

**PROFESSIONAL CONSULTING SERVICES AGREEMENT
CONTRACT NUMBER: 216-240**

This Agreement is effective the 17th day of May, 2016, between the City of San Marcos, Texas, (the “City”), 630 East Hopkins, San Marcos, Texas 78666 and AECOM Technical Services, Inc. (the “Consultant”), 7399 Florida Boulevard, Suite 300, Baton Rouge, Louisiana 70806, for the Consultant’s provision of professional Disaster Recovery Support Services (the “Services” or the “Project”).

The City and the Consultant agree as follows:

**ARTICLE 1
CONSULTANT’S SERVICES AND RESPONSIBILITIES**

1.0 STANDARDS OF PERFORMANCE

1.0.1 The Consultant is responsible for the proper, accurate and adequate delivery of disaster recovery services in connection with the May and October 2015 floods (the “Floods”) including planning, policy expertise, and implementation strategies. In addition, the Services include the generation of the Unmet Needs Assessment and Action Plan for this CDBG-DR allocation, amending the City’s 2015-2019 Consolidated Plan, updating the City’s 2013 Analysis of Impediments to Fair Housing Choice, and reviewing various City policies to ensure they comply with current regulations and the Federal Register notice requirements.

1.0.2 The Consultant understands that the City expects to receive funding for this Project from the United States Department of Housing and Urban Development (“HUD”) through the Community Development Block Grant – Disaster Recovery Program (“CDBG-DR”). This funding will be awarded directly to the City. In addition, the City will receive details regarding the utilization of this funding when those requirements are published by the U. S. Department of Housing and Urban Development (“HUD”) in a Federal Register Notice (the “Notice”). The Consultant will perform all of its services so that the Project will proceed in accordance with the detailed provisions of the Notice.

1.0.3 The Consultant’s Basic Services consist of the services described in Sections 1.0 through 1.5.

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

1.0.5 The Consultant understands and agrees that it will comply with the Federal Register notice as issued, all HUD, CDBG-DR, and cross-cutting federal requirements as well as with all local, State and other applicable federal rules, laws, regulations, ordinances and policies all in accordance with Section 9.8 of this Agreement. The Consultant understands and agrees that its services will be performed contingent upon the City's receipt of the expected funding.

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

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

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

1.0.9 Marisa Mason, Program Integration Team Lead, Resilient Critical Infrastructure, Water Business Unit, is the Consultant's Project Representative assigned to this Project. The Consultant will not substitute another representative for this Project unless approved in writing by the City in advance of such proposed substitution. In the event the City and the Consultant cannot agree to the substitution of the Project Representative, the City may terminate this agreement in accordance with Article 8. Remaining members of the team include:

- Tiffany Crane, JD
- C. Lael Holton, AICP
- Kevin Hamby, JD, Remora Consulting
- Heather Lambousy

Should the project team require additional support; the following subject matter experts will provide supplemental technical assistance in a limited capacity:

- Esrone McDaniels, MPA
- Jennifer Mattingly, JD

1.1 TASK 1 – UNMET NEEDS ASSESSMENT

The Consultant will:

1.1.1 Assist the City in building a Needs Assessment Planning Committee (the “Planning Committee”) and establish contact with City-identified members of the Committee.

1.1.2 Conduct community outreach activities necessary to engage affected citizens in the required Citizens’ Participation process via public meetings, surveys and other outlets to solicit input on disaster recovery needs.

