SEABROOK CITY COUNCIL
NOTICE OF REGULAR CITY COUNCIL MEETING
TUESDAY, APRIL 15, 2025 - 6:00 PM

For city information visit www.seabrooktx.gov
For agendas visit www.seabrooktx.gov/agendas

NOTICE IS HEREBY GIVEN THAT THE SEABROOK CITY COUNCIL WILL MEET ON **TUESDAY, APRIL 15, 2025 AT 6:00 PM** IN THE CITY HALL CITY COUNCIL CHAMBERS, 1700 1ST STREET, SEABROOK, TEXAS, **TO DISCUSS, CONSIDER, AND IF APPROPRIATE, TAKE ACTION** WITH RESPECT TO THE ITEMS LISTED BELOW.

PLEDGE OF ALLEGIANCE

1. PUBLIC COMMENTS AND ANNOUNCEMENTS

At this time we would like to listen to any member of the audience on any subject matter, whether or not that item is on the agenda. All comments are limited to a maximum of four minutes for each speaker, shall be limited to City business or City-related business or matters of general public interest, and shall not include any personal attacks. In accordance with the Texas Open Meetings Act, members may not discuss or take action on any item that has not been posted on the agenda. When your name is called, please come to the podium and state your name and address clearly into the microphone before making your comments. Thank you.

REGISTER ONLINE TO SPEAK IN PERSON DURING PUBLIC COMMENTS:
www.seabrooktx.gov/publiccomment

1.1 Mayor, City Council and/or members of the City staff may make announcements about City/Community events. City Council

2. PRESENTATIONS

2.1 Presentation of video footage of the Highway 146 project from the beginning to the current status of the project. Presentation

3. CONSENT AGENDA

3.1 Approve the minutes of the April 1, 2025 City Council Meeting.

4. BID AWARDS

4.1 Consider and take all appropriate action on bid award for RFP 2025-3-110, HMGP 4585 City of Seabrook Emergency Operations Center Generator to McDonald Municipal and Industrial for an amount not to exceed $151,269.00 and authorize the City Manager to execute a contract and all associated documents. This project is an approved HMGP Grant for 10% Local and 90% Federal; Local obligation will be $15,126.90. *Brian Craig, Director of Public Works | City Engineer*

4.2 Consider and take all appropriate actions on bid award for RFP 2025-04-110, HMGP 4485 City of Seabrook Fire Station Generator to Texan Municipal & Industrial, LLC for an amount not to exceed $117,167.00 and authorize the City Manager to execute a contract and all associated documents. This project is an approved HMGP Grant for 10% Local and 90% Federal; Local obligation will be $11,716.70. *Brian Craig, Director of Public Works | City Engineer*

5. OLD BUSINESS

5.1 Consider and take all appropriate action on the second reading of Ordinance 2025-06, Disannexation of additional property of Port of Houston Authority (PHA) pursuant to Amendment No. 3 of the Memorandum of Settlement Agreement. *Gayle Cook, City Manager*

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEABROOK, TEXAS APPROVING DISANNEXATION OF PORT OF HOUSTON AUTHORITY PROPERTY COMPRISING APPROXIMATELY 51.29 ACRES; BEING 34.926 ACRES OUT OF THE RITSON MORRIS SURVEY, ABSTRACT NO. 52, HARRIS COUNTY, TEXAS, BEING ALL OF A CALLED 17.298 ACRE TRACT AND ALL OF A 17.296 ACRES TRACT CONVEYED TO OOTZIE OF TEXAS, LLC AS RECORDED UNDER CLERK'S FILE NO. 20070662868 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY (O.P.R.R.P.H.C.); BEING 3.7054 ACRES, SITUATED IN THE RITSON MORRIS SURVEY, ABSTRACT 52, HARRIS COUNTY, TEXAS, BEING OUT OF LOT 1 OF THE EAST END OF LOT 2 OF THE SUBDIVISION OF RITSON MORRIS LEAGUE, A SUBDIVISION RECORDED IN VOLUME 470, PAGE 496 OF THE DEED RECORDS OF HARRIS COUNTY, TEXAS AND BEING ALL OF A TRACT OF LAND CONVEYED TO DAVID A. DEANE BY DEED RECORDED UNDER COUNTY CLERK'S FILE NO. X778689 OF THE OFFICIAL PUBLIC RECORDS OF HARRIS COUNTY, TEXAS, SAID 3.7054 ACRE TRACT, BEING THE SAME TRACT AS RECORDED UNDER COUNTY CLERK'S FILE NO. 2016-185573 OF THE OFFICAL PUBLIC RECORDS OF HARRIS COUNTY, TEXAS; BEING 3.7818 ACRES SITUATED IN THE RITSON MORRIS SURVEY, ABSTRACT NO. 52, HARRIS COUNTY, TEXAS, AND BEING OUT OF AN PART OF A CERTAIN 8 ACRE TRACT AS DESCRIBED IN A DEED FROM MRS. VIRGINIA B. LARRABEE, A WIDOW, TO OLIVER P.C CHRISTY, JR., AND WIFE, IRMA LARRABEE CHRISTY, DATED MAY 2, 1946, RECORDED IN VOLUME 1457, PAGE 95, OF THE DEED RECORDS OF HARRIS COUNTY, TEXAS, TO WHICH DEED REFERENCE IS HERE MADE FOR PURPOSES OF DESCRIPTION, SAID 3.7818 ACRE TRACT BEING THE SAME TRACT AS RECORDED IN HARRIS COUNTY CLERK'S FILE NO. 20130646764; AND BEING 8.88 ACRES, MORE OR LESS, OUT OF THE RITSON MORRIS SURVEY ABSTRACT 52, HARRIS COUNTY, TEXAS, AND BEING THAT SAME LAND DESCRIBED IN DEED DATED APRIL 10, 1937, FORM OSCIE J. MENARD, ET AL, TO VIRGINIA LARRABEE, RECORDED IN VOLUME 1209, PAGE 715 OF THE DEED RECORDS OF HARRIS COUNTY, TEXAS; ALL SUCH PROPERTY BEING MORE SPECIFICALLY DESCRIBED IN EXHIBITS "A-1" AND "A-2", ATTACHED HERETO.

6. NEW BUSINESS

6.1 Consider and take all appropriate action on the creation of a Department of Government Officiency (DOGE) to review each department in the City of Seabrook. *Joe Machol, At-Large Position 6*

6.2 Consider and take all appropriate action regarding cleaning the ditch located between the two Carothers Coastal Gardens properties. *Joe Machol, At-Large Position 6*

6.3 Consider and take all appropriate action regarding flying American Flags on highway 146, NASA Parkway, Repsdorph, the traffic circle and medians throughout Seabrook. *Joe Machol, At-Large Position 6*

6.4 Consider and take all appropriate action regarding beautification of all City of Seabrook entry and exit points. *Joe Machol, At-Large Position 6*

6.5 Consider and take action to approve Resolution 2025-09, "Authorization for Acquisition of Property for Park Use" in the amount of $81,592.00, and authorize the City Manager to expend funds and execute all necessary documents.

6.6 Consider and take all appropriate action to approve Resolution 2025-10, Expressing Support for H.B. 4538. *Gayle Cook, City Manager*

6.7 Consider and take all appropriate action on the approval of a License Agreement between the City of Seabrook and Pasadena Farmers Market, DBA.

7. DISCUSSION

7.1 Discussion on the Involuntary Terminated Status with the Secretary of State by Carothers Coastal Gardens 501(c)(3) as associated with the agreement for the Development, Operation and Maintenance of the Project: *Carothers Community Gardens*. *Jackie Rasco, At-Large Position 1*

7.2 Discuss potential amendments to Chapter 22-51, "Mobile Food Vendor Regulations," of the Seabrook Code of Ordinances, and direct staff regarding preparation of a revised ordinance for future Council consideration. *Jackie Rasco,* *At-Large Position 1*

7.3 Discussion regarding the authorization of the expenditure of $2000 for the Christmas Boat Parade to be taken from the General Fund. *Joe Machol, At-Large Position 6*

7.4 Discussion regarding the bond language for the police station located at Highway 146 and Meyer. *Joe Machol, At-Large Position 6*

7.5 Discussion regarding the maintenance of the properties located at 3325 NASA Road 1, 3329 NASA Road 1, and 3345 NASA Road 1, in Seabrook, Texas. *Joe Machol, At-Large Position 6*

7.6 Discussion regarding the City of Seabrook light ordinances. *Joe Machol, At-Large Position 6*

7.7 Discussion regarding the progress of plans for Pine Gully Pier. *Joe Machol, At-Large Position 6*

8. ROUTINE BUSINESS

8.1 Presentation of the Monthly Financial Report for March, 2025 *Michael Gibbs, Director of Finance*

8.2 City Manager update and report to City Council on various items that require no action, including Seabrook Boards and Commissions, Transportation Projects, and City of Seabrook CIP Projects.

8.3 Establish future meeting dates and agenda items.

THE CITY COUNCIL RESERVES THE RIGHT TO HEAR ANY OF THE ABOVE DESCRIBED AGENDA ITEMS THAT QUALIFY FOR AN EXECUTIVE SESSION IN AN EXECUTIVE SESSION BY PUBLICLY ANNOUNCING THE APPLICABLE SECTION NUMBER OF THE OPEN MEETINGS ACT, (CHAPTER 551 OF THE TEXAS GOVERNMENT CODE) THAT JUSTIFIES EXECUTIVE SESSION TREATMENT.

THIS FACILITY IS WHEELCHAIR ACCESSIBLE AND ACCESSIBLE PARKING SPACES ARE AVAILABLE. REQUESTS FOR OTHER ACCOMMODATIONS OR INTERPRETIVE SERVICES, MUST BE MADE, 48 HOURS PRIOR TO THIS MEETING. PLEASE CONTACT THE CITY SECRETARY'S OFFICE AT (281) 291-5663 OR CITYSEC@SEABROOKTX.GOV

FOR FURTHER INFORMATION.

I certify that this notice was posted on the bulletin board on or before Friday, April 11, 2025 no later than 6:00 p.m. and that this notice will remain posted until the meeting has ended.

Rachel Lewis, TRMC

MEETING MINUTES
APRIL 1, 2025

SEABROOK CITY COUNCIL
REGULAR CITY COUNCIL MEETING

Mayor Pro Tem Hammann called the Seabrook Council Meeting to order at 6:00 p.m. in the Council Chambers in Seabrook City Hall. Present were City Councilmembers Buddy Hammann, Jackie Rasco, Rob Hefner, Tom Tollett, Michael Giangrosso, and Joe Machol. Also in attendance were: City Manager Gayle Cook and City Secretary Rachel Lewis. Pledges were conducted.

1. PUBLIC COMMENTS AND ANNOUNCEMENTS

Kelly Stewart	2510 Hollybrook, Seabrook 2024	Recall, business loss, election

1.1 Mayor, City Council and/or members of the City staff may make announcements about City/Community events. City Council

Councilmember Hefner announced the following events:
Monroe Field Splash Pad opening on April 1, 2025
Last day to register to vote on April 3, 2025
Coffee With a Cop on April 4, 2025
Seabrook Trail Adventure on April 5, 2025
Early Voting from April 22, 2025 through April 29, 2025
Councilmember Machol announced the Flag Burning Ceremony on April 26 2025

2. SPECIFIC PUBLIC HEARING

Mayor Pro Tem Hammann opened the hearing at 6:08 pm.

2.1 Conduct a Public Hearing on a request for approval for disannexation of additional Port of Houston Authority (PHA) properties.

There were no public comments.

Councilmember Hammann closed the hearing at 6:09 pm.

3. PRESENTATIONS

3.1 Mayor Kolupski to present a proclamation to Bikers Against Child Abuse, Inc. declaring April 26, 2025 and April 27, 2025 as BACA Heroes Weekend in the City of Seabrook.

Mayor Pro Tem Hammann presented the proclamation to the Bikers Against Child Abuse, Inc. and proclaimed April 26, 2025 and April 27, 2025 as BACA Heroes Weekend in the City of Seabrook.

3.2 Mayor Kolupski to present a proclamation to Bay Area Turning Point declaring the month of April, 2025 as Sexual Assault Awareness month in the City of Seabrook.

Mayor Pro Tem Hammann presented the proclamation to Bay Area Turning Point and proclaimed the month of April, 2025 as Sexual Assault Awareness Month in the City of Seabrook.

4. CONSENT AGENDA

4.1 **Approve the minutes of the March 18, 2025 City Council Meeting.**

4.2 **Approval of the quarterly investment report for the first quarter of FY 2025 including October 2024 through December 2024.**

4.3 **Approval of adjustments to the quarterly investment reports for FY2024 October 2023 through September 2024.**

Motion:	To Approve the Consent Agenda
Made By:	At-Large Position 2 Hefner
Seconded By:	At-Large Position 3 Tollett
Vote:	**Passed** unanimously by all present

5. NEW BUSINESS

5.1 **Consider and take all appropriate action on approval of a forensic audit to be conducted for all City of Seabrook finances.**

Councilmember Machol explained that he wanted the agenda item to read "outside independent audit" rather than "forensic audit". He stated he wanted to have several funds explained. Finance Director Michael Gibbs explained the City engages in outside independent audits annually, and the annual audit was underway for the prior fiscal year. He also stated that in 2011 the Council at that time made the decision to stay with the same auditors rather than changing auditors every few years.

Councilmember Machol stated he wanted to have a different firm audit rather than the same one. Mr. Gibbs stated the City would be going out to bid for auditors. No further action was taken.

5.2 **Consider and take all appropriate action on approval of a forensic audit to be completed for all Seabrook Economic Development Corporation finances.**

No action was taken on this item.

5.3 **Consider and take all appropriate action on the first reading of Ordinance 2025-06, Disannexation of additional property of Port of Houston Authority (PHA) pursuant to Amendment No. 3 of the Memorandum of Settlement Agreement.**

Motion:	To Approve
Made By:	At-Large Position 3 Tollett
Seconded By:	At-Large Position 4 Giangrosso
Vote:	**Passed** with Councilmembers Rasco, Hefner, Hammann, Tollett, ar voting in favor, and Councilmember Machol voting opposed.

