



# **REQUEST FOR QUALIFICATIONS FOR ENGINEERING SERVICES**

## **RFQ 25-08** **2024-2025 TWDB – EDAP**

**Due Date:**  
**Tuesday, April 8, 2025, at 2:00 pm**

**CITY OF KINGSVILLE**  
*400 WEST KING AVE.*  
*KINGSVILLE, TEXAS 78363*  
April 8, 2025

**To Whom It May Concern:**

**Re: REQUEST FOR QUALIFICATIONS FOR ENGINEERING SERVICES; RFQ 25-08-TWDB-EDAP**

Dear Engineering Service Providers:

Attached is a copy of the City of Kingsville Request for Qualifications for engineering services for the 2024-2025 Economically Distressed Area Program (EDAP) Program project funded by the Texas Water Development Board (TWDB). The City of Kingsville is considering applying for such funding to support infrastructure improvement activities in the City of Kingsville, Texas.

Firms may submit proposals for any or all activities. Multiple contracts may be awarded as a result of this solicitation. The City will, in its sole discretion, determine the number of contracts awarded, and may decide not to award any contracts. The submission requirements for this proposal are also included in the attached RFQ. Firms and/or individuals should have past experience with federal and state funded programs. Please submit sealed statement of qualifications to:

Charlie Sosa  
Purchasing Manager  
City of Kingsville  
400 West King Ave.  
Kingsville, Texas 78363

**The deadline for submission of sealed statements of qualifications is at 2:00 p.m. on Tuesday, April 8, 2025.** It is the responsibility of the Responding Engineer to ensure that the proposal is received in a timely manner. Submittals received after the deadline will not be considered for award, regardless of whether the delay was outside of the control of the Respondent. The City of Kingsville reserves the right to negotiate with any, and all, persons or firms submitting statements of qualifications in accordance with the Texas Professional Services Procurement Act, Chapter 2254, TEX. GOV'T CODE ("the Act").

These services are funded by the Texas Water Development Board. Accordingly, any contract derived from this solicitation is subject to the Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) Program, which includes EPA-approved fair share goals toward procurement of Minority and Women-owned Business Enterprise (M/WBE) businesses. EPA rules require that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to M/WBEs through demonstration of the six affirmative steps. For more details of the DBE Program and the current, applicable fair share goals, please visit [www.twdb.texas.gov/DBE](http://www.twdb.texas.gov/DBE).

The City of Kingsville is an affirmative action/equal opportunity employer. The City of Kingsville does not discriminate based upon race, color, national origin, sex, sexual orientation, gender identity, religion, age or handicapped status in employment or the provision of services. Minority business enterprises, small business enterprises, and women business enterprises are encouraged to submit statements of qualifications.

Enclosures:  
Request for Statement of Qualifications

**Attachments**

- A. Engineering Services Rating Sheet
- B. Insurance Certification
- C. Child Support Statement for Negotiated Contracts and Grants
- D. Civil Rights Compliance
- E. System Award Management
- F. Anti-Collusion Affidavit
- G. Form CIQ - Conflict of Interest Questionnaire
- H. Certification Regarding Lobbying
- I. Disclosure of Lobbying Activities
- J. Form 1295 - Certificate of Interested Parties
- K. Mandatory Federal and State Contract Clauses

**REQUEST FOR QUALIFICATIONS (RFQ) FOR ENGINEERING SERVICES RFQ  
25-08-TWDB-EDAP**

The City of Kingsville is seeking to enter into an engineering services contract with an engineer/engineering firm to assist the City in the design of first time waste water connections including a lift station, gravity mains, force main, manholes, demo septic tanks, service lines, and related appurtenances, if funded by the Texas Water Development Board (“TWDB”) through the Economically Distressed Areas Program (“EDAP”) Program, and to assist the City in the application for such funding. The following outlines the request for sealed statements of qualifications for such engineering services.

**I.  
SCOPE OF WORK**

**A. Services Required.** The engineer/engineering firm(s) (“Engineer” or “Provider”) selected by the City of Kingsville will provide the following engineering and related services to the City for the wastewater project(s), if funded by the TWDB EDAP Grant Program:

**1. Phase 1.** Perform and provide all engineering services that are required for the preliminary and detailed design of the Project(s), which generally includes, but is not limited to, the complete design and full permitting of the Project, and specifically the following:

- a. Environmental Permitting:** Provide all engineering design services that are reasonably required to assist the City of Kingsville as an environmental consultant in the City’s applications for all environmental permits that are required for construction and implementation of the Project, including, but not

limited to any mitigation plan required for the Project, and coordination with all applicable permitting agencies.

**b. Preliminary and Final Design:** Complete the preliminary and final Project design, including:

- the design of all project features needed for project construction and implementation.
- Design of necessary utility relocation requirements and coordination with utility owners.
- Identification of final construction limits, including proposed real estate requirements and environmentally sensitive areas that should be avoided during construction.
- All Wastewater modeling that may be required in support of Project design.
- Easement Acquisitions

**c. Prepare Plans, Specifications, and Contract Documents, including:**

- Document project layout/staging areas.
- General and special construction notes.
- “Issued for Bid” project plans, including alignments, profiles, cross-sections, and construction details.
- Applicable project specific technical specifications.
- Design of necessary utility relocation requirements and coordination with utility owners.
- Construction contracting documents, including detailed bid documents.
- Detailed construction estimates as required to evaluate reasonableness of construction bids.

**d. Phase 1 Deliverables:** Create and provide to the City of Kingsville, or assist the City in the creation of all deliverables required by the TWDB, including, but not limited to the following:

- Narrative scope of work for Phase 1.
- Final cost estimate for Phase 1.
- Benefit Cost Analysis (BCA) file based on the study with supporting documentation (in coordination with the City of Kingsville Grant Administrator).
- 30%, 60% and 100% designs, with cost estimates, modeling, calculations, and permits.
- Complete set of signed and sealed Engineering Plans.