1.1.3 Work cooperatively with the City to ascertain the availability of existing data resources for use in the Consultant’s determination of “unmet needs” relative to damages associated with the 2015 floods which include, but are not limited to:

- a) FEMA Individual Assistance (IA) Data;
- b) FEMA Public Assistance (PA) Data;
- c) City of San Marcos Division of Emergency Management Damage Assessments and mapping of affected areas (Single Family/Multi-Family/Infrastructure);
- d) 2010 Census and the most current American Community Survey Data;
- e) National Weather Service Data;
- f) TxDOT data;
- g) HUD 2015 LMI Summary Data;
- h) Texas Parks and Wildlife Data;
- i) City of San Marcos assessment of economic impact to local business;
- j) Small Business Administration (SBA) applicant information;
- k) NFIP Insurance claims filed for damages to single-family structures
- l) Survey results from public meetings that have or will be conducted by the City; and
- m) Mapping shape files

1.1.4 Analyze collected data and calculate unmet needs in the areas of housing, (including public housing), infrastructure, and economic revitalization. Prepare a summary of the findings which may include the use of tables to illustrate the numbers of units damaged, estimated dollar value of the damage, and values of the financial resources available to repair the damage.

1.1.5 Prepare an initial draft of the Impact and Unmet Needs section of the City’s CDBG-DR Action Plan for the City’s review and comment using the data collected to identify the unmet needs.

1.1.6 Conduct at least one (1) public hearing on the proposed Needs

1.1.7 Within 21 business days of the City’s execution of this Agreement, deliver to the City a final Needs Assessment, including the City’s edits, for incorporation into the CDBG-DR Action Plan.

1.2 TASK 2 – CDBG-DR ACTION PLAN

The Consultant will:

1.2.1 Provide the City with a comprehensive timeline for Action Plan activities to include Planning Committee activities, citizens' participation and public meetings, community surveying, critical milestones, deadlines for needs assessment and other milestones necessary for completion of the Action Plan.

1.2.2 Develop a CDBG-DR Action Plan outline and submit it to the City for approval.

1.2.3 Assist the City in meeting all of its citizens' participation requirements per the Federal Register Notice and the adopted Citizens' Participation Plan including preparing notices in English and Spanish, conducting public meetings, workshops and responding to public inquiries related to any public comment periods. To the extent possible this activity will run concurrently with citizen participation requirements for the AI and the amended Consolidated Plan.

1.2.4 Work cooperatively with City staff to develop a first draft of the CDBG—DR Acton Plan based on data from Needs Assessment in accordance with published Federal Register notice, HUD requirements, the City's Citizen Participation Plan, and other CDBG-DR requirements. The Draft is anticipated to include, but not be limited to:

- a) Background/Historical Information;
- b) Needs Assessment as completed in Task 1;
- c) Types of flood related activities that the City intends to fund with CDBG-DR;
- d) Method of Distribution of funding;
- e) Eligibility and scoring criterion for funding eligibility;
- f) Expenditure Projections;
- g) Low to Moderate Income ("LMI") Population to Serve;
- h) Funding sources to be used;
- i) Approach to Program Income;
- j) Performance schedule;
- k) Program budget;
- l) City's approach to avoiding duplication of benefits;
- m) How thresholds and caps will be implemented, if applicable;
- n) City's Citizen Participation Plan;
- o) Waiver requirements where applicable

1.2.5 Prepare a second draft incorporating the City's edits in a format that allows review by the public.

1.2.6 Assist the City in complying with Citizen Participation requirements as outlined in its Citizen's Participation Plan and the Federal Register notice for the Action Plan, including

preparation of notices in English and Spanish, conducting a stakeholder workshop, and, if required, a Council public hearing.

1.2.7 Conduct Citizen Participation activities for the amendment to the Consolidated Plan, the updated Analysis of Impediments of Fair Housing Choice (“AI”), and the CDBG-DR Action Plan concurrently to the extent possible.

1.2.8 Deliver a final CDBG-DR Action Plan, incorporating City responses to public comments, to the City of San Marcos for approval by the City Council prior to submission to HUD.

1.2.9 Assist the City with its response to HUD action items and inquiries regarding the CDBG-DR Action Plan and prepare any required revisions until HUD’s final approval has been received.

1.2.10 Assist the City in configuring the City’s approved CDBG-DR Action Plan into HUD’s Disaster Recovery Grant Reporting (“DRGR”) System once granted access by HUD.