5.4 **Consider and take all appropriate action on Resolution 2025-07, Grant of a Right of Way Permanent Easement of 4.93 acres pursuant to Amendment No. 3 of the Memorandum of Settlement Agreement between the City of Seabrook and Port of Houston Authority (PHA).**

City Manager Gayle Cook presented the Resolution.

Motion:	To Approve
Made By:	At-Large Position 2 Hefner
Seconded By:	At-Large Position 4 Giangrosso
Vote:	**Passed** with Councilmembers Rasco, Hefner, Hammann, Tollett, ar voting in favor, and Councilmember Machol voting opposed.

5.5 Consider and take all appropriate action on the first reading and final approval of Ordinance 2025-07 amending the budget for FY 2024.

Motion:	To Approve
Made By:	At-Large Position 4 Giangrosso
Seconded By:	At-Large Position 2 Hefner
Vote:	**Passed** unanimously by all present

5.6 Consider and take all appropriate action on the first reading and final approval of Ordinance 2025-08 amending the FY 2025 budget.

Motion:	To Approve
Made By:	At-Large Position 2 Hefner
Seconded By:	At-Large Position 4 Giangrosso
Vote:	**Passed** unanimously by all present

5.7 Consider and take all appropriate action on the approval of Resolution 2025-08, Opposing S.B 2722 and H.B. 5177.

Motion:	To Approve
Made By:	At-Large Position 1 Rasco
Seconded By:	At-Large Position 4 Giangrosso
Vote:	**Passed** unanimously by all present

6. ROUTINE BUSINESS

6.1 City Manager update and report to City Council on various items that require no action, including Legislative Update, Seabrook Boards and Commissions, Transportation Projects, and City of Seabrook CIP Projects.

City Manager Gayle Cook presented the update. **See Attachment A.**
She also introduced some bills before the State Legislature that could affect the City.
See attachment B.
Councilmember Machol requested to see the before-and-after drone footage of the Highway 146 project.
Councilmember Rasco requested the status of rules governing farmers' markets and Ms. Cook stated she was working on an ordinance to present.

6.2 Establish future meeting dates and agenda items.

City Secretary Rachel Lewis informed Council the next regular meeting was scheduled for April 15, 2025 at 6:00 pm.

Councilmember Hammann adjourned into Executive Session in accordance with Texas Government Code 551.071 for consultation with the attorney at 6:58 pm.

Mayor Pro Tem Hammann reconvened into Open Session at 7:18 pm and stated no action was taken in Executive Session.

Motion:	To Adjourn
Made By:	At-Large Position 4 Giangrosso
Seconded By:	At-Large Position 3 Tollett
Vote:	**Passed** unanimously by all present

The meeting was adjourned at 7:18 pm.

APPROVED: ______________________________ DATE: ____________________

Thomas G. Kolupski
Mayor

ATTEST: ______________________________

Rachel Lewis, TRMC
City Secretary

Agenda Briefing

Date of Meeting: April 15, 2025

Responsible Department: Public Works

Presenter: Brian Craig, Director of Public Works | City Engineer

Briefing Prepared By: Brian Craig

Strategic Focus Area:

General Information:

Consider and take all appropriate action on bid award for RFP 2025-3-110, HMGP 4585 City of Seabrook Emergency Operations Center Generator to McDonald Municipal and Industrial for an amount not to exceed $151,269.00 and authorize the City Manager to execute a contract and all associated documents. This project is an approved HMGP Grant for 10% Local and 90% Federal; Local obligation will be $15,126.90.

Executive Summary / Background:

The City of Seabrook was awarded the Hazard Mitigation Grant Program (HMGP), DR 4485 Texas COVID 19 Pandemic grant for City of Seabrook Emergency Operations Center Generator Project on August 29, 2024. This is a 10% Local and 90% Federal fund obligation project with a estimated grant of $325,000.00. With the award, City staff procured three bids through the Request for Proposal process, meeting FEMA/TDEM requirements. Bids ranged from $151,269.00 to $238,825.00 with the low bidder being McDonald Municipal and Industrial. Staff have reviewed the bids, verified the specifications, verified the qualifications of the contractor with a recommendation to McDonald Municipal and Industrial for the amount of $151,269.00 for the project.

Funding / Fiscal Information:

Supporting Materials Attached:

1. Bid verification
2. Award-Package

Prior Action / Review by Council, Boards, Commissions:

Staff Recommendation:

Recommend approval of Bid and allow City Manager to enter into contract.

All requests must be submitted to the City Secretary's Office no later than 12:00 p.m. on the Monday, one week prior to the regular Tuesday Council Meeting. All required attachments are to be submitted with the request. Incomplete items cannot be placed on the agenda.

Bidder			Texan Municipal ar
Description	Unit	Quantity	Unit Price
Removal of existing standby generator per Specific Requirements	Each	1	$ 10,000.00
New standby generator per the Specifc Requirements; installed	Each	1	$ 120,000.00
Automatic transfer switch per the Specific Requirements; installed	Each	1	$ 8,000.00
Electrical and plumbing per the Specific Requiremetns; installed for an operable complete system	LS	1	$ 71,169.00
TOTALS			

nd Indurstial, LLC	McDonald Municipal and Industrial		Colorado S
Total Cost	Unit Price	Total Cost	Unit Price
$ 10,000.00	$ 1,000.00	$ 1,000.00	NA
$ 120,000.00	$ 115,269.00	$ 115,269.00	NA
$ 8,000.00	$ 10,000.00	$ 10,000.00	NA
$ 71,169.00	$ 25,000.00	$ 25,000.00	NA
$ 209,169.00		$ 151,269.00	

tandby LLC	Southland Rehab and Healthcare Center	
Total Cost	Unit Price	Total Cost
NA	$ 15,578.00	$ 15,578.00
NA	$ 148,747.00	$ 148,747.00
NA	$ 50,619.00	$ 50,619.00
NA	$ 23,881.00	$ 23,881.00
$ -		$ 238,825.00

TDEM
THE TEXAS A&M UNIVERSITY SYSTEM

August 29, 2024

The Honorable Thom Kolupski
Mayor, City of Seabrook
1700 First Street
Seabrook, TX 77586
Subject: Sub-Grant Award

Dear Mayor Kolupski:

The Texas Division of Emergency Management (TDEM) has issued a sub-grant for the Hazard Mitigation Grant Program (HMGP), DR 4485, Texas COVID 19 Pandemic. The following is the information related to this award:

Sub-Recipient Information:

UEI Number:	JKWVS23E6773
TINS Number:	74-1402289
FIPS Number:	201-66392-00

Award Information:

Catalog of Federal Domestic Assistance: 97.039
FEMA Project Number: 0141
Project Title: City of Seabrook Emergency Operations Center Generator
Period of Performance (POP): July 23, 2024 to July 14, 2026.

PROJECT FUNDS OBLIGATIONS						
Version/ Amendment	Date	Total Subgrant Amount	Federal Share %	Federal Share Amount	Local Share %	Local Share Amount
0	23 July, 2024	$325,000.00	90%	$292,500.00	10%	$32,500.00

Please Note: This award is not for research or development as defined in 2 Code of Federal Regulations (C.F.R.) § 200.87.

The eligible management costs for a reimbursement request are calculated by multiplying the eligible direct project costs submitted by the percentage of obligated management costs (up to 5%) for the project. In some cases, the management costs submitted for a reimbursement will exceed the eligible management cost amount. In this instance, the management costs will be trapped until additional eligible direct project costs are submitted for reimbursement.

MANAGEMENT COSTS OBLIGATIONS						
Version/ Amendment	Date	Total Management Costs	Federal Share %	Federal Share Amount	Local Share %	Local Share Amount
0	23 July, 2024	$13,000.00	100%	$13,000.00	0%	$0

The approved Scope of Work (SOW) follows, and the terms and conditions of this award are attached. It is important that the sub-recipient read, understand and comply with the SOW and all terms and conditions. It is also vital that this information be disseminated to sub-recipient's staff and contractors involved in work related to this project.

Utilizing the proposed HMGP grant, the City of Seabrook proposes to replace an existing back-up generator on an existing elevated platform and conduct electrical modifications at the Emergency Operations Center, located at 1400 Cook Ave, Seabrook, Harris County, TX (29.564744, -95.023674). By installing the new emergency generator dependable power supply will be immediately available to the City's Police Department and Emergency Operations Center. This will ensure these critical operations will be available to the city during events that can create power outages such as tropical storms, hurricanes and severe winter storms such as Winter Storm Uri. This will ensure emergency Police, Fire and Ambulance Services and water, sewer and drainage services can be properly managed and coordinated for all the citizens of the City of Seabrook.

The City of Seabrook's proposed MC activities include the following: Application preparation including coordination with locality, data processing, budget development, and Benefit-Cost Analysis development. Review award packet and distribute approved project SOW and materials to engineer for review. Serve as liaison between State, locality, and Engineer. Support locality in tracking and reviewing invoices and supporting documentation from engineers. Request proof of payment for the submission of reimbursement requests. Facilitate tracking and review of in-kind or force account contributions, as applicable. Request and review quarterly reports provided by Engineers. Submittal of quarterly reports and supplemental information to the State for review. Review of potential SOW changes or modifications. Preparation and submission of scope change/modification documentation for review, if applicable. Review of potential SOW changes or modifications. Preparation and submission of scope change/modification documentation for review, if applicable.

In accordance with FEMA Instruction 108-1-1 and DHS Instruction 023-01-001-01; this project has been determined to be Categorically Excluded (CATEX #M13. FEMA concludes that the project is categorically excluded from the National Environmental Policy Act (NEPA) requirement to prepare further environmental documentation. No extraordinary conditions in accordance with DHS Instruction 023-01-001-01 exist involving this project.

Signing and returning this award letter indicates sub-recipient's acceptance of the SOW of the sub-award, the ability to pay the local cost share, and all grant terms and conditions outlined in the attached documents.

The sub-recipient must ensure that:

1. The initial quarterly progress report for the project is submitted at the end of the approving quarter. Please include the project number (provided above) in your future quarterly reports. Note that 44 C.F.R. § 206.438(c) indicates the state must provide a quarterly progress report to FEMA indicating the status and completion date for each project funded. The report must include any problems or circumstances affecting completion dates, SOW, or project cost that may result in non-compliance with the approved grant conditions.

2. In accordance with HMGP rules and policy, TDEM requires the submittal of all closeout documentation within 90 days of the project completion not to exceed the POP. The Governor's Authorized Representative (GAR) "shall certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measure is in compliance with the provisions of the FEMA-State Agreement" in accordance with 44 C.F.R. § 206.438(d).

If changes are needed to the SOW for the sub-award, period of performance or costs associated with the sub-award, the sub-recipient should immediately contact TDEM. No change to the sub-award will be considered approved until the sub-recipient is notified in writing by TDEM.

This signed and dated award letter and attached grant terms and conditions must be returned to TDEM before payment on the sub-award can be processed. Your signature is required on this award letter and on the last page of the attached grant terms and conditions. You must also initial each exhibit on the last page of the grant terms and conditions. Please sign, date, and return both the award letter and the attached grant terms and conditions acknowledging acceptance of this sub-award via email to the assigned Mitigation Coordinator, Merryl Holmes at merryl.holmes@tdem.texas.gov.

Thom Kolupski, Mayor, City of Seabrook   Date

Should you wish to appeal any determination related to this sub-award you must do so within 60 days of receipt of the notice of the action. You will need to provide your appeal with any documentation supporting your position to your assigned TDEM Mitigation Coordinator within the allotted time.

If you have any questions please contact your Mitigation Coordinator, Merryl Holmes, at 281-794-4102 or merryl.holmes@tdem.texas.gov.

Respectfully,

W. Nim Kidd, MPA, CEM®
Chief - Texas Division of Emergency Management
Vice Chancellor for Disaster and Emergency Services
The Texas A&M University System

ATTACHMENTS: FEMA Approval Letter
Grant Terms and Conditions
Record of Environmental Considerations
Technical Recommendations

Copy: Gayle Cook, City Manager
gcook@seabrooktx.com

U.S. Department of Homeland Security
FEMA Region 6
800 N. Loop 288
Denton, TX 76209

FEMA

July 23, 2024

W. Nim Kidd, MPA, CEM
Chief, Texas Division of Emergency Management
Vice Chancellor - The Texas A&M University System
2883 Highway 71 East
P.O. Box 285
Del Valle, TX 78617-9998

Attn: Mr. Josh Davies, State Hazard Mitigation Officer

RE: DR-4485-0141-TX
City of Seabrook Emergency Operations Center Generator
Approval
Assistance Listing 97.039 Hazard Mitigation Grant Program

Dear Chief Kidd:

This letter provides official notification that the Federal Emergency Management Agency (FEMA) approves the application submitted by the City of Seabrook for the City of Seabrook Emergency Operations Center Generator project. The Federal share is available through the Hazard Mitigation Grant Program (HMGP) under DR-4485-TX. The non-federal match requirement of $32,500 will be provided by subrecipient.

Pursuant to Section 1215 of the Disaster Recovery Reform Act of 2018, which amended Section 324 of the Robert T. Stafford Disaster Relief and Assistance Act, Subrecipient Management Costs (MC) in the amount of $13,000 are available to subrecipient at a Federal Cost Share of 100%.

Summary of funding for the project is illustrated below:

DR-4485-0141-TX	Federal Share	Non-Federal Share	Total
Project Costs	$292,500.00 (90%)	$32,500.00 (10%)	$325,000.00 (100%)
Subrecipient Management Costs	$13,000.00 (100%)	$0.00 (0%)	$13,000.00 (100%)
Total	$305,500.00	$32,500.00	$338,000.00

The following is the approved Scope of Work (SOW) and MC activities for the above-referenced project:

Utilizing the proposed HMGP grant, the City of Seabrook proposes to replace an existing back-up generator on an existing elevated platform and conduct electrical modifications at the Emergency Operations Center, located at 1400 Cook Ave, Seabrook, Harris County, TX (29.564744, -95.023674). By installing the new emergency generator dependable power supply will be immediately available to the City's Police Department and Emergency Operations Center. This will assure these critical operations will be available to the City during events that can create power outages such as tropical storms, hurricanes and severe winter storms such as Winter Storm Uri. This will assure emergency Police, Fire and Ambulance Services and water, sewer and drainage services can be properly managed and coordinated for all the citizens of the City of Seabrook.

