



Travis County Commissioners Court Agenda Request

Meeting Date: December 30, 2013

Prepared By/Phone Number: L. Perry; M. Brice, CPPB, 512-854-9700

Elected/Appointed Official/Dept. Head: Cyd Grimes

Commissioners Court Sponsor: Judge Biscoe

Agenda Language: Approve exemption and contract award for Travis County Professional Disaster Mitigation Consulting Services, Jeffrey S. Ward and Associates, Inc.

Purchasing Recommendation and Comments: Purchasing concurs with department and recommends approval of requested action. This procurement action meets the compliance requirements as outlined by the statutes.

- TNR, with Purchasing's concurrence, requests contract exemption and approval, for Professional Disaster Mitigation Consulting Services with Jeffrey S. Ward and Associates, Inc.
- Jeffrey S. Ward and Associates, Inc. has provided Disaster Mitigation Consulting Services to the County at competitive rates for several years. The firm's ongoing performance has been exceptional. Their knowledge of federal and county buy-out processes and procedures will enable them to perform these services expediently and efficiently.
- The contract is structured as such that all services related to Disaster Mitigation will be rapidly available to the County on an as needed basis. The ability to move quickly is extremely important in these instances.
- Once the exemption order and contract are awarded, the process of appraising and acquiring numerous flood damaged properties resulting from the October 31, 2013 flood event, primarily in Precincts 3 and 4, will begin.
- **Contract-Related Information:**
 - Award Amount: As Needed
 - Contract Type: Professional Service Agreement
 - Contract Period: Through Completion

➤ **Contract Modification Information: N/A**

Modification Amount:

Modification Type:

Modification Period:

➤ **Solicitation-Related Information:**

Solicitations Sent: N/A

Responses Received: N/A

HUB Information: Vendor is not a HUB

% HUB Subcontractor: N/A

➤ **Special Contract Considerations:**

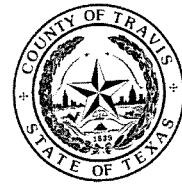
- Award has been protested; interested parties have been notified.
- Award is not to the lowest bidder; interested parties have been notified.
- Comments: N/A

➤ **Funding Information:**

Shopping Cart/Funds Reservation in SAP: N/A

Funding Account(s): 4056 1490220000 522050 LDAQ.149.000009

Comments: N/A



TRANSPORTATION AND NATURAL RESOURCES DEPARTMENT

STEVEN M. MANILLA, COUNTY EXECUTIVE

700 Lavaca Street-5th Floor
Travis County Administration Building
P.O. Box 1748
Austin, Texas 78767
(512) 854-9383
FAX (512) 854-4626

December 19, 2013

Memorandum to: Cyd Grimes, Purchasing Agent

From: Steve Manilla, P.E., County Executive –TNR

Subject: Exemption Order for Flood Prone Property Buy-Out Consultant Services

TNR requests an Exemption Order for professional services required to facilitate the process of acquiring numerous flood damaged properties resulting from the October 31, 2013 flood event that occurred primarily in Precincts 3 and 4 . Jeffrey S. Ward and Associates, Inc. has provided these services at a reasonable price to the county for several years. The firm's performance has been exceptional. The knowledge of federal and county buy-out processes and procedures it has acquired over years of service to the County will enable it to perform more expediently and efficiently than other firms having less comparable local experience. The ability to move quickly is extremely important to the Court to provide relief to many property owners that have yet to fully recover from the flood event. If approved, the Professional Services Agreement will be structured such that all services the Consultant is capable of providing will be available to the County on an as needed basis. TNR recommends the Exemption Order and approval of the Professional Services Agreement with Jeffrey S Ward and Associates, Inc.

CC

Jon White, Director, TNR NREQ
Melinda Malia and Mickey Roberts, TNR NREQ
Marvin Brice and Lee Perry, Purchasing
Stacey Scheffel, Floodplain Administer
Charles Bergh, Director, TNR Parks
Isabel Lopes, TNR Financial Services

PROFESSIONAL SERVICES AGREEMENT
BETWEEN
TRAVIS COUNTY
AND

JEFFREY S. WARD AND ASSOCIATES, INC.

FOR
PROFESSIONAL DISASTER MITIGATION CONSULTING SERVICES

DRAFT

PROFESSIONAL SERVICES AGREEMENT (PSA)

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PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §

§

COUNTY OF TRAVIS §

§

This Agreement (this "Agreement" or "PSA") is made and entered into by and between Travis County, Texas, a political subdivision of the State of Texas ("County"), and Jeffrey S. Ward and Associates, Inc. ("Consultant") (each a "Party" and collectively the "Parties").

County desires to obtain professional services for disaster mitigation, including the evaluation and acquisition of real property interests located in flood-prone areas of Travis County (each a "Project" or collectively, the "Projects").

Consultant has the professional ability and expertise, experience, and any necessary professional degrees, licenses, and certificates to furnish the professional services.

In consideration of the mutual covenants and agreements set forth in this Agreement, the amount and sufficiency of which are acknowledged, County and Consultant agree as follows:

SECTION 1

EMPLOYMENT OF THE CONSULTANT

- 1.1 The County Executive of the Travis County Transportation and Natural Resources Department ("TNR") (the "County Executive") has designated a primary Project representative to act on behalf of County with respect to the work to be performed under this Agreement (the "County Project Manager"). The County Project Manager, in consultation with the County Executive, has the authority to interpret and define County's policies and decisions with respect to Consultant's services. The County Project Manager may designate representatives to transmit instructions and receive information. The County Project Manager will supervise the performance of Consultant's services under this Agreement. Consultant must cooperate fully with the County Project Manager in the performance of services under this Agreement.
- 1.2 County is contracting with Consultant as an independent contractor. Consultant shall perform professional services as described in this Agreement. If any dispute arises under this Agreement, Consultant and the County Project Manager specifically agree to make a good faith effort to resolve the dispute directly between them. If they are unable to resolve the matter to Consultant's satisfaction, Consultant may appeal the dispute by following the procedures described in Paragraph 9.8 of this Agreement.
- 1.3 County will provide Consultant convenient access to all existing plans, maps, studies, reports, field notes, statistics, computations, and other data in its possession relating to existing facilities and to the Project. Consultant shall make copies of needed information and promptly return all originals.
- 1.4 County cannot and does not warrant or guarantee the accuracy of all information that it provides to Consultant. Consultant may rely on professional sealed documents to the extent

that the original professional would have been held liable for the information contained in those document, in accordance with industry standard practice.

- 1.5 If the County Project Manager observes or otherwise becomes aware of any fault or defect in the Work Product, as defined in Section 6, the County Project Manager will give prompt written notice of the fault or defect to Consultant. Consultant shall correct any such fault or defect at no cost to County.
- 1.6 The Travis County Commissioners Court orders this Agreement for professional services exempt from the County Purchasing Act pursuant to Texas Local Government Code § 262.024(4) as an item for procurement of professional services.
- 1.7 Nothing in this Agreement requires the County to have services performed by the Consultant.

SECTION 2 BASIC SERVICES OF CONSULTANT

- 2.1 Consultant shall be responsible for the complete design and documentation of the work described or referenced in this Agreement, and shall prepare the Work Product so that it is acceptable to the County Project Manager. Consultant shall also serve as County's professional consultant during each Project to which this Agreement applies, and shall consult with and give advice to County during the performance of each Project.
- 2.2 Consultant shall perform the "Basic Services," which means:
 - 2.2.1 all elements of labor, materials and equipment required for each Project, which must be rendered to the satisfaction of the County Project Manager and the Commissioners Court and in accordance with the requirements, policies, and standard practices of Travis County;
 - 2.2.2 the detailed Scope of Services for the Projects as specified in **Appendix A**, attached to and made a part of this Agreement for all purposes (the "Scope of Services");
 - 2.2.3 the Work Product, as defined herein, which Consultant shall submit to County for review at regular intervals, as specified in each Project Schedule to be provided by Consultant. The requirements applicable to each Project Schedule are specified in Exhibit 3.
- 2.3 Consultant shall use all applicable codes in performing the services for each Project. The standards, codes, specifications, or other technical, design or professional requirements that apply to each Project are the latest edition in effect on the date on which this PSA is executed, unless Consultant and County expressly agree otherwise.

SECTION 3 COMPENSATION AND PAYMENT SCHEDULE

- 3.1 In consideration of Consultant's performance of the Basic Services, Consultant will receive the Basic Services compensation described in Exhibit 1. County will pay the Basic Services

compensation in accordance with the payment schedule specified in Exhibit 1.

