

CONTRACT FOR PROFESSIONAL SERVICES

BETWEEN

CITY OF KYLE

AND

HALFF ASSOCIATES,  
INC.

FOR

DR-4485 COVID  
HAZARD MITIGATION GRANT PROGRAM

THIS CONTRACT is entered into by and between CITY OF KYLE, 100 W Center St, Kyle, TX 78640, hereinafter called the "CITY", acting herein by Travis Mitchell, Mayor, hereunto duly authorized, and HALFF ASSOCIATES, INC., 1201 North Bowser Rd, Richardson, TX 75081, hereinafter called "FIRM", acting herein by Corporation, procured in conformance with Texas Government Code Chapter 2254, Subchapter A, "Professional Services" and 2 C.F.R. 200 regulations.

WITNESSETH THAT:

WHEREAS, CITY desires to implement an Engineer Services Contract in conformance with its Request for Qualifications of Engineering Services for DR-4485 COVID Hazard Mitigation Assistance; and

WHEREAS, CITY desires to engage FIRM to render certain professional services ("Services") in connection with the above solicitation in relation to Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program projects awarded to CITY.

NOW THEREFORE, the parties do mutually agree as follows:

## **ARTICLE 1 – SCOPE OF SERVICES**

- 1.1** Part I, Scope of Services, is hereby incorporated by reference into this Contract.
- 1.2** In performing its work under this Agreement, the FIRM shall perform its Services to the standard of care of a reasonable professional that is performing the same or similar work, at the same time and locality and under the same or similar conditions faced by the FIRM (Standard of Care). The Services of the FIRM shall commence on the date first given for the execution of this Contract. In any event, all the Services required, and performance hereunder shall be completed no later than May 22, 2023 or end of the Period of Performance of the grant plus any extensions.
- 1.2** The FIRM's Services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the project.
- 1.3** It is understood and agreed that the FIRM's Services under this agreement do not include participation in or support for any litigation. Should such services be required, a Supplemental Agreement may be negotiated between the CITY and the FIRM describing the services desired and providing a basis for compensation to the FIRM.
- 1.4** If any change proposed by the CITY to the requested professional services described in Part 1 causes an increase or decrease in the cost and/or time required for performance of this Agreement, the FIRM shall notify the CITY and the change will be reduced to writing mutually agreed to by both parties and will modify this Agreement accordingly.

## **ARTICLE 2 – COMPENSATION**

- 2.1** The compensation to be paid to the FIRM for providing the requested Services shall be the maximum amount of compensation and reimbursement to be paid hereunder as noted in Article 3 of this Contract. Payment to the FIRM shall be based on satisfactory completion of identified milestones in Article 3 – Invoice Procedures and Payment of this Contract.
- 2.2** If the FIRM's Services under this Agreement are delayed, suspended, or interrupted for reasons beyond the FIRM'S control, the FIRM'S compensation and schedule shall be equitably adjusted at the time of performance.
- 2.3** CITY hereby acknowledges that the FIRM cannot warrant that any cost estimates

provided by the FIRM will not vary from actual costs incurred by the CITY.

**2.4** It is understood and agreed that the FIRM'S Services under this Agreement are limited to those described in Part 1 hereof and do not include participation in or control over the operation of any aspect of the project. Compensation under this Agreement does not include any amount for participating in or controlling any such operation.

### **ARTICLE 3 – INVOICE PROCEDURES AND PAYMENT**

**3.1** The FIRM shall submit invoices to the CITY for work accomplished at the end of each milestone period as noted below. The maximum amount of compensation and reimbursement shall conform with the schedule below. Payment to the FIRM shall be based on satisfactory completion of identified milestones as listed below.

Budget will be entered here for the Engineering portion of the Project

Data Collection/Site Assessment	\$10,000
Draft Generator Assessment Study	\$27,000
Final Generator Assessment Study	\$5,000
Benefit Cost Analysis	\$4,400

#### **Standard Hourly Rates Schedule.**

The following standard hourly rates are subject to review and adjustment. Hourly rates for services are for services as of the effective Date of this contract are:

Insert engineers schedule of hourly rates here

**3.2** The CITY, as owner or authorized agent for the owner, hereby agrees that payment as provided herein will be made for said work within 30 days from the date the invoice, for same, is mailed to the CITY at the address set out herein or is otherwise delivered, and, in default of such payment, hereby agrees to pay all costs of collection, including reasonable attorney's fees.

If CITY fails to make any payment due FIRM for services and expenses within 30 days after receipt of Engineer's invoice, then the compounded amount due FIRM will be increased at the rate of 1.5% per month from said thirtieth day and the FIRM may, after giving seven days written notice to CITY, suspend services until CITY has paid in full all amounts due for services, expenses, and other related charges. If CITY contests an invoice, FIRM may withhold only that portion so contested, and must pay the undisputed portion. This suspension shall remain in effect until all unpaid invoices are paid in full, and the FIRM shall not have any liability to the CITY for delays or damages caused by CITY's untimely or unpaid payments.