- Wastewater Calculations in accordance with TWDB deliverable requirements.
- Environmental Assessment.
- Permitting under the Clean Water Act with United States Core of Engineers (USACE).
- Approval of TCEQ Permits
- Any other actions, responses or documentation that the TWDB may require from the City of Kingsville associated with the above-referenced grant award.

**2. Phase 2:** Perform and provide all engineering and related services reasonably required or requested by the City of Kingsville for construction, and full and complete implementation of the Project, including, but not limited to:

- a. Construction project management.
  - Review and respond to contractor submittals.
  - Respond to contractor requests for information (RFIs).
  - Provide engineered modifications, as necessary, to address discovery of items and changed field conditions during the construction period.
- b. Construction project observation at a minimum frequency of twice per week during active construction periods and inspection of critical elements as needed to ensure contractor is not delayed at key points of construction.
- c. Review all change order requests from the contractor and provide recommendations to the City of Kingsville for action and/or response.
- d. Review contractor pay requests and recommend payment based on acceptable construction progression.
- e. Provide bi-weekly (every 2 weeks) construction progress reports to the City of Kingsville.
- f. Construction project close-out.
- g. Provide final “record” drawings based on contractor submittals.
- h. Prepare, for execution by the City of Kingsville, a Certificate of Completion within 30 days of final inspection and acceptance of construction.
- i. All closeout documents

## **B. Personnel and Equipment Requirements**

1. **Engineer Requirements:** The Respondent shall be an engineer or engineering firm, and all engineering work accomplished under this Scope of Services will be performed in accordance with the laws and rules of the State Board of Registration for Professional Engineers and Land Surveyors (TBPELS).
2. **Equipment:** Provide computer hardware, software and other equipment necessary to accomplish the services requested by the Department.
3. **Contracted Services:** The Engineers shall be capable of providing all services described herein, although the Engineers may subcontract with other engineers to provide some of such services. In any event, all subcontractors must be approved by the City of Kingsville, and such approval shall be at the sole discretion of the City.

## II. STATEMENT OF QUALIFICATIONS

- A. **Intent:** The City of Kingsville is seeking to contract with one, or more, competent Engineers registered to practice in the State of Texas with qualifications and experience in the following types of projects:
1. Design and construction management of public work projects, and specifically Wastewater infrastructure improvement projects.
  2. State and federally funded wastewater improvement studies, and design and construction projects.
  3. Wastewater improvement projects involving gravity lines, manholes, cleanouts, force main, and lift station structures, service lines, taps and demo of existing septic tanks.
- B. **Transmittal Letter.** Each Respondent shall include a transmittal letter that includes the following information:
1. A brief statement, signed by the proposed lead project engineer, communicating why the Respondent should be selected.
  2. Confirmation that the Respondent meets the appropriate state licensing requirements to practice as an engineer in Texas. *See*, TEX. OCC. CODE §1001.301.
  3. Confirmation that the Respondent has not had a record of substandard work within the last five (5) years.
  4. Confirmation that the Respondent has not engaged in any unethical practices within the last five (5) years.

## III.

## EVALUATION CRITERIA

- A. Scoring:** The Statement of Qualifications received will be evaluated and ranked according to criteria and using a scoring system as reflected in the attached rating sheet (*See, Attachment A*).
- B. Factors:** The City of Kingsville will review and evaluate each Respondent's qualifications, and the most qualified Respondent(s) will be selected, subject to negotiation of fair and reasonable compensation.

## IV. SUBMISSION REQUIREMENTS

- A. Statement of Qualifications ("SOQ" or "SOQs"):** Each Respondent shall submit a SOQ demonstrating competence and expertise in the areas of practice outlined in this solicitation. SOQs shall be limited to not more than **twenty (20) pages**, exclusive of resumes, tabs and required attachments. The SOQ shall include:
- 1) Any information that the Respondent deems appropriate in support of its submittal;
  - 2) Respondent's company profile;
  - 3) A list of past local governmental clients, as well as resumes of all engineers/architects/surveyors that will or may be assigned to this project should the Respondent receive an engineering services contract award; and
  - 4) 4) A list with a minimum of five (5) references.
- B. Insurance:** Each Respondent must affirmatively state that the Engineer, if selected by the City of Kingsville, is capable of obtaining, and shall obtain insurance in the following amounts:
- I. Commercial General Liability Limits  
(Underlying Coverage):

Each Occurrence	\$ 1,000,000
Fire Damage to Rented Premises	\$ 300,000
Medical Expenses	\$ 10,000
Personal & Adv. Injury	\$ 1,000,000
General Aggregate	\$ 2,000,000
Products-Comp/Ops Aggregate	\$ 2,000,000
  - II. Auto Liability Limits (Underlying Coverage):

Combined Single Limits for Owned, Hired & Non-Owned	\$ 1,000,000
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  - III. Umbrella Liability Limits for Commercial General Liability  
(I, above) and Auto Liability (II, above):