- 3.2 For the performance of services not specifically described in the Basic Services (the "Additional Services"), Consultant will receive the Additional Services compensation described in Exhibit 1.
- 3.3 The County Project Manager will have authority to classify Consultant's services as "Basic or "Additional" services under this Agreement. The Project Manager may make this classification in consultation with the County Executive. In the event of any dispute over the classification of the Consultant's services as "Basic" or "Additional" services under this Agreement, the decision of the County Executive will be final and binding on the Consultant.

SECTION 4 PERIOD OF SERVICE

- 4.1 Consultant shall perform the professional services described herein, whether "Basic" or "Additional" services, in accordance with each Project Schedule, attached to this Agreement as Exhibit 3. Consultant shall obtain written County approval for any proposed modification to the Project Schedule.
- 4.2 This Agreement will become effective on the Effective Date, as defined on the signature page of this Agreement, and will remain in full force and effect for ten years following the Effective Date unless terminated sooner in accordance with this Agreement.
- 4.3 If the performance by Consultant or County of either Party's obligations under this Agreement is interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party to this Agreement, then that Party will be excused from such performance for a period of time that is reasonably necessary after such occurrence to remedy the effects of the occurrence. Upon the discovery of such an event, the Party whose performance is affected under this section shall notify the other Party, and the County Project Manager will call a special meeting to propose a program for resolution of the problem, and if necessary, to establish an estimated period of time of suspension or extension of the Project Completion Date. If Consultant makes a written request for an extension of time, the County Project Manager may grant the extension if the request is properly documented and justified by the circumstances.

SECTION 5 COORDINATION WITH COUNTY

- 5.1 The Travis County Purchasing Agent (the "Purchasing Agent") acts as County's overall contract administrator. The Purchasing Agent may designate representatives to transmit and receive information. For each Project, Consultant shall not commence work until the County Project Manager has thoroughly briefed Consultant on the scope of that Project. Consultant shall not commence work on the Project until receipt of a written notice to proceed issued by the Purchasing Agent upon the recommendation of the County Executive (the "Notice to Proceed").

- 5.2 Consultant shall furnish all available data and reasonable assistance necessary to comply with established application, review, and approval processes for any permits, grants, or planning advances required for each Project. Consultant shall familiarize itself, and comply, with established application, review, and approval processes as necessary to ensure that reasonable compliance will cause no delay to the Project Schedule.
- 5.3 For the duration of the Agreement term, Consultant shall be responsible for advising County whether in Consultant's judgment it is feasible to proceed with each Project given any constraints affecting the Project.
- 5.4 Consultant shall cooperate and coordinate with County's staff and other consultants and contractors as reasonable and necessary in performance of this Agreement and as required by the County Executive, the County Project Manager, and the Purchasing Agent.

SECTION 6 WORK PRODUCT

- 6.1 The term "Work Product" means any reports, drawings, plans, specifications and any other documents created, obtained or assembled in connection with performance of this Agreement and with the services rendered in connection with each Project, including but not limited to any and all deliverables for each Project as described in the Scope of Services.
- 6.2 Consultant shall submit the Work Product for each Project on or before the dates specified in each Project Schedule. Upon receipt of the Work Product, County will check the submission for completion. A "Complete" submission means that all items listed, referenced and otherwise described in this Agreement relating to that Project have been included.
- 6.3 If the submission is Complete, County will notify Consultant and County's Technical Review Process, as defined in this Section, will begin. If the submission is incomplete, County will notify Consultant, who shall perform any professional services that are required to complete the Work Product for that Project. Consultant shall then resubmit the Work Product to County.
- 6.4 County's "Technical Review Process" means County's review of the Complete Work Product for substantial compliance with the technical specifications and requirements included in the Basic Services. If during the Technical Review Process, the County Program Manager determines that the Complete Work Product is not in substantial compliance with the technical specifications and requirements specified in the Basic Services, the County may return the Complete Work Product to Consultant, and Consultant must perform any professional services required to bring the Work Product into compliance and resubmit the Complete Work Product to County.
- 6.5 The process described in Paragraphs 6.3 and 6.4 will be repeated until the Work Product is accepted by County. "Acceptance" means that in the County Project Manager's opinion, substantial compliance with the technical specifications and requirements has been achieved.

- 6.6 After Acceptance, Consultant shall perform any required modifications, corrections, redesigns, and additional work as requested by County and any other governmental entities having jurisdiction over the Project and as necessary to receive final approval by the County Project Manager. "Approval" means formal written recognition by County that the Work Product for that Project is Complete and that compliance with the technical specifications and requirements has been fully achieved.
- 6.7 The County Project Manager will have authority to classify Consultant's services as "Complete", "Accepted", or "Approved" under this Agreement. The Project Manager may make this classification in consultation with the County Executive.

SECTION 7 REVISION TO WORK PRODUCT

- 7.1 After Approval by County of the Work Product for each Project, Consultant shall, without additional compensation, perform any professional services required as a result of Consultant's development of the Work Product that County has found to be unclear or in error or omission. In addition, if it is necessary to revise the Work Product in order to accomplish the objectives of the Project, Consultant shall do so without additional compensation. However, after Approval by County, any revisions, additions, or other modifications made at County's request for the convenience of County that require Consultant to perform extra services and incur additional expenses will entitle Consultant to additional compensation for such extra services and expenses. This compensation will be paid as Additional Services in accordance with Exhibits 1 and 2. Consultant must obtain County's written authorization for Additional Services in advance in accordance with Exhibit 1.

SECTION 8 SUSPENSION AND TERMINATION OF AGREEMENT

- 8.1 **SUSPENSION.** County may suspend performance of this Agreement at any time for any reason without terminating this Agreement by giving Consultant written Notice of Suspension (a "Notice of Suspension"). The "Effective Date of Suspension" will be the date on which Consultant receives the Notice of Suspension, and the Suspension Period will begin on this date. Performance may be reinstated and this Agreement resumed in full force and effect within 60 days of Consultant's receipt of written notice of reinstatement from County. Upon the Effective Date of Suspension, Consultant shall follow the procedures described below:
- 8.1.1 Upon receipt of a Notice of Suspension, Consultant shall, unless the Notice otherwise directs, immediately begin to phase out and discontinue all services in connection with the performance of this Agreement and shall prepare a statement detailing the services performed under this Agreement prior to the Effective Date of Suspension. Consultant shall prepare copies of all completed or partially completed designs, plans, and specifications prepared under this Agreement prior to the Effective Date of Suspension, including but not limited to the Work Product, for possible delivery to County upon County's request.

8.1.2 During the Suspension Period, Consultant may submit the above-referenced statement to County for payment of the approved services actually performed under this Agreement, less previous payments.

8.2 TERMINATION FOR CONVENIENCE. County reserves the right to terminate this Agreement for reasons other than default by Consultant, including for any reason deemed by Commissioners Court to serve the public interest, or resulting from any governmental law, ordinance, regulation, or court order, by delivering to Consultant a written notice (a "Notice of Termination for Convenience"), which will take effect on the tenth day following receipt by Consultant ("Termination for Convenience"). In the event of Termination for Convenience, County and its officials, agents and representatives will not be liable for loss of any profits.

8.2.1 Upon receipt of a Notice of Termination for Convenience and prior to the effective date of termination, Consultant shall, unless the Notice of Termination for Convenience otherwise directs, immediately begin to phase out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within 30 days after receipt of a Notice of Termination for Convenience, Consultant shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination.

8.2.2 Consultant shall deliver to County copies of all completed or partially completed designs, plans, specifications and other Work Product prepared under this Agreement prior to the effective date of termination as a pre-condition to any final payment due under this Agreement.

8.2.3 Upon satisfaction of the above conditions, County will pay Consultant for approved services actually performed under this Agreement prior to termination, less previous payments.

8.2.4 Consultant's failure to submit the required statement described in Paragraph 8.2.1 and to comply with the above stated conditions will constitute a waiver by Consultant of any and all rights or claims to collect the fee to which Consultant may rightfully be entitled for services performed under this Agreement.

8.3 TERMINATION FOR DEFAULT. Either Party may terminate this Agreement for the failure of the other Party to perform any provisions of this Agreement, through no fault of the terminating Party ("Termination for Default") by delivering written notice of termination (a "Notice of Termination for Default") to the defaulting Party. The Notice of Termination for Default shall take effect on the tenth day following receipt by the defaulting Party. In the event of Termination for Default, County and its officials, agents and representatives will not be liable for loss of any profits.

Termination by Consultant:

8.3.1 In the event Consultant exercises its right to terminate for default by County, within 30 days after receipt by County of Consultant's Notice of Termination for Default,

Consultant shall submit a statement detailing the services performed under this Agreement prior to the effective date of termination.

