); or Standard Form 424D (Rev. 7-97) (construction projects), in **Attachment A**, attached hereto and incorporated herein for all purposes.

“Federal Certifications” means U.S. Department of Commerce Form CD-512 (12-04), “Certifications Regarding Lobbying – Lower Tier Covered Transactions,” also in **Attachment A**, attached hereto and incorporated herein for all purposes.

“Final Inspection Report” means the document submitted by the housing contractor to a Grant Recipient under a CDBG-MIT Regional Mitigation Housing grant contract, indicating the completed construction of one Housing Unit.

“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.

“GAAP” means “Generally Accepted Accounting Principles.”

“GASB” means the Governmental Accounting Standards Board.

“Budget” means the statements in **Attachment B**, attached hereto and incorporated herein for all purposes, which Provider affirms by executing this Contract.

“GLO” means the Texas General Land Office, its officers, employees, and designees.

“GLO-Vendor Contract” means the contract or contracts between the GLO and Provider procured through the Solicitation; such GLO-Vendor Contract is hereby incorporated herein by reference, for all purposes.

“Grant Administration Fee” means the amount to be paid to Provider for all services performed for a Grant Recipient.

“Housing” refers to a project involving home repair, home reconstruction, and new home construction; including housing for single-family and multi-family rental units under a CDBG-MIT Regional Mitigation program grant.

“Housing Unit” means one house, or one multi-family rental unit.

“HSP” means HUB Subcontracting Plan, as outlined by Chapter 2161 of the Texas Government Code.

“HUB” means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

“HUD” means the United States Department of Housing and Urban Development.

“Mentor Protégé” means the Comptroller of Public Accounts’ leadership program found at: <http://www.window.state.tx.us/procurement/prog/hub/mentorprotege/>

“Non-housing” refers to a project involving the restoration and/or repair of infrastructure facilities and the economic revitalization activities approved under a CDBG-MIT Regional Mitigation program grant.

“Performance Statement” means Provider’s detailed scope of work hereby incorporated for all purposes as **Attachment C**.

“Project” means the grant administration services described in **SECTION 1.03** of this Contract and in any applicable Attachments.

“Project Completion Report” means a report containing an “as built” accounting of all projects completed under a CDBG-MIT Regional Mitigation non-housing or housing grant, and containing all information required to completely close out a grant file.

“Project Implementation Manual” means a set of guidelines for the CDBG-MIT Regional Mitigation Program, incorporated herein by reference for all purposes in its entirety.

“Project Period” means the stated time for completion of a Project assigned by Work Order, if any.

“Prompt Pay Act” means Chapter 2251, Subtitle F of Title 10 of the Texas Government Code.

“Provider” means David J. Waxman, Inc., selected to provide the services under this Contract, if any.

“Public Information Act” means Chapter 552 of the Texas Government Code.

“Quarterly Report” means a document submitted by Provider to a Grant Recipient for approval and submission to the GLO as a condition of reimbursement, as discussed in **SECTION 1.05** and **ARTICLE III**, below.

“RFP” means the Grant Recipient’s Request for Proposals, or the Solicitation, as defined below.

“Setup” means documentation, submitted by a Grant Recipient, necessary for the GLO to determine that housing sites meet minimum eligibility criteria, resulting in approval for the Grant Recipient to move forward with the projects.

“Solicitation” means Grant Recipient’s Request for Qualifications/Proposals No. _____, including any Addenda.

“Solicitation Response” means Provider’s full and complete response to the Solicitation, including any Addenda.

“State of Texas *TexTravel*” means Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

“Subcontractor” means an individual or business that signs a contract to perform part or all of the obligations of Provider under this Contract.

“Grant Recipient” means County of Polk, a local governmental body or political subdivision that receives funds under HUD’s CDBG—DR Program for housing projects. Any Work Order issued for services to a recipient of a housing grant shall refer to “Grant Recipient” as the party served.

“Grant Recipient Agreement” means the contractual agreement for a CDBG-MIT Regional Mitigation housing or non-housing grant between the GLO and the Grant Recipient for which Provider performs services assigned by the Grant Recipient, if any.

“Technical Guidance Letter or ‘TGL’” means an instruction, clarification, or interpretation of the requirements of the CDBG-MIT Regional Mitigation Program, issued by the GLO to specified recipients, applicable to specific subject matter, to which the addressed Program participants shall be subject.

“Weekly Report” means a document submitted weekly by a Grant Recipient showing the status of all housing projects, both completed and remaining, and any other information as may be required by the GLO.

1.02 INTERPRETIVE PROVISIONS

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms;
- (b) The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, attachment, work order, or schedule of this Contract unless otherwise specified;
- (c) The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent that such amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation;
- (d) The captions and headings of this Contract are for convenience of reference only and shall not affect the interpretation of this Contract;

- (e) All attachments within this Contract, including those incorporated by reference, and any amendments are considered part of the terms of this Contract;
- (f) This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each shall be performed in accordance with its terms;
- (g) Unless otherwise expressly provided, reference to any action of the Grant Recipient or by the Grant Recipient by way of consent, approval, or waiver shall be deemed modified by the phrase “in its/their sole discretion.” Notwithstanding the preceding sentence, any approval, consent, or waiver required by, or requested of, the Grant Recipient shall not be unreasonably withheld or delayed;
- (h) Time is of the essence in this Contract.
- (i) In the event of conflicts or inconsistencies between this contract and its attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Signed Contract; Attachments to the Contract: Attachment A, Attachment B, Attachment C. Solicitation Documents; and Provider’s Response to Solicitation.