## **ARTICLE 4 – LIMIT OF LIABILITY**

**4.1** To the extent permitted by law, City and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Specific Project. Further, any damages incurred by City shall be limited to the insurance required under this Agreement.

## **ARTICLE 5 – INDEMNIFICATION**

**5.1** To the extent permitted by law, FIRM shall indemnify and hold harmless CITY, and CITY'S officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages to the extent arising out of or relating to this Agreement, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, but only to the extent caused by the negligent act or omission of FIRM or FIRM'S officers, directors, members, partners, agents, employees, or consultants.

**5.2** To the extent permitted by applicable law, CITY shall indemnify and hold harmless FIRM and its officers, directors, members, partners, agents, employees, and consultants from reasonable claims, costs, losses, and damages to the extent arising out of or relating to this Agreement, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, but only to the extent caused by the negligent act or omission of CITY or CITY'S officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the CITY with respect to this Agreement.

## **ARTICLE 6 – INSURANCE**

**6.1** The FIRM shall, at all times, carry Workers' Compensation Insurance as required by statute, commercial general liability insurance including bodily injury and property damage; automobile liability coverage; and professional liability coverage. Insurance certificates will be provided to the CITY upon request.

**6.2** The FIRM shall name the CITY as an additional insured on insurance coverages provided by contractors on the project.

## **ARTICLE 7 – ASSIGNABILITY**

**7.1** FIRM shall not assign any interest on this Contract and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of CITY thereto. Provided, however, that claims for money by the FIRM from CITY under this Contract 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 CITY.

## **ARTICLE 8 – SUBSURFACE INVESTIGATIONS**

**8.1** In soils, foundation, groundwater, and other subsurface investigations, the actual characteristic may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total cost

and/or execution of projects. These conditions and cost/execution effects are not the responsibility of the FIRM.

## **ARTICLE 9 – CITY FURNISHED DATA**

**9.1** It is agreed that all information, data, reports and records and maps as are existing, available and necessary for the carrying out of the work outlined above shall be furnished to the FIRM by the CITY and its agencies. No charge will be made to the FIRM for such information and the CITY and its agencies will cooperate with the FIRM in every way possible to facilitate the performance of the work described in the Contract.

## **ARTICLE 10 – ACCESS TO FACILITIES AND PROPERTY**

**10.1** CITY will make its facilities accessible to the FIRM as required for the FIRM's performance of its services and will provide labor and safety equipment as requested by the FIRM for such access. CITY will perform, at no cost to the FIRM, such tests of equipment, machinery, pipelines, and other components of CITY's facilities as may be required in connection with the FIRM's services.

## **ARTICLE 11 – NO THIRD-PARTY BENEFICIARIES**

**11.1** Nothing contained in this agreement shall create a contractual relationship with, or a cause of action in favor of, any third party. It is expressly understood and agreed that the enforcement of these items and conditions shall be reserved to the CITY and the FIRM. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any third person. It is the express intent of the CITY and the FIRM that any such person or entity, other than the CITY and the FIRM, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary.

## **ARTICLE 12 – TERMINATION/CHANGES**

**12.1** Termination of Contract for Cause. If, through any cause, FIRM shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if FIRM shall violate any of the covenants, agreements, or stipulations of this Contract, CITY shall thereupon have the right to terminate this Contract by giving written notice to FIRM of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by FIRM under this Contract shall, at the option of CITY, become its property and FIRM shall be entitled to receive just and equitable compensation for Services completed hereunder.

Notwithstanding the above, FIRM shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of the Contract by FIRM, and CITY may withhold any payments to FIRM for the purpose of set-off until such time as the exact amount of damages due CITY from FIRM is determined.

**12.2** Termination for Convenience of CITY. CITY may terminate this Contract at any time by giving at least ten (10) days' notice in writing to FIRM. If the Contract is terminated by CITY as provided herein, FIRM will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of FIRM, Section 12.1 above relative to termination shall apply.

**12.3 Remedies.** In the event of any dispute, claim, question, or disagreement arising from or relating to determining the party responsible for any disallowed costs as a result of non-compliance with federal, state, or program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 60 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules.

**12.4 Changes.** CITY may, from time to time, request changes in the scope of the services, listed in Part 1, of FIRM to be performed hereunder. Such changes, including any increase or decrease in the amount of FIRM's compensation, which are mutually agreed upon by and between CITY and FIRM, shall be incorporated in written amendments to this Contract.

### **ARTICLE 13 – NOTICES**

**13.1** All notices, certifications, progress reports, or acknowledgements given under this Agreement shall be in writing and delivered personally or sent by registered mail, reputable overnight courier service, telegram, fax or other confirmed electronic means. Such notices shall be effective upon receipt by the addressee.