- 8.3.2 Consultant shall deliver to County copies of all completed or partially completed designs, plans, specifications and other Work Product prepared under this Agreement prior to the effective date of termination as a pre-condition to any final payment due under this Agreement.
- 8.3.3 Upon satisfaction of the above conditions, County will pay Consultant for approved services actually performed under this Agreement prior to termination, less previous payments.
- 8.3.4 Consultant's failure to submit the required statement described in Paragraph 8.3.1 and to comply with the above stated conditions will constitute a waiver by Consultant of any and all rights or claims to collect the fee to which Consultant may rightfully be entitled for services performed under this Agreement.

Termination by County:

- 8.3.5 Upon receipt by Consultant of a Notice of Termination for Default and prior to the effective date of termination, Consultant shall, unless the Notice of Termination otherwise directs, immediately begin to phase out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within 30 days after receipt of a Notice of Termination for Default, Consultant shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination.
- 8.3.6 Consultant shall deliver to County copies of all completed or partially completed designs, plans, specifications and other Work Product prepared under this Agreement prior to the effective date of termination as a precondition to any final payment due under this Agreement.
- 8.3.7 Upon satisfaction of the above conditions, County will pay Consultant for approved services actually performed under this Agreement prior to termination, less previous payments.
- 8.3.8 Consultant's failure to submit the required statement described in Paragraph 8.3.5 and to comply with the above stated conditions will constitute a waiver by Consultant of any and all rights or claims to collect the fee to which Consultant may rightfully be entitled for services performed under this Agreement.
- 8.4 All references to time in this Agreement will be measured in calendar days unless otherwise specified.

SECTION 9 CONSULTANT'S RESPONSIBILITY AND LIABILITY

- 9.1 Consultant covenants to undertake no task for which a professional license or certificate is required unless Consultant or someone under Consultant's direction is appropriately licensed. In the event such licensed individual's license expires, is revoked, or is canceled, Consultant shall inform County of such event within five working days.
- 9.2 Consultant shall be responsible for conformance with applicable federal and state laws, County permitting requirements, and city ordinances currently in effect.
- 9.3 Acceptance and Approval of the Work Product by County will not release Consultant of any responsibility or liability for the accuracy and competency of Consultant's documents or work performed under this Agreement. Neither Acceptance nor Approval by County will be an assumption of responsibility or liability by County for any defect, error, or omission in Work Product prepared by Consultant.
- 9.4 Notwithstanding anything in this Agreement to the contrary, Consultant shall perform all services and responsibilities required of Consultant under this Agreement using at least that standard of care that a reasonably prudent Consultant in Travis County, Texas, would use in similar circumstances. Consultant shall perform the duties set forth in this Agreement in a professional manner and nothing in this Agreement will be construed to relieve Consultant of this duty.
- 9.5 Upon County's request, Consultant shall immediately remove from association with the Project any employee of Consultant who, in the opinion of County, is incompetent or whose conduct becomes detrimental to the work or coordination with County.
- 9.6 Consultant is an independent contractor under this Agreement. Neither Consultant nor any officer, agent, servant, or employee of Consultant will be classified as an employee or servant of County.
- 9.7 **INDEMNIFICATION.** CONSULTANT AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS COUNTY AND ITS OFFICIALS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, ACTIONS, SUITS, AND LIABILITY OF ANY KIND, WHETHER MERITORIOUS OR NOT, INCLUDING, WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING IN WHOLE OR IN PART FROM ANY NEGLIGENT ACT, NEGLIGENT ERROR, OR NEGLIGENT OMISSION OF CONSULTANT OR ANY OF CONSULTANT'S EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS ON ACCOUNT OF, ARISING OR RESULTING FROM, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF THIS AGREEMENT.
- 9.7.1 If any person, firm, corporation or other entity makes or brings any claim, or other action, against Consultant that relates to Consultant's performance under this Agreement, including proceedings before an administrative agency, Consultant shall give written notice to County of the following information:

- (i) the existence of the claim, or other action, within ten working days after being notified of it;
- (ii) the name and address of the person, firm, corporation, or other entity that made a claim, or that instituted any type of action or proceeding;
- (iii) the alleged basis of the claim, action or proceeding;
- (iv) the court or administrative tribunal, if any, where the claim, action or proceeding was instituted; and
- (v) the name or names of any person against whom this claim is being made.

9.7.2 Except as otherwise directed, Consultant shall furnish to County copies of all pertinent papers received by Consultant with respect to these claims or actions and all court pleadings related to the defense of these claims or actions.

9.8 CONTRACT ADMINISTRATION; UNRESOLVED DISPUTES. The Purchasing Agent acts as the County representative in the administration of this Agreement. In case of an unresolved dispute, any document, notice, or correspondence not issued by or to the Purchasing Agent, or other authorized County person, is void unless otherwise stated in this Agreement. If Consultant does not agree with any document, notice, or correspondence issued by the Purchasing Agent, or other authorized County person, relating to the unresolved dispute, Consultant must submit a written notice to the Purchasing Agent, or other authorized County person, within ten calendar days after receipt of the document, notice, or correspondence, outlining the exact point of disagreement in detail. Consultant may finally appeal the decision of the Purchasing Agent, in writing, to the Travis County Commissioners Court, whose decision shall be final and binding.

SECTION 10 OWNERSHIP OF DOCUMENTS

- 10.1 Consultant shall furnish County with Work Product as requested, whether or not it is complete at the end of each Project, or upon suspension or termination of this Agreement, as provided in this Agreement. Consultant may retain copies of the Work Product for Consultant's records.
- 10.2 The Work Product, and any other documents, including estimates, computer tapes, graphic files, tracings, calculations, analyses, reports, specifications, field notes, and data prepared by Consultant in performance of this Agreement, together with all intellectual property and proprietary rights in and to all such documents, will upon creation become the sole and exclusive property of County. Upon completion of each Project, Consultant shall deliver all such documents to County in an organized fashion. Consultant may retain a copy.
- 10.3 Any reuse by Consultant of any such documents described in Paragraphs 10.1 and 10.2 without the specific and prior written consent of County will be at Consultant's sole risk and without liability or legal exposure to County.

- 10.4 Consultant will not be responsible for any use or any modifications to the documents described in Paragraphs 10.1 and 10.2 made by any other entity, unless Consultant has given its specific written consent.

SECTION 11 MAINTENANCE OF AND RIGHT OF ACCESS TO RECORDS

- 11.1 Consultant agrees to maintain appropriate accounting records of costs, expenses, and payrolls of employees working on the Project, together with documentation of evaluations and study results for a period of five years after final payment for completed services and all other pending matters concerning this Agreement have been closed.
- 11.2 Consultant further agrees that County and its duly authorized representatives will have access to any and all books, documents, papers and records of Consultant that are directly pertinent to the services performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

SECTION 12 MISCELLANEOUS

- 12.1 VENUE. This Agreement is governed by and will be construed in accordance with the laws of the United States of America and the State of Texas, and all obligations under this Agreement are performable in Travis County, Texas. Venue for any dispute arising out of this Agreement will lie in the appropriate court of Travis County, Texas.
- 12.2 SEVERABILITY. If a court of competent jurisdiction rules any portion or portions of this Agreement invalid, illegal, or unenforceable in any respect, the remainder of it shall remain valid and binding.
- 12.3 EQUAL OPPORTUNITY IN EMPLOYMENT. Consultant agrees, during the performance of the services under this Agreement, to comply with the equal opportunity in employment provisions cited in Exhibit 4.
- 12.4 CERTIFICATION OF CONSULTANT. Consultant certifies that neither Consultant nor any members of Consultant's firm has:
- 12.4.1 Employed or retained for a commission, percentage, brokerage, contingency fee, or other consideration, any firm or person (other than a bona fide employee working solely for Consultant) to solicit or secure the services provided by this Agreement.
 - 12.4.2 Agreed, as an expressed or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person other than in connection with carrying out the services to be performed under this Agreement.
 - 12.4.3 Paid or agreed to pay to any firm, organization, or person (other than bona fide employees working solely for Consultant) any fee, contribution, donation, or

consideration of any kind for, or in connection with, procuring or carrying out the services provided under this Agreement.

Consultant agrees that County may furnish this certification to any local, state or federal governmental agencies in connection with this Agreement and with those portions of the Project involving participation of agency grant funds. Consultant agrees that this certification is subject to all applicable state and federal, criminal and civil laws.

12.5 BIDDING EXEMPTION. This Agreement is exempted from the bidding requirements of the COUNTY Purchasing Act pursuant to Section 262.024(a)(4) of the Local Government Code as this is a contract for professional services.

12.6 NOTICE. Any notice required or permitted to be given under this Agreement by one Party to the other must be in writing. The notice will be given and deemed to have been given immediately if delivered in person to the address set forth in this section for the Party to whom the notice is given. The notice will be given and deemed to have been given on the third day following mailing if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the party at the address set forth in this section.