1.03 PROJECT

Provider shall perform, or cause to be performed at the direction of the Grant Recipient, in assistance to Grant Recipient, comprehensive administration services necessary to facilitate activities for the disaster relief, recovery, restoration, and economic revitalization and mitigation in areas eligible under the CDBG—MIT Program. Provider will assist the Grant Recipient in fulfilling State and Federal CDBG-MIT Regional Mitigation statutory responsibilities related to recovery from 2017 Hurricane Harvey including, but not limited to, performing grant administration services for non-housing and/or housing projects. Grant administrative services must be performed in compliance with (i) HUD requirements, (ii) the Non-Exclusive List of Laws, Rules, and Regulations in **Attachment D**; (iii) this Contract and all Attachments, including Provider’s Performance Statement, **Attachment C**; (iv) any Amendments to this Contract; (v) any Technical Guidance Letter, program requirements, or program guidance that may be issued by the GLO; (vi) GLO RFQ Nos. 2017 Hurricane Harvey; and (viii) Provider’s full and complete response to the RFQ (“the Project”).

Provider shall be responsible at all times for maintaining close oversight of approved projects and record-keeping including, but not limited to, obtaining and maintaining, through Provider’s own efforts, the Grant Recipient’s current Performance Statement / Implementation Schedule, and Budget, including Revisions approved and Technical Guidance Letters issued by the GLO; and any other information that may be required for the satisfactory performance by Provider of the services herein described or assigned under a Work Order, as discussed below.

1.04 REPORTING REQUIREMENTS

Provider shall assist the Grant Recipient to timely submit all reports and documentation that are required under this Contract and any Grant Recipient Agreement.

PROJECT COMPLETION REPORTS:

NON-HOUSING SERVICES: Provider shall prepare and submit to the Grant Recipient a draft Project Completion Report (PCR) by the close of business no later than thirty (30) days from Provider's receipt of the fully executed final Certificate of Construction Completion ("COCC"). Provider shall then cooperate with the Grant Recipient to submit the final, signed, PCR to the GLO by the close of business no later than sixty (60) days from Provider's receipt of the fully executed final COCC. The PCR must be submitted in accordance with the specifications in the Project Implementation Manual, and must include a full description of all Grant Recipient projects, both as originally assigned and as ultimately completed, accounting for all Amendments, Revisions, and Technical Guidance Letters, if any.

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II. TERM

2.01 DURATION

This Contract shall be effective as of the date signed by the last party, and shall terminate on _____*_____. The Grant Recipient, at its own discretion, may extend any contract awarded pursuant to the Solicitation for up to one year (1) or until the time the grant funding expires, whichever comes first. Any extension will be subject to terms and conditions mutually agreeable to both parties.

2.02 EARLY TERMINATION

The Grant Recipient may terminate this Contract by giving written notice specifying a termination date at least thirty (30) days subsequent to the date of the notice. Upon receipt of any such notice, Provider shall cease work, undertake to terminate any relevant 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.

2.03 ABANDONMENT OR DEFAULT

If the Provider defaults on the Contract, the Grant Recipient reserves the right to cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible vendor qualified under the Solicitation. The defaulting provider will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the Grant Recipient based on the seriousness of the default.

* Three (3) years after the effective date of this contract or at completion of the Scope of Work.

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III. CONSIDERATION

3.01 CONTRACT LIMIT, FEES, AND EXPENSES

Provider will be compensated on a negotiated fee basis, for a not to exceed amount of One Million Twenty Five Thousand Eight Hundred Eighty Dollars and No Cents (\$1,025,880.00) (HUD MID \$930,600.00 and State MID \$95,280.00) reimbursable in increments as shown in the Benchmarks in **Attachment B** for the type of work to be performed. The Grant Administration Fee shall not exceed the maximum amount available for such services as prescribed by the Grant Recipient Agreement, the GLO, HUD or any governing law, for the term of this Contract. The Grant Recipient agrees to pay Provider in accordance with The Prompt Pay Act Tex. Govt. Code Ch. 2251.

The form of invoice will be prescribed by the Grant Recipient and made available to Provider in a separate submission from the Grant Recipient.

Grant funds must not be commingled between or among HUD funding rounds; nor between or among Non-Housing and Housing assignments.

Reimbursement for services may be requested based on the Benchmarks, as per Attachment C, according to the type of services authorized, contingent upon Provider's facilitation of the timely submission of each documents required, as discussed in SECTION 1.04, above.

All payments under this Contract shall be paid for by Polk County directly and be reimbursed by the GLO as per their procedures.

At a minimum, invoices must clearly reflect:

- (a) Provider's Contract Number;
- (b) the name and GLO Contract Number (12 digits) of the Grant Recipient Agreement to which services have been provided;
- (c) the current amount being billed;
- (d) the cumulative amount billed previously;
- (e) the balance remaining to be billed; and
- (f) an itemized statement of services performed, including documentation as required under the Contract, such as invoices, receipts, statements, stubs, tickets, time sheets, and any other which, in the judgment of the Grant Recipient, provides full substantiation of reimbursable costs incurred.

Subject to the maximum Contract amount authorized herein, upon specific, prior, written approval by the Grant Recipient, lodging, travel, and other incidental direct expenses may be reimbursed under this Contract for professional or technical personnel who are (a) away from the cities in which they are permanently assigned; (b) conducting business

specifically authorized by the Grant Recipient; and (c) performing services not originally contemplated in the Scope of Services.

The limit for such reimbursements shall be the rates established by the Comptroller of the State of Texas, as outlined in the State of Texas travel guidelines, *TexTravel*. If a rate within the limits set forth in *TexTravel* is not available, Provider shall use its best efforts to obtain the lowest available room rate. Provider shall obtain prior approval from the Grant Recipient.

NOTICE TO PROVIDER:

Failure to include all of the information required in SECTION 3.01 with each invoice may result in a significant delay in processing payment for the invoice.