1.2.11 Present Action Plan progress updates to the Council upon request by the City of San Marcos

1.2.12 The Consultant will complete the Action Plan and all necessary action requirements within the timeline and milestones established in accordance with Subsection 1.2.1. All milestone deadlines may be subject to change as necessary to comply with requirements and deadlines specified in the pending Federal Register notice.

1.3 TASK 3 - ANALYSIS OF IMPEDIMENTS OF FAIR HOUSING CHOICE (AI)

The Consultant will:

1.3.1 Update the City’s 2013 AI to meet the Affirmatively Furthering Fair Housing (“AFFH”) standard to take into account the impacts of the 2015 floods on fair housing in San Marcos.

1.3.2 Provide an executive summary of the information and process used to update the AI.

1.3.3 Identify and meet with community groups for input into impediments to fair housing choice.

1.3.4 In coordination with the City, hold at least two public meetings to discuss the outcomes and receive input of the modified AI.

1.3.5 Provide an analysis of the City’s current AI and steps taken to address identified impediments.

1.3.6 Review and analyze local demographic materials, HUD demographic materials and American Community Survey demographic materials for impacted areas.

1.3.7 After the analysis of demographic materials, identify any segregated neighborhoods and any contributing factors to segregation specific to the City of San Marcos.

1.3.8 Identify any communities or census tracts that demonstrate a concentration of racial or ethnic minorities—especially within known poverty areas or Racial and Ethnic Concentrations of Poverty (RE/CAP).

1.3.9 Review the identified RE/CAP areas for “disparities to access of opportunities” identified by HUD as potential challenges.

1.3.10 Review:

- a) Information for housing burdens including cost and availability;
- b) Complaints filed with Texas Workforce Commission or HUD based on Fair Housing concerns;
- c) Public Housing for race and ethnic participation and location of housing stock; and
- d) State, County and local Fair Housing laws and zoning regulations to determine if they create additional impediments.

1.3.11 Use HUD and American Community Survey (ACS) data to identify disability and senior populations and their access to compliant housing.

1.3.12 Provide the City with a draft of an updated AI deliverable that incorporates the various elements detailed under the Assessment of Fair Housing (AFH) tool for the City’s review/edit and approval.

1.3.13 Assist the City in complying with the Citizen Participation requirements as outlined in its Citizen’s Participation Plan and the Federal Register notice for the amendment, including preparation of notices in English and Spanish, providing a revised AI in a format that can be reviewed by the public, conducting a stakeholder workshop, and if required a Council public hearing.

1.3.14 Provide the City with a final updated AI deliverable that incorporates the City’s edits.

1.4 TASK 4 – AMENDMENT TO THE 2015-2019 CONSOLIDATED PLAN

The Consultant will:

1.4.1 Review the City’s current Consolidated Plan, Action Plan, and AI to determine which sections and tables must be amended to incorporate required CDBG-DR information in conformance with the Federal Register notice and HUD requirements and guidelines.

1.4.2 Provide the City with a comprehensive summary of the necessary amendments and a draft for review and edit that incorporates all necessary updates to reflect changes required by the Notice and other local, state, and federal provisions applicable to the declared disaster.

1.4.3 Prepare a final draft of the amended Consolidated Plan incorporating the City's edits in a format that can be reviewed by the public.

1.4.4 Prepare notices in English and Spanish for a stakeholder's workshop, a Council public hearing (if required), and public review of the Consolidated Plan amendment to meet citizen participation requirements as outlined in the City's Citizens Participation Plan and the Federal Register notice.

1.4.5 Assist the City in conducting a stakeholder's workshop in compliance with the City's Citizens Participation Plan and the Federal Register notice;

1.4.6 Incorporate all necessary updates into the City's Consolidated Plan, including comments that were received from the City, to the extent feasible, to reflect changes required by the Federal Register Notice and other local, state and federal provisions applicable to the declared disaster.