The address of County for all purposes under this Agreement, unless such notice is specifically directed otherwise, is:

COUNTY: Cyd V. Grimes, C.P.M., CPPO (or successor)
 Travis County Purchasing Agent
 P.O. Box 1748
 Austin, Texas. 78767

with copies to (registered or certified mail with return receipt is not required):

Steven M. Manilla, P.E. (or successor)
 County Executive
 Travis County Transportation and Natural Resources Department
 P.O. Box 1748
 Austin, Texas 78767

The address of Consultant for all purposes under this Agreement, unless such notice is specifically directed otherwise, is:

Jeffery S. Ward and Associates, Inc.
 ATTN: Jeff Ward
 14401 Bookcliff Ct.
 Purcellville, Va 20132

12.7 INSURANCE. Consultant agrees during the performance of the services under this Agreement to comply with the insurance requirements specified in Exhibit 5.

12.8 FORFEITURE OF AGREEMENT. Consultant shall forfeit all benefits of this Agreement and County will retain all performance by Consultant and recover all consideration, or the value of all consideration, paid to Consultant pursuant to this Agreement if:

- (i) Consultant was doing business at the time of submitting its Qualifications Statement or had done business during the 365-day period immediately prior to the date on which its Qualifications Statement was due with one or more Key Contracting Persons; or
- (ii) Consultant does business with a Key Contracting Person after the date on which the Qualifications Statement that resulted in this Agreement and prior to full performance of this Agreement.

12.8.1 "Was doing business" and "has done business" mean:

- (a) Paying or receiving in any calendar year any money valuable thing which is worth more than \$250 in the aggregate in exchange for personal services or for purchase of any property or property interest, either real or personal, either legal or equitable; or
- (b) Loaning or receiving a loan of money; or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in a calendar year;

but does not include:

- (c) any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the general public;
- (d) any financial services product sold to a Key Contracting Person for personal, family, or household purposes in accordance with pricing guidelines applicable to similarly situated individuals with similar risks as determined by Consultant in the ordinary course of its business; or
- (e) a transaction for a financial service or insurance coverage made on behalf of Consultant if Consultant is a national or multinational corporation by an agent, employee or other representative of Consultant who does not know and is not in a position that he or she should have known about this Agreement.

12.8.2 "Key Contracting Person" means any person or business listed in listed in Attachment 1 to Exhibit 6.

12.9 PURCHASE ORDER. Consultant and its contractors, subcontractors and vendors shall provide goods and services using the purchase order method. The designated representative of the Travis County Purchasing Office will assign a purchase order number. Consultant and its

contractors, subcontractors and vendors shall reference the Agreement number and the purchase order number on all invoices to the Travis County Transportation and Natural Resources Department. The terms and conditions contained elsewhere in this Agreement will prevail over different or contrary terms in any purchase order. All invoices submitted by Consultant and its contractors, subcontractors, and vendors must reference the purchase order number on the invoice. County will not pay invoices that are in excess of the amount authorized by the purchase order.

12.10 PAYMENTS. County will make payment by check or warrant upon satisfactory delivery and acceptance of items and submission of a correct and complete invoice to the address below for orders placed by the Purchasing Agent, as indicated on Purchase Orders.

Travis County Transportation and Natural Resources Department
P.O. Box 1748
Austin, Texas 78767

In order to be considered "correct and complete," an invoice must include at least the following information:

- 12.10.1 name, address, and telephone number of Consultant and similar information in the event payment is to be made to a different address;
- 12.10.2 County Agreement, Purchase Order, or Delivery Order number;
- 12.10.3 identification of items or services as outlined in the Agreement;
- 12.10.4 quantity or quantities, applicable unit prices, total prices, and total amount, and
- 12.10.5 any additional payment information that may be called for by this Agreement.

12.11 DISBURSEMENTS TO PERSONS WITH OUTSTANDING DEBTS PROHIBITED. In accordance with Section 154.045 of the Local Government Code, if notice of indebtedness has been filed with the County Auditor or County Treasurer evidencing the indebtedness of Consultant to the State, County or a salary fund, a warrant may not be drawn on a County fund in favor of Consultant, or an agent or assignee of Consultant until:

- (a) the County Treasurer notifies Consultant in writing that the debt is outstanding; and
- (b) the debt is paid.
- (c) "Debt" includes delinquent taxes, fines, fees, and indebtedness arising from written agreements with County.
- (d) County may apply any funds County owes Consultant to the outstanding balance of debt for which notice is made under this section 12.11, if the notice includes a statement that the amount owed by County to Consultant may be applied to reduce the outstanding debt.

- 12.12 INTEREST ON OVERDUE PAYMENTS. Chapter 2251 of the Texas Government Code will govern accrual and payment of interest on overdue payments.
- 12.13 PROPERTY TAXES. Notwithstanding anything to the contrary in this Agreement, if Consultant is delinquent in the payment of property taxes at the time of providing the services rendered under this Agreement, Consultant assigns any payments to be made for services rendered hereunder to the Travis County Tax Assessor-Collector for the payment of the delinquent taxes.
- 12.14 TAXPAYER IDENTIFICATION. Consultant shall provide County with an Internal Revenue Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code, its rules and regulations, and a statement of entity status in a form satisfactory to the County Auditor before any funds are payable under this Agreement.
- 12.15 SUCCESSORS AND ASSIGNS. This Agreement will be binding on and inure to the benefit of County and Consultant and their respective successors, executors, administrators, and assigns. Neither County nor Consultant may assign, sublet, or transfer its interest in or obligations under this Agreement without the written consent of the other party. IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO ASSIGN THIS AGREEMENT EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COMMISSIONERS COURT.
- 12.16 HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) PROGRAM REPORTING REQUIREMENTS.
- 12.16.1 HUB Program Requirements.
- 12.16.1.1 In consideration of award of this Agreement to Consultant, Consultant agrees to maintain a subconsultant relationship with any HUB Subconsultants identified on the HISTORICALLY UNDERUTILIZED BUSINESS (HUB) DECLARATION Form provided with Consultant's Qualifications Statement and attached to this Agreement as Exhibit 7. Consultant shall make good faith efforts to meet or exceed the HUB participation goals in the Professional Services category for an overall 15.8% for Minority-Owned Business Enterprises (MBE) and an Overall 15.8% for Woman-Owned Business Enterprises (WBE). *(Sub-goals: 1.9% African-American, 9.0% Hispanic-American, 4.9% Native/Asian-American)* of the Agreement Sum. For purposes of this Agreement, all references to "HUB" mean "certified HUB." To be considered as a "certified HUB," the subconsultant must have been certified by, and hold a current and valid certification with, any of the following three agencies: (1) The State of Texas; (2) the City of Austin; or (3) the Texas Unified Certification Program. Minimum good faith efforts include, to the extent practical and consistent with standard and prudent industry practices, the following:

- (a) dividing the Work into the smallest feasible portions, to allow for maximum HUB subconsultant participation;
- (b) providing to HUBs that exhibited genuine interest in bidding on a subcontract adequate information regarding the Project (i.e. plans, specifications, scope of work, bonding and insurance requirements and a point of contact within Consultant's organization);
- (c) notifying, in writing, three or more HUBs for each scope of work, allowing no less than five working days prior to bid submission, of the planned work to be subcontracted;
- (d) providing notice of opportunities to minority or women trade organizations or development centers to assist in identifying potential HUBs by disseminating the information to their members/participants.

12.16.1.2 Consultant may go beyond the good faith efforts listed above when soliciting HUB subconsultants.

12.16.2 Subcontractor/Subconsultant Tracking Software System.

12.16.2.1 The Travis County Purchasing Office has implemented an electronic subcontracting/subconsulting reporting system (the "Subcontractor Tracking Software System" or the "System") to assist the Travis County Purchasing Office in monitoring, tracking and reporting payments to Subcontractors/subconsultants. County understands and believes, based on discussions with representatives of the System vendor and review of documentation accompanying the System, that: (i) the System provides a paperless environment in which transactions are electronically stored and routed; "Payment" and "Payment Verification" alerts are provided by e-mail and fax; (ii) the System will facilitate electronic Subcontractor/subconsultant diversity management, which in turn will improve auditing while cutting costs and shortening the audit cycle from months to hours; (iii) the System will eliminate standard forms and streamline the current manual process of tracking payments to all first-tier Subcontractors/subconsultants by performing all such tracking procedures electronically; and (iv) the System will serve as a tool to improve efficiency, accountability, data accuracy, transparency, and overall communication.

12.16.2.2 Consultant shall designate, and shall require all Subcontractors/subconsultants to designate, a liaison responsible for handling all Subcontractor Tracking Software System reporting. On a monthly basis, Consultant shall record and submit electronically payments made to all Subcontractors/subconsultants for work completed through the end of the previous pay period; such electronic recording and submission must be completed no later than the 15th day after such

payments are made. Consultant shall contractually require all Subcontractors/subconsultants to verify payments by entering such payment data in the System no later than 10 days following the day on which Consultant enters the Subcontractor/subconsultant payment information as required in this Agreement. Consultant shall attempt to resolve any payment discrepancies or disputes in good faith. Consultant shall not receive credit towards the HUB, M/WBE and DBE participation goals until reported payments have been verified by entering the payment data into the System as described in this Agreement or by providing to County payment documentation satisfactory to County.