Each Occurrence	\$ 2,000,000
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- |     |   |              |
|-----|---|--------------|
|     | Aggregate                                     | \$ 2,000,000 |
| IV. | Professional Liability (Underlying Coverage): |              |
|     | Per Claim                                     | \$ 2,000,000 |
|     | Annual Aggregate                              | \$ 2,000,000 |
- C. **Child Support Statement for Negotiated Contracts and Grants (Attachment C).**
- D. **Civil Rights Compliance (Attachment D).**
- E. **System for Award Management:** Respondent must include a certification that the Respondent, or any of its lead engineers who may provide some or all of the services on behalf of the Respondent, is not debarred or suspended from the Excluded Parties List System (“EPLS”) in the System for Award Management (“SAM”) (*See, Attachment E*). Respondent must include verification that the Respondent, as well as the Respondent’s key employees, are not listed (are not debarred) through the SAM as indicated on the website <https://sam.gov/SAM/>. Each Respondent must enclose a printed copy of the search results (including the record date).
- F. **Affidavit of Non-Collusion:** Respondent must complete and include the Affidavit of NonCollusion (*See, Attachment F*).
- G. **Form CIQ.** Each Respondent (and/or any key employee of Respondent) seeking to contract with a local government entity must disclose the Engineer’s (and/or any key employee of Respondent) employment, affiliation, business relationship, family relationship or provision of gifts that might cause a conflict of interest with a local government entity. *See*, Chapter 176, [TEX. GOV](http://www.texas.gov)’T CODE. Accordingly, each Respondent (and/or any key employee of Respondent) must complete and attach Questionnaire Form CIQ, a copy of which is included in the RFQ (*See, Attachment G*).
- H. **Certification Regarding Lobbying:** A Certification for Contracts, Grants, Loans, and Cooperative Agreements (*See, Attachment H*) is included in the RFQ and must be included in each Respondent’s submittal.
- I. **Disclosure of Lobbying Activities:** Each Respondent must complete a Disclosure of Lobbying Activities (*See, Attachment I*) of the Respondent, or its key employees.
- J. **Form 1295.** Effective January 1, 2016, all contracts and contract amendments, extensions, or renewals executed by the State of Texas will require the completion of Form 1295 “Certificate of Interested Parties.” *See*, [TEX. GOV](http://www.texas.gov)’T CODE §2252.908. Each Respondent that is awarded a contract must complete and submit Form 1295 at the same time as the Engineer submits a signed contract. A copy of Form 1295 is included in this RFQ for the convenience of each Respondent (*See, Attachment J*).
- K. **Mandated Federal and State Contract Provisions:** All contracts between the City of Kingsville and a Respondent must include the mandated federal and state contract clauses (*see, Attachment K*).



V.  
**DISADVANTAGED BUSINESSES**

- A. Disadvantaged Businesses Encouraged To Participate:** Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. Small and minority businesses, women's business enterprises, and labor surplus area firms are encouraged to participate in this RFP.
- B. Affirmative Steps Required:** If the awarded vendor is a prime contractor and may use subcontractors, the following affirmative steps are required of the prime contractor:
- 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.
  - 6) Minority Business Enterprises, Small Business Enterprises, Women Business Enterprises, and labor surplus area firms are encouraged to submit proposals.
- C. Disadvantaged Business Enterprise Program:** Any contract derived from this RFQ is subject to the Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) Program, which includes EPA-approved fair share goals toward procurement of Minority and Women-owned Business Enterprise (M/WBE) businesses. EPA rules require that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to M/WBEs through demonstration of the six affirmative steps. For more details of the DBE Program and the current, applicable fair share goals, please visit [www.twdb.texas.gov/DBE](http://www.twdb.texas.gov/DBE).

**VI.**  
**FORM AND DEADLINE FOR SUBMISSION**

- A. Deadline/Number of Copies:** Statements of Qualification must be received in the City of Kingsville Purchasing Manger office no later than **Tuesday, April 8, 2025, by 2:00 p.m.** It is the responsibility of the Engineer to ensure that the proposal is received in a timely manner. SOQs received after the deadline will not be considered for award, regardless of whether the delay was outside the control of the Engineer. Please submit one (1) original and four (4) hard copies to the following address: **Charlie Sosa, Purchasing Manager, City of Kingsville, 400 West King Ave., Kingsville, Texas 78363.**

**(If original is in color, please submit the copies in color and mark "Copy")**

- B. Method of Delivery:** The submittal must be delivered in a sealed 9 x 12 or larger envelope clearly marked on the outside: “RFQ 25-08-TWDB-EDAP”.
- C. Project Contact Person.** Any and all questions or requests for additional information shall be directed to Charlie Sosa by email at [csosa@cityofkingsville.com](mailto:csosa@cityofkingsville.com), and such email must include “RFQ 25-08-TWDB-EDAP” in the subject heading thereof. All questions or requests must be submitted **no later than Tuesday, April 1, 2025**. The City of Kingsville will attempt to provide a response to such an inquiry within three (3) business days.
- D. Opening of Submittals.** The City of Kingsville will open the submittals at **2:00 p.m. on Tuesday, April 8, 2025**, in the Helen Groves Community Room City Hall of the City of Kingsville located at **400 West King Ave., Kingsville, Texas 78363**. The public is invited to attend.

<b>Engineer:</b>	
<b>Evaluator:</b>	
TWDB EDAP	<b>Date:</b> /        / 2024

**EXPERIENCE:** Rate the Engineer for experience in the following areas:

Factor	Max Pts.	Score
Has previously designed wastewater improvement projects that are funded, in whole or in part, by state or federal agencies or departments.	10	
Has designed first time connection wastewater projects within coastal areas in South Texas region and is familiar with the local topography, climate, environmental conditions, and other factors that can impact the project.	40	
Extent of experience in project construction management.	10	
<b>Total Score:</b>	<b>60</b>	

**WORK PERFORMANCE:**

Factor	Max Pts.	Score
Past projects completed on schedule without requesting time extensions	10	
Manages projects within budgetary constraints	5	
Work is high quality with minimal errors and omissions	10	
<b>Total Score:</b>	<b>25</b>	

**CAPACITY TO PERFORM:**

Factor	Max Pts.	Score
Staff level/Experience of Staff	5	
Adequacy of resources, including ability to attend in-person meetings with limited notice, provide agenda and meeting minutes	5	
Professional liability insurance is in force	5	
<b>Total Score:</b>	<b>15</b>	

**TOTAL SCORE:**

Factor	Max Pts.	Score
Experience	60	
Work performance	25	
Capacity to perform	15	
<b>Total Score:</b>	<b>100</b>	

## ATTACHMENT B

### *Attach Insurance Certification or Binder*

#### **Certification**

I, \_\_\_\_\_, as a duly authorized representative of \_\_\_\_\_  
(full name) (name of firm)

certify that evidence of required general liability, worker's compensation, and professional liability insurance for personnel assigned to the project and automobile insurance for any vehicles used for the project in the amounts in this RFQ shall be provided to the issuer of this RFQ within 10 calendar days of any Notice of Award.