The City of Seabrook's proposed MC activities include the following: Application preparation including coordination with locality, data processing, budget development, and Benefit-Cost Analysis development. Review award packet and distribute approved project SOW and materials to engineer for review. Serve as liaison between State, locality, and Engineer. Support locality in tracking and review of invoices and supporting documentation from engineers. Request proof of payment for the submission of reimbursement requests. Facilitate tracking and review of in-kind or force account contributions, as applicable. Request and review quarterly reports provided by Engineers. Submittal of quarterly reports and supplemental information to State for review. Review of potential SOW changes or modifications. Preparation and submission of scope change/modification documentation for review, if applicable. Review of potential SOW changes or modifications. Preparation and submission of scope change/modification documentation for review, if applicable.

Technical Conditions:

The project will comply with the latest edition of codes and standards as required by Federal, State, and Local rules and regulations. The subrecipient must coordinate with the local floodplain administrator to obtain the necessary permits and must comply with any conditions of these permits prior to initiating work (if applicable). All permits and related coordination activities must be retained by the subrecipient. At project closeout, submit all permits and documentation of coordination to FEMA. Additionally, the subrecipient must acquire all applicable Federal, State, Tribal, and/or Local permits.

This project has been determined to be Categorically Excluded (CATEX) in accordance with FEMA Instruction 108-1-1 and Department of Homeland Security (DHS) Instruction 023-01-001-01; CATEX #m13 from the need to either an Environmental Impact Statement or Environmental Assessment. No extraordinary circumstances in accordance with DHS Instruction 023-01-001-01 have been identified regarding this action. The applicant must comply with all conditions set forth in the attached Record of Environmental Consideration (REC). Failure to comply with these conditions may jeopardize federal assistance including funding.

FEMA will not establish activity completion timeframes for individual subawards. The Period of Performance (POP) for DR-4485-TX is set to expire on February 1, 2027. It is the responsibility of the recipient and subrecipient to ensure all approved activities associated with this subaward are completed by the end of the POP. Any costs incurred prior to the date of this approval or after the POP will be disallowed.

A change to the approved SOW requires prior approval from FEMA. The National Environmental Policy Act (NEPA) stipulates that additions or amendments to a HMGP SOW shall be reviewed by all state and federal agencies participating in the NEPA process. NEPA sign-off for all SOW additions or amendments is essential before the revised SOW can be approved by FEMA or implemented by the HMGP subrecipient.

In accordance with FEMA Policy #104-11-1 Interim Hazard Mitigation Grant Program Management Costs, any MC provided will be obligated in increments sufficient to cover recipient and subrecipient needs for no more than one year unless contractual agreements require additional funding. Actual subrecipient MC are to be reconciled quarterly during the review of expenditures submitted by the subrecipient through quarterly report process. Subrecipient MC can be expended for a maximum time of 180 days after work is completed for the subaward or the end of the POP, whichever is sooner.

The initial quarterly progress reports for the HMGP project is due at the end of the approving quarter. Please include this HMGP project in your future quarterly reports. Note that Title 44 of the Code of Federal Regulations (44 C.F.R.) § 206.438(c) indicates the State must provide a quarterly progress report to FEMA indicating the status and completion date for each project funded. The report will include any problems or circumstances affecting completion dates, SOW, or project cost that may result in non-compliance with the approved grant conditions.

In accordance with HMGP rules and policy, we require the submittal of all closeout documentation within 90 days of the project completion, not to exceed POP. Section 206.438(d) of 44 C.F.R. requires the Governors Authority Representative to “certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measure is in compliance with the provisions of the FEMA-State Agreement.”

The Obligation Report, REC, and Technical Recommendation Report are included for your records.

If you have any questions regarding the information, please contact Chandra Fugett, Hazard Mitigation Assistance (HMA) Specialist, at (202) 919-1509 or Chandra.Fugett@fema.dhs.gov.

Sincerely,

BRIANNE M SCHMIDTKE
Digitally signed by BRIANNE M SCHMIDTKE
Date: 2024.08.05 08:26:26 -05'00'

Brianne Schmidtke
HMA Disaster Branch Chief

Enclosures: Obligation Report
REC
Technical Recommendation Report

Texas Division of Emergency Management

Subrecipient Agreement for TDEM-Administered Grant Awards

Date Revised: February 22, 2024

Index

Letter to Subrecipient

Dear Subrecipient:

Congratulations on your new award!

The following document, in conjunction with the applicable State Administrative Plan (SAP) or Disaster State Administrative Plan (DSAP), lays out applicable laws, rules, and regulations set forth by local, State, and Federal authority that you, Subrecipient, agree to upon acknowledgement. Before you may request or receive any funding awarded to you, you must establish acceptance of this award. By accepting this award, you acknowledge that the terms of the following document are conditions of your award.

Please read this agreement in full. Acknowledgement by means of signature at the conclusion of the document, holds Subrecipient to the terms and conditions in the agreement. Failure to sign this agreement infringes on the ability to obtain Federal awards, or state or local grant awards, administered through the Texas Division of Emergency Management.

Subrecipient Information

Entity Information

Entity Name: ______________________________

EIN/TIN: ______________________________

UEI: ______________ UEI Expiration Date: ________

Address Line 1: ______________________________

Address Line 2: ______________________________

City ______________________________

State ______________ Zip (+4) ________ - ________

Subrecipient Contacts

Primary Contact

Serves as the primary point of contact for project(s).

Name: ______________ Position/Job Title: ______________

Email: ______________ Phone Number: ______________

Certifying Official

Serves as the official representative of the organization.
Must possess the authority to obligate funds & enter into contracts for the organization.

Name: ______________ Position/Job Title: ______________

Email: ______________ Phone Number: ______________

Primary Finance Contact

Serves as primary contact for all financial matters.

Name: ______________ Position/Job Title: ______________

Email: ______________ Phone Number: ______________

II

Texas Division of Emergency Management

Subrecipient Agreement for TDEM-Administered Grant Awards

III

Table of Contents

Revisions

Rev. 1. Change from Authorized Agent to Primary Finance Contact information on the Subrecipient Information page.

Rev. 2. Inclusion of language related to subrecipient reimbursement for Recipient management cost.

State of the Agreement

Agreement Authority

This agreement applies to all Department of Homeland Security Federal Emergency Management Agency (DHS/FEMA) awards or other awarding agency financial assistance awards administered by the Texas Division of Emergency Management (TDEM). The federal government, the State of Texas, and TDEM have the right to seek judicial enforcement of these actions.

Subrecipients are required to follow applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200, and adopted by DHS at 2 C.F.R Part 3002, as well as all other applicable federal, state, and local laws, regulations, policies, procedures, and executive orders.

By accepting this agreement, Subrecipient and its executives, as defined in 2 C.F. R. §170.315, certify that the subrecipient's policies are in accordance with guidance applicable to federal, state and local laws, and relevant executive guidance. This agreement, consisting of these terms and conditions and all exhibits, is between the Texas Division of Emergency Management (TDEM), an agency of the State of Texas, hereinafter referred to as TDEM, and Subrecipient.

TDEM and Subrecipient are collectively hereinafter referred to as the parties. All awards made under this agreement are subject to the same terms and conditions except where additional provisions may be added by TDEM to assure compliance with the aforementioned authority.

Subrecipient may not assign or transfer any interest in this award without prior written consent of TDEM and, if required, DHS/FEMA or other awarding agency.

Agreement

I. General Terms

1. The terms recipient and pass-through entity have the same meaning as grantee, as used in governing statutes, regulations, and DHS/FEMA guidance.

2. Throughout this document the terms grant and award will be used interchangeably.

3. A recipient is a non-Federal entity for administration purposes.

4. A subrecipient is known as a subgrantee as used in governing statutes, regulations, and DHS/FEMA guidance.

5. The grant referred to in this agreement is an award to the subrecipient passed through from TDEM to Subrecipient.

6. The “certifying official” is the mayor, judge, or executive director authorized to execute these terms and conditions, and to submit changes of subrecipient agents. Contracted staff and/or vendors may assist the certifying official in completing related grant tasks but may not act in lieu of the certifying official.

7. Project and any subsequent versions for those projects accepted by Subrecipient and subsequently obligated or de-obligated by DHS/FEMA are considered subawards to this agreement.

8. TDEM uses contractors to assist in administering subawards, both in communication with Subrecipient and the awarding agency. A subrecipient’s point of contact for all awards will be the assigned regional staff. TDEM may task various grant management tasks to contractors to work directly with subrecipients.

9. Within 10 calendar days of any change, Subrecipient must notify TDEM of any change in Designated Subrecipient Agents as submitted during the execution of this agreement, and any subsequent changes submitted by Subrecipient in TDEM’s Grants Management System (GMS).

10. In the event Subrecipient hires a consultant to assist them with managing its Public Assistance and Hazard Mitigation grants (or other), they must be listed on the Designated Subrecipient Agent Form (DSA) and may not act in lieu of the designated agent. TDEM will direct all correspondence to the Subrecipient. The Subrecipient is solely responsible for sharing written communications with the consultant. The Subrecipient is the primary point of contact and must be included in all decision-making activities.

II. Standard of Performance

Subrecipient must perform all activities as approved by TDEM and that is required in applicable grant/funding awards. Subrecipient must perform all activities in accordance with all terms, provisions and requirements set forth in the award, including, the following exhibits:

1. Assurances – Non-Construction Programs (Federal authority), hereinafter referred to as Exhibit A
2. Assurances – Construction Programs (Federal authority), hereinafter referred to as Exhibit B
3. Certifications for Grant Agreements (Federal authority), hereinafter referred to as Exhibit C
4. State of Texas Assurances (State authority), hereinafter referred to as Exhibit D
5. Environmental Review Certification (Federal authority), hereinafter referred to as Exhibit E
6. Additional Grant Certifications (State authority), hereinafter referred to as Exhibit F
7. Request for Information and Documentation Policy (State authority), hereinafter referred to as Exhibit G
8. Pre-Obligation Request for Information and Documentation Policy (State authority), hereinafter referred to as Exhibit H
9. Recoupment of Funds (State authority), hereinafter referred to as Exhibit I

III. Failure to Perform

In the event Subrecipient fails to implement and complete the project(s) approved and awarded, or comply with any provision of this grant, Subrecipient is liable to TDEM for an amount not to exceed the amount of this award and may be barred from receiving additional DHS/FEMA grant program funds or any other grant program funds administered by the State of Texas until repayment is made and any other compliance or audit finding is satisfactorily resolved, in addition to any other remedy specified in this grant. Failure to timely implement and complete projects may reduce future funding in additional DHS/FEMA and/or other grant programs administered by TDEM.

IV. Funding Obligations

TDEM is not liable to Subrecipient for any costs incurred by Subrecipient that are not allowable costs authorized under the applicable award.

1. Notwithstanding any other provision of this grant, the total of all payments and other obligations incurred by TDEM under this award must not exceed the total cumulative award amounts listed on the subawards (projects and subsequent versions).

2. Subrecipient must contribute the required cost share, also known as non-Federal share or match, listed on the subaward.

3. Subrecipient must provide supporting documentation that supports the totality of funding requests in accordance with program policy.

4. In the event that TDEM is required to continue to manage the subrecipients award after the Recipients (TDEM) allocated state management funds have been exhausted, subrecipient agrees to reimburse TDEM for such costs necessary to close FEMA awards including the final recoupment of any funds due to FEMA and/or TDEM and the State of Texas.

V. Recoupment of Funds

Subrecipient must refund to TDEM any sum of these award funds that TDEM and/or DHS/FEMA determines to be an overpayment to and/or has not been spent by Subrecipient in accordance with this award. Refund payment(s) may be made from local, state, or federal grant funds unless prohibited by federal regulation or other provision.

Nothing in Exhibit I-Recoupment of Funds shall limit TDEM's ability to implement alternative remedies for which it has authority to resolve outstanding recoupments or to limit TDEM's ability to take immediate recoupment action(s) after notice of required refund has been made.

VI. Uniform Administrative Requirements, Cost Principals and Audit Requirements

Except as specifically modified by law or this grant, Subrecipient shall administer this award through compliance with the most recent version of all applicable laws and regulations, including but not limited to DHS/FEMA program legislation, federal awarding agency regulations, and the terms and conditions of this grant. A non-exclusive list sanctioned by Federal Authority is provided below (not all may apply in every project):

a. Public Law 93-288, as amended (Stafford Act)

b. 44 C.F.R., Emergency Management and Assistance

c. 2 C.F.R., Grants and Agreements

d. Disaster Mitigation Act of 2000

e. Executive Order 11988, Floodplain Management

f. Executive Order 11990, Protection of Wetlands

g. Executive Order 12372, Intergovernmental Review of Programs and Activities

h. Executive Order 12549, Debarment and Suspension

i. Executive Order 12612, Federalism

j. Executive Order 12699, Seismic Design

k. Executive Order 12898, Environmental Justice

l. Coastal Barrier Resources Act, Public Law 97-348

m. Single Audit Act, Public Law 98-502

n. Sandy Recovery Improvement Act publications

o. Disaster Recovery Reform Act of 201816 U.S.C. § 470, National Historic Preservation Act

p. 16 U.S.C. § 1531, Endangered Species Act References

q. FEMA program publications, guidance, and policies

VII. State Requirements for Grants

Subrecipient must comply with all other federal, state, and local laws and regulations applicable to this award including but not limited to the laws and the regulations promulgated in Texas Government Code, Chapter 783, Uniform Grant and Contract Management (UGMS) at: http://www.window.state.tx.us/procurement/catrad/ugms.pdf and the most recent applicable version of the program State Administrative Plan (and all effective updates), available at: https://tdem.texas.gov. Subrecipient must, in addition to the assurances and certifications, comply and require each of its subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders, Office of Management and Budget (OMB) circulars, terms and conditions of this award and the approved application.