12.16.2.3 Consultant shall report payment information pertaining to each Subcontractor/subconsultant that includes, but is not limited to, business name, certification status, work assignment, original subcontract sum, payment number, percentage and dollars paid during the reporting period. A "Comment" field is available for entering additional information and comments and includes the ability to attach documents.

12.16.2.4 Failure by Consultant to furnish the information required of it described in this Paragraph 12.16.2 may result in cancellation of the contract award and Agreement termination in accordance with the procedures set forth in this Agreement. Additionally, if County determines that Consultant is in default of these mandatory reporting requirements, County may consider such conduct against Consultant in the evaluation of future contracts between Consultant and County.

12.16.2.5 Consultant shall register, and shall contractually require all Subcontractors/subconsultants to register, with a username and password. Training on how to use the System will be provided by Travis County Purchasing Office HUB staff.

12.16.2.6 County understands and believes that the Subcontractor Tracking Software System will assist County in ensuring compliance with the County's HUB Program, and that the System will allow County staff to closely monitor Consultant and all Subcontractors/subconsultants performing work on the Project. Travis County Purchasing Office HUB staff will conduct periodic post-award compliance reviews to verify that Subcontractors/subconsultants listed by Consultant performed the work and received payment.

12.16.2.7 During the term of this Agreement, Consultant is encouraged to inform County of any problems anticipated or encountered, and of any other concerns, regarding the utilization of HUBs, M/WBEs and DBEs.

12.16.2.8 Other information tracked by the System includes increases or decreases in Subcontractor/subconsultant work assignments, percentage of HUB

goal achieved, and substitutions. When substituting a Subcontractor/subconsultant, Consultant is highly encouraged to utilize HUBs, M/WBEs and DBEs. Consultant shall notify County of any substitutions or changes to Subcontractors/subconsultants in accordance with the procedures described in the System. Such notice shall be sent electronically to the Purchasing Agent or HUB Program Coordinator. County may request Consultant to provide evidence that it made a good faith effort to substitute another HUB, M/WBE or DBE Subcontractor/subconsultant but was unable to do so. Approval turnaround time will be within 24 – 48 hours. If Consultant has difficulty in locating HUB, M/WBE or DBE Subcontractors/subconsultants, it should contact the Travis County Purchasing Office HUB staff at (512) 854-4561 or (512) 854-4852.

12.16.2.9 County understands and believes that other notifications automatically generated by the Subcontractor Tracking Software System include the following: User Registration/Password, Contract Award Notifications, Audit Reminders, Unresponsive HUB Subcontractors, Discrepancy Notifications, HUB Subcontractor Change Requests, Payment Verifications, Vendor Information Verification Notices, Not Meeting the Goals Notification and Contract Closeout. Some notifications listed may include response deadlines.

12.17 FUNDING OUT. Despite anything to the contrary in this Agreement, if, during budget planning and adoption, the Commissioners Court fails to provide funding for this Agreement for the following fiscal year of Travis County, County may terminate this Agreement after giving Consultant 30 days' written notice that this Agreement is terminated due to the failure to fund it.

12.18 NON-WAIVER OF DEFAULT. No payment, act, or omission by County will constitute or be construed as a waiver of any breach or default of Consultant that then exists or that may subsequently exist. All rights of County under this Agreement are specifically reserved and any payment, act or omission will not impair or prejudice any remedy or title to County under it. Any right or remedy in this Agreement will not preclude the exercise of any other right or remedy under this Agreement or under any law, except as expressly provided in this Agreement, nor will any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

12.19 MEDIATION. When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in Section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.

- 12.20 OFFICIALS NOT TO BENEFIT. If a member of the Commissioners Court belongs to a cooperative association, County may purchase equipment or supplies from the association only if no member of the Commissioners Court will receive a pecuniary benefit from the purchase, other than as reflected in an increase in dividends distributed generally to members of the association.
- 12.21 CONSULTANT CERTIFICATIONS:
- 12.21.1 Consultant certifies that Consultant: (i) is a duly qualified, capable and otherwise bondable business entity; (ii) is not in receivership and does not contemplate same; (iii) has not filed for bankruptcy and is not currently delinquent with respect to payment of property taxes within Travis County; and (iv) is duly licensed in the State of Texas to perform the work described in this Agreement.
- 12.21.2 Consultant further represents and warrants that: (i) all applicable copyrights, patents and licenses that may exist on materials used in this Agreement have been adhered to; and (ii) County will not be liable for any infringement of those rights and any rights granted to County will apply for the duration of this Agreement. Consultant shall indemnify County and its officers, agents and employees from all claims, losses, damages, causes of action and liability of every kind, including expenses of litigation, court costs and attorney fees, for damages to any person or property arising in connection with any alleged or actual infringement of existing patents, licenses of copyrights applicable to materials used in this Agreement.
- 12.22 CIVIL RIGHTS/ADA COMPLIANCE. Consultant shall provide all services and activities required in a manner that would comply with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, and with the provisions of the Americans With Disabilities Act of 1990, Public Law 101-336 [S.933] as if Consultant were an entity bound to comply with these laws. Consultant shall not discriminate against any employee or applicant for employment based on race, religion, color, sex, national origin, age, or handicapped condition.
- 12.23 GRATUITIES. County may terminate this Agreement if it is found that gratuities of any kind, including entertainment or gifts, were offered or given by Consultant, or any agent or representative of Consultant, to any County official or employee with a view toward securing favorable treatment with respect to this Agreement. If this Agreement is terminated by County pursuant to this provision, County will be entitled, in addition to any other rights and remedies, to recover from Consultant at least three times the cost incurred by Consultant in providing the gratuities.
- 12.24 MONITORING. County reserves the right to perform periodic on-site monitoring of Consultant's compliance with the terms of this Agreement and of the adequacy and timeliness of Consultant's performance under this Agreement. After each monitoring visit, County will provide Consultant with a written report of the monitor's findings. If the report

notes deficiencies in Consultant's performance under the terms of this Agreement, it will include requirements and deadlines for the correction of those deficiencies by Consultant. Consultant shall take action specified in the monitoring report prior to the deadlines specified.

- 12.25 INCORPORATION OF EXHIBITS AND ATTACHMENTS. All of the exhibits, attachments, and appendices referred to in this Agreement are incorporated by reference as if set forth verbatim in this Agreement.
- 12.26 ENTIRE AGREEMENT. This Agreement represents the entire and integrated agreement between County and Consultant and supersedes all prior negotiations, representations, or agreements, either oral or written.
- 12.27 TEXAS PUBLIC INFORMATION ACT. Notwithstanding any provision in this Agreement to the contrary, disclosure of any information obtained by County or any of its officials, employees, agents or representatives in connection with this Agreement will be subject to the provisions of the Texas Public Information Act and all legal authorities relating to that Act, including but not limited to opinions, decisions and letter rulings issued by the Texas Attorney's General Office.
- 12.28 CERTIFICATION OF ELIGIBILITY. This provision applies if the Total Agreement Sum specified in Exhibit 1 exceeds \$25,000. Consultant certifies that at the time of submission of its proposal to perform the Project services, Consultant was not on the federal government's list of suspended, ineligible, or debarred contractors. If Consultant has been placed on the list between the time of submission of its proposal and contract award, Consultant shall notify the Purchasing Agent. If Consultant fails to do so, County may terminate this Agreement for default.
- 12.29 CONFLICT OF INTEREST QUESTIONNAIRE. If required, the Consultant must complete, file and update a Conflict of Interest Questionnaire in compliance with Chapter 176 of the Texas Local Government Code. Consultant acknowledges that the law requires the County to provide access to this questionnaire on the official Travis County website.
- 12.30 AMENDMENT. The Parties may amend this Agreement only by written instrument signed by both Parties. CONSULTANT EXPRESSLY ACKNOWLEDGES THAT NO OFFICER, AGENT, REPRESENTATIVE OR EMPLOYEE OF TRAVIS COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO MODIFY OR AMEND THE TERMS OF THIS AGREEMENT UNLESS THE COMMISSIONERS COURT HAS EXPRESSLY GRANTED THAT SPECIFIC AUTHORITY.
- 12.31 ENTITY STATUS. By my signature below, I certify that Consultant is a _____ corporation, duly incorporated under law, and that the corporation is authorized to do business in the State of Texas.

As a duly authorized representative of Consultant, I acknowledge by my signature below that I have read and understand the above paragraphs and that Consultant has the obligation to ensure compliance with its provisions by itself and its employees, agents, and representatives.