1.4.7 Assist the City in its response to HUD action items and inquiries regarding the amendments to the Consolidated Plan and prepare any required revisions until HUD's final approval has been received.

1.5 TASK 5 - POLICIES

The Consultant will:

1.5.1 Review and update the City's existing policies and procedures relative to citizens' participation, limited English proficiency, anti-displacement and relocation, ethics, procurement, cost allocation and reasonableness, sub-recipient agreements, accessibility requirements and Section 3 Local Opportunity Plan to comply with federal regulations.

1.5.2 Provide technical assistance to the City regarding policy considerations relative to the CDBG-DR Program development and eligible CDBG-DR activities.

1.5.3 Advise the City of any new policies/procedures that may be necessary in undertaking eligible CDBG-DR activities.

1.6 ADDITIONAL SERVICES/CHANGE OR DELAY IN SERVICES/PROJECT ASSUMPTIONS

1.6.1 The City may direct the Consultant to perform services outside of the scope of the Basic Services described in Sections 1.1 through 1.5 above. The Consultant will submit a written estimate of fees to the City and obtain the City's authorization before initiating any additional

services. The Consultant will submit a written estimate of fees to the City and obtain the City's authorization before initiating any additional services. Updates to the Land Development Code including changes to floodplain ordinances, CDBG-DR Program Design and the Development of Standard Operating Procedures and Environmental Review Record Procedures are specifically considered to be additional services.

1.6.2 Each material change (deletion or addition) in the services to be provided by the Consultant must be authorized by the City on the Authorization of Change in Services form attached to this Agreement as Attachment A. Compensation for additional services will be in addition to that specified for Basic Services in accordance with Article 14 of this Agreement. The approval of the San Marcos City Council is necessary for all additional services the compensation for which exceeds \$50,000.00.

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

ARTICLE 2 THE CITY'S RESPONSIBILITIES

The City will:

2.1 Provide full information to the Consultant regarding the City's requirements for the Consultant's services under this Agreement. The City will furnish the Consultant with copies of data and information in the City's possession needed by the Consultant at the Consultant's request. The City will provide this information and render decisions expeditiously for the orderly progress of the Consultant's services.

2.2 Designate Janis Hendrix, Community Initiatives Program Administrator or her designee as the City's Project Manager and authorized representative to act on the City's behalf with respect to this Agreement. The City will examine the documents and information submitted by the Consultant and promptly render responses to the Consultant on issues requiring a decision by the City.

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

2.4 Be responsible for securing all federal and state required permits required for the

construction of this Project with the assistance of the Consultant.

2.5 Bear all other costs incidental to this Article.

**ARTICLE 3
REIMBURSABLE EXPENSES**

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

**ARTICLE 4
PAYMENTS TO THE CONSULTANT**

4.1 PAYMENTS FOR BASIC SERVICES

The City will pay the Consultant for Basic Services on a monthly basis following receipt by the City of the Consultant's invoices showing direct and indirect labor costs, expenses for materials and supplies and any other reimbursable expenses if applicable, and appropriate payment requisitions. The Consultant will base its invoices upon the extent of work it has completed on an hourly basis within each task of services, in accordance with Article 14 of this Agreement, less any disputed amounts, pending resolution thereof.

4.2 PAYMENTS OR ADDITIONAL SERVICES

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

4.3 TAXES

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

**ARTICLE 5
CONSULTANT'S RECORDS**

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

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

5.3 The Consultant will furnish to the City at such time and in such form as the City may require, financial statements including audited financial statements, records, reports, data and information, as the City may request pertaining to the matters covered by this Agreement. Information provided pursuant to this subsection will be held in strict confidence to the extent permitted by applicable law.

ARTICLE 6 OWNERSHIP AND USE OF DOCUMENTS

6.1 All documents prepared by the Consultant in connection with this Agreement are the property of the City whether any project related to this Agreement is executed or not.