\_\_\_\_\_  
Signature – Company Official

\_\_\_\_\_  
Printed/Typed Firm Name

\_\_\_\_\_  
Printed/Typed Name/Title

\_\_\_\_\_  
Date

**ATTACHMENT C**  
**CHILD SUPPORT STATEMENT FOR**  
**NEGOTIATED CONTRACTS AND GRANTS**

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is eligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate.

List below the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25% of the business entity submitting the bid or application.

NAME	SOCIAL SECURITY NUMBER

Section 231.006, Family Code, specifies that a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25% is not eligible to receive payments from state funds under a contract to provide property, materials, or services; or receive a state-funded grant or loan.

A child support obligor or business entity ineligible to receive payments described above remains ineligible until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency.

Except as provided by Section 231.302(d), Family Code, a social security number is confidential and may be disclosed only for the purpose of responding to a request for information from an agency operating under the provision of Parts A and D of Title IV of the federal Social Security Act (42 USC Section 601417 and 651-669).

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Signature – Company Official

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Printed/Type Firm Name

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Printed/Typed Name and Title

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Date

**ATTACHMENT D**  
***CIVIL RIGHTS COMPLIANCE***

**1. Nondiscrimination**

The Architect/Engineer, with regard to the work performed by him or her during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Architect/Engineer shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 and Part 710.405(b) of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

**2. Solicitations for Subcontracts Including Procurement of Materials and Equipment**

In all solicitations either by competitive bidding or negotiation made by the Architect/Engineer for work to be performed under a subcontract including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Architect/Engineer of the Architect/Engineer's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

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Signature – Company Official

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Printed/Typed Firm Name

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Printed/Typed Name/Title

---

Date

## Attachment E

### SYSTEM FOR AWARD MANAGEMENT INFORMATION

**Federal Award Management Registration**

CALL NOW TO SPEAK TO A REGISTRATION SPECIALIST  
**(844) 513-9067**



## SYSTEM FOR AWARD MANAGEMENT REGISTRATION SUPPORT

Complete Your SAM.gov Registration Or Renewal Online. Registration Advisors Are Standing By To Provide Immediate Assistance And Expedited Registration Service.

### START YOUR SAM REGISTRATION HERE!

<input type="text"/>	<input type="text"/>	<input type="text"/>
First Name	Last Name	Business Name
<input type="text"/>	<input type="text"/>	What type of registration is this?
Phone	Email	<input type="checkbox"/> New <input type="checkbox"/> SAM Renewal <input type="checkbox"/> CCR Renewal

Get Registered Now!

Step 1 of 3 contact details

## System For Award Management Registration (SAM)

### SAM Registration Is Required To Win Contracts and Receive Grants

A SAM registration is required for any business, organization, or agency that is eligible to, or plans to, receive payments from the federal government. In order to qualify for federal contracts or grants, a fully accurate, and compliant System For Award Management registration is required. More importantly if you have already completed a government contract or have been awarded a grant, an up-to-date SAM registration is required in order for you to receive payment.



Registration Specialists Are Standing By To Assist

SAM | CCR | ORCA | CAGE

Get Your SAM Registration Expedited

**(844) 513-9067**

**Attachment F**

**STATE OF TEXAS** \_\_\_\_\_ §  
\_\_\_\_\_  
\_\_\_\_\_  
**COUNTY OF** \_\_\_\_\_ §  
\_\_\_\_\_

**ANTI-COLLUSION AFFIDAVIT**

**BEFORE ME**, the undersigned authority, on this day personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed to the following, who, upon oath says:

“I am the Manager, Secretary, or other Agent or Officer or the Principal of the Engineer in the matter of the proposal to which this affidavit is attached, and I have full knowledge of the relations of the Engineer with the other firms in this same line of business, and the Engineer is not a member of any trust, pool or combination to control the price of the services in this proposal, or to influence any person to submit a proposal or not to submit a proposal thereon.

I further affirm that the Engineer has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted proposal.”

**AFFIANT FURTHER SAYETH NAUGHT**

\_\_\_\_\_  
**AFFIANT**

**SWORN TO AND SUBSCRIBED BEFORE ME** by the above Affiant, who, upon his or her oath, states that the facts contained in the above are true and correct, this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
**NOTARY PUBLIC – STATE OF TEXAS**

Engineer: \_\_\_\_\_  
Signed By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_



**NOTE: SUBMITTALS UNACCOMPANIED BY THIS AFFIDAVIT WILL NOT BE CONSIDERED**

The City of Kingsville, Texas is an affirmative action/equal opportunity employer. The City of Kingsville does not discriminate based on race, color, national origin, sex, sexual orientation, gender identity, religion, age or handicapped status in employment or the provision of services. Minority business enterprises, small business enterprises, women business enterprises, and labor surplus area firms are encouraged to submit statements of qualifications.