EXHIBIT 1**COMPENSATION FOR PROFESSIONAL SERVICES AND SCHEDULE OF PAYMENTS****SECTION 1 – COMPENSATION FOR BASIC SERVICES**

- 1.1 The County will pay the Consultant for satisfactory performance of the services in accordance with the fees set forth in Appendix A, Scope of Services.

SECTION 2 – COMPENSATION FOR ADDITIONAL SERVICES

- 2.1 “Additional Services” are defined as any services performed by Consultant not specifically described in the Basic Services (Section 2 of this Agreement).
- 2.2 For the performance of the Additional Services, County will pay Consultant under a written amendment to this Agreement; provided, however, that the performance of any Additional Services must be authorized in advance in writing by the Purchasing Agent upon the recommendation of the County Project Manager.
- 2.3 The basis of compensation for the services of principals and employees engaged in the performance of the Additional Services will be the hourly rates set forth in Exhibit 2.
- 2.4. County will not compensate Consultant for work made necessary by Consultant's errors or omissions. County will compensate Consultant for the Additional Services.

SECTION 3 -- SCHEDULE OF PAYMENTS

- 3.1 Payments will be made on a monthly basis for work performed, as described in detail in the Scope of Services, within 30 days of receipt of a correct and complete invoice, as defined in paragraph 12.10, by the Travis County Transportation and Natural Resources Department.

EXHIBIT 2
HOURLY RATES

See rates set forth in Appendix A, Scope of Services

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EXHIBIT 3
PROJECT SCHEDULE

- A. Consultant shall provide a detailed schedule of services, including a list of tasks and accompanying Work Product, to be performed for each Project described in the Scope of Services (the "Project Schedule"). At the beginning of each Project, the County Project Manager and Consultant will update and adjust the details of the Project Schedule and accompanying Work Product as may be required for each Project. The Project Schedule must allow sufficient time for the development of the Work Product in each Project to a level of quality and standard of completeness consistent with normal practice. The Project Schedule must also allow sufficient time for the County's Technical Review Process.
- A.1 Consultant shall provide and maintain sufficient Project staffing levels necessary to produce the work in a timely and efficient manner consistent with the Project Schedule.
- A.2 The Project Schedule must be updated in the event that:
1. any County approval or decision is not made within the time frame specified in the Project Schedule;
 2. County makes a written request for a revision in the Work Product that is inconsistent with written approval or instructions previously given by County and due to causes beyond the reasonable control of Consultant;
 3. a force majeure event has occurred; and
 4. Consultant has not performed in accordance with the latest Project Schedule.
- A.3 If Consultant falls behind the Project Schedule by two or more weeks, then Consultant shall present the County Project Manager with a recovery plan that sets forth the remedial actions to be taken by Consultant. At its sole option, the COUNTY may withhold all or part of any payment due to Consultant until the Project Schedule is recovered.
- B. This Agreement will become effective upon the Effective Date and will remain in full force and effect until the Project Completion Date.

EXHIBIT 4
EQUAL OPPORTUNITY IN EMPLOYMENT

- A. Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Consultant shall 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 must include, but not be limited to, the following: employment, upgrading, demotion, or transfer; termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. Consultant shall, in all solicitations or advertisements for employees placed by or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. Consultant shall send to the labor union representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or worker's representatives of Consultant's obligations under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. Consultant shall comply with the regulations of the United States Department of Transportation (49 CFR 21 and 23 CFR §710.405) and all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor, including 41 CFR Part 60.
- E. Consultant shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto; and shall permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of Consultant's non-compliance with the non-discrimination 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 Consultant may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. Consultant shall include the provisions of paragraphs (A.) through (F.) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 or Executive Order 11246 of September 24, 1965, as amended, so that such provisions shall be binding upon each subcontractor or vendor. Consultant shall

take such action with respect to any subcontractor purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by County or federal agency, Consultant may request County and United States to enter into such litigation to protect the interests of the United States.

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EXHIBIT 5**INSURANCE REQUIREMENTS**

During the life of this Agreement, Consultant agrees to provide and maintain the following insurance:

- A. Worker's Compensation in accordance with statutory requirements.
- B. Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$400,000 per occurrence and \$1,000,000 in the aggregate, including coverage on the same for independent subcontractor(s). TRAVIS COUNTY MUST BE NAMED AS AN ADDITIONAL INSURED UNDER THIS COVERAGE.
- C. Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage limits of \$400,000 per occurrence and \$1,000,000 in the aggregate. Consultant shall require any subcontractor(s) to provide Automobile Liability Insurance in the same minimum amounts.
- D. Professional Liability Errors and Omissions Insurance in the amount of \$1,000,000.

Consultant shall not commence any field work under this Agreement until Consultant has obtained all required insurance and such insurance has been approved by County. CONSULTANT shall not allow any subcontractor(s) to commence work to be performed in connection with this Agreement until all required insurance has been obtained. Approval of the insurance by COUNTY shall not relieve or decrease the liability of Consultant under this Agreement.

The required insurance must be written by a company approved to do business in the State of Texas at the time the policy is issued. Consultant shall furnish County with a certification of coverage issued by the insurer. The insurance company will be subject to County's approval. Consultant must not cause any insurance to be canceled or permit any insurance to lapse. ALL INSURANCE CERTIFICATES MUST INCLUDE A CLAUSE TO THE EFFECT THAT THE POLICY WILL NOT BE CANCELED OR REDUCED, RESTRICTED OR LIMITED UNTIL TEN (10) DAYS AFTER COUNTY HAS RECEIVED WRITTEN NOTICE AS EVIDENCED BY RETURN RECEIPT OF REGISTERED OR CERTIFIED LETTER.

EXHIBIT 6

STATE OF TEXAS }
COUNTY OF TRAVIS }

ETHICS AFFIDAVIT

Date: _____

Name of Affiant: _____

Title of Affiant: _____

Business Name of CONSULTANT: _____

County of CONSULTANT: _____

Affiant on oath swears that the following statements are true:

1. Affiant is authorized by CONSULTANT to make this affidavit for CONSULTANT.
2. Affiant is fully aware of the facts stated in this affidavit.
3. Affiant can read the English language.
4. CONSULTANT has received the list of Key Contracting Persons associated with this Agreement, which is attached to this affidavit as Attachment 1.
5. Affiant has personally read Attachment 1 to this Affidavit.
6. Affiant has no knowledge of any Key Contracting Person on Attachment 1 with whom CONSULTANT is doing business or has done business during the 365-day period immediately before the date of this affidavit.

Signature of Affiant

Address

SUBSCRIBED AND SWORN TO before me by _____ on _____, 20__.

Notary Public, State of _____

Typed or printed name of notary

My commission expires: _____

EXHIBIT 6, ATTACHMENT 1
LIST OF KEY CONTRACTING PERSONS
December 11, 2013

CURRENT Position Held	Name of Individual Holding Office/Position	Name of Business Individual is Associated
County Judge	Samuel T. Biscoe	
County Judge (Spouse)	Donalyn Thompson-Biscoe	
Executive Assistant	Cheryl Brown	
Executive Assistant	Melissa Velasquez	
Executive Assistant	Josie Z. Zavala	
Executive Assistant	David Salazar*	
Commissioner, Precinct 1	Ron Davis	
Commissioner, Precinct 1 (Spouse)	Annie Davis	Seton Hospital
Executive Assistant	Deone Wilhite	
Executive Assistant	Felicitas Chavez	
Executive Assistant	Sue Spears	
Commissioner, Precinct 2	Bruce Todd*	
Commissioner, Precinct 2 (Spouse)	Elizabeth Christian	Consultant
Executive Assistant	Sara Krause*	
Executive Assistant	Joe Hon	
Executive Assistant	Peter Einhorn	
Commissioner, Precinct 3	Gerald Daugherty*	
Commissioner, Precinct 3 (Spouse)	CharylN Daugherty	Consultant
Executive Assistant	Bob Moore*	
Executive Assistant	Martin Zamzow*	
Executive Assistant	Barbara Smith*	
Commissioner, Precinct 4	Margaret Gomez	
Executive Assistant	Edith Moreida	
Executive Assistant	Norma Guerra	
County Treasurer	Dolores Ortega-Carter	
County Auditor	Nicki Riley	
County Executive, Administrative	Vacant	
County Executive, Planning & Budget	Leslie Browder	
County Executive, Emergency Services	Danny Hobby	
County Executive, Health/Human Services	Sherri E. Fleming	
County Executive, TNR	Steven M. Manilla, P.E.	
County Executive, Justice & Public Safety	Roger Jefferies	
Director, Facilities Management	Roger El Khoury, M.S., P.E.	
Chief Information Officer	Tanya Acevedo	
Director, Records Mgmt & Communications	Steven Broberg	
Travis County Attorney	David Escamilla	
First Assistant County Attorney	Steve Capelle	
Executive Assistant, County Attorney	James Collins	
Director, Land Use Division	Tom Nuckols	
Attorney, Land Use Division	Julie Joe	
Attorney, Land Use Division	Christopher Gilmore	
Director, Transactions Division	John Hille	