Notices to Halff Associates, Inc shall be sent to:

Halff Associates, Inc  
13620 Briarwick Drive, Ste. 100  
Austin, TX 78729  
Attention: Paul Morales, PE

Notice to CITY shall be sent to:

CITY of Kyle  
300 W Center St,  
Kyle, TX 78640,  
Attention: City Manager

### **ARTICLE 14 – GOVERNING LAW AND MISCELLANEOUS PROVISIONS**

**14.1** This Contract shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hays County, Texas.

**14.2** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Contract.

**14.4** If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

## **ARTICLE 15 – SEVERABILITY**

**15.1** In any case one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Contract shall not be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

## **ARTICLE 16 – PERSONNEL**

**16.1** FIRM represents that he/she has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with CITY.

**16.2** All of the services required hereunder will be performed by FIRM or under his/her 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.

**16.3** None of the work or services covered by this Contract shall be subcontracted without the prior written approval of CITY. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.

## **ARTICLE 17 – REPORTS AND INFORMATION**

**17.1** FIRM, at such times, and in such forms as CITY may require, shall furnish CITY such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

**17.2** Progress reports are due to the CITY on the 1<sup>st</sup> day of the beginning of the next reporting quarter on the following schedule:

Quarter 1 – October 1 (for the period July through September)  
Quarter 2 – January 1 (for the period October through December)  
Quarter 3 – April 1 (for the period January through March)  
Quarter 4 – July 1 (for the period April through June)

## **ARTICLE 18 – FEDERAL COMPLIANCE – REQUIRED CONTRACT PROVISIONS**

**18.1** Standard. Contracts for more than the simplified acquisition threshold, currently set at \$250,000. All payments or expenditures made by the CITY under this Agreement are subject to the CITY's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made. This Agreement is subject to termination for convenience upon not less than (10) days written notice to the FIRM if CITY has failed to allocate funds for the continued procurement of the service.

**18.2** Clean Air Act. The FIRM agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act as amended, 42 U.S.C. § 7401 et seq. The FIRM further agrees to:

- report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office; and
- the FIRM agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**18.3** Federal Water Pollution Control Act. The FIRM agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The FIRM further agrees to:

- a. Report each violation to the CITY and understands and agrees that the CITY, will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office; and
- b. The FIRM agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**18.4** Debarment and Suspension (Executive Order 12549 and 12689). The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified.

- a. Suspension and Debarment

1. This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the FIRM is required to verify that none of the FIRM'S principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The FIRM must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters.
3. This certification is a material representation of fact relied upon by the CITY. If it is later determined that the FIRM did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The FIRM agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The FIRM further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**18.5** Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification: If applicable, the FIRM must sign and submit to the CITY the Certification Regarding Lobbying (Appendix A, 44 C.F.R. Part 18).

**18.6** Solid Waste Disposal Act/Procurement of Recovered Material (2 CFR 200 Appendix II (K) and 2 CFR 200.322). A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of

the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. [78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014].

**18.7** Conflicts of Interest (24 CFR 570.489(g) and Uniform Grant Management Standards (UGMS) of the Texas Comptroller of Public Accounts, 2 CFR 200.318(c)(1).

- a. Governing Body. No member of the governing body of the CITY and no other officer, employee, or agent of the CITY, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of FEMA award between FEMA and the CITY, shall have any personal financial interest, direct or indirect, in the FIRM or this Contract; and the FIRM shall take appropriate steps to assure compliance.
- b. Other Local Public Officials. No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the FEMA award between TDEM and the CITY, shall have any personal financial interest, direct or indirect, in the FIRM or this Contract; and the FIRM shall take appropriate steps to assure compliance.
- c. The FIRM and Employees. The FIRM warrants and represents that it has no conflict of interest associated with the FEMA award between FEMA and the CITY or this Contract. The FIRM further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the FEMA award between FEMA and the CITY or in any business, entity, organization or person that may benefit from the award. The FIRM further agrees that it will not employ an individual with a conflict of interest as described herein.

**18.8** Section 504 of the Rehabilitation Act of 1973, as amended. The Firm agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.

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

**18.10** Energy Efficiency (2 CFR 200 Appendix II (H) and 42 U.S.C. 6201. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**18.11** Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms (2 CFR 200.321).

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
  - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
  - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
  - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
  - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's

business enterprises.

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

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

**ARTICLE 19 – FEDERAL COMPLIANCE – FEMA REQUIRED PROVISIONS**

**19.1 Access to Records** – The following access to records requirements apply to this contract:

- (1) The FIRM agrees to provide Texas Department of Emergency Management (TDEM), the CITY, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the FIRM which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The FIRM agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The FIRM agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the CITY and the FIRM acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**19.2 Findings Confidential.** All of the reports, information, data, etc., prepared or assembled by FIRM under this contract are confidential and FIRM agrees that they shall not be made available to any individual or organization without the prior written approval of CITY.