## Attachment G

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b> <b>For vendor doing business with local governmental entity</b>		<b>FORM CIQ</b>
<p><b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b></p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>		<b>OFFICE USE ONLY</b>
1	<b>Name of vendor who has a business relationship with local governmental entity.</b>  <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div>	Date Received  <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div>
2	<input type="checkbox"/> <b>Check this box if you are filing an update to a previously filed questionnaire.</b> (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)	
3	<b>Name of local government officer about whom the information is being disclosed.</b>  <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> <p style="text-align: center; margin-top: 5px;">Name of Officer</p>	
4	<b>Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</b>	
<div style="margin-bottom: 20px;"> <p>A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <div style="display: flex; justify-content: center; gap: 50px;"> <input type="checkbox"/> Yes                             <input type="checkbox"/> No                         </div> </div> <div> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <div style="display: flex; justify-content: center; gap: 50px;"> <input type="checkbox"/> Yes                             <input type="checkbox"/> No                         </div> </div>		
5	<b>Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</b>	
6	<input type="checkbox"/> <b>Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</b>	
7	<div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 60%;"> <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> <p style="text-align: center; margin-top: 5px;">Signature of vendor doing business with the governmental entity</p> </div> <div style="width: 35%;"> <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> <p style="text-align: center; margin-top: 5px;">Date</p> </div> </div>	

**CONFLICT OF INTEREST QUESTIONNAIRE**  
**For vendor doing business with local governmental entity**

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

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

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

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

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

\*\*\*

- (2) the vendor:

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

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

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

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

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

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

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

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

- (1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

**Attachment H**

## **CERTIFICATION REGARDING LOBBYING**

### *44 C.F.R. PART 18*

#### **Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C.Chap.38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
*Signature of Contractor's Authorized Official*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Name and Title of Contractor's Authorized Official*

## **Attachment I**

### **DISCLOSURE OF LOBBYING ACTIVITIES**

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

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

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the sub-awardee, e.g., the first sub-awardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Sub-awardee," then enter the full name, address, city, State and zip code of the prime Federal recipient.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFQ) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., “RFQ-DE-90-001.”
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. Identification of Lobbyists.
  - (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
  - (b) Enter the full names of the individual(s) performing services and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
10. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (03480046), Washington, DC 20503

Approved by OMB

0348-0046

### Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 (See reverse for public burden disclosure)

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

<b>Federal Use Only</b>	<b>Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)</b>
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**Attachment J**



# **CERTIFICATE OF INTERESTED PARTIES**

**FORM 1295**

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## **OFFICE USE ONLY**

**1** Name of business entity filing form, and the city, state and country of the business entity's place of business.

**2** Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

**3** Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

**5** Check only if there is no Interested Party. ☐

## **6 UNSWORN DECLARATION**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address: \_\_\_\_\_ (street) \_\_\_\_\_ (city) \_\_\_\_\_ (state) \_\_\_\_\_ (zip code) \_\_\_\_\_ (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(month) (year)

\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)

**ADD ADDITIONAL PAGES AS NECESSARY**

**Attachment K**

## **MANDATORY FEDERAL AND STATE CONTRACT CLAUSES**

### **I. Contract Clauses Mandated By The State Of Texas**

**Contract Clauses Mandated by The State Of Texas.** The State of Texas mandates the following clauses and must be included in any Agreement pertaining to work or services funded in whole or in part by an agency of the State of Texas. Accordingly, the Parties agree as follows:

- A. Antitrust Affirmation:** The Contractor affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Agreement, neither the Contractor nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, TEX. BUS. & COMM. CODE, Chapter 15; (2) in connection with this Agreement, neither the Contractor nor any representative of the Contractor has violated any federal antitrust law; and (3) neither the Contractor nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Agreement to a competitor of the Contractor or any other company, corporation, firm, partnership, or individual engaged in the same line of business as the Contractor. TEX. GOV'T CODE §2155.005.
- B. Assignment:** The Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the City of Kingsville and/or TWDB. Any attempted assignment in violation of this provision is void and without effect. TEX. GOV'T CODE §2262.056(d)(1).
- C. Buy Texas Affirmation:** In accordance with Section 2155.4441 of the Texas Government Code, the Contractor agrees that during the performance of a contract for services, it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside the State of Texas. TEX, GOV'T CODE §2155.4441.
- D. Child Support Obligation:** Under Section 231.006 of the Family Code, the Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Agreement may be terminated, and payment may be withheld if this certification is inaccurate. TEX. FAM. CODE §§231.006 and 231.302.
- E. Contracting Information Responsibilities:** In accordance with Section 552.372 of the Texas Government Code, the Contractor agrees to (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to the City of Kingsville /TWDB for the duration of the Agreement, (2) promptly provide to the City of Kingsville /TWDB any contracting information related to the Agreement that is in the custody or possession of the Contractor on request of the City of Kingsville /TWDB, and (3) on termination or expiration of the Agreement, either provide at no cost to the City of Kingsville

/TWDB all contracting information related to the Agreement that is in the custody or possession of the Contractor or preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the City of Kingsville /TWDB. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Agreement, and the Contractor agrees that the Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. TEX. GOV'T CODE §552.372.

- F. COVID-19 Vaccine Passport Prohibition:** The Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. The Contractor acknowledges that such a vaccine or recovery requirement would make the Contractor ineligible for a state-funded contract. TEX. HEALTH & SAFETY CODE §161.0085.
- G. Critical Infrastructure Affirmation:** Pursuant to Section 2274.0102 of the Texas Government Code, the Contractor certifies that neither it nor its parent company, nor any affiliate of the Contractor or the affiliate's parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Section 2274.0103 of the Texas Government Code, or (2) headquartered in any of these countries. TEX. GOV'T CODE §2274.0102.
- H. Cybersecurity Training:** The Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and the required verification of completion of the training program. TEX. GOV'T CODE §2054.5192.
- I. Dealings with Public Servants Affirmation:** Pursuant to Section 2155.003 of the Texas Government Code, the Contractor represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Agreement. TEX. GOV'T CODE §572.051(a)(1), TEX. GOV'T CODE §2155.003, and 34 TAC §20.157.
- J. Debts and Delinquencies Affirmation:** The Contractor acknowledges and agrees that to the extent the Contractor owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts the Contractor is otherwise owed under the Agreement may be applied toward any debt the Contractor owes the State of Texas until the debt is paid in full. These provisions are effective at any time the Contractor owes any such debt or delinquency. TEX. GOV'T CODE §2252.903.