6.2 The Consultant will retain all of its records and supporting documentation relating to this Agreement, and not delivered to the City, for a period of four years except in the event that the Consultant goes out of business during that period, it will turn over, to the City, all of its records relating to the Project for retention by the City.

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

ARTICLE 7 TERM; TERMINATION OF AGREEMENT

7.1 The term of this Agreement begins on the effective date established in the first paragraph of the Agreement and will end upon the Consultant's completion, and the City's acceptance of all services described in this Agreement unless this Agreement is terminated under Sections 7.2 or 7.3 below. Both the City and the Consultant assume the Project/Services will be finally completed in accordance with the Schedule of Events attached and incorporated into this Agreement as Attachment B.

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

7.3 The City may terminate this Agreement for convenience and without cause upon at least 15 calendar days prior written notice to the Consultant. In the event of termination for convenience the City may require the Consultant to transfer title and deliver to the City in the manner and to

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

ARTICLE 8 INSURANCE AND INDEMNITY

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

8.2 The Consultant will procure and maintain at Consultant's expense insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by Consultant or Consultant's agents, subcontractors or employees. Before commencing the work, the Consultant will furnish to the City a certificate or certificates in form satisfactory to the City, showing that Consultant has complied with this paragraph. All certificates will provide that the policy will not be changed or canceled until at least 30 calendar days written notice has been given to the City. Failure of the Consultant to demand a certificate or other sufficient evidence of full compliance with these insurance requirements or failure of the Consultant to identify a deficiency from the evidence that is provided as proof of insurance will not be construed as a waiver of the Consultant's obligation to maintain

the required insurance coverage specified herein. Commercial general liability insurance and motor vehicle insurance will be written with the City of San Marcos, Texas as an additional insured and will be endorsed to provide a waiver of the carrier's right of subrogation against the City. The kinds and amounts of insurance required are as follows:

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

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

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

ARTICLE 9 FEDERALLY REQUIRED PROVISIONS

9.1 COPELAND ANTI-KICKBACK ACT COMPLIANCE

The Consultant will comply with the requirements of 29 CFR Part 3 (the Copeland Act). The "Anti-Kickback" section of the Act precludes a contractor or subcontractor from inducing an employee -- in any manner -- to give up any part of his/her compensation to which he/she is entitled under his/her contract of employment.

9.2 CONFLICTS OF INTEREST (24 CFR 570.611; 24 CFR 85.35; and 24 CFR 84.42)

There are two sets of conflict of interest provisions applicable to activities carried out with CDBG funding. The first set, applicable to the procurement of goods and services by subrecipients (*funded applicants*), is the procurement regulations located at 24 CFR 84.42 and 85.36. The

second set of provisions is located at 24 CFR 570.611(a)(2). These provisions cover situations not covered by parts 84 and 85.

With respect to procurement activities, the Consultant must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. At a minimum, these standards must:

(a) Require that no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the firm selected for an award:

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

(b) Require that employees, agents, and officers of the Consultant neither solicit nor accept gratuities, favors, or anything of value from contractors, or parties to sub-agreements. However, consultants may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.

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

With respect to all other CDBG-assisted activities, the general standard is that no employee, agent or officer of the subrecipient, who exercises decision-making responsibility with respect to CDBG funds and activities is allowed to obtain a financial interest in or benefit from CDBG activities, or have a financial interest in any contract, subcontract, or agreement regarding those activities or in the proceeds for the activities. Specific provisions include that:

- 1) This requirement applies to any person who is an employee, agent, Consultant, officer, or elected or appointed official of the City, a designated public agency, or a subrecipient, and to their immediate family members and business partner(s).
- 2) The requirement applies for such persons during their tenure and for a period of one year after leaving the grantee or subrecipient organization.
- 3) Upon written request, exceptions may be granted by HUD on a case-by-case basis.

9.3 CERTIFICATION OF ELIGIBILITY

By submitting a proposal in response to the Invitation for Bids, the Consultant certifies that at the time of submission, he/she/it is not listed on the government- wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement

Executive Orders 12549 (3 CFR Part 1986 Comp., p 189) and 12689 (3 CFR part 1989 Comp., p 235), "Debarment and Suspension".