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IV. PROVIDER'S WARRANTY, AFFIRMATIONS, AND ASSURANCES

4.01 PERFORMANCE WARRANTY

Provider represents that all services performed under this Contract will be performed in a manner consistent with a degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Provider represents that all work product, including Deliverables if any, under this Contract shall be completed in a manner consistent with standards in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated Attachments (if any); and shall be fit for ordinary use, of good quality, and with no material defects. If Provider fails to submit Deliverables timely or to perform satisfactorily under conditions required by this Contract, the Grant Recipient may require Provider, at its sole expense, to the extent such defect or damage is caused by the negligence of Provider, to (a) repair or replace all defective or damaged Deliverables; (b) refund any payment received for all defective or damaged Deliverables and, in conjunction therewith, require Provider to accept the return of such Deliverables; and/or (c) take necessary action so that future performance and Deliverables conform to the Contract requirements.

4.02 GENERAL AFFIRMATIONS

To the extent that they are applicable, Provider further certifies that the Budget and Scope of Work in **Attachment B** have been reviewed, and that Provider is in compliance with each of the requirements reflected therein.

4.03 FEDERAL ASSURANCES

To the extent that they are applicable, Provider further certifies that the Federal Assurances in **Attachment A** have been reviewed and that Provider is in compliance with each of the requirements reflected therein. The Federal Assurance form must be executed by Provider's authorized signatory.

4.04 FEDERAL CERTIFICATIONS

To the extent that they are applicable, Provider further certifies that the Federal Certifications also in **Attachment A** have been reviewed, and that Provider is in compliance with each of the requirements reflected therein. The Federal Certifications form must be executed by Provider's authorized signatory.

In addition, Provider certifies that it is in compliance with any other applicable federal laws, rules, or regulations, as they may pertain to this Contract including, but not limited to, those listed in Attachment A, B, C, D, E, and F.

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V. FEDERAL AND STATE FUNDING, RECAPTURE OF FUNDS, AND OVERPAYMENT

5.01 FEDERAL FUNDING

- (a) Funding for this Contract is appropriated under Consolidated Security, Disaster Assistance and Continuing Appropriation Act, 2009, Pub. L. No. 110-329, and as amended or added to by subsequent budget/appropriations, to facilitate disaster recovery, restoration, economic revitalization, and to affirmatively further fair housing in accordance with Executive Order, in areas affected by Hurricane Harvey, which are Presidentially-declared major disaster areas under Title IV of 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 Regional Mitigation Program, and any other applicable laws. Further, Provider acknowledges that all funds are subject to recapture and repayment for non-compliance.
- (b) **All participants in the CDBG-MIT Regional Mitigation grant program must have a data universal numbering system (DUNS) number, as well as a Commercial And Government Entity (CAGE) Code.**
- (c) **The DUNS number and CAGE Code must be reported to the GLO for use in various grant reporting documents, and may be obtained by visiting the Central Contractor Registration web site at:**

<https://www.bpn.gov/ccr/>

Assistance with this web site may be obtained by calling **866-606-8220**.

5.02 STATE FUNDING

- (a) This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or the GLO in violation of Article III, Section 49, of the Texas Constitution. In compliance with Article VIII, Section 6 of the Texas Constitution, it is understood that all obligations of the GLO hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the Grant Recipient, in its sole discretion, may terminate this Contract. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests, accrued up to the date of termination.
- (b) Furthermore, any claim by Provider for damages under this Contract may not exceed the amount of funds appropriated for payment, but not yet paid to Provider, under the annual budget in effect at the time of the breach. Nothing in this provision shall be construed as a waiver of sovereign immunity.

5.03 RECAPTURE OF FUNDS

Provider shall conduct, in a satisfactory manner as determined by the Grant Recipient, the Project as set forth in the Contract. The discretionary right of the Grant Recipient to terminate for convenience under **SECTION 2.02** notwithstanding, it is expressly

understood and agreed by Provider that the Grant Recipient shall have the right to terminate the Contract and to recapture, and be reimbursed for any payments made by the Grant Recipient (i) that exceed the maximum allowable HUD rate; (ii) that are not allowed under applicable laws, rules, and regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures.

5.04 OVERPAYMENT

Provider understands and agrees that it shall be liable to the Grant Recipient or the GLO for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under this Contract. Provider further understands and agrees that reimbursement of such disallowed costs shall be paid by Provider from funds which were not provided or otherwise made available to Provider under this Contract.

5.05 It is agreed by the Entity and David J. Waxman, Inc. that they are the sole parties to this Contract. This Contract shall be a “third party” Contract in which the GLO shall have no standing.

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VI. OWNERSHIP

6.01 OWNERSHIP AND THIRD PARTY RELIANCE

- (a) The Grant Recipient shall own, and Provider hereby assigns to the GLO, all right, title, and interest in all services to be performed; all goods to be delivered; and/or all other related work product prepared, or in the course of preparation, by Provider (or its subcontractors) pursuant to this Contract, together with all related worldwide intellectual property rights of any kind or character (collectively, the "Work Product"). Under no circumstance will any license fee, royalty, or other consideration not specified in this Contract be due to Provider for the assignment of the Work Product to the GLO or for the GLO's use and quiet enjoyment of the Work Product in perpetuity. Provider shall promptly submit all Work Product to the GLO upon request or upon completion, termination, or cancellation of this Contract for any reason, including all copies in any form or medium.

- (b) Provider and the Grant Recipient shall not use, willingly allow, or cause such Work Product to be used for any purpose other than performance of Provider's obligations under this Contract without the prior written consent of either party and the GLO. Work Product is for the exclusive use and benefit of, and may be relied upon only by the parties. Prior to distributing any Work Product to any third party, other than the GLO, the parties shall advise such third parties that if it relies upon or uses such Work Product, it does so entirely at its own risk without liability to the GLO, Provider, or the Grant Recipient.