- K. Disaster Recovery Plan:** Upon request of the District, the Contractor shall provide the descriptions of its business continuity and disaster recovery plans. TEX. GOV'T CODE §441.190; 13 TAC §6.94(a)(9).
- L. Disclosure of Prior State Employment:** In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, the Contractor certifies that it does not employ an individual who has been employed by the District or another agency of the State of Texas at any time during the two years preceding the submission of the response to the solicitation made the basis of this Agreement or, in the alternative, the Contractor has disclosed in its response to the solicitation made the basis of this Agreement the following: (i) the nature of the previous employment with the District or another agency of the State of Texas; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination. TEX. GOV'T CODE §2254.033.
- M. Dispute Resolution (General):** For all agreements other than agreements for Engineering and Architectural services, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract. However, this provision does not apply to Agreements to render professional engineering, architectural, or construction services. TEX. GOV'T CODE §2260.001 *et seq.*
- N. Dispute Resolution (Engineering, Architectural or Construction Services):** Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set forth below in subsections (a)-(d) shall be used by the Parties to attempt to resolve all disputes arising under this contract. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the Parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d).
- a. Notwithstanding Texas Government Code, Chapter 2260.002(3) and Chapter 114.012 and any other statute or applicable law, if the Contractor's claim for breach of contract cannot be resolved by the Parties in the ordinary course of business, the Contractor may make a claim against the City of Kingsville for breach of contract; and the City of Kingsville may assert a counterclaim against the Contractor as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, the Contractor must provide written notice to the City of Kingsville of a claim for breach of the contract not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity: (1) the nature of the alleged breach, (2) the amount the Contractor seeks as damages, and (3) the legal theory of recovery.

- b. The chief administrative officer, or if designated in the contract, another officer of the City of Kingsville, shall examine the claim and any counterclaim and negotiate with the Contractor in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052.
- c. If the negotiation under paragraph (b) above results in the resolution of some disputed issues by agreement or in a settlement, the Parties shall reduce the agreement or settlement to writing, and each Party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a Party's rights under this contract as to the parts of the claim that are not resolved.
- d. If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with the City of Kingsville unless the Parties agree in writing to an extension of time, the Parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by the City of Kingsville if the Parties are unable to resolve their disputes as described in this section.
- e. Nothing in the Agreement shall be construed as a waiver of the State of Texas' or the City of Kingsville sovereign immunity. This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the City of Kingsville, the State of Texas, or any agency of the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the City of Kingsville t, the State of Texas, or any agency of the State of Texas under this Agreement or under any applicable statute, rule or regulation of the State of Texas or the United States of America shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. The City of Kingsville does not waive any privileges, rights, defenses, or immunities available to the city's by entering into this Agreement or by its conduct or by the conduct of any representative of the City of Kingsville prior to or subsequent to entering into this Agreement.
- f. Compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the Contractor:
  - 1. filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code; or

2. initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Government Code.

TEX. CIV. PRAC. & REM. CODE §144.001 *et seq.*

- O. Energy Company Boycotts:** The Contractor represents and warrants that (1) it does not, and will not for the duration of the contract, boycott energy companies or

(2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Agreement. If circumstances relevant to this provision change during the course of the Agreement, the Contractor shall promptly notify the City of Kingsville. TEX. GOV'T CODE §2271.002.
- P. Entities That Boycott Israel:** The Contractor represents and warrants that (1) it does not, and shall not for the duration of the Agreement, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Agreement. If circumstances relevant to this provision change during the course of the Agreement, the Contractor shall promptly notify the City of Kingsville. TEX. GOV'T CODE §2271.002.
- Q. E-Verify Program:** The Contractor certifies that it utilizes and will continue to utilize the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of (1) all persons employed by the Contractor to perform duties within Texas during the term of the Agreement and (2) all persons, including subcontractors, assigned by the Contractor to perform work pursuant to the contract within the United States of America. EXECUTIVE ORDER NO. RP-80; TEX. ATT'Y GEN. OP. NO. KP-70 (2016).
- R. Excess Obligations Prohibited:** The Agreement is subject to termination or cancellation, without penalty to the City of Kingsville t, either in whole or in part, subject to the availability of state funds. TEX CONST ART III § 49a; TEX CONST ART VIII § 6; General Appropriations Act, Senate Bill 1, 87th R.S. at Art IX, § 6.03.
- S. Excluded Parties:** The Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of the Treasury, Office of Foreign Assets Control. EXECUTIVE ORDER NO. 13224.
- T. Executive Head of a State Agency Affirmation:** In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, the Contractor certifies that it is not (1) the executive head of the City of Kingsville /TWDB, (2) a person who at any time during the four years before the date of the Agreement was the executive head of the City of Kingsville /TWDB, or (3) a person who employs a current or former executive head of the City of Kingsville /TWDB. TEX. GOV'T CODE §669.003.