Grant funds must not be awarded to or expended by any entity which performs political polling. This prohibition does not apply to a poll conducted by an academic institution as part of the institution's academic mission that is not conducted for the benefit of a particular candidate or party.

Award funds may not be expended by a unit of local government unless the following limitations and reporting requirements are satisfied:

1. Texas General Appropriations Act, Art. IX, Parts 2 and 3, except there is no requirement for increased salaries for local government employees;

2. Texas Government Code Sections 556.004, 556.005, and 556.006, which prohibits using any money or vehicle to support the candidacy of any person for office, influencing positively or negatively the payment, loan, or gift to a person or political organization for a political purpose, and using grant funds to influence the passage or defeat of legislation including not assisting with the funding of a lobbyist, or using grant funds to pay dues to an organization with a registered lobbyist;

3. Texas Government Code Sections 2113.012 and 2113.101, which prohibits using grant funds to compensate any employee who uses alcoholic beverages on active duty and Subrecipient may not use grant funds to purchase an alcoholic beverage and may not pay or reimburse any travel expense for an alcoholic beverage;

4. Texas General Appropriations Act, Art. IX, Section 6.13, which requires Subrecipient to make every effort to attain key performance target levels associated with this grant, including performance milestones, milestone time frames, and related performance reporting requirements; and

5. General Appropriations Act, Art. IX, Sections 7.01 and 7.02, and Texas Government Code §2102.0091, which requires that this award may only be expended if Subrecipient timely completes and files its reports.

TDEM strongly encourages subrecipients to complete refresher training in federal procurement standards as variances from these standards account for the majority of funding de-obligation. TDEM will provide training or sources for subrecipients to attain training. Federal procurement training may be required of some recipients in advance of funding or as a condition of funding and/or if additional monitoring is deemed appropriate by TDEM.

VIII. Restrictions and General Conditions

DHS/FEMA grant funds must only be used for the purposes set forth in this award and must be consistent with the statutory authority for the grant. Award funds must not be used for matching funds for other federal grants/cooperative agreements, lobbying, or intervention in federal regulatory or adjudicatory proceedings. In addition, federal funds must not be used to sue the federal government or any other government entity.

1. Federal employees are prohibited from directly benefiting from any funds under this Grant.

2. In accordance with 2 C.F.R. §25.300, TDEM will not make a subaward unless the Subrecipient has obtained a unique entity identifier (UEI). A UEI is the identifier required for System for Award Management (SAM) registration to uniquely identify entities with which the federal government does business.

3. Subrecipient maintains that it has registered at SAM.gov or other federally established site for contractor registration and entered TDEM-required information. Subrecipient shall keep current, and then review and update the information at least annually. Subrecipient shall keep information current in the SAM database until the later of when it submits this grant's final financial report or receives final award payment. Subrecipient agrees that it must not make any subaward agreement or contract related to this award without first obtaining the vendor or subawardee's mandatory UEI. See 2 C.F.R. Part 25, Appendix A.

4. Subrecipient must report total compensation for each of the five most highly compensated executives for the preceding completed fiscal year if the following is applicable (2 C.F.R. Subtitle A; Chapter 1, Part 170, Appendix A to Part 170). See FEMA Information Bulletin 350.

   a. Subrecipient shall report whether Subrecipient received $25 million or more in Federal procurement contracts or financial assistance subject to the Transparency Act per 2 C.F.R. §170.320.

   b. Subrecipient shall report whether 80% or more of Subrecipient’s annual gross revenues were from Federal procurement contracts or Federal financial assistance. If Subrecipient answers “yes” to both questions, Subrecipient shall report, along with subrecipient’s UEI, the names and total compensation (see 17 C.F.R. §229.402(c)(2)) for each of subrecipient’s five most highly compensated executives for the preceding completed fiscal year.

   c. Subrecipient shall report executive total compensation at SAM.gov, or other federally established replacement site.

5. By signing this grant, Subrecipient certifies that, if required, Subrecipient has registered, entered the required information, and shall keep information in the System for Award Management (SAM) database current, and update the information at least annually until the subrecipient submits its final financial report, or receives final payment.

6. Subrecipient agrees that it shall not make any subaward agreement or contract without first obtaining the subawardee's mandatory UEI.

7. Subrecipient must comply with Federal Executive Orders 12549 and 12689, which provide protection against waste, fraud, and abuse by debarring or suspending those persons deemed irresponsible in their dealings with the Federal government

8. A completed direct deposit form from Subrecipient must be provided to TDEM, prior to receiving any funds under the provisions of this grant. The direct deposit form is currently available at https://tdem.texas.gov.

9. Subrecipient shall maintain property/inventory records which, at minimum, shall include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, the cost of the property, the percentage of federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property. Subrecipient shall develop and implement a control system to prevent loss, damage, or theft of property and Subrecipient shall investigate and document any loss, damage or theft of property funded under this grant.

10. DHS/FEMA and/or TDEM, through its authorized representatives, have the right at all reasonable times to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If any site visit is made by DHS/FEMA or TDEM on the premises of Subrecipient or a contractor under this grant, Subrecipient must provide and must require its contractors to provide all reasonable facilities and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner that will not unduly delay the work. A final physical site inspection for eligible scope of work and program compliance may be conducted after the subrecipient's Project Completion and Certification Report has been submitted.

IX. Procurement Contracting

Subrecipient shall comply with all applicable federal, state, and local laws and requirements, including but not limited to proper competitive solicitation processes where required, for any procurement which utilizes federal funds awarded under this award in accordance with 2 C.F.R. 200. 317-327 and Appendix II to Part 200 (A-C) and (E-J).

1. All contracts executed using funds awarded under this award shall contain the contract provisions listed under 2 C.F.R. 200.327 and Appendix II (A), Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

2. For each of the following types of procurement, activities must follow the most restrictive of federal, state, or local procurement regulations:

   a. Micro purchase
   b. Small purchase
   c. Sealed bid
   d. Competitive proposal
   e. Non-Competitive proposal (solely when the award of a contract is unfeasible under the other methods)

3. The State must approve the use of a noncompetitive procurement method. Federal regulations allow for noncompetitive procurements under certain circumstances, including when a non-state entity determines that immediate actions required to address the public exigency or emergency cannot be delayed by a competitive solicitation. Failure to follow eligible procurement methods will result in ineligible costs. Other types of agreements for services must have State approval prior to use or execution. A copy of the local procurement policy must be provided to the State before initial payment.

4. Contracts attributed as "cost-plus-percentage-of-cost" or "percentage-of-construction-cost" are explicitly prohibited by Federal procurement standards and are ineligible for DHS/FEMA grant.

5. Subrecipients must perform cost/price analysis for every procurement action in excess of the Simplified Acquisition Threshold.
6. Subrecipients must negotiate profit as a separate element where required.

7. Subrecipients must not make any award to any party which is debarred or suspended, or is otherwise excluded from participation in the Federal assistance programs (Executive Order 12549, Debarment and Suspension).

   a. Subrecipient must maintain documentation validating review of debarment list of eligible contractors. Evidence of non-debarment for vendors must be documented through SAM.gov and http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred/ and submitted for review. TDEM will not reimburse any expense for a debarred vendor or a vendor or Subrecipient that does not have a valid SAM.gov registration.

8. Subrecipients must comply with rules related to underutilized businesses (small and minority businesses, women's enterprises and labor surplus firms) at 2 C.F.R §200.321.

9. Subrecipients must comply with the rules of recovered materials for procurements at 2 C.F.R §200.323.10. Subrecipients must comply with the rules for domestic preferences for procurements at 2 C.F.R § 200.322.

X. Monitoring

Subrecipient will be monitored periodically by federal, state, or local entities, both programmatically and financially, to ensure that project goals, objectives, performance requirements, timelines, milestone completion, budget, and other program-related criteria are met.

a. TDEM, or its authorized representative, reserves the right to perform periodic desk/office-based and/or on-site monitoring of subrecipient's compliance with this award and of the adequacy and timeliness of subrecipient's performance pursuant to this award.

b. After each monitoring visit, if the monitoring visit reveals deficiencies in subrecipient's performance under this grant, a monitoring report will be provided to the subrecipient that includes requirements for the timely correction of such deficiencies by subrecipient. Failure by subrecipient to take action(s) specified in the monitoring report may be cause for suspension or termination of this award pursuant to the Changes, Amendments, Suspensions or Termination Section (XIII) herein.

XI. Audit

Subrecipients expending $750,000 or more in total federal financial assistance in a fiscal year will be required to provide an audit made in accordance with OMB Uniform Guidance; Cost Principles, Audit, and Administrative Requirements for Federal Awards, Subpart F.

1. A copy of the Single Audit must be submitted to TDEM or your cognizant state agency within nine months of the end of the subrecipient's fiscal year. If not required to submit a single audit, a response to the request will suffice. Failing to follow the regulation can result in significant adverse consequences including any action listing in the Enforcement Section (XIV) of this agreement

Subrecipient must give DHS/FEMA, the Comptroller General of the United States, the Texas State Auditor, TDEM, or any of their duly authorized representatives access to and the right to conduct a financial or compliance audit of funds received, and performances rendered under this award. Subrecipient must permit TDEM or its authorized representative to audit subrecipient's records. Subrecipient must provide any documents, materials, or information necessary to facilitate such audit.

1. Subrecipient understands and agrees that it is liable to TDEM for any costs disallowed pursuant to any financial or compliance audit(s) of these funds. Subrecipient further understands and agrees that reimbursement to TDEM of such disallowed costs shall be paid by Subrecipient from funds that were not provided or otherwise made available to the subrecipient pursuant to this award or any other federal contract.

2. Subrecipient must take such action to facilitate the performance of such audit(s) conducted pursuant to this section as TDEM may require of Subrecipient. Subrecipient must ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Subrecipient and the requirement to cooperate is included in any subcontract it awards.

3. Subrecipient understands that acceptance of funds under this award acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. Subrecipient further agrees to cooperate fully with the State Auditor's Office's audit or investigation, including providing all records requested. Subrecipient must ensure that this clause concerning the State Auditor's Office's authority to audit funds and the requirement to cooperate fully with the State Auditor's Office is included in any subgrants or subcontracts it awards. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Subrecipient relating to this award.

XII. Retention and Accessibility of Records

Subrecipient shall follow its own internal retention policy, or the State's retention policy, whichever is more restrictive. At a minimum, the subrecipient must maintain fiscal records and supporting documentation for all expenditures of this award's funds pursuant to the applicable OMB 2 C.F.R. Subpart D – Post Federal Award Requirements, §200.334-338, and this agreement.

1. Subrecipient shall retain these records and any supporting documentation for a minimum of three (3) years from the later of the completion of this project's public objective, submission of the final expenditure report, or any litigation, dispute, or audit.

2. Records shall be retained for three (3) years after any real estate or equipment final disposition.

3. DHS/FEMA or TDEM may direct subrecipient to retain documents or to transfer certain records to DHS/FEMA custody when DHS/FEMA determines that the records possess long term retention value.

Subrecipient must give DHS/FEMA, the Comptroller General of the United States, the Texas State Auditor, TDEM, or any of its duly authorized representatives, access to and the right to examine all books,accounts, records, reports, files, other papers, things, or property belonging to or in use by subrecipient pertaining to this award including records concerning the past use of DHS/FEMA funds. Such rights to access shall continue as long as the records are retained by Subrecipient.

XIII. Changes, Amendments, Suspensions or Termination

TDEM may modify this agreement after an award has been made. Once notification has been made in writing, any subsequent request for funds indicates Subrecipient's acceptance of the changes to this subrecipient award. Any alteration, addition, or deletion to this agreement by subrecipient is not valid.

Any alterations, additions, or deletions to this agreement that are required by changes in federal and state laws, regulations, or policy are automatically incorporated into this agreement without written amendment to this award and shall become effective upon the date designated by such law or regulation. In the event DHS/FEMA or TDEM determines that changes are necessary to this agreement after an award has been made, including changes to the period of performance of the award, or terms and conditions, the certifying official shall be notified electronically of the changes in writing. Once notification has been made, any subsequent request for refunds will indicate subrecipients acceptance of the changes to this award.

1. In the event subrecipient fails to comply with any term of this grant or agreement, TDEM may, upon written notification to subrecipient, suspend this award, in whole or in part, withhold payments to Subrecipient, and prohibit Subrecipient from incurring additional obligations of this grant's funds.

2. TDEM has the right to terminate this award, in whole or in part, at any time before the end of the Performance Period, if TDEM determines that subrecipient has failed to comply with any terms of this grant. TDEM shall provide written notice of the termination that includes:

    a. The reason(s) for such determination;
    b. The effective date of such termination; and

c. The scope of the termination of the award.

d. Termination of an award is final.

XIV. Enforcement

If subrecipient materially fails to comply with any term of this award or agreement, whether stated in a federal or state statute or regulation, an assurance, in a state plan or application, a notice of award, or elsewhere, TDEM or DHS/FEMA may take one or more of the following actions, as appropriate in the circumstances:

1. Increased monitoring of projects and require additional financial and performance reports;

2. Require all payments as reimbursements rather than advance payments;

3. Temporarily withhold payments pending correction of the deficiency;

4. Disallow or deny use of funds and matching credit for all or part of the cost of the activity or action not in compliance;

5. Request DHS/FEMA to wholly or partially de-obligate funding for a project;

6. Withhold cash payments pending correction of the deficiency bysubrecipient or more severe enforcement action by TDEM or DHS/FEMA;

7. Withhold future awards for the grant program; and

8. Take other remedies that may be legally available

In taking an enforcement action, TDEM will adhere to any administrative proceeding to which Subrecipient is entitled under any statute or regulation applicable to the action involved, and where TDEM, as the recipient, is obligated to follow.

The costs to a subrecipient resulting from expenses incurred by the subrecipient during a suspension or after termination of this award are not allowable.

The enforcement remedies identified in this section, including suspension and termination, do not preclude subrecipient from being subject to “Debarment and Suspension” under Executive Order 12549. 2 C.F.R., Appendix II Part 200, (1).