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VII. RECORDS, AUDIT, RETENTION, CONFIDENTIALITY, PUBLIC RECORDS

7.01 BOOKS AND RECORDS

Provider shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the Grant Recipient, the GLO, the State of Texas Auditor's Office, the United States Government, and/or their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes.

7.02 INSPECTION AND AUDIT

- (a) Provider agrees that all relevant records related to this Contract and any Work Product produced in relation to this Contract, including the records and Work Product of 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 any location where such records and Work Product may be found, with or without notice from the Grant Recipient, the GLO, HUD, or other government entity with necessary legal authority. Provider agrees to cooperate fully with any federal or state entity in the conduct of inspection, examination, audit, and copying, including providing all information requested. Provider 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) Provider understands that acceptance of state funds under this Contract acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. Provider further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Provider will ensure that this clause concerning the State Auditor's Office's authority to audit state funds and the requirement to fully cooperate with the State Auditor's Office is included in any subcontracts it awards. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Provider relating to the Contract for any purpose. HUD, the Comptroller General, the General Accounting Office, the Office of Inspector General, or any authorized representative of the U.S. Government shall also have this right of inspection. **PROVIDER SHALL ENSURE THAT ALL SUBCONTRACTS AWARDED REFLECT THE REQUIREMENTS OF THIS SECTION 7.02, AND THE REQUIREMENT TO COOPERATE.**
- (c) Provider will be deemed to have read and have knowledge of all applicable federal, state, and local laws, regulations, and rules including, but not limited to those identified in **Attachment D**, governing audit requirements pertaining to the Project.

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7.03 PERIOD OF RETENTION

All records relevant to this Contract shall be retained for a period subsequent to the final closeout of the State of Texas CDBG-MIT Regional Mitigation grant program, in accordance with federal regulations. **The Grant Recipient will notify all Program participants of the date upon which local records may be destroyed.**

7.04 CONFIDENTIALITY

To the extent permitted by law, Provider and the Grant Recipient agree to keep all information confidential, in whatever form produced, prepared, observed, or received by Provider or the Grant Recipient to the extent that such information is: (a) confidential by law; (b) marked or designated "confidential" (or words to that effect) by Provider or the Grant Recipient; or (c) information that Provider or the Grant Recipient is otherwise required to keep confidential by this Contract. Furthermore, Provider will not advertise that it is doing business with the Grant Recipient, use this Contract as a marketing or sales tool, or make any press releases concerning work under this Contract without the prior written consent of the Grant Recipient.

7.05 PUBLIC RECORDS

Information related to the performance of this Contract may be subject to the Public Information Act ("PIA") and will be withheld from public disclosure or released only in accordance therewith. Provider shall make any information required under the PIA available to the Grant Recipient in portable document file (".pdf") format or any other format agreed between the Parties. Failure of Provider to mark as "confidential" or a "trade secret" any information that it believes to be excepted from disclosure waives any and all claims Provider may make against the Grant Recipient for releasing such information without prior notice to Provider. Provider shall notify the Grant Recipient within twenty-four (24) hours of receipt of any third party written requests for information, and forward a copy of said written requests to the Grant Recipient. If the request was not written, Provider shall forward the third party's contact information to the Grant Recipient.

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VIII. MISCELLANEOUS PROVISIONS

8.01 INSURANCE

Provider shall acquire for the duration of this Contract insurance with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount and in the form required by this Contract. Furthermore, Provider shall submit a certificate of liability insurance as required under this Contract, including (if requested) a schedule of coverage (or "underwriter's schedules") establishing to the satisfaction of the Grant Recipient the nature and extent of coverage granted by each policy.

Provider shall submit certificates of insurance and endorsements electronically, in the manner requested by the Grant Recipient. In the event that any policy is determined to be deficient to comply with the terms of this Contract, Provider shall secure such additional policies or coverage as the Grant Recipient may reasonably request or that are required by law or regulation.

Provider will be responsible for submitting renewed certificates of insurance and endorsements, as evidence of insurance coverage throughout the term of this Contract. Provider may not be actively working on behalf of the Grant Recipient if the insurance coverage does not adhere to insurance requirements. Failure to submit required insurance documents may result in the cancellation of this Contract.

8.02 TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE

PROVIDER AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, PROVIDER SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF PROVIDER'S AND PROVIDER'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. PROVIDER AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE GRANT RECIPIENT SHALL NOT BE LIABLE TO THE PROVIDER, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/ OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. 2) PROVIDER AGREES TO INDEMNIFY AND HOLD HARMLESS THE GRANT RECIPIENT, THE GLO, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. PROVIDER SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY PROVIDER WITH THE GRANT RECIPIENT NAMED AS A DEFENDANT IN ANY LAWSUIT AND PROVIDER MAY NOT AGREE TO ANY SETTLEMENT

WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE GRANT RECIPIENT. PROVIDER AND THE GRANT RECIPIENT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

8.03 LEGAL OBLIGATIONS

Provider shall procure and maintain for the duration of this Contract any state, county, County, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Provider to provide the goods or services required by this Contract. Provider will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Provider agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

8.04 INDEMNITY

EXCEPT FOR DAMAGES DIRECTLY OR PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OF THE GRANT RECIPIENT OR THE GLO, PROVIDER SHALL INDEMNIFY AND HOLD HARMLESS THE GRANT RECIPIENT, THE STATE OF TEXAS, THE GLO, AND THE OFFICERS, REPRESENTATIVES, AGENTS, AND EMPLOYEES OF THE GRANT RECIPIENT, THE STATE OF TEXAS, AND THE GLO FROM ANY LOSSES, CLAIMS, SUITS, ACTIONS, DAMAGES, OR LIABILITY (INCLUDING ALL COSTS AND EXPENSES OF DEFENDING AGAINST ALL OF THE AFOREMENTIONED) ARISING IN CONNECTION WITH:

- **THIS CONTRACT;**
- **ANY NEGLIGENCE, ACT, OMISSION, OR MISCONDUCT IN THE PERFORMANCE OF THE SERVICES REFERENCED HEREIN; OR**
- **ANY CLAIMS OR AMOUNTS ARISING OR RECOVERABLE UNDER FEDERAL OR STATE WORKERS' COMPENSATION LAWS, THE TEXAS TORT CLAIMS ACT, OR ANY OTHER SUCH LAWS.**
- **EXCEPT THOSE CLAIMS ARISING FROM NEGLIGENCE OR MISCONDUCT OF THE ENGINEER OR THE CONTRACTOR.**

PROVIDER SHALL BE RESPONSIBLE FOR THE SAFETY AND WELL BEING OF ITS EMPLOYEES, CUSTOMERS, AND INVITEES. THESE REQUIREMENTS SHALL SURVIVE THE TERM OF THIS AGREEMENT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND SUITABLE EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO THE GRANT RECIPIENT. THE PROVISIONS OF THIS SECTION 8.03 SHALL SURVIVE TERMINATION OF THIS CONTRACT.

THE GLO, THE ENTITY AND DAVID J. WAXMAN, INC. ALL AGREE TO BE RESPONSIBLE FOR THEIR OWN ACTIONS AND SHALL NOT INDEMNIFY EACH OTHER FOR THE OTHERS ACTIONS.

8.05 ASSIGNMENT AND SUBCONTRACTS

Provider shall not assign, transfer, or delegate any rights, obligations, or duties under this Contract without the prior written consent of the Grant Recipient. Notwithstanding this provision, it is mutually understood and agreed that Provider may subcontract with others for some or all of the services to be performed. In any approved subcontracts, Provider shall legally bind such subcontractor to perform and make such subcontractor subject to all the duties, requirements, and obligations of Provider as specified in this Contract. Nothing in this Contract shall be construed to relieve Provider of the responsibility for ensuring that the goods delivered and/or the services rendered by Provider and/or any of its subcontractors comply with all the terms and provisions of this Contract. Provider will provide written notification to the Grant Recipient of any such subcontractor performing fifteen percent (15%) or more of the work under this Contract, including the name and taxpayer identification number of subcontractor, the task(s) being performed, and the number of subcontractor employees expected to work on the task.

8.06 RELATIONSHIP OF THE PARTIES

Provider is associated with the Grant Recipient only for the purposes and to the extent specified in this Contract, and, with respect to Provider's performance pursuant to this Contract, Provider 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 shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for the Grant Recipient or the GLO any liability whatsoever with respect to the indebtedness, liabilities, and obligations of Provider or any other party. Provider shall be solely responsible for, and the Grant Recipient shall have no obligation with respect to:

- (a) withholding of income taxes, FICA, or any other taxes or fees;
- (b) industrial or workers' compensation insurance coverage;
- (c) participation in any group insurance plans available to employees of the State of Texas;
- (d) participation or contributions by the State to the State Employees Retirement System;
- (e) accumulation of vacation leave or sick leave; or
- (f) unemployment compensation coverage provided by the State.

8.07 COMPLIANCE WITH OTHER LAWS

In the performance of this Contract, Provider shall comply with all applicable federal, state, and local laws, ordinances, and regulations. Provider shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations that in any manner affect performance under this Contract including, but not limited to, those attached hereto and incorporated herein for all purposes as **Attachment D**. Provider will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.

8.08 NOTICES

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

Grant Recipient

County of Polk
101 West Church Street
Livingston, TX 77351
Attention: Sydney Murphy, County Judge

Provider

David J. Waxman, Inc.
P. O. Drawer 900
Jasper, TX 75951
Attention: Lesley A. Waxman

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 as herein provided.

8.10 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 between Grant Recipient and Provider under this Contract shall be in a court of competent jurisdiction in the Entity's County, Texas. Provider irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto.

8.11 SEVERABILITY

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

8.12 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 a "Force Majeure"),

then, while 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 shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and shall resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, the GLO may terminate this Contract immediately upon written notification to Provider.

8.13 DISPUTE RESOLUTION

By a Court of competent jurisdiction locally.

8.14 ENTIRE CONTRACT AND MODIFICATION

This Contract, its integrated Attachment(s), and any Technical Guidance 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 that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in such Attachment(s), Technical Guidance Letter shall be harmonized with this Contract to the extent possible. Unless such integrated 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 terms of this Contract.

8.15 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. If the Contract is not executed by the GLO within thirty (30) days of execution by the other party, this Contract shall be null and void. In the sole discretion of the GLO, Work Orders issued, if any, may be executed by the parties in counterparts exchanged by electronic mail.

8.16 PROPER AUTHORITY

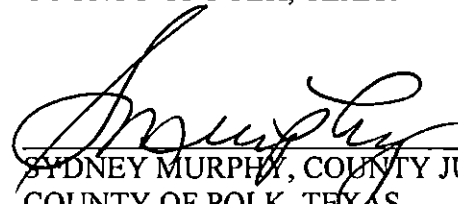
Each party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract. Provider acknowledges that this Contract is effective for the period of time specified in the Contract. Any services performed by Provider before this Contract is effective or after it ceases to be effective are performed at the sole risk of Provider.

SIGNATURE PAGE FOLLOWS

SIGNED and entered into this _____ day of _____, 2023.

CLIENT:

COUNTY OF POLK, TEXAS



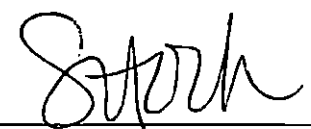
SYDNEY MURPHY, COUNTY JUDGE
COUNTY OF POLK, TEXAS

CONSULTANT:

DAVID J. WAXMAN, INC.