**19.3 Copyright.** No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of FIRM.

**19.4 Retention of Records.** All records related to this grant will be retained for a minimum of three (3) years from the date of closeout of the grant.

**19.5 Department of Homeland Security (DHS) Standard Terms and Conditions.** Firm shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**19.6 Compliance with Local Laws.** FIRM shall comply with all applicable laws, ordinances and codes of the State and local governments, and FIRM shall save CITY harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

**19.7 Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The FIRM will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**19.8 No Obligation by Federal Government.** The Federal Government is not a part to this contract and is not subject to any obligations or liabilities to the non-Federal entity, FIRM, or any other party pertaining to any matter resulting from the contract.

**19.9 Program Fraud and False or Fraudulent Statements or Related Acts.** The FIRM acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

## **ARTICLE 20 – TEXAS GOVERNMENT CODE PROVISIONS**

**20.1 Verification of No Boycott Israel.** As required by Chapter 2270, Texas Government Code, the FIRM hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

**20.2 Foreign Terrorist Organizations.** Pursuant to Chapter 2252, Texas Government Code, the FIRM represents and certifies that, at the time of execution of this Agreement neither the FIRM, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

**20.3 Anti-Boycott Verification – Energy Companies.** FIRM hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such Section is not inconsistent with a governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by the preceding statement in (A).

**20.4 Anti-Discrimination Verification – Firearm Entities and Firearm Trade Associations.** FIRM hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on

its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

#### **ARTICLE 21 – ENTIRE AGREEMENT AND MODIFICATIONS**

This Agreement and the Attachments incorporated by reference contain the entire understanding between the Parties, superseding all prior or contemporaneous communications, agreements, and understandings between the Parties with respect to the subject matter hereof. This Agreement may not be modified in any manner except by written amendment executed by both Parties.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

**HALFF ASSOCIATES, INC.**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**CITY OF KYLE, TEXAS**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

## **PART I** **SCOPE OF SERVICES**

Note, this Scope of Services is for this Contract only and may not reflect all services described in the Request for Qualifications under which these services were procured. As stated in the RFQ, other Contracts may be entered into between CITY and FIRM that cover additional services, or other services may be added to this Contract at a later date if amended by both parties.

CITY intends that this Contract cover a scope of services that will produce reports, drawings, budgets, and other documents required in pre-award and post-award engineering services for Hazard Mitigation Grant Assistance (HMGA).

FIRM shall perform the following tasks:

### **Post-Award Services**

1. Preliminary and Final Design Plans and Specifications
  - a. Prepare a preliminary report with an estimated budget.
  - b. Prepare detailed plans and technical specifications for the construction the improvements within the allowed budget.
  - c. Submit the drawings and specifications to the CITY for review and approval.
  - d. Upon completion of any revisions by the CITY, prepare final quantity takeoff for establishment of construction costs.
2. Bidding Phase Services
  - a. Coordinate with the CITY on specific pre-bid opening & bid opening dates and times to be specified in the advertisement for bids.
  - b. Complete the advertisement for bids and schedule required notices for publishing in the local area newspaper(s).
  - c. Prepare and provide construction documents including all contract document information for the bidding and construction of the project.
  - d. Provide the necessary copies of project manuals, plans, and specifications for bidding and construction of the project.
  - e. Attend pre-bid and bid opening conferences.
3. Construction Phase Services
  - a. Oversight of construction.
  - b. Inspection of work throughout construction and upon project completion.

### **Standard of Performance**

1. All services of FIRM and its independent professional associates, consultants and subcontractors will be performed in a professional, reasonable and prudent manner in accordance with generally accepted professional practice. The Firm represents that it has the required skills and capacity to perform work and services to be provided under this Contract.
2. FIRM represents that services provided under this Contract shall be performed within the limits prescribed by CITY in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances.
3. Any deficiency in FIRM's work and services performed under this Contract shall be subject to the provisions of applicable state and federal law. Any deficiency discovered shall be corrected upon notice from CITY and at FIRM's expense if the deficiency is due to FIRM's negligence. CITY shall notify FIRM in writing of any such deficiency and provide an opportunity for mutual investigation and resolution of the problem prior to pursuit of any judicial remedy. In any case, this provision shall in no way limit the judicial remedies

available to CITY under applicable state or federal law.

4. FIRM agrees to and shall hold harmless CITY, its officers, employees, and agents from all claims and liability of whatsoever kind or character due to or arising solely out of the negligent acts or omissions of FIRM, its officers, agents, employees, subcontractors, and others acting for or under the direction of FIRM doing the work herein contracted for or by or in consequence of any negligence in the performance of this Contract, or by or on account of any omission in the performance of this Contract.