XV. Conflicts of Interest

The subrecipient must maintain and provide upon request written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts and must establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

XVI. Closing of this Award

TDEM will close each subaward after receiving all required final documentation from the subrecipient. If the close out review and reconciliation indicates that subrecipient is owed additional funds, TDEM will send the final payment automatically to subrecipient. If Subrecipient did not use all the funds received, TDEM will recover the unused funds. This does not affect:

1. DHS/FEMA or TDEM's right to disallow costs and recover funds on the basis of a later audit or other review;

2. Subrecipient's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

3. Records retention requirements, property management requirements, and audit requirements, as set forth herein; and

4. Any other provisions of this award that impose continuing obligations on Subrecipient or that govern the rights and limitations of the parties to this award after the expiration or termination of this award.

XVII. Notices

All notices and other communications pertaining to this agreement shall be delivered in electronic format and shall be transmitted in TDEM's Grant Management System, hereinafter referred to as "GMS". TDEM reserves the right to use other delivery avenues as needed.

XVIII. TDEM Grants Management System

TDEM requires the use of the TDEM's Grants Management System (GMS) for subrecipient grant management functions. Subrecipient is required to access GMS for all grant related functions as required by TDEM unless written authorization from TDEM is given. Requested forms and processes may be adjusted and changed to accommodate GMS processes and requirements.

Subrecipient agrees to monitor GMS as necessary to properly manage and complete awarded projects under this agreement. Paper forms and email requests to initiate grant management functions within GMS are not accepted.

XIX. Performance Period

The performance period for this award is listed on the subaward letter for each project. All projects must be completed within the performance period and within the approved budget. Subrecipient shall have expended all award funds and must submit final requests for reimbursements, invoices, and any supporting documentation to TDEM no later than 60 calendar days after the end of the performance period. TDEM is not obligated to reimburse expenses incurred after the performance period or submitted after the deadline.

From time to time, the performance period for grants may be extended by TDEM. These extensions do not change the established performance periods for subrecipients to submit final requests for reimbursements, invoices, and any supporting documentation.

1. All work must be done prior to the approved project completion deadline assigned to each project.
    a. For Public Assistance projects written at 100% complete, documentation must be submitted within 60 days of the Recovery Scoping Meeting (or DHS/FEMA process equivalent).
    b. For projects not written at 100% complete for both Hazard Mitigation and Public Assistance awards, documentation must be submitted within 60 days of the work completion date.
2. Should additional time be required, a time extension request must be submitted which:
    a. Identifies the projects requiring an extension;
    b. Explains the reason for an extension;
    c. Indicates the percentage of work that has been completed;
    d. Provides an anticipated completion date;
    e. Provides detailed milestones documenting expected progress.

The reason for an extension must be based on extenuating circumstances, or unusual project requirements that are beyond the control of Subrecipient. Failure to submit a time extension request 90 days prior to the end of the period of performance may result in denial, or reduction or withdrawal of federal funds for approved work.

XX. Cost/Scope Modification

Any change to a project's approved scope of work must be reported and approved through TDEM and DHS/FEMA before starting the project. Failure to do so will jeopardize award funding.

Subrecipient shall submit requests for cost overruns to TDEM for review. Any requests sent for a Public Assistance project will be submitted to DHS/FEMA for review and approval. Approval of these requests is not guaranteed and is subject to funding availability. Costs incurred prior to approval of any scope or budget/cost changes may be denied.

XXI. Final Expenditures Report

The Project Completion and Certification Report (P4) must be submitted to TDEM within 90 days of all approved work being completed for each project. If any project requires the purchase of insurance as a condition of receiving federal funds, a copy of the current policy must be attached to this report and the Applicant's Attestation for Duplication of Benefits (DOB) form certifying other funds were received to complete the project.

XXII. Net Small Project Overrun

If the total actual cost of all of a subrecipient's Public Assistance small projects combined exceeds the total obligated for all small projects, the subrecipient may request additional funding through the appeal process, within 60 days of the latest work completion date of all its Small Projects, as described in the Public Assistance Program and Policy Guide. A net small project overrun appeal will require a review of all small projects and could result in a reduction of funding.

XXIII. Appeals

1. Public Assistance

   In the event that a subrecipient does not agree with the determinations made by DHS/FEMA, the subrecipient has the right to file an appeal. This appeal must be submitted in GMS by initiating a New Project Appeal, attaching documented justification supporting the subrecipient's position, specifying the monetary figure in dispute and the provisions in federal law, regulation, or policy with which the subrecipient believes the initial action was inconsistent. Additionally, for disasters declared on or after January 1, 2022, subrecipients must submit appeals using DHS/FEMA's Grants Portal system, in addition to GMS. An appeal must be submitted by the subrecipient within the following time frames:

a. Any DHS/FEMA determination – 60 days from the written notice of the determination being made.

b. Second Appeal – 60 days from the written notice of the determination made on the previous appeal.

Appeals should be addressed to the TDEM's Deputy Chief of Recovery & Mitigation and should contain additional information that the subrecipient wants to have considered. Upon receipt of an appeal from Subrecipient, TDEM will review the material submitted, and forward the appeal with a written recommendation to DHS/FEMA within 60 days.

For presidentially declared disasters on or after October 30, 2012, a subrecipient may choose to arbitrate in lieu of submitting a second appeal. The arbitration program is designed to offer an alternate second appeal process by providing final adjudication through an independent, neutral panel of arbitrators for particular PA projects involving a dispute equal to or in excess of $500,000 (or $100,000 if the Applicant is in a "rural area", defined as having a population of less than 200,000 living outside an urbanized area) and must be filed within 60 days of receipt of the first appeal decision. For specific information, refer to 44 CFR § 206.206.

2. Hazard Mitigation

In the event that a subrecipient does not agree with the determinations made by DHS/FEMA, the subrecipient has the right to file an appeal. This appeal must be submitted in GMS by initiating a New Project Appeal, attaching documented justification supporting the subrecipient's position, specifying the monetary figure in dispute and the provisions in federal law, regulation, or policy with which the subrecipient believes the initial action was inconsistent. In accordance with 44 C.F.R §206.440, an appeal must be submitted by the subrecipient within the following time frames:

a. Any DHS/FEMA or TDEM determination – 60 days from the date of the determination of the appeal written on the DHS/FEMA letter;

b. Second Appeal – 60 days from the written notice of the determination made on the previous appeal. The decision of the Second Appeal is final and not subject to arbitration.

Appeals must be addressed to the State Hazard Mitigation Officer (SHMO) and should contain additional information, in accordance with Hazard Mitigation Assistance (HMA) guidance, that the subrecipient wants to have considered by DHS/FEMA. Upon receipt of an appeal from the subrecipient, TDEM will forward the appeal to DHS/FEMA within 60 days.

XXIV. Requests for Reimbursement

Subrecipient will request payment of funds on projects by initiating a request for reimbursement (RFR) in GMS or an advance of funds request (AFR) through GMS. The request must include documentation supporting the request.

Payments for open projects must be requested at least quarterly if expenditures have been made in that quarter. If payment is not requested quarterly, Subrecipient is subject to enforcement mechanisms described in the Enforcement section (XIV). Additional monitoring may be required of subrecipients if funds are advanced.

Small projects will be paid upon completion of work and submission of all necessary closeout documentation to TDEM. Due to the increase of the small project maximum, subrecipients may require an Advance of Funds to pay eligible costs of approved project scopes of work.

XXV. Quarterly Report Requirements

Subrecipients must submit quarterly progress reports (QPR) for open, large projects in Public Assistance, all Hazard Mitigation Grant Program, Building Resilient Infrastructure and Committees (BRIC), and Pre-Disaster Mitigation Grant projects using GMS. QPRs are due to TDEM the 15th of the month after the reporting period ends. The reporting period consists of 4 3-month periods:

a. Quarter 1 (Q1): October – December
b. Quarter 2 (Q2): January – March
c. Quarter 3 (Q3): April – June
d. Quarter 4 (Q4): July – September

Failure to submit required QPRs that demonstrate appropriate project progress for two or more quarters, or Requests for Reimbursement (RFR) not submitted quarterly, can result in the withholding or de-obligation of funding for subrecipients until all QPRs are submitted to TDEM.

TDEM may use the data provided in QPRs when considering requests for overruns, period of performance extensions, or any other award activity. If projects are not progressing, TDEM will require additional reporting or may take any other appropriate action to comply with required standards.

XXVI. Equipment Records

When an individual item of equipment is no longer required for federally-funded programs or projects, Subrecipient must calculate the current fair market value of the individual item. If items have a fair market value in excess of $5,000.00, Subrecipient must make DHS/FEMA aware. For full rules and regulations regarding purchased equipment, reference 2 C.F.R. 200.313.

XXVII. FEMA Public Assistance Portal and FEMA GO

In addition to TDEM's Grants Management System, must utilize the required DHS/FEMA grant management systems. The FEMA Public Assistance Delivery Model, or Simplified Application process, is used to facilitate the writing of project worksheets in FEMA's Grants Portal system (Portal). The subrecipient must establish and maintain an active account in the Portal. It is the subrecipient's responsibility to provide and upload timely, all information requested that is needed to write accurate project worksheets. The Portal provides the subrecipient visibility of the entire project writing process.

The FEMA Grant Outcomes (FEMA GO) platform is used to facilitate the application, tracking, and management of Hazard Mitigation Grant Programs (HMGP) including Building Resilient Infrastructure and Communities (BRIC), Flood Mitigation Assistance (FMA), and HMGP Post Fire Assistance. The subrecipient is responsible for requesting and maintaining an active account in FEMA GO and responding timely to any information requested in order to complete the award process.

The use of FEMA's Grants Portal and FEMA GO do not eliminate the requirement to use TDEM's Grants Management System.

XXVIII. Indirect Cost Rates

The subrecipient may use the negotiated Indirect Cost Rate approved by its cognizant agency, or may use the 10 percent de minimis rate of modified total direct costs (MTDC) (as per 2 C.F.R. § 200.414) when receiving Management Costs.

XXIX. Request for Information

TDEM and/or DHS/FEMA may request additional information from the subrecipient throughout the life cycle of this grant. This process, the Request for Information, herein referred to as RFI. DHS/FEMA RFIs may be received directly from TDEM's Grants Management System (GMS), FEMA systems (FEMA Grants Portal & FEMA GO), DHS/FEMA employees, or indirectly through TDEM representatives. DHS/FEMA RFI timeframes may vary, but due dates are always communicated upon transmission of the RFI. The TDEM RFI policies can be found in Exhibits G & H.

Exhibits

Exhibit A: Assurance – Non-Construction Programs

(See Standard Form 424B)

As the duly authorized representative of subrecipient, I certify that subrecipient

1. Has the legal authority to apply for federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project cost) to ensure proper planning, management and completion of the project described in this grant.
2. Will give the Department of Homeland Security, the Texas Division of Emergency Management, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this grant and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C.§§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686 and 44 C.F.R. Part 19), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), as amended, relating to

confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C.§§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which agreement for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply or has already complied with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction sub-agreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000.00 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190 as amended by 42 U.S.C. 4311 et seq. and Executive Order (EO) 11514) which establishes national policy goals and procedures to protect and enhance the environment, including protection against natural disasters. To comply with NEPA for DHS grant-supported activities, DHS-FEMA requires the environmental aspects to be reviewed and evaluated before final action on the application; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C.§§1451 et seq.); (f) comply with the Clean Air Act of 1977, (42 U.S.C.§§7401 et seq. and Executive Order 11738) providing for the protection of and enhancement of the quality of the nation’s air resources to promote public health and welfare and for restoring and maintaining the chemical, physical,

and biological integrity of the nation's waters; (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93- 205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348, 45 C.F.R. 46, and DHS Management Directive 026-044 (Directive) regarding the protection of human subjects involved in research, development, and related activities supported by this Grant. "Research" means a systematic investigation, including research, development, testing, and evaluation designed to develop or contribute to general knowledge. See Directive for additional provisions for including humans in the womb, pregnant women, and neonates (Subpart B); prisoners (Subpart C); and children (Subpart D). See also state and local law for research using autopsy materials.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) which requires the minimum standards of care and treatment for vertebrate animals bred for commercial sale, used in research, transported commercially, or exhibited to the public according to the Guide for Care and Use of Laboratory Animals and Public Health Service Policy and Government Principals Regarding the Care and Use of Animals.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C.§§4801 et seq.), which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133 (now OMB 2 C.F.R. 200.500), "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, grant guidance, and policies governing this Grant.

Exhibit B: Assurances – Construction Programs

(See Standard Form 424D)

As the duly authorized representative of subrecipient, I certify that subrecipient:

1. Has the legal authority to apply for federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project costs) to ensure proper planning, management and completion of project described in this Grant.
2. Will give the Department of Homeland Security, the Texas Division of Emergency Management, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to this grant and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of this Grant.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards of merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

10. Will comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 1683, and 1685-1686 and 44 C.F.R. Part 19), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29) U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statue(s) under which agreement for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statue(s) which may apply to the agreement.

11. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

12. Will comply or has already complied with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases

13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327- 333) regarding labor standards for federally- assisted construction sub-agreements.

14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

15. Will comply with environmental standards which may be prescribed pursuant to the

following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) as amended by 42 U.S.C. 4311 et seq. and Executive Order (EO) 11514 which establishes national policy goals and procedures to protect and enhance the environment, including protection against natural disasters; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) comply with the Clean Air Act of 1977, (42 U.S.C.§§7401 et seq. and Executive Order 11738) providing for the protection of and enhancement of the quality of the nation's air resources to promote public health and welfare and for restoring and maintaining the chemical, physical, and biological integrity of the nation's waters; (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq).

18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133 (now OMB 2 C.F.R. 200.500), "Audits of States, Local Governments, and Non-Profit Organizations."

19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, grant guidance and policies governing this grant.

Exhibit C: Certifications for Grant Agreements

The undersigned, as the authorized official, certifies the following to the best of his/her knowledge and belief:

1. No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL Disclosure of Lobbying Activities, in accordance with its instructions.