LESLEY WAXMAN, PRESIDENT
DAVID J. WAXMAN, INC.

ATTEST:



SCHELANA HOCK, COUNTY CLERK
COUNTY OF POLK, TEXAS

ATTEST:

(Entity shall refer to City or County)

Attachment A

**PART IV
TERMS AND CONDITIONS**

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

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

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

Upon such termination, Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Contractor as are permitted by the prime contract and approved by Entity; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against Entity for any additional compensation or damages in the event of such termination and payment.

3. Changes. The Entity may, from time to time, request changes in the services the Contractor will perform under this Agreement. Such changes, including any increase or decrease in the amount of the Contractor's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Agreement.

4. Resolution of Program Non-Compliance and Disallowed Costs. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or CDBG program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Agreement and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. *[This section may also provide for the qualifications of the mediator(s), the locale of meetings, time limits, or any other item of concern to the parties.]* If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.
5. Personnel.
 - a. The Contractor represents that he/she/it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the Entity.
 - b. All of the services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
 - c. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the Entity. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.
6. Assignability. The Contractor shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Entity thereto; Provided, however, that claims for money by the Contractor from the Entity under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the Entity.
7. Reports and Information. The Contractor, at such times and in such forms as the Entity may require, shall furnish the Entity such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.
8. Records and Audits. The Contractor shall insure that the Entity maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, 24 CFR 570.490, and this Agreement. Such records must include data on the racial, ethnic, and gender characteristics of

persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. Entity shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.

9. Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Contractor under this contract are confidential and the Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the Entity.
10. Copyright. No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.
11. Compliance with Local Laws. The Contractor shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Contractor shall save the Entity harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.
12. Conflicts of interest.
 - a. Governing Body. No member of the governing body of the Entity and no other officer, employee, or agent of the Entity, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of the CDBG award between GLO and the Entity / Entity shall have any personal financial interest, direct or indirect, in the Contractor or this Agreement; and the Contractor shall take appropriate steps to assure compliance.
 - b. Other Local Public Officials. No other public official who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the CDBG award between GLO and the Entity shall have any personal financial interest, direct or indirect, in the Contractor or this Agreement; and the Contractor shall take appropriate steps to assure compliance.
 - c. Contractor and Employees. The Contractor warrants and represents that it has no conflict of interest associated with the CDBG award between GLO and the Entity or this Agreement. The Contractor further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the CDBG award between GLO and the Entity or in any business, entity, organization or person that may benefit from the award. The Contractor further agrees that it will not employ an individual with a conflict of interest as described herein.
13. Debarment and Suspension (Executive Orders 12549 and 12689). The Contractor certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (1986) and 12689 (1989). The term "principal" for purposes of this Agreement is defined as an officer, director,

owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor. The Contractor understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

Federal Civil Rights Compliance.

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

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

- e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity," and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - f. The 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.
 - 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 or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - h. The 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 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.
15. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
16. Section 109 of the Housing and Community Development Act of 1974. The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
17. Section 504 Rehabilitation Act of 1973, as amended. The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.

18. Age Discrimination Act of 1975. The Contractor shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

[If this Contract is greater than \$100,000, include the following Section 3 language:]

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

a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

b. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this 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 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 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 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

SCOPE OF WORK

SCOPE OF SERVICES REQUESTED

Providers will help the GLO fulfill State and Federal Community Development Block Grant Disaster Recovery ("CDBG-DR") statutory responsibilities related to recovery in connection with any federally declared disaster. Providers will assist the GLO and/or grant recipients in completion of CDBG-DR qualified housing or non-housing projects. Respondents may be qualified to provide Grant Administration services for housing projects, non-housing projects, or both. Grant administrative services must be performed in compliance with the U.S. Department of Housing and Urban Development ("HUD") and guidelines issued by the GLO.

DESCRIPTION OF SERVICES AND SPECIAL CONDITIONS

Respondent must be able to perform the tasks listed herein to be considered eligible for an award under this Solicitation. Respondents should provide a detailed narrative of their experience as it relates to each of the items below. Respondents should clearly indicate if they intend to provide services in-house with existing staff or through subcontracting or partnership arrangements. Grant Administration Services will be provided in conformance with the guidance documents and use forms provided by the subrecipient utilizing GLO guidance. The providers shall furnish pre-funding and post-funding grant administrative services to complete the disaster recovery projects, including, but not limited to the following:

Pre-Funding Services

Grant Administrator will develop project scope and complete CDBG-DR application. The provider will work with the subrecipient and Engineering, if applicable, to provide the concise information needed for submission of complete disaster recovery funding application and related documents. The required information shall be submitted in a format to be described by the GLO.

Post-Funding Services

Grant Administrator will administer and complete infrastructure, utilities, housing and eligible projects approved for disaster recovery funding. The selected administrative firm must follow all requirements of the Texas CDBG Disaster Recovery program.

Grant Administration Services – General

(a) Administrative Duties:

- i. Coordinate, as necessary, between subrecipient and any other appropriate service providers (i.e. Engineer, Environmental, etc.), contractor, subcontractor and GLO to effectuate the services requested.
- ii. May assist in public hearings.
- iii. Will work with GLO's system of record.
- iv. Provide monthly project status updates.
- v. Funding release will be based on deliverables identified in the contract.

vi. Labor and procurement duties:

- a. Provide all Labor Standards Officer (LSO) Services.
- b. Ensure compliance with all relevant labor standards regulations.
- c. Ensure compliance with procurement regulations and policies.
- d. Maintain document files to support compliance.

vii. Financial duties:

- a. Prepare and submit all required reports (Section 3, Financial Interest, etc.).
- b. Assist subrecipient with the procurement of audit services.
- c. Assist subrecipient in establishing and maintaining a bank account for disaster recovery funds.
- d. Implementation and coordination of Affirmatively Furthering Fair Housing ("AFFH") requirements as directed by HUD and the GLO.
- e. Implementation and coordination of Section 504 requirements.
- f. Program compliance.