- U. **False Statements:** The Contractor represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a response to the underlying solicitation with a false statement or material misrepresentations made during the performance of a contract is a material breach of this Agreement and may void the submitted response to the underlying procurement solicitation as well as this Agreement. TEX. GOV'T CODE §2155.077(a)(2).
- V. **Financial Participation Prohibited Affirmation:** Pursuant to Section 2155.004(a) of the Texas Government Code, the Contractor certifies that neither the Contractor nor any person or entity represented by the Contractor has received compensation from the City of Kingsville /TWDB to participate in the preparation of the specifications or solicitation on which this Agreement is based. Under Section 2155.004(b) of the Texas Government Code, the Contractor certifies that the individual or business entity named in this Agreement is not ineligible to be a party to the specified Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate. TEX. GOV'T CODE §2155.004.
- W. **Firearms Entities and Trade Associations Discrimination:** The Contractor verifies that: (1) it does not, and will not for the duration of the Agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Agreement. If circumstances relevant to this provision change during the Agreement, the Contractor shall promptly notify the District/TWDB. TEX. GOV'T CODE §2274.001 *et seq.*
- X. **Foreign Terrorist Organizations:** The Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code. TEX. GOV'T CODE §2252.152.
- Y. **Former Agency Employees:** In accordance with Section 2252.901 of the Texas Government Code, the Contractor represents and warrants that for professional services contracts as described by Chapter 2254 of the Texas Government Code, if a former employee of the City of Kingsville /TWDB was employed by the Contractor within one (1) year of the employee's leaving the District/TWDB, then such employee will not perform services on projects with the Contractor that the employee worked on while employed by the City of Kingsville /TWDB. TEX. GOV'T CODE §2252.901.
- Z. **Governing Law and Venue:** The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Kleberg County, Texas unless the specific venue is

otherwise identified in a statute that directly names or otherwise identifies its applicability to the contracting Agency. TEX. GOV'T CODE §2155.0012.

**AA. Human Trafficking Provision:** Under Section 2155.0061 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this Agreement is not ineligible to enter into this Agreement and acknowledges that this Agreement may be terminated, and payment withheld if this certification is inaccurate. TEX. GOV'T CODE 2155.0061.

**AB. Indemnification (Engineering Services):** NOTWITHSTANDING ANY OTHER PROVISION APPEARING IN THIS AGREEMENT, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE CITY OF KINGSVILLE\ TWDB, AS WELL AS THE STATE OF TEXAS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO RESPONDENT'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO CONTRACTOR, OR ANY OTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY THE CONTRACTOR WITH THE CITY OF KINGSVILLE AS WELL AS LEGAL COUNSEL FOR TWDB AND/OR THE STATE OF TEXAS AS THE CASE MAY BE WHEN STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT, AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE CITY OF KINGSVILLE, LEGAL CONSEL FOR TWDB, THE OFFICE OF THE TEXAS ATTORNEY GENERAL. THE CONTRACTOR AND THE CITY OF KINGSVILLE, LEGAL COUNSEL FOR TWDB, AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. ART. VIII, § 6, TEXAS CONSTITUTION; TEX. GOV'T CODE §2254.0031.

**AC. No Conflicts of Interest:** The Contractor represents and warrants that the provision of goods and services or other performance under the Agreement will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. TEX. GOV'T CODE §§2252.908, 2252.032, and 2261.252(b).

**AD. Prior Disaster Relief Contract Violation:** Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Contractor certifies that the individual or



business entity named in this Agreement is not ineligible to be a party to this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

**AE. Texas Public Information Act:** The Contractor understands that the City of Kingsville /TWDB will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material concerning the underlying solicitation and/or this Agreement may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, the Contractor is required to make any information created or exchanged with the City of Kingsville /TWDB

or the State of Texas pursuant to the Agreement and not otherwise excepted from disclosure under the Texas Public Information Act available in a format that is accessible by the public at no additional charge to the State. TEX. GOV'T CODE §552.001 *et seq.*; TEX. GOV'T CODE §2252.907.

**AE. Signatory Authority:** By executing this Agreement, the Contractor represents and warrants that the individual executing this Agreement, as well as any ancillary documents made part of this Agreement, is authorized to sign such documents on behalf of the Contractor and to bind the Contractor under this Agreement that may be based on the Contractor's response to the underlying solicitation. TEX. GOV'T CODE 2155.0012.

**AF. Standard of Care for Engineers:** Notwithstanding any other provision in this Agreement, Pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Respondent shall perform services (1) with professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer. TEX. GOV'T CODE §2254.301 and TEX. GOV'T CODE §271.904(a)-(e) and (g).

**AG. State Auditor's Right to Audit:** Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any Agreement or indirectly through a subcontract under the Agreement. The acceptance of funds by the Contractor or any other entity or person directly under the Agreement or indirectly through a subcontract under the Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

The Contractor shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Agreement and the requirement to cooperate is included in any subcontract it awards. TEX. GOV'T CODE §2262.154.

**AL. Suspension and Debarment:** The Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration of the United States. TEX. GOV'T CODE §2155.077.

**27. Contract Clauses Mandated By The United States Government:** The Contractor acknowledges its full and complete understanding that the Work that it provides pursuant to this Agreement will be funded in whole or in part by the Texas Water Development

Board ("TWDB") and that notwithstanding any other provisions set forth in this Agreement, the following provisions govern the responsibilities of the Parties, and the Contractor shall comply with all the following provisions:

**A. Equal Employment Opportunity:** During the performance of this Agreement,

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of The Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided 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.

4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. 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.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement 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 as 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.
7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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 that the 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.

**B. Davis Bacon Act and Copeland Anti-Kickback Act – Compliance with the Copeland "Anti-Kickback" Act.**

1. **“Kickbacks” Prohibited:** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
2. **Subcontracts:** The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the Funding Agency may by appropriate instructions require, and a clause requiring the

subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with all these contract clauses.

3. **Breach:** A breach of the Agreement clauses above may be grounds for termination of the Agreement and for debarment as a contractor and subcontractor as provided in 29 C.F.R. §5.12.