3. The undersigned shall require that the language of this certification prohibiting lobbying be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

4. As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 C.F.R. Part 67, for prospective participants in primary covered transactions, as defined at 28 C.F.R. Part 67, Section 67.510. (Federal Certification), the subrecipient certifies that it and its principals and vendors:

    a. Are not debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency. Subrecipient can access debarment information by going to www.sam.gov and the State Debarred Vendor List at: www.window.state.tx.us/procurement/prog/vendor_performance/debarred.

b. Have not within a three-year period preceding this grant been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (D)(2) of this certification;

d. Have not within a three-year period preceding this grant had one or more public transactions (federal, state, or local) terminated for cause or default; or

e. Where subrecipient is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this grant. (Federal Certification).

5. Federal funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose. Subrecipient may be required to supply documentation certifying that a reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

6. Subrecipient will comply with 2 C.F.R. Part 180, Subpart C as a condition of receiving grant funds and subrecipient will require such compliance in any subgrants or contract at the next tier.

7. Subrecipient will comply with the Drug-free Workplace Act, in Subpart B of 2 C.F.R. Part 3001.

8. Subrecipient is not delinquent on any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129 and form SF-424, item number 17 for additional information and guidance.

9. Subrecipient will comply with all applicable requirements of all other federal laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this grant.

10. Subrecipient understands that failure to comply with any of the above assurances may result in suspension, termination or reduction of funds in this grant.

Exhibit D: State of Texas Assurances

As the duly authorized representative of subrecipient, I certify that subrecipient:

1. Shall comply with Texas Government Code, Chapter 573, by ensuring that no officer, employee, or member of the Subrecipient’s governing body or of the Subrecipient’s contractor shall vote or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years, or such other period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.

2. Shall insure that all information collected, assembled, or maintained by the Subrecipient relative to a project will be available to the public during normal business hours in compliance with Texas Government Code, Chapter 552, unless otherwise expressly prohibited by law.

3. Shall comply with Texas Government Code, Chapter 551, which requires all regular, special, or called meetings of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.

4. Shall comply with Section 231.006, Texas Family Code, which prohibits payments to a person who is in arrears on child support payments.

5. Shall not contract with or issue a license, certificate, or permit to the owner, operator, or administrator of a facility if the Subrecipient is a health, human services, public safety, or law enforcement agency and the license, permit, or certificate has been revoked by another health and human services agency or public safety or law enforcement agency.

6. Shall comply with all rules adopted by the Texas Commission on Law Enforcement pursuant to Chapter 1701, Texas Occupations Code, or shall provide the grantor agency with a certification from the Texas Commission on Law Enforcement that the agency is in the process of achieving compliance with such rules if the Subrecipient is a law enforcement agency regulated by Texas Occupations Code, Chapter 1701.

7. Shall follow all assurances. When incorporated into a grant award or contract, standard assurances contained in the application package become terms or conditions for receipt of grant funds. Administering state agencies and subrecipients shall maintain an appropriate contract administration system to ensure that all terms, conditions, and specifications are met. (See UGMS Section _.36 for additional guidance on contract provisions).

8. Shall comply with the Texas Family Code, Section 261.101, which requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Child Protective and Regulatory Services. Subrecipient shall also ensure that all program personnel are properly trained and aware of this requirement.

9. Shall comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990 including Titles I, II, and III of the Americans with Disability Act which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities, 44 U.S.C. §§ 12101-12213; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g)§§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to this grant.

10. Shall comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction subagreements.

11. Shall comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91- 646), which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

12. Shall comply with the provisions of the Hatch Political Activity Act (5 U.S.C. §§7321-

29), which limit the political activity of employees whose principal employment activities are funded in whole or in part with Federal funds.

13. Shall comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable.

14. Shall insure that the facilities under its ownership, lease, or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA (EO 11738).

15. Shall comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition proposed for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

16. Shall comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1977, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

17. Shall comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

18. Shall assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

19. Shall comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) which requires the minimum standards of care and treatment for vertebrate animals bred for commercial sale, used in research, transported commercially, or exhibited to the public according to the Guide for Care and Use of Laboratory Animals and Public Health Service Policy and Government Principals Regarding the Care and Use of Animals.

20. Shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residential structures.

21. Shall comply with the Pro-Children Act of 1994 (Public Law 103-277), which prohibits smoking within any portion of any indoor facility used for the provision of services for children.

22. Shall comply with all federal tax laws and are solely responsible for filing all required state and federal tax forms.

23. Shall comply with all applicable requirements of all other federal and state laws, executive orders, regulations, and policies governing this program.

24. And its principals are eligible to participate and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and it is not listed on a state or federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement have Exclusions listed at SAM.gov.

25. Shall adopt and implement applicable provisions of the model HIV/AIDS workplace guidelines of the Texas Department of Health as required by the Texas Health and Safety Code, Ann., Sec. 85.001, et seq.

Exhibit E: Environmental Review

As the duly authorized representative of subrecipient, I certify that subrecipient:

1. Shall assess its federally funded projects for potential impact to environmental resources and historic properties.

2. Shall submit any required screening form(s) as soon as possible and shall comply with deadlines established by TDEM. Timelines for the Environmental Planning and Historic Preservation (EHP) review process will vary based upon the complexity of the project and the potential for environmental or historical impact.

3. Shall include sufficient review time within its project management plan to comply with EHP requirements. Initiation of any activity prior to completion of FEMA's EHP review will result in a non-compliance finding and TDEM will not authorize or release Grant funds for non-compliant projects.

4. As soon as possible upon receiving this grant, shall provide information to TDEM to assist with the legally required EHP review and to ensure compliance with applicable EHP laws and Executive Orders (EO) currently using the FEMA EHP Screening Form OMB Number 1660-0115/FEMA Form 024-0-01 and submitting it, with all supporting documentation, to TDEM for review. These EHP requirements include but are not limited to the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, EO 11988 – Floodplain Management, EO 11990 – Protection of Wetlands, and EO 12898 – Environmental Justice. Subrecipient shall comply with all Federal, State, and local EHP requirements and shall obtain applicable permits and clearances.

5. Shall not undertake any activity from the project that would result in ground disturbance, facility modification, or purchase and use of sonar equipment without the prior approval of FEMA. These include but are not limited to communications towers, physical security enhancements involving ground disturbance, new construction, and modifications to buildings.

6. Shall comply with all mitigation or treatment measures required for the project as the result of FEMA's EHP review. Any changes to an approved project description will require re-evaluation for compliance with EHP requirements before the project can proceed.

7. If ground disturbing activities occur during project implementation, subrecipient shall ensure monitoring of ground disturbance and if any potential archeological resources are discovered, subrecipient shall immediately cease construction in that area and notify FEMA and the appropriate State Historical Preservation Office.

Exhibit F: Additional Grant Certifications

1. Public Assistance and Hazard Mitigation Program Grant (HMGP)
   a. Match Certifications

      Subrecipient certifies that it has the ability to meet or exceed the cost share required for all subawards (projects) and amendments (versions) under this Grant Agreement.

   b. Duplication of Program Statement

      Subrecipient certifies there has not been, nor will be, a duplication of benefits for this project Match Certification.

   c. Federal Debt Disclosure

      Subrecipient certifies that it not delinquent on and Federal debt.

2. HMGP Only
   a. Maintenance Agreement

      Applicant certifies that there is a Maintenance Agreement needed for this facility and that a copy of that agreement will be provided to TDEM.

   b. Environmental Justice Statement

      Federal Executive Order 12898 compliance requirements – If there are any concentration of low income of minority populations in or near the HMGP projects:

      i. Applicant certifies that the HMGP project result will not result in a disproportionately high effect on low income or minority populations.

      OR

      ii. Applicant certifies that actions will be taken to ensure of environmental justice for low income and minority populations related to this HMGP project.

Exhibit G: Request for Information Policy

Timelines for providing complete and accurate information and documentation are crucial to the success of the overall Grant Program and to the timely completion and closure of awarded projects. TDEM has developed a framework following a progressive series of communications for the Subrecipient, referred to as Request for Information (RFI). TDEM will work with Subrecipients throughout the RFI process as communication is the key to success.

This policy will be applied to Public Assistance and Hazard Mitigation projects for management and closeout activities after obligation. This policy will address non-responsive and inadequate responses to requests for information. Although the timeline outlines milestones to be completed, nothing limits the ability of TDEM from sending communications.

Day 1	TDEM regional coordinators or the Support Affiliate will reach out to Subrecipient's primary contact requesting the information needed. Communication will be documented in GMS.
Day 10	If adequate response is not received, TDEM Regional Unit Chief will reach out to Subrecipient primary contact. Communication will be documented in GMS.
Day 20	If adequate response is not received, TDEM Regional Section Chief will reach out to Subrecipient primary contact. Communication will be documented in GMS.
Day 30	If adequate response is not received, TDEM regional coordinator or Support Affiliate will send a letter, signed by the Regional Unit or Section Chief notifying the subrecipient of the missed deadline and any action that will be taken.
Extension Request	If Subrecipient requires additional time a written request must be submitted to the Regional Coordinator no later than Day 30. Extensions will be approved at TDEM's discretion and up to 30 days may be granted; in total an RFI will have a window of no more than 60 days.
End of Extension	If adequate response is not received, TDEM regional coordinator will send a letter, signed by the Regional Unit or Section Chief notifying the subrecipient of the missed deadline and any action that will be taken.

Exhibit H: Pre-Obligation Request for Information Policy

Timelines for providing complete and accurate information and documentation are crucial to the success of the overall Grant Program and to the timely obligation of projects. TDEM has developed a framework following a progressive series of communications for the subrecipient, referred to as Request for Information (RFI). TDEM will work with subrecipients throughout the RFI process as communication is the key to success.

This policy will be applied to Hazard Mitigation projects for management activities pre-obligation. This policy will address non-responsive and inadequate responses to requests for information. The timeline outlined below represents a single, 15-day period beginning from TDEM's first review of Subrecipient's application. Failure to supply timely responses could result in dismissal of application or award submission. Although the timeline outlines milestones to be completed, nothing limits the ability of TDEM from sending communications.

Day 1	Upon initial review of Subrecipient's HMGP application, TDEM staff will initiate contact with Subrecipient via email. This first communication begins the 15-day pre-obligation request for information policy timeline.
Day 6	5 days after the first communication, if adequate response is not received, the Regional Unit Chief will issue a read receipt, high importance email to the Subrecipient's primary contact highlighting previous requests and notifying Subrecipient of the 10 remaining days to provide the requested information.
Day 11	5 days after the second communication, if adequate response is not received, TDEM staff will issue a formal reminder through a letter signed by the Regional Unit Chief and emailed to the Subrecipient's primary contact and Certifying Official informing them of the final 5 days remaining to provide the requested information. The Assistant Chief is to be copied on the email for visibility.
Day 16	5 days after the third communication, if adequate response is not received, TDEM staff will send a letter, signed by the Regional Unit Chief, to Subrecipient's primary contact notifying Subrecipient of missed deadline.

Exhibit I: Recoupment of Funds

Procedure Summary

1. This procedure is to ensure responsible spending of federal dollars, 2 CFR § 200.344 and 2 CFR § 200.345 require that the State of Texas and the Texas Division of Emergency Management (TDEM) act to identify and recover any improper payments.

2. This procedure applies to all Division subrecipients that receive funds from or through TDEM and explains the process by which funding to subrecipients will be recovered in the event that such funding is determined to be an overpayment or is not expended appropriately under the terms and conditions between TDEM and the subrecipient and/or applicable FEMA program, statue, regulations, or guidance.

3. The federal dollars described in this policy are passed through the Division, which serves as the Governor's authorized representative for certain federal grants and awards. Any amount of debt owed to the federal government is ultimately the responsibility of the State of Texas, not specifically the responsibility of the Division.

Procedure

1. Applicability of Recoupment

   1.1. This procedure will be applied to subrecipients that have been determined by the Division to have received an overpayment or that the Division determines has not spent federal funds in accordance with their grant or financial award.

2. Recipient's Responsibilities

   2.1. subrecipients are required to sign Grant Terms and Conditions prior to receipt of funds that stipulate subrecipients shall refund to the Division any sum that has been determined by the Division to be an overpayment to Subrecipient or that the Division determines has not been spent by Subrecipient in accordance with their grant or financial award.

   2.2. No refund payment(s) shall be made from local, state or federal grant funds unless repayment with grant funds is specifically permitted under the applicable program.

   2.3. Subrecipients shall make such refund to the Division within thirty (30) calendar days after the Division requests such refund.

3. Division Collection Actions

3.1. Upon determination that a subrecipient has received an overpayment or has not expended funds in accordance with the grant or fiscal award, the following steps will be taken:

3.1.1. First Formal Communication: A recoupment letter will be sent to the subrecipient's Authorized Agent(s) highlighting the amount of federal funds owed, electronic transfer information, and the requirement to repay the amount within thirty (30) calendar days.

3.1.1.1. The communication will be sent using electronic mail to the designated agent identified in the grant/funding application, and;

3.1.1.2. Posted in TDEM's Grants Management System (GMS), and;

3.1.2. The Division will confirm receipt of the recoupment letter by either receiving a written confirmation from the subrecipient or making documented verbal contact with the subrecipients designated agent, mayor, or county judge as applicable.

3.1.3. If the subrecipient fails to make repayment of the amount identified in the recoupment letter within thirty (30) business days of receipt of the letter, the Division may offset an applicant's owed funds against current available funding due to applicant unless an agreement to return funding is reached with the applicant as approved by TDEM

3.1.4. If the repayment is not made, the Division shall send an additional notice to the subrecipient by electronic mail and posted to the TDEM Grants Management System (GMS) thirty (30) to forty-five (45) days after the first letter was sent and then confirm receipt of the recoupment letter by either receiving a written confirmation from the subrecipient or making documented verbal contact with the subrecipients designated agent, mayor, or county judge as applicable. This letter will indicate the amount of funds that have been transferred to offset the amount due and remaining balance or will confirm if offset will occur. In addition, the letter will contain information related to recoupment options that may be taken in accordance with section 3.2 Delinquent Accounts.