- g. Ensure that fraud prevention and abuse practices are in place and being implemented.
- h. Prepare and submit all closeout documents.
- i. Submit all invoices no later than 60 days after the expiration of the contract. All outstanding funds may be swept after 60 days. The provider may request an extension of this requirement in writing.
- j. Assist in preparation of contract revisions and supporting documents including but not limited to:
 - Amendments/modifications,
 - Change orders.

(b) Construction Management

- i. The provider will assist the subrecipient in submitting/setting up project applications in the GLO's system of record.
- ii. The provider may compile and collate complete contract/bid packages that meet GLO program requirements. The packages will contain supporting documentation that meets or exceeds the requirements of the GLO's program. If applications do not have the necessary forms, the provider may assist the subrecipient by coordinating to acquire the necessary documentation.
- iii. The provider may monitor, report, and evaluate contractor's performance; notify the subrecipient if the contractor(s) fails to meet established scheduled milestones. Receive, review, recommend, and process any change orders as appropriate to the individual projects.
- iv. The provider may assist the subrecipient with project Activity Draws/Close Out.
- v. The provider may assist the subrecipient by submitting all the necessary documentation for draws and to close a project activity in the GLO's system of record. The provider will compile, review for completeness, and collate complete contract/closeout packages that meet GLO program requirements for draw requests. If applications do not have the necessary forms, the provider may assist the subrecipient by coordinating to acquire the necessary documentation.
- vi. The provider may assist the subrecipient in developing

Architectural and Engineering plans with guidance from the GLO.

vii. Reassignment scope alignment (if necessary).

Grant Administration Services – Infrastructure

a) Administrative Duties:

- i. Ensure program compliance including all CDBG-DR requirements and all part's therein, current Federal Register, etc.
- ii. Assist subrecipient in establishing and maintaining financial processes.
- iii. Obtain and maintain copies of the subrecipient's most current contract including all related change requests, revisions and attachments.
- iv. Establish and maintain record keeping systems.
- v. Assist subrecipient with resolving monitoring and audit findings.
- vi. Serve as monitoring liaison.
- vii. Assist subrecipient with resolving third party claims.
- viii. Report suspected fraud to the GLO.
- ix. Submit timely responses to the GLO requests for additional information.
- x. Complete draw request forms and supporting documents.
- xi. Facilitate outreach efforts, application intake, and eligibility review.
- xii. Perform any other administrative duty required to deliver the project.
- xiii. Utilize and assist with GLO's system of record to complete milestones, submit documentation, reports, draws, change requests, etc.
- xiv. Submit change requests and all required documentation related to any change requests.

(b) Acquisition Duties:

- i. Submit acquisition reports and related documents.

- ii. Establish acquisition files (if necessary).
- iii. Complete acquisition activities (if necessary).

(c) Environmental Services

- i. Assist detailed scope of services
 - a. Review each project description to ascertain and/or verify the level of environmental review required: Exempt, Categorical Exclusion not Subject to 58.5, Categorical Exclusion Subject to 58.5, Environmental Assessment, and Environmental Impact Statements;
 - b. Prepare, complete and submit HUD required forms for environmental review and provide all documentation to support environmental findings;
 - c. Consult and coordinate with oversight/regulatory agencies to facilitate environmental clearance;
 - d. Be able to perform or contract special studies, additional assessments, or permitting to secure environmental clearance. These may include, but are not limited to biological assessments, wetland delineations, asbestos surveys, lead-based paint assessments, archeology studies, architectural reviews, Phase I & II ESAs, USACE permits, etc.;
 - e. Prepare all responses to comments received during comment phase of the environmental review, including State/Federal Agency requiring further studies and/or comments from public or private entities during public comment period;
 - f. Maintain close coordination with local officials, project engineer and other members of the project team to assure appropriate level of environmental review is performed and no work is conducted without authorization;
 - g. Complete and submit the environmental review into GLO's system of record;
 - h. At least one site visit to project location and completion of a field observation report
 - i. Prepare and submit for publication all public

notices including, but not limited to the Notice of Finding of No Significant Impact (FONSI), Request for Release of Funds floodplain/wetland early and final notices in required order and sequence;

- j. Provide documentation of clearance for Parties Known to be Interested as required by 24 CFR 58.43;
- k. Process environmental review and clearance in accordance with NEPA;
- l. Advise and complete environmental re-evaluations per 24 CFR 58.47 when evidence of further clearance or assessment is required;
- m. Prepare and submit Monthly Status Report; and
- n. Participate in regularly scheduled progress meetings.
- o. The Administrator shall not be responsible for cost of archeological investigations, Corp of Engineers 404 Permits and asbestos-identification and mitigation.

Attachment C

Administration cost of the "Project" shall not exceed 6% of total cost and shall be the amount as is contained in the Contract between the Entity and the GLO if the Project is funded.

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David J. Waxman, Inc.
Planning Consultant
P.O. Drawer 900
Jasper, Texas 75951

Payments to Administrator
Attachment C

STATEMENT

This Statement for billing will be adjusted as per the County Contract with GLO.