**C. Compliance with the Contract Work Hours and Safety Standards Act.**

1. **Overtime Requirements:** The Contractor or any subcontractor contracting for any part of the Work which may require or involve the employment of laborers or mechanics shall not require or permit any such laborer or mechanic in any workweek in which he or she is employed to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; Liability for Unpaid Wages; Liquidated Damages:** In the event of any violation of the clause set forth in paragraph (1) of this section, the Contractor, and any subcontractor responsible therefore, shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the City of Kingsville for liquidated damages). Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 or such other amount required by law, for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. **Withholding for Unpaid Wages and Liquidated Damages.** The City of Kingsville shall, upon its own action or written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any money payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same contract, or any other federally-assisted contract subject to the contract work hours and Safety Standards Act, which is held by the same contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. **Subcontracts.** The Contractor or its subcontractor(s) shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this

section and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

**D. Clean Air Act:**

1. The Contractor 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.*
2. The Contractor agrees to report each violation to the Texas Commission on Environmental Quality (TCEQ) and understands and agrees that TCEQ will, in turn, report each violation as required to assure notification to the City of Kingsville, the appropriate Environmental Protection Agency Regional Office, FEMA, or other appropriate state or federal agency.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by TWDB.

**E. Federal Water Pollution Control Act:**

1. The Contractor 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.*
2. The Contractor agrees to report each violation to the Texas Commission on Environmental Quality (TCEQ) and understands and agrees that TCEQ will, in turn, report each violation as required to assure notification to the District, Federal Emergency Management Agency, the appropriate Environmental Protection Agency Regional Office and/or other appropriate state or federal agency.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the TWDB.

**F. Debarment and Suspension.**

1. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that neither the Contractor nor its principles (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 Contractor 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 of Kingsville. If it is later determined that the Contractor 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 of Kingsville, the federal government may pursue available remedies, including (but not limited to) suspension and/or debarment.
4. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, throughout the time period of this Agreement. The Contractor further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

**G. Procurement of Recovered Materials:**

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
  - a. Competitively within a timeframe providing for compliance with the contract performance schedule,
  - b. Meeting contract performance requirements or
  - c. At a reasonable price.
2. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines website.

**H. Program Fraud and False or Fraudulent Statements or Related Acts:** The Contractor 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.

**I. Access to Records.** The following access to records requirements applies to this Contract:

1. The Contractor agrees to provide the City of Kingsville, the TWDB, the Comptroller General of the United States, or any other authorized state or federal entity, agency or department, or their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

2. The Contractor 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 Contractor agrees to provide the TWDB, its representatives, and the authorized representatives of any other federal or state entity, agency, or department access to construction or other work sites pertaining to the Work being completed under this Agreement.
- J. Agency Seal, Logo, and Flags:** The Contractor shall not use the seals, logos, or flags of FEMA, the Department of Homeland Security, TWDB, or any other state or federal agency without the express written permission of such state or federal agency.
- K. Byrd Anti-Lobbying Amendment. 31 U.S.C. § 1352 (as amended):** The Contractor must file with the government the required certification. Each subcontractor 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 must 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 non-Federal award. If not provided with the bid response, the Contractor must complete and submit the Certification Regarding Lobbying Form.
- L. Whistleblower Protection Act:** The Contractor understands and agrees that this Agreement and employees working on this Agreement will be subject to the whistleblower rights and remedies established under 41 U.S.C. § 4712 and shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. § 4712 as described in section 3.908 of the Federal Acquisition Regulation. The Contractor shall insert the substance of this Paragraph L (“Whistleblower Protection Act”) in all subcontracts providing services under this Agreement.
- M. Damages:**
1. All Work to be performed under this Agreement shall be timely commenced; it being understood that the Contractor will be given adequate time to employ sound professional practices. A breach of this Agreement by the Contractor would cause substantial delay in the completion of the required services affecting the safety and welfare of the public.

2. In the event of the Contractor's breach of its performance obligations, the City of Kingsville shall have all rights and remedies against the Contractor as provided by law.
- N. Energy Efficiency and Conservation (2 CFR §200.326 Appendix II to Part 200):** If applicable to the Work and services performed by the Contractor under the Agreement, the Contractor shall comply with the mandatory standards and policies of the state regulation promulgated in accordance with the Energy Policy and Conservation Act (42 U.S.C. §6201).
- O. Agreements With Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (2 CFR §200.321):** Should the Contractor subcontract any of the work under this Agreement, the Contractor shall take the following affirmative steps: place qualified small and minority businesses and women's business enterprises on solicitation lists; assure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources; divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and use 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.
- P. Compliance With All Other Federal and State Law, Regulations and Executive Orders:** In addition to the provisions set forth above, the Contractor agrees that it will comply with all other federal and state laws, regulations, and executive orders that may be applicable to the Work which it performs pursuant to this Agreement, including, but not limited to, all of such provisions that are required for the City of Kingsville's eligibility for funding from the TWDB or any other applicable funding entity, agency or department.
- Q. No Obligation by Federal Government:** The Federal government is not a party to this Agreement and is not subject to any obligations or liabilities to the City of Kingsville, the Contractor, or any other party pertaining to any matter resulting from this contract.
- R. Required Amendment to Contract:** In the event that this Agreement needs to be amended or modified so as to allow the City of Kingsville to become or remain eligible for funding for the Project(s) from the TWDB or any other federal or state entity, agency, or department, the City of Kingsville and the Contractor agree that they shall reasonably attempt to amend or modify this Agreement in writing for such purpose, providing that such amendment or modification does not materially alter the obligations of the Parties, or providing that the Contractor is reasonably compensated in the event that such amendment or modification of the contract does materially alter the Contractor's obligations hereunder.