If the repayment is not made after the second letter, the Division shall send a third notice to the subrecipient by electronic mail and posted to the TDEM Grants Management System (GMS) thirty (30) to forty-five (45) days after the second letter was sent and then confirm receipt of the recoupment letter by either receiving a written confirmation from the subrecipient or making documented verbal contact with the subrecipients designated agent, mayor, or county judge as applicable. This letter will indicate the amount of funds that have been transferred to offset the amount due and remaining balance or will confirm if offset will occur. In addition, the letter will contain information related to recoupment options that may be taken in accordance with section 3.2 Delinquent Accounts.

3.1.5. If the subrecipient fails to make repayment of the amount identified in the recoupment letter or enter an agreement to repay the funding with the Division approved by TDEM within one hundred twenty (120) days from the date that the original recoupment letter was sent, the Division will take any and all authorized actions to withhold funding for other grants, including issuing a State Comptroller Warrant Hold and/or referring the matter to the attorney general. The Division shall notify the subrecipient of any such decision.

3.2. Delinquent Accounts

3.2.1. Delinquency Determination

3.2.1.1. If a subrecipient fails to make repayment of the amount identified in the recoupment letter or enter an agreement approved by TDEM to repay the funding with the Division within 120 days from the date the original recoupment letter was sent, the Division may determine that the account is delinquent.

3.2.1.2. At TDEM's sole discretion, TDEM may authorize payment plans that fully reimburse the full amount owed over a 1–9-month period or prior to the end of the grant period. From time to time, variances in approved timelines may occur based on the phase of the grant process and other timelines determined by FEMA such as periods of performance and closeout liquidation periods.

3.2.1.3. Should a subrecipient enter into a payment plan and then fail to make more than one timely payment, the payment plan shall be considered invalid and the full balance shall be due within 30 calendar days. If payment is not made within 30 days, the actions contained within Section 3.1.7 and Section 3.2.

3.2.2. Warrant Hold Process

3.2.2.1. Once the Division has determined that the debt is delinquent, the Division may utilize the state comptroller's warrant hold process to ensure payments are not issued to the individual or entity that is indebted to the state.

3.2.3. Referral to the Attorney General

3.2.3.1. Once the account is determined to be delinquent, the Division may determine whether to refer the account to the Attorney General through the System Office of the General Counsel.

3.2.3.2. The determination as to the manner in which to pursue the collection of the account must consider the following:

3.2.3.2.1. The size of the debt;

3.2.3.2.2. The existence of any security or collateral;

3.2.3.2.3. The likelihood of collection through passive means;

3.2.3.2.4. The cost to the Division or Attorney General in attempting to collect the obligation; and

3.2.3.2.5. The availability of resources within the Division or Attorney General to devote to the collection of the obligation.

3.2.4. Referral to the Attorney General

3.2.4.1. Upon a determination to refer to the Attorney General, the Division shall notify the subrecipient of the delinquency status of the account, including the amount in no more than two mailed letters.

3.2.4.1.1. The first demand letter shall be mailed USPS First Class Mail within 30 days after the debt has been determined delinquent and an Attorney General referral is desired.

3.2.4.1.2. The second demand letter shall be mailed USPS First Class Mail between 30-60 days after the first demand letter was mailed if repayment of the amount has not occurred.

3.2.4.2. If the Division determines that it will refer the matter to the Attorney General, it shall, through the System Office of the General Counsel, notify the Attorney General around the 90th day after the first demand letter was sent.

3.3. The Division shall maintain copies of all communications with the subrecipients regarding the recoupment of the grant or financial award funding.

4. TDEM's Ability to Remedy

Nothing in this procedure shall limit TDEM's ability to implement alternative remedies for which it has authority to resolve outstanding recoupments.

Nothing in this policy shall prohibit TDEM from immediately taking any recoupment action after the first thirty (30) day notice has been issued requesting repayment.

Related Statutes, Policies, or Requirements

- Texas A&M University System Regulation 21.01.04
- 1 Tex. Admin. Code Section 59.2
- Tex. Gov't Code Section 403.055
- Tex. Gov't Code Chapter 2107
- Texas A&M University System Office Collection and Write-off Guidance
- Texas A&M University System Regulation 09.04.01

Grant Acknowledgement, Agreement and Signature

Please provide your signature next to each item in acknowledgement you have received, read, understand, and agree to abide by the terms.

I, ________________________ , the undersigned and Certifying Official of

Printed Name

________________________ understand that TDEM strongly encourages refresher

Subrecipient Name

training in federal procurement standards as variances from these standards account for the majority of funding deobligation. I also certify that I have read and understand each section of the above agreement. My signatures below serve as Subrecipient agreement to comply with all laws, rules, regulations, and policy presented.

________________________________ Signature	Agreement Authority
________________________________ Signature	Agreement (Section I – XXIX)
________________________________ Signature	Exhibit A: Assurance – Non-Construction Programs
________________________________ Signature	Exhibit B: Assurance – Construction Programs
________________________________ Signature	Exhibit C: Certifications for Grant Agreements
________________________________ Signature	Exhibit D: State of Texas Assurances
________________________________ Signature	Exhibit E: Environmental Review Certification

______________________ Signature	Exhibit F: Additional Grant Certifications
______________________ Signature	Exhibit G: Request for Information Policy
______________________ Signature	Exhibit H: Pre-Obligation Request for Information Policy
______________________ Signature	Exhibit I: Recoupment of Funds

Please sign below to acknowledge subrecipient’s acceptance of this grant and all exhibits and subrecipient’s agreement to abide by all terms and conditions.

______________________ **Signature of Certifying Official**	______________ **Date**
______________________ **Printed Name**	______________ **Title**

FEDERAL EMERGENCY MANAGEMENT AGENCY

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project HMGP-4485-0141-TX (1)

Title: City of Seabrook EOC Generator

NEPA DETERMINATION

Non Compliant Flag:	No	**EA Draft Date:**		**EA Final Date:**	
EA Public Notice Date:		**EA Fonsi**		**Level:**	CATEX
EIS Notice of Intent		**EIS ROD Date:**			

Comment Utilizing the proposed HMGP grant, the City of Seabrook proposes to replace an existing back-up generator on an existing elevated platform and conduct electrical modifications at the Emergency Operations Center, located at 1400 Cook Ave, Seabrook, Harris County, TX (29.564744, -95.023674). By installing the new emergency generator dependable power supply will be immediately available to the City's Police Department and Emergency Operations Center. This will assure these critical operations will be available to the City during events that can create power outages such as tropical storms, hurricanes and severe winter storms such as Winter Storm Uri. This will assure emergency Police, Fire and Ambulance Services and water, sewer and drainage services can be properly managed and coordinated for all the citizens of the City of Seabrook.

This project has been determined to be Categorically Excluded from the need to prepare either an Environmental Impact Statement or Environmental Assessment in accordance with FEMA Instruction 108-1-1 and DHS Instruction 023-01-001-01; CATEX M13. Particular attention should be given to the project conditions before and during project implementation. Failure to comply with these conditions may jeopardize federal assistance including funding.
- dcook125 - 04/27/2023 16:03:32 GMT

CATEX CATEGORIES

Catex Category Code	Description	Selected
*m13	(*m13) Construction or installation of structures, facilities, or equipment for the purpose of ensuring the continuity of operations during incidents such as emergencies, disasters, flooding, and power outages involving less than one acre of ground disturbance. Examples include the installation of generators, installation of storage tanks of up to 10,000 gallons, installation of pumps, construction of structures to house emergency equipment, and utility line installation. This CATEX covers associated ground disturbing activities, such as trenching, excavation, and vegetation removal of less than one acre, as well as modification of existing structures.	Yes

EXTRAORDINARY

Extraordinary Circumstance Code	Description	Selected ?
	No Extraordinary Circumstances were selected	

ENVIRONMENTAL LAW / EXECUTIVE ORDER

Environmental Law/ Executive Order	Status	Description	Comment
Clean Air Act (CAA)	Completed	Project will not result in permanent air emissions - Review concluded	

FEDERAL EMERGENCY MANAGEMENT AGENCY

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project HMGP-4485-0141-TX (1)

Title: City of Seabrook EOC Generator

Environmental Law/ Executive Order	Status	Description	Comment
Coastal Barrier Resources Act (CBRA)	Completed	Project is not on or connected to CBRA Unit or otherwise protected area - Review concluded	
Clean Water Act (CWA)	Completed	Project would not affect any water of the U.S. - Review concluded	
Coastal Zone Management Act (CZMA)	Completed	Project is located in a coastal zone area and/or affects the coastal zone	Based on consultation with Texas General Land Office (GLO) and review of Coastal Coordination Council (CCC) General Concurrence #5, FEMA has determined that this project is deemed consistent with the goals and policies of the Texas Coastal Management Program (CMP) and consistency review procedures as implemented by the GLO. - dcook125 - 04/27/2023 16:04:18 GMT
	Completed	State administering agency does not require consistency review - Review concluded	
Executive Order 11988 - Floodplains	Completed	Located in floodplain or effects on floodplain/flood levels	The project is located within an AE zone, area of 100-yr flooding, per Flood Insurance Rate Map (FIRM) panel 48201C1085M, dated 01/06/2017. Initial Disaster Public Notice was published on 04/28/2020 and 08/05/2021. The proposed action is not likely to result in any potential direct impacts that will adversely affect the natural values and function of floodplains, nor is it likely to increase the risk of flood loss. 8-step checklist attached. - dcook125 - 04/27/2023 16:01:52 GMT
	Completed	Possible adverse effects associated with investment in floodplain, occupancy or modification of floodplain environment	
	Completed	8 Step Process Complete - documentation attached - Review concluded	
Executive Order 11990 - Wetlands	Completed	No effects on wetlands and project outside wetlands - Review concluded	A review of the National Wetland Inventory (NWI) online mapper, accessed on 4/26/23, for the site indicates that the area is not located within, nor does it affect a designated wetland. - dcook125 - 04/27/2023 16:02:06 GMT
Executive Order 12898 - Environmental Justice for Low Income and Minority Populations	Completed	Low income or minority population in or near project area	

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project HMGP-4485-0141-TX (1)

Title: City of Seabrook EOC Generator

Environmental Law/ Executive Order	Status	Description	Comment
	Completed	No disproportionately high and adverse impact on low income or minority population - Review concluded	
Endangered Species Act (ESA)	Completed	Listed species and/or designated critical habitat present in areas affected directly or indirectly by the federal action	
	Completed	No effect to species or designated critical habitat (See comments for justification) - Review concluded	
Farmland Protection Policy Act (FPPA)	Completed	Project does not affect designated prime or unique farmland - Review concluded	
Fish and Wildlife Coordination Act (FWCA)	Completed	Project does not affect, control, or modify a waterway/body of water - Review concluded	
Migratory Bird Treaty Act (MBTA)	Completed	Project located within a flyway zone	
	Completed	Project does not have potential to take migratory birds - Review concluded	
Magnuson-Stevens Fishery Conservation and Management Act (MSA)	Completed	Project not located in or near Essential Fish Habitat - Review concluded	
National Historic Preservation Act (NHPA)	Completed	Applicable executed Programmatic Agreement. Activity meets Programmatic Allowance (enter date and # in comments) - Review concluded	The scope of work has been reviewed and meets the criteria in Appendix B - Programmatic Allowances, Tier II; Section D.2.a of FEMA's Programmatic Agreement (PA) dated March 16, 2022. In accordance with this PA, FEMA is not required to determine the National Register eligibility of properties where work performed meets the Appendix B criteria. The scope of work has been reviewed and FEMA has determined, based on Tribal preferences, that the project will not require Tribal Consultation. - amccomb1 - 04/27/2023 15:52:58 GMT
Resource Conservation and Recovery Act, aka Solid Waste Disposal Act (RCRA)	Completed	Review concluded	
Wild and Scenic Rivers Act (WSR)	Completed	Project is not along and does not affect Wild and Scenic River - Review concluded	

NOTE: All times are GMT using a 24-hour clock.

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project HMGP-4485-0141-TX (1)

Title: City of Seabrook EOC Generator

CONDITIONS

Special Conditions required on implementation of Projects:

Applicant must coordinate with the local floodplain administrator, obtain required permits prior to initiating work, and comply with any conditions of the permit to ensure harm to and from the floodplain is minimized. All coordination pertaining to these activities should be retained as part of the project file in accordance with the respective grant program instructions.

The project and all its attendant utilities are supporting a critical action and must be elevated or otherwise protected to the 0.2% annual chance (500-year) base flood elevation (BFE) or higher. The applicant must submit documentation to FEMA upon closeout supporting compliance with this condition. Documentation related to determination of the 500-year BFE may consist of a permit issued by the local entity responsible for floodplain ordinance compliance; an email or letter from the local floodplain official; an elevation certificate; a statement or study signed by a qualified engineer; and/or reference to a FEMA Flood Insurance Study or other FEMA flood product or tool. Where multiple sources of flood hazard information are available for a proposed project site, such as where there is both an Effective and Preliminary FIRM or both an Effective FIRM and Advisory Flood Hazard Information, the best available information is the source which provides the highest 500-year BFE. In situations where elevating or otherwise protecting to the 500-year BFE, would not be practicable due to engineering feasibility and cost, then the documentation submitted to FEMA must also include proof/justification as to why doing so would not be practicable based on those factors.

For actions located in the floodplain and/or wetlands, the applicant must issue a final public notice per 44 CFR Part 9.12(e) at least 15 days prior to the start of work. The final notice shall include the following: (1) A statement of why the proposed action must be located in an area affecting or affected by a floodplain or a wetland; (2) A description of all significant facts considered in making this determination; (3) A list of the alternatives considered; (4) A statement indicating whether the action conforms to applicable state and local floodplain protection standards; (5) A statement indicating how the action affects or is affected by the floodplain and/or wetland, and how mitigation is to be achieved; (6) Identification of the responsible official or organization for implementation and monitoring of the proposed action, and from whom further information can be obtained; and (7) A map of the area or a statement that such map is available for public inspection, including the location at which such map may be inspected and a telephone number to call for information.

Source of condition: Executive Order 11988 - Floodplains — Monitoring Required: No

Unusable equipment, debris and material shall be disposed of in an approved manner and location. In the event significant items (or evidence thereof) are discovered during implementation of the project, applicant shall handle, manage, and dispose of petroleum products, hazardous materials and toxic waste in accordance to the requirements and to the satisfaction of the governing local, state and federal agencies.