(a) In the event of placement on the list between the time of bid/proposal submission and time of contract award, the bidder/proposer will immediately notify the City.

(b) Consultant certifies that its subcontractors are not presently debarred, suspended, or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program.

(c) Placement of Consultant on the federal government's list of suspended, ineligible, or debarred contractors, false certification, or failure to notify City as required may result in City's termination of this Contract for default.

(d) When requested by the City or HUD, Consultant will furnish a copy of the certification in accordance with 24 C.F.R. Part 24 (Debarment and Suspension).

9.4 NON-COLLUSION CERTIFICATION

The Consultant certifies that, if a proposal was provided that resulted in a contract, that proposal was made without collusion with any other person, firm or corporation.

9.5 BYRD ANTI-LOBBYING AMENDMENT

(31 U.S.C. 1352) Contractors that bid for an award exceeding \$100,000 must file the required certification that it will not and has not used Federal appropriated funds to pay any persons or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

9.6 SECTION 3 COMPLIANCE

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

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

(b) The parties to this Contract agree to comply with HUD's regulations in 24 C.F.R. Part 135,

which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

- (c) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.
- (e) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. Part 135.
- (f) Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.
- (g) When required, Contractor shall furnish the City or HUD with satisfactory proof of its compliance herewith.

9.7 COMPLIANCE WITH RULES & REGULATIONS

Funding for the Project has been made available by HUD through the CDBG-DR Program. The Consultant will comply with all of the applicable uniform administrative regulations related to the application, acceptance and use of federal funds as contained in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The Consultant is encouraged to obtain the necessary information but failure to do so will not relieve it from compliance with the applicable regulations. The Consultant will be responsible for compliance and conformance with applicable federal and state laws, rules, regulations and codes,

City permitting requirements, and city ordinances currently in effect. Federal and state laws, rules, regulations and codes include but are not limited to:

(a) Workers Compensation laws;

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

- 1) Fair Labor Standards Act of 1938, as amended;
- 2) Equal Pay Act of 1963, PL 88-38; and
- 3) All applicable regulations implementing the above laws;

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

- 1) Title VII of the Civil Rights Act of 1964, as amended;
- 2) Section 504 of the Rehabilitation Act of 1973, as amended;
- 3) The Age Discrimination Act of 1975, as amended; and
- 4) all applicable regulations implementing the above laws;

(d) Licensing laws and regulations;

(e) Compliance with Texas Accessibility Standards ("TAS") and ADA requirements, issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, or other applicable Texas law;

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

(g) All applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C.7401-7671q), and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387, as amended).

(h) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PUB L 94-163, 89 Stat. 871) codified at 42 U.S.C.A. Section 6321 et seq.;

(i) National Environmental Policy Act ("NEPA") including Environmental Protection Agency regulations (40 C.F.R. Part 15), applicable HUD regulations set forth in 24 C.F.R. Parts 50 and 58 including authorities cited therein, and National Historic Preservation Act of 1966, including Federal Historic Preservation Regulations (36 C.F.R. Part 800), which require environmental clearance of federal aid projects; and in connection with NEPA requirements, Consultant is responsible for the preparation of NEPA documents required for environmental clearance of the Project covered hereunder;

(j) 24 C.F.R. Section 5.105, including applicable authorities cited therein, as well as applicable provisions of 24 C.F.R. Part 58, including Section 58.5 and applicable authorities cited therein and Section 58.6 and applicable authorities cited therein.

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

10.9 The Consultant will comply with Executive Order 11246 of 9/24/65, entitled "Equal Employment Opportunity," (30 FR 12319, 12935, 3 CFR Part, 1964-65 Comp., p. 339) as amended by Executive Order #11375 of 10/13/67, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).