Attorney, Transactions DivisionDaniel Bradford
 Attorney, Transactions DivisionElizabeth Winn
 Attorney, Transactions DivisionMary Etta Gerhardt
 Attorney, Transactions DivisionBarbara Wilson
 Attorney, Transactions DivisionJim Connolly
 Attorney, Transactions DivisionTenley Aldredge
 Director, Health Services DivisionBeth Devery
 Attorney, Health Services DivisionPrema Gregerson
 Purchasing AgentCyd Grimes, C.P.M., CPPO
 Assistant Purchasing AgentMarvin Brice, CPPB
 Assistant Purchasing AgentBonnie Floyd, CPPO, CPPB, CTPM
 Purchasing Agent Assistant IVCW Bruner, CTP
 Purchasing Agent Assistant IVLee Perry
 Purchasing Agent Assistant IVJason Walker
 Purchasing Agent Assistant IVRichard Villareal
 Purchasing Agent Assistant IVPatrick Strittmatter
 Purchasing Agent Assistant IVLori Clyde, CPPO, CPPB
 Purchasing Agent Assistant IVScott Wilson, CPPB
 Purchasing Agent Assistant IV.....Jorge Talavera, CPPO, CPPB
 Purchasing Agent Assistant IVLoren Breland, CPPB
 Purchasing Agent Assistant IVJohn E. Pena, CTPM
 Purchasing Agent Assistant IVRosalinda Garcia
 Purchasing Agent Assistant IVAngel Gomez
 Purchasing Agent Assistant IVJesse Herrera, CTP, CTPM, CTCM
 Purchasing Agent Assistant IIIShannon Pleasant, CTPM
 Purchasing Agent Assistant IIIDavid Walch
 Purchasing Agent Assistant IIIMichael Long, CPPB
 Purchasing Agent Assistant IIISydney Ceder
 Purchasing Agent Assistant IIIRuena Victorino*
 Purchasing Agent Assistant IIIRachel Fishback*
 Purchasing Agent Assistant II.....Vacant
 Purchasing Agent Assistant II.....L. Wade Laursen
 Purchasing Agent Assistant II.....Sam Francis
 HUB Coordinator.....Sylvia Lopez
 HUB Specialist.....Betty Chapa
 HUB Specialist.....Jerome Guerrero
 Purchasing Business Analyst.....Scott Worthington
 Purchasing Business Analyst.....Vacant

FORMER EMPLOYEES

<u>Position Held</u>	<u>Name of Individual Holding Office/Position</u>	<u>Date of Expiration</u>
Commissioner, Precinct 3	Karen Huber	01/01/14
Executive Assistant	Garry Brown	01/01/14
Executive Assistant	Julie Wheeler	01/01/14
Executive Assistant	Jacob Cottingham	01/01/14
Commissioner, Precinct 2	Sarah Eckhardt	05/31/14
Purchasing Agent Assistant III	Nancy Barchus, CPPB	06/28/14
Purchasing Business Analyst	Jennifer Francis	11/29/14

* - Identifies employees who have been in that position less than a year.

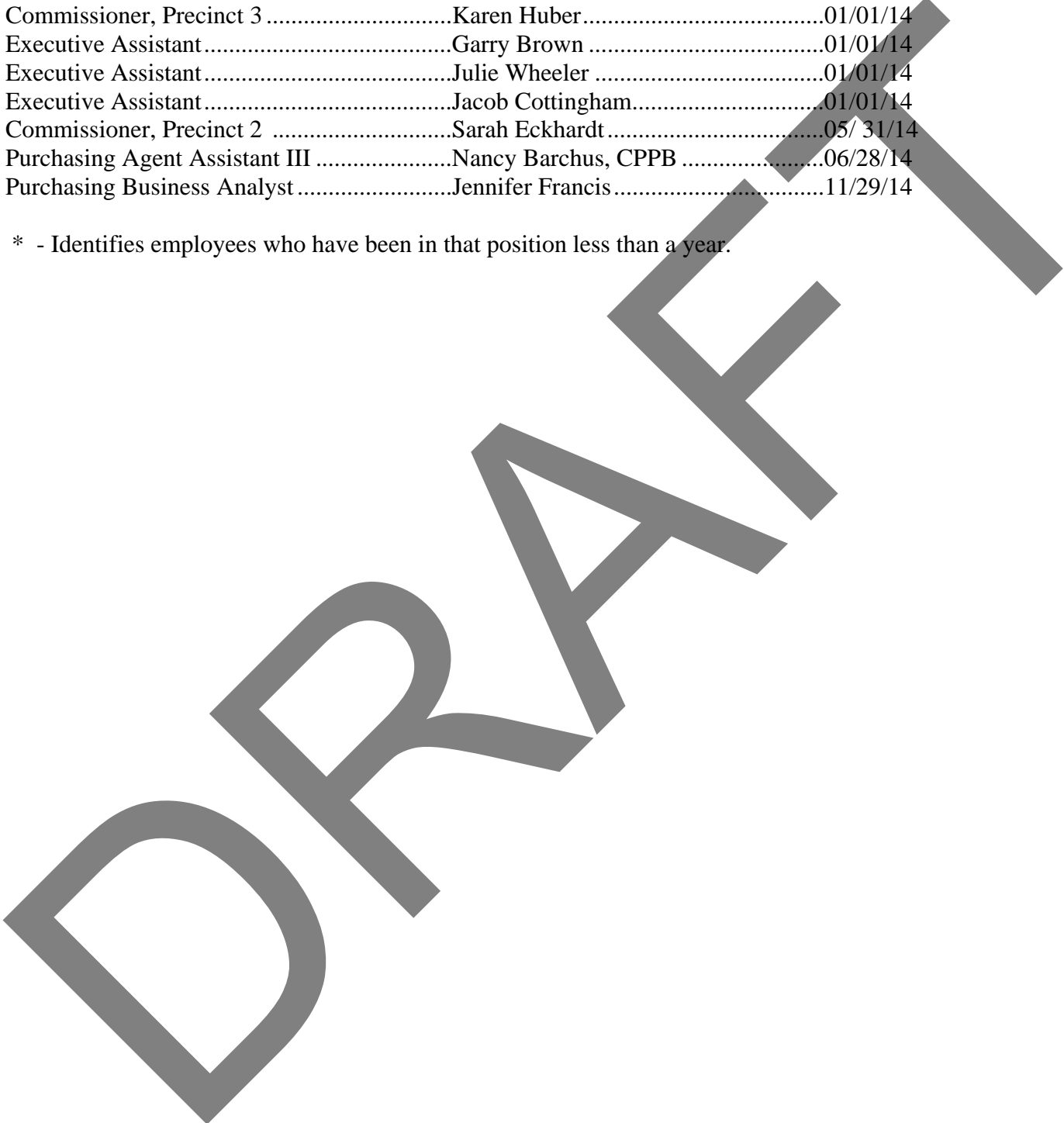


EXHIBIT 7

HUB DECLARATION AND LIST OF CERTIFIED HUB SUBCONTRACTORS

(Insert at Contract Award)

DRAFT

APPENDIX A

SCOPE OF SERVICES

Professional Services for Disaster Mitigation

I. Acquisition and Relocation Services

A. Basic Acquisition Tasks

1. **Contract, Review, and Oversight of Title Company Activities**

The Consultant will utilize the services of a title insurance company that is under contract to work for Travis County. If there are no firms under contract with the County or if the available firms are not capable or unavailable for the buyout work, the Consultant must procure the services of a title insurance company licensed to do business in Texas and properly qualified to provide a commitment to insure, provide escrow and closing agent services, and issue a title insurance policy from a nationally recognized insurer to ensure that the County acquires good and indefeasible title in fee simple to the property.

The Consultant will ensure that the title company activities are performed in a timely manner and in accordance with the terms of the contract. The Consultant will review title searches and title insurance commitments to ensure that they meet the requirements of the contract. If problems are encountered, the Consultant will seek resolution from the title company.