Date:

Client:

Project:

For Professional Services:

As per Contract covering work on GLO- (Section Six – Payments to Consultant

TOTAL CONTRACT AMOUNT \$795,240.00

Milestones	Grant Administration
Project Kick-Off Meeting and Start-Up Package	15%
Engineering Notice to Proceed	
Environmental Notice to Proceed	30%
100% Design Approved	
Special Environmental Report Approved	
Authority to Use Grant Funds	50%
Acquisition Start	
Bid Advertise	60%
Construction Notice to Proceed	85%
As-Built COCC/FWCR	95%
Closeout Packet Approved	100%

NONEXCLUSIVE LIST OF APPLICABLE LAWS, RULES, AND REGULATIONS

If applicable to the Project, Provider must be in compliance with the following laws, rules, and regulations; and any other state, federal, or local laws, rules, and regulations as may become applicable throughout the term of the Contract, and Provider acknowledges that this list may not include all such applicable laws, rules, and regulations.

Provider and is deemed to have read and understands the requirements of each of the following, if applicable to the Project under this Contract:

GENERALLY

The Acts and Regulations specified in this Contract;

Consolidated Security, Disaster Assistance, and Continuing Appropriation Act (Public Law 110-329);

The Housing and Community Development Act of 1974 (12 U.S.C. § 5301 *et seq.*);

Cash Management Improvement Act regulations (31 C.F.R. Part 205);

Community Development Block Grants (24 C.F.R. Part 570);

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Disaster Recovery Implementation Manual;

Plan for Disaster Recovery; and

Guidance Documents: 2008 Supplemental Disaster Recovery Fund; Hurricanes Dolly and Ike; and Non-Housing Activities Application Guide, issued by the Texas Department of Housing and Community Affairs.

Civil Rights

Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d *et seq.*); 24 C.F.R. Part 1, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e *et seq.*);

Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. 3601 *et seq.*), as amended;

Executive Order 11063, as amended by Executive Order 12259, and 24 C. F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The

failure or refusal of Provider to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;

The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*); and

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794.) and "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8. By signing this Contract, Provider understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

LABOR STANDARDS

The Davis-Bacon Act, as amended (originally, 40 U.S.C. 276a-276a-5 and re-codified at 40 U.S.C. 3141-3148); 29 C.F.R. Part 5;

The Copeland "Anti-Kickback" Act (originally, 18 U.S.C. 874 and re-codified at 40 U.S.C. 3145); 29 C.F.R. Part 3;

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (originally, 40 U.S.C. § 327A and 330 and re-codified at 40 U.S.C. 3701-3708);

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act) (29 C.F.R. Part 5); and

Federal Executive Order 11246, as amended;

EMPLOYMENT OPPORTUNITIES

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C.1701u); 24 C.F.R. §§ 135.3(a)(2) and (a)(3);

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. § 4212); and

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688); and

Federal Executive Order 11246, as amended;

GRANT AND AUDIT STANDARDS

Single Audit Act Amendments of 1996, 31 U.S.C. § 7501;

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for

Federal Awards (2 C.F.R. Part 200);

Uniform Grant and Contract Management Act (Texas Government Code Chapter 783) and the Uniform Grant Management Standards issued by Governor's Office of Budget and Planning; and

Title 1 Texas Administrative Code § 5.167(c);

LEAD-BASED PAINT

Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) and the procedures established by TDRA thereunder.

HISTORIC PROPERTIES

The National Historic Preservation Act of 1966 as amended (16 U.S.C. 470 *et seq.*), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2), except as provided in §58.17 for Section 17 projects;

Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 C.F.R. 1971-1975 Comp., p. 559, particularly section 2(c);

Federal historic preservation regulations as follows: 36 C.F.R. part 800 with respect to HUD programs; and

The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*), particularly section 3 (16 U.S.C. 469a-1).

ENVIRONMENTAL LAW AND AUTHORITIES

Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities (24 C.F.R. Part 58, as amended);

National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347); and

Council for Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508).

FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION

Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 C.F.R. part 55, particularly Section 2(a) of the Order (For an explanation of the relationship between the decision-making process in 24 C.F.R. part 55 and this part, see § 55.10.); and

Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 C.F.R., 1977 Comp., p. 121 particularly Sections 2 and 5.

COASTAL ZONE MANAGEMENT

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

SOLE SOURCE AQUIFERS

The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) *et seq.*, and 21 U.S.C. 349) as amended; particularly section 1424(e)(42 U.S.C. 300h-3(e); and

Sole Source Aquifers (Environmental Protection Agency-40 C.F.R. part 149.).

ENDANGERED SPECIES

The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as amended, particularly section 7 (16 U.S.C. 1536).

WILD AND SCENIC RIVERS

The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) as amended, particularly sections 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

AIR QUALITY

The Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended, particularly sections 176(c) and (d) (42 U.S.C. 7506(c) and (d)).

Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-40 C.F.R. parts 6, 51, and 93).

FARMLAND PROTECTION

Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202); and

Farmland Protection Policy (Department of Agriculture-7 C.F.R. part 658).

HUD ENVIRONMENTAL STANDARDS

Applicable criteria and standards specified in HUD environmental regulations (24 C.F.R. part 51) (other than the runway clear zone and clear zone notification requirement in 24 C.F.R. 51.303(a)(3); and

HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979).

ENVIRONMENTAL JUSTICE

Executive Order 12898 of February 11, 1994 --- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

SUSPENSION AND DEBARMENT

Use of debarred, suspended, or ineligible contractors or subrecipients (24 C.F.R. Section 570.609);

General HUD Program Requirements; Waivers (24 C.F.R. Part 5); and

Nonprocurement Suspension and Debarment (24 C.F.R. Part 2424).

OTHER REQUIREMENTS

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

ACQUISITION/RELOCATION

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*), 24 C.F.R. Part 42, and 24 C.F.R. Section 570.606.

FAITH-BASED ACTIVITIES

Executive Order 13279 of December 12, 2002 - Equal Protection of the Laws for Faith-Based and Community Organizations, (67 FR 77141).

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