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

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

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

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

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

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

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

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

10.18 The Consultant's attention is called to the fact that pursuant to San Marcos Ordinance No. 2013-57, as amended, all City of San Marcos owned and rented/leased properties are smoke free properties. All Consultants, their subconsultants and employees are prohibited from smoking while on City property. This prohibition includes the enclosed areas of public places and workplaces and within 10 feet of doors and windows of City-owned or rented buildings, all City parks and the grounds outside of any City building. This prohibition includes e-cigarettes and other inhaled vapor devices. The City may terminate this Agreement for noncompliance with this ordinance.

10.19 If City funds are utilized to fund any part of this Agreement, the Consultant understands that those City funds for the payment for work performed by the Consultant under this Agreement have been provided through the City's budget approved by City Council for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. The City cannot guarantee the availability of funds, and enters into this Agreement only to the extent such funds are made available. The Consultant acknowledges and agrees that it will have no recourse against the City for its failure to appropriate funds for the purposes of this Agreement in any fiscal year other than the year in which this Agreement was executed. The fiscal year for the City extends from October 1st of each calendar year to September 30th of the following calendar year.

10.20 The Consultant is required to electronically generate a Certificate of Interested Parties Form 1295 through the Texas Ethics Commission ("TEC") website (https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and submit a signed and notarized copy of the form to the City prior to the award of the contract. This contract, including a City-issued purchase order, will not be enforceable or legally binding until the City receives and acknowledges receipt of the properly completed Form 1295 from the vendor.

ARTICLE 11 SUCCESSORS AND ASSIGNS

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

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

ARTICLE 12 EXTENT OF AGREEMENT

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

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

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

ARTICLE 13 NOTICES

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

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

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

ARTICLE 14 BASIS OF COMPENSATION

14.1 The City will compensate the Consultant, in accordance with Article 4, Payments to the Consultant, and the other terms and conditions of this Agreement, as follows:

14.2 The total of all fees and expenses (at direct cost) to be paid to the Consultant for Basic Services as described in Sections 1.1 through 1.5 is a not to exceed fee of \$93,360.00. Reimbursable expenses, include such things as expenses for reproduction of documents, auto travel mileage at the prevailing IRS rate, lodging, delivery charges, long distance, communications and freight and are included in the total compensation. This compensation is divided among the Basic Services and Reimbursable Expenses as follows:

1.1-TASK 1 – NEEDS ASSESSMENT	\$ 21,970.00
1.2-TASK 2 - CDBG-DR ACTION PLAN	\$ 23,730.00
1.3-TASK 3 - ANALYSIS OF IMPEDIMENTS OF FAIR HOUSING CHOICE (AI)	\$ 34,080.00
1.4-TASK 4 – AMENDMENT TO THE 2015-2016 CONSOLIDATED PLAN	\$ 4,430.00
1.5-TASK 5 - POLICIES	<u>\$ 4,650.00</u>
	\$ 88,860.00
REIMBURSABLE EXPENSES	<u>\$ 4,500.00</u>
TOTAL FEE:	\$ 93,360.00

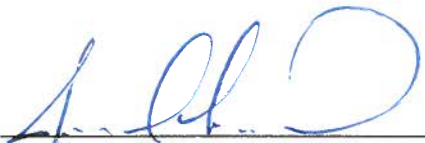
14.3 Compensation for the Consultant’s additional services will be computed based on the following hourly rates, plus reimbursable expenses at direct cost.

Senior Planner	\$109.00/hr
Senior Subject Matter Expert	\$155.00/hr.
Staff Subject Matter Expert	\$140.00/hr.

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

City of San Marcos

AECOM Technical Services, Inc.