2. **Contract, Review of Appraisal and Oversight of the Appraisal Firm**

The Consultant will procure real estate appraisal services from an appraiser(s) that is properly qualified and licensed in Texas to provide an estimate of the fair market value of each parcel to be acquired. The Consultant will ensure these services are performed in a timely manner. The Consultant will review each appraisal for compliance with Uniform Standards for Professional Appraisal Practices ("USPAP") and granting agency requirements (if applicable). The appraiser's estimate of value should be well documented and supported by the best comparable sales data available. An appraisal review form will be prepared for each appraisal. The Consultant will bring errors, omissions and unsupported conclusions to the attention of the appraiser and require the appraiser to revise the report as needed to meet the County's requirements. The Consultant will prepare an approved estimate of value. Should a property owner later challenge the Determination of Compensation and obtain their own appraisal, the Consultant will review owner's appraisal and prepare a revised Offer to Sell for County approval, as appropriate. The review of owner appraisals and the preparation of revised offers will be billed for each parcel as appropriate.

Note: The actual cost for appraisals in connection with this acquisition task is not included in the fee set forth in Section I.C. The Consultant will contract for appraisals on behalf of Travis County and will be responsible for overseeing appraisal contractors to ensure that they meet County requirements and granting agency requirements. Travis County will reimburse the Consultant for the cost of the appraisal and the Consultant will, in turn, pay the appraisal firm.

3. Develop Data for Determining Compensation

Information provided by the appraiser and the community will be reviewed and an amount of compensation for each parcel will be recommended. The Consultant will prepare a Contract of Sale, and any other acquisition documentation required by a granting agency or the County, such as a Statement of Just Compensation. The Consultant will review duplication of benefits information and make proper deductions from value.

Note: Duplication of Benefits data is only as good as the data provided by the community and/or the homeowner. The Consultant will not be responsible for duplication of benefits data not known or withheld at the time of the development of the Contract of Sale. The Consultant will make every effort to obtain complete and accurate duplication of benefits data up to the point of settlement of the property.

4. Prepare Contract of Sale

Utilizing the data developed or obtained in Task 3, the Consultant will prepare the following documents:

- a. Letter to each parcel owner explaining the acquisition process and their rights and options, to be signed by the Consultant;
- b. Contract of Sale for each parcel to be signed by the County official;
- c. any other documents required by Granting Agencies or the County.

5. Negotiate with Owners

The Consultant will meet with each owner in person to explain the County acquisition process and review his/her owner rights and options. The meetings will be conducted in facilities provided by the County. The Consultant will provide a copy of any appraisal reports to the owner and explain the basis of the valuation. A Contract of Sale, in a form approved by the Travis County Attorney's Office, will be presented and explained to each owner by the Consultant. If the seller agrees to the appraised value, a signed contract will be forwarded to the County Project Manager for review, approval and signature by an authorized official. If the seller does not agree to sell at appraised value, the Consultant may examine any evidence of valuation offered by the seller and make a recommendation regarding an alternate purchase price to the County Project Manager. The Consultant will advise sellers who dispute appraised value that the Commissioners' Court must approve all purchases above appraised value on a case by case basis.

If duplication of (insurance) benefit deductions are made and the owner has documentation to support a revision to the deductions or to support a reimbursement, the Consultant will make appropriate adjustments. The Consultant will obtain information for each parcel relating to duplication of benefits from the State of Texas or from the granting agency, as appropriate.

6. Deed Preparation

The Consultant will prepare a sample Deed for each parcel in a form that meets the requirements of the Travis County Attorney's Office and/or the appropriate granting agency. The deed must be suitable for recording, identify the interest in the land to be acquired, and include any deed restrictions required by the granting agency or Travis County.

7. **Oversee and Coordinate Settlements**

The title company will be responsible for scheduling closing with each parcel owner and for the preparation of all documents necessary for closing. The Consultant will monitor these activities to ensure that they are performed in a timely manner and that all matters are properly coordinated. The Consultant will provide a check request to the County Project Manager and County Financial Services staff prior to each closing which identifies the amount needed for disbursement by the title company at closing. The check request will identify each parcel by parcel number, owner name, address of property and amount of compensation. The County will be advised to deposit the needed funds in the Title Company escrow prior to closing. Travis County will pay the title company directly for its services through the transfer of funds prior to settlement.

The Consultant will notify the County Project Manager in writing, or ensure that the Title Company notifies the County Project Manager in writing, within 3 business days of closing on a property.

8. **Prepare and Maintain Hard Copy Case Files**

The Consultant will prepare and submit to the County Project Manager a hard copy and an electronic copy case file for each parcel purchased upon receipt by Consultant of final closing documents from the title company. This file will contain at a minimum: the application package from the owner, a copy of the appraisal a copy of Contract of Sale and any revisions thereto, a copy of the final title insurance policy, a copy of the recorded deed and any other acquisition documents required by the County or granting agency.

Notes regarding owner meetings and various discussions will be included in the case file as appropriate.

B. Relocation Services

The Consultant will assist the County in determining relocation benefits for eligible owners and tenants who are displaced by a County buyout program.

This service will be provided on an as-needed basis, according to programmatic requirements and County policy. The Consultant will review eligibility for relocation benefits. The Consultant will obtain information from each owner or tenant and calculate benefit amounts to be paid. The Consultant will prepare an Agreement for each eligible owner or tenant, submit it to the County Project Manager for review and approval, and oversee the payment of benefits.

C. Consultant's Fee Schedule for Acquisition and Relocation Services

- | | |
|------------------------------------|------------------------|
| 1. Acquisition Services | |
| a. Parcels acquired | \$1,000 per parcel |
| b. Parcels not acquired (declined) | \$ 800 per parcel |
| 2. Relocation Services | |
| a. Owner Relocation | \$1,000 per parcel |
| b. Tenant Relocation | \$ 500 per transaction |

D. Acquisition Services for Involuntary Buyouts

The Consultant will conduct all buyout projects on a voluntary basis; in other words, the Consultant will only acquire property from willing sellers. For involuntary programs, such as projects carried out in conjunction with the U.S. Army Corps of Engineers on Onion Creek, the Consultant will first attempt to acquire the properties on a voluntary basis. If voluntary buyouts are unsuccessful, the County Attorney’s Office will take the lead on acquiring any properties that require the use of eminent domain. In such cases, the Consultant will perform services, if requested by the County Attorney’s Office, at the hourly rates set forth in Section V of this document.

II. Appraisal Services

The Consultant will provide independent appraisal services, apart from the acquisition services described in Section I of this document, if requested by the County. Fees for performance of these appraisals will be negotiated on a project by project basis.

III. Grant Application Development

The Consultant will provide grant application development services on an as-needed basis to support the County’s following programs for buyout, disaster mitigation or disaster recovery:

- Hazard Mitigation Grant Program
- Flood Mitigation Assistance Program
- Pre-Disaster Mitigation Grant Program
- Hazard Mitigation Planning
- Other related programs

A. Tasks

The Consultant will assist in the preparation and submission of applications for grant funding in compliance with local, state and federal requirements. This support includes the Consultant’s performance of the following tasks:

1. Assure compliance with local, state & federal requirements
2. Identify areas for acquisition prioritization
3. Identify qualified properties
4. Verify interest of candidates
5. Collect and verify property loss data
6. Assist in development of project budget
7. Prepare benefit/cost analysis
8. Prepare and provide notification to appropriate agencies

B. Fee Schedule

- | | |
|--|---------|
| 1. Grant Applications for non-buyout mitigation projects | \$7,500 |
| 2. Planning Grant Application Development | \$3,000 |
| 3. Grant Applications for property buyouts. Fees are based the number of homes in the application that | |

must be analyzed for cost/benefit according to FEMA guidelines.

- a. Applications with 1 to 25 homes \$5,000
- b. Applications with 26 to 50 homes \$6,000
- c. Applications with 51 to 75 homes \$7,000
- d. Applications with 76 to 100 homes \$8,000
- e. Applications with greater than 100 \$9,000
- 4. Partial or duplicate grant applications \$2,000

IV. Hazard Mitigation Planning

Travis County has a current, FEMA-approved Hazard Mitigation Plan. This plan, per FEMA guidance, must be kept current and updated every five years. When the plan is due for update, the Consultant will, if requested by the County, evaluate current planning guidance, consider any new cities to be incorporated into the Travis County plan, and develop a price, using the hourly rates listed in Section V below, to develop a plan update. This proposed price will be submitted to the County for review and concurrence.

V. Other Services

Other services may be requested that are not addressed in previous sections. These will be paid at the following per hour rates for each calendar year ("CY"):

	<u>Sr. Mitigation Specialist</u>	<u>Mitigation Specialist</u>	<u>Jr. Mitigation Specialist</u>
CY 2013	\$160.00	\$120.00	\$80.00
CY2014	\$160.00	\$120.00	\$80.00

For CY 2015 and beyond the above hourly rates will increase 4% per year, effective January 1 of each calendar year.

VI. Purchase Order

The Consultant may not proceed with any work described in Section I, II, III, IV, or V above unless first provided a Purchase Order from the Travis County Purchasing Agent. Additionally, any purchase order in excess of \$50,000 must be approved by the Commissioners Court prior to the beginning of work.