By: 
 Jared Miller, City Manager

By: 
 Michael J. Richardson, Vice President

Date: 05/20/2016

Date: 6/2/2016

ATTACHMENT A

**AUTHORIZATION OF CHANGE IN SERVICES
CITY OF SAN MARCOS, TEXAS**

PROJECT: AECOM
CONSULTANT: Disaster Recovery Support Services
CONTRACT NUMBER: 216-240
AUTHORIZATION NO.:
ORIGINAL CONTRACT DATE:
AUTHORIZATION DATE:

WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES

Previous contract amount: \$ _____
Net increase/decrease in contract amount: \$ _____
Revised contract amount: \$ _____

AECOM

By: _____ Date: _____

Printed Name, Title

City of San Marcos:

By: _____ Date: _____

Printed Name, Title

City only below this line.

Account Number(s): _____, _____
Previous Changes in Service:
_____; date; amount
_____; date; amount
_____; date; amount

ATTACHMENT B

Schedule of Events* Disaster Recovery Support Services City of San Marcos

ID	Task Name	Duration	Start	Finish	May	June	July	August
					5/1 5/8 5/15 5/22	5/29 6/5 6/12 6/19 6/26	7/3 7/10 7/17 7/24 7/31	8/7 8/14 8/21 8/28
1	City of San Marcos Disaster Recovery Support Services	87 days	Tue 5/17/16	Fri 8/12/16	-----			
2	Disaster Recovery Action Plan Award made from San Marcos to AECOM	0 days	Tue 5/17/16	Tue 5/17/16	-----			
3	AECOM executes contract with City of San Marcos	0 days	Fri 5/20/16	Fri 5/20/16	-----			
4	City of San Marcos issues AECOM Notice to Proceed	0 days	Wed 5/25/16	Wed 5/25/16	-----			
5	Project Kickoff Meeting	2 days	Mon 5/30/16	Tue 5/31/16	-----			
6	AECOM commences coordinating, research, data gathering, preparation of Unmet Needs Assessment and report writing	0 days	Mon 5/30/16	Mon 5/30/16	-----			
7	Initiate development of Action Plan Framework based on Federal Register notices, if notice has not been published	0 days	Mon 5/30/16	Mon 5/30/16	-----			
8	Publish Notice of Public Hearing to solicit input on potential eligible activities for incorporation into Action Plan	0 days	Fri 6/3/16	Fri 6/3/16	-----			
9	Conduct Public Hearing in accordance with City of San Marcos Citizen's Participation Plan	0 days	Mon 6/13/16	Mon 6/13/16	-----			
10	Finalize Unmet Needs Assessment and submit to the City of San Marcos	0 days	Fri 6/17/16	Fri 6/17/16	-----			
11	Once Federal Register is Published, incorporate the various components specific to the City of San Marcos disaster	63 days	Tue 5/17/16	Mon 7/18/16	-----			
12	Work with City of San Marcos to develop priorities based upon leadership, assessment of data, public comment and determine the best Method of Distribution (MOD)	63 days	Tue 5/17/16	Mon 7/18/16	-----			
13	AECOM provides final Action Plan to the City of San Marcos for public comment to be published online and via other appropriate communication portals	0 days	Wed 7/20/16	Wed 7/20/16	-----			
14	Public Comment Period	16 days	Thu 7/21/16	Fri 8/5/16	-----			
15	Analyze and consider public comments; summarize public comments and incorporate into the Action Plan	5 days	Sat 8/6/16	Wed 8/10/16	-----			
16	Submit Final Action Plan to HUD	0 days	Fri 8/12/16	Fri 8/12/16	-----			

Project: City of San Marcos DR Su Date: Tue 4/12/16	<input type="checkbox"/> Task <input type="checkbox"/> Milestone <input type="checkbox"/> Summary	<input type="checkbox"/> Project Summary <input type="checkbox"/> Manual Task <input type="checkbox"/> Manual Summary Rollup
	<input type="checkbox"/> Start-only <input type="checkbox"/> Finish-only <input type="checkbox"/> Deadline	<input type="checkbox"/> Progress

*This schedule is based upon a Notice to Proceed of May 25th, however, any delay in contract execution or publication of the above mentioned Federal Register could push the Notice to Proceed to a later date. The schedule will be revised should that occur.