Source of condition: Resource Conservation and Recovery Act, aka Solid Waste Disposal Act (RCRA) — Monitoring Required: No

Standard Conditions:

Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.

This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.

If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

Record of Technical Consideration and Benefit Cost Summary

Project Summary

Program:	HMGP
Project Number:	4485-0141-TX
Sub-Recipient:	Harris County
County or Parish:	Harris County
Project Title:	City of Seabrook EOC Generator
Project Type:	Generator
Phase:	Non-Phased
Total Project Cost	$325,000 (provided by Applicant)

BCA Summary

Analyst:	FEMA
Benefit Coast Analysis:	Streamline Process for Sub-$1 million Project Post
Benefit Cost Ratio:	1.0
Hazard Type Analysis:	Infrastructure Failure
Property Structure Type:	Critical Facility Building
Mitigation Action:	Generator
Type of Service:	Other
Number of Generators:	1: 230 kW

Objective

The main objective is to review the information submitted by the subrecipient to ensure completeness, adherence to programmatic guidelines and cost allowability and to determine if there are any pre award conditions that should be applied to the project prior to the award of funding. Additionally, the project will be reviewed for post award conditions that will be required for closeout. Project data and information submitted should have enough information to demonstrate the project is sustainable and cost-effective and will be designed to reduce the risk to individuals and property from future natural hazards, while also reducing reliance on federal funding from future disasters.

Scope of Work

This project proposes the replacement of backup power generator at the City's Police Department and Emergency Operations Center. The project will be constructed in Zone X as seen on FEMA FIRM listed below.

Generator	Latitude	Longitude	Flood Information Used
City's Police Department and Emergency Operations Center. 230 kW	29°33'53.1"N	95°01'25.3"W	FEMA FIRM 48201C1085M effective 1/6/2017

All activities shall be completed in strict compliance with Federal, State and Local Applicable Rules and regulations including but not limited to 44CFR 60.3.

Conditions

1. Subrecipient must coordinate with the local floodplain administrator to obtain required permits. The subrecipient must comply with any conditions of the permit(s) prior to initiating work. All permits and coordination pertaining to these activities must be retained by the subrecipient. Submit permits and documentation of coordination to FEMA at closeout.
2. Subapplicant/Subrecipient must acquire all applicable federal, state, tribal and/or local permits.

SEABROOK

Agenda Briefing

Date of Meeting: April 15, 2025

Responsible Department: Public Works

Presenter: Brian Craig, Director of Public Works | City Engineer

Briefing Prepared By: Brian Craig

Strategic Focus Area:

General Information:

Consider and take all appropriate actions on bid award for RFP 2025-04-110, HMGP 4485 City of Seabrook Fire Station Generator to Texan Municipal & Industrial, LLC for an amount not to exceed $117,167.00 and authorize the City Manager to execute a contract and all associated documents. This project is an approved HMGP Grant for 10% Local and 90% Federal; Local obligation will be $11,716.70.

Executive Summary / Background:

The City of Seabrook was awarded the Hazard Mitigation Grant Program (HMGP), DR 4485 Texas COVID 19 Pandemic grant for City of Seabrook Fire Station Generator Project on December 19, 2024. This is a 10% Local and 90% Federal fund obligation project with an estimated grant of $215,600.00. With the award, City staff procured three bids through the Request for Proposal process, meeting FEMA/TDEM requirements. Bids ranged from $117,167.00 to $464,680.00 with the low bidder being Texan Municipal & Industrial, LLC. Staff reviewed the bids, verified the specifications, verified the qualifications of the contractor with a recommendation to Texan Municipal & Industrial, LLC for the amount of $117,167.00 for the project.

Funding / Fiscal Information:

Supporting Materials Attached:

1. Bid Tab
2. Award-Package

Prior Action / Review by Council, Boards, Commissions:

Staff Recommendation:

Recommend approval of Bid and allow City Manager to enter into contract.

All requests must be submitted to the City Secretary's Office no later than 12:00 p.m. on the Monday, one week prior to the regular Tuesday Council Meeting. All required attachments are to be submitted with the request. Incomplete items cannot be placed on the agenda.

SEABROOK

BID TABULATION SHEET

RFP 2025-04-110

HMPG 4485 CITY OF SEABROOK FIRE STATION GENERATOR

3/20/2025 **2:00 pm CST**

It should be noted that figures shown on an initial bid tab represent those compiled at the time of bid opening and per the terms and conditions of the bid solicitation. Other evaluation factors exist and must be considered before an award recommendation is completed.

Company Name	Bid Bond	Base Bid
McDonald Municipal & Ind	Yes	118,269 00
~~Colorado Standby~~	~~Yes~~	~~308,365.00~~
~~Precision & Integrity Construction~~	~~Yes~~	~~238,825.00~~
Texan Municipal + Industrial	Yes	117,167.00
JLA Construction	Yes	464,680.00

TDEM
THE TEXAS A&M UNIVERSITY SYSTEM

December 19, 2024

The Honorable Thom Kolupski
Mayor
City of Seabrook
1700 First Street
Seabrook, TX 77586

Subject: Sub-Grant Award

Dear Mayor Kolupski:

The Texas Division of Emergency Management (TDEM) has issued a sub-grant for the Hazard Mitigation Grant Program (HMGP), DR-4485, Texas Covid-19 Pandemic. The following is the information related to this award:

Sub-Recipient Information:

UEI Number: JKWVS23E6773
TINS Number: 74-1402289
FIPS Number: 201-66392-00

Award Information:

Catalog of Federal Domestic Assistance: 97.039
FEMA Project Number: 0142
Project Title: City of Seabrook Fire Station Generator
Period of Performance (POP): October 10, 2024 to October 1, 2026

PROJECT FUNDS OBLIGATIONS						
Version/ Amendment	Date	Total Subgrant Amount	Federal Share %	Federal Share Amount	Local Share %	Local Share Amount
0	8/1/2024	$215,600.00	90%	$194,040.00	10%	$21,560.00

Please Note: This award is not for research or development as defined in 2 Code of Federal Regulations (C.F.R.) § 200.87.

The eligible management costs for a reimbursement request are calculated by multiplying the eligible direct project costs submitted by the percentage of obligated management costs (up to 5%) for the project. In some cases, the management costs submitted for a reimbursement will exceed the eligible management cost amount. In this instance, the management costs will be trapped until additional eligible direct project costs are submitted for reimbursement.

MANAGEMENT COSTS OBLIGATIONS						
Version/ Amendment	Date	Total Management Costs	Federal Share %	Federal Share Amount	Local Share %	Local Share Amount
1	10/10/2024	$10,780.00	100%	$10,780.00	0%	$0

The approved Scope of Work (SOW) follows and the terms and conditions of this award are attached. It is important that the sub-recipient read, understand and comply with the SOW and all terms and conditions. It is also vital that this information be disseminated to sub-recipient's staff and contractors involved in work related to this project.

Utilizing the proposed HMGP grant, the City of Seabrook proposes to replace an existing back-up generator on an existing elevated platform and conduct electrical and structural modifications at the City's Fire Department located at 1850 Meyers Ave., Seabrook, Harris County, TX (29.57547, - 95.02541). By installing the new emergency generator dependable power supply will be immediately available to the City's Fire Station. This will assure emergency Fire services can be properly provided and coordinated for all the citizens of the City of Seabrook during events that can create power outages such as tropical storms, hurricanes, and severe winter storms such as Winter Storm Uri.

In accordance with FEMA Instruction 108-1-1 and DHS Instruction 023-01-001-01; this project has been determined to be Categorically Excluded (CATEX M13). FEMA concludes that the project is categorically excluded from the National Environmental Policy Act (NEPA) requirement to prepare further environmental documentation. No extraordinary conditions in accordance with DHS Instruction 023-01-001-01 exist involving this project.

Signing and returning this award letter indicates sub-recipient's acceptance of the SOW of the sub-award, the ability to pay the local cost share, and all grant terms and conditions outlined in the attached documents.

The sub-recipient must ensure that:

1. The initial quarterly progress report for the project is submitted at the end of the approving quarter. Please include the project number (provided above) in your future quarterly reports. Note that 44 C.F.R. § 206.438(c) indicates the state must provide a

quarterly progress report to FEMA indicating the status and completion date for each project funded. The report must include any problems or circumstances affecting completion dates, SOW, or project cost that may result in non-compliance with the approved grant conditions.

2. In accordance with HMGP rules and policy, TDEM requires the submittal of all closeout documentation within 90-days of the project completion not to exceed the POP. The Governor's Authorized Representative (GAR) "shall certify that reported costs were incurred in the performance of eligible work, that the approved work was completed and that the mitigation measure is in compliance with the provisions of the FEMA-State Agreement" in accordance with 44 C.F.R. § 206.438(d).

If changes are needed to the SOW for the sub-award, period of performance or costs associated to the sub-award, the sub-recipient should immediately contact TDEM. No change to the sub-award will be considered approved until the sub-recipient is notified in writing by TDEM.

This signed and dated award letter and attached grant terms and conditions must be returned to TDEM before payment on the sub-award can be processed. Your signature is required on this award letter and on the last page of the attached grant terms and conditions. You must also initial each exhibit on the last page of the grant terms and conditions. Please sign, date, and return both the award letter along with the attached grant terms and conditions acknowledging acceptance of this sub-award via email to the assigned Mitigation Coordinator, Merryl Holmes at merryl.holmes@tdem.texas.gov.

________________________________ __________________________

Thom Kolupski, Mayor Date

Should you wish to appeal any determination related to this sub-award you must do so within 60 days of receipt of the notice of the action. You will need to provide your appeal with any documentation supporting your position to your assigned TDEM Mitigation Coordinator within the allotted time.

If you have any questions please contact your Mitigation Coordinator, Merryl Holmes, at 281-794-4102 or merryl.holmes@tdem.texas.gov.

Respectfully,

W. Nim Kidd, MPA, CEM®
Chief - Texas Division of Emergency Management
Vice Chancellor for Disaster and Emergency Services
The Texas A&M University System

ATTACHMENTS: FEMA Approval Letter
Grant Terms and Conditions
Record of Environmental Considerations
4485-0142-SeabrookFireStationGenerator-FEMArevisedBCA-03-15-2024

Copy: Gayle Cook, City Manager
gcoook@seabrooktx.gov

U.S. Department of Homeland Security
FEMA Region 6
800 N. Loop 288
Denton, TX 76209

FEMA

October 10, 2024

W. Nim Kidd, MPA, CEM
Chief, Texas Division of Emergency Management
Vice Chancellor - The Texas A&M University System
2883 Highway 71 East
P.O. Box 285
Del Valle, TX 78617-9998

Attn: Ms. Jennifer Charlton-Faia, Interim State Hazard Mitigation Officer

RE: DR-4485-0142-TX
Seabrook – City of Seabrook Fire Station Generator
Assistance Listing 97.039 Hazard Mitigation Grant Program

Dear Chief Kidd:

This letter provides official notification that the Federal Emergency Management Agency (FEMA) approves the application submitted by the Seabrook for the City of Seabrook Fire Station Generator project. The total project cost is $215,600.00. The Federal share in the amount of $194,040.00, is available through the Hazard Mitigation Grant Program (HMGP) under FEMA-4485-DR-TX. The non-federal match requirement of $21,560.00 will be provided by the Seabrook.

Pursuant to Section 1215 of the Disaster Recovery Reform Act of 2018, which amended Section 324 of the Robert T. Stafford Disaster Relief and Assistance Act, subrecipient Management Costs (MC) in the amount of $10,780.00 are available to the Seabrook at a Federal Cost Share of 100%.

The following is the approved Scope of Work (SOW) for the above-referenced project:

Utilizing the proposed HMGP grant, the City of Seabrook proposes to replace an existing back-up generator on an existing elevated platform and conduct electrical and structural modifications at the City's Fire Department located at 1850 Meyers Ave., Seabrook, Harris County, TX (29.57547, - 95.02541). By installing the new emergency generator dependable power supply will be immediately available to the City's Fire Station. This will assure emergency Fire services can be properly provided and coordinated for all the citizens of the City of Seabrook during events that can create power outages such as tropical storms, hurricanes, and severe winter storms such as Winter Storm Uri.

This project has been determined to be Categorically Excluded (CATEX) in accordance with FEMA Instruction 108-1-1 and Department of Homeland Security (DHS) Instruction 023-01-001-01; CATEX m13 from the need to prepare either an Environmental Impact Statement or Environmental Assessment. No extraordinary circumstances in accordance with DHS Instruction 023-01-001-01 have been identified regarding this action. The applicant must comply with all conditions set forth in the attached Record of Environmental Consideration (REC). Failure to comply with these conditions may jeopardize federal assistance including funding.

Environmental Conditions
1. Applicant must coordinate with the local floodplain administrator, obtain required permits prior to initiating work, and comply with any conditions of the permit to ensure harm to and from the floodplain is minimized. All coordination pertaining to these activities should be retained as part of the project file in accordance with the respective grant program instructions.
2. The project and all its attendant utilities are supporting a critical action and must be elevated or otherwise protected to the 0.2% annual chance (500-year) base flood elevation (BFE) or higher. The applicant must submit documentation to FEMA upon closeout supporting compliance with this condition. Documentation related to determination of the 500-year BFE may consist of a permit issued by the local entity responsible for floodplain ordinance compliance; an email or letter from the local floodplain official; an elevation certificate; a statement or study signed by a qualified engineer; and/or reference to a FEMA Flood Insurance Study or other FEMA flood product or tool. Where multiple sources of flood hazard information are available for a proposed project site, such as where there is both an Effective and Preliminary Flood Insurance Rate Map (FIRM) or both an Effective FIRM and Advisory Flood Hazard Information, the best available information is the source which provides the highest 500-year BFE. In situations where elevating or otherwise protecting to the 500-year BFE, would not be practicable due to engineering feasibility and cost, then the documentation submitted to FEMA must also include proof/justification as to why doing so would not be practicable based on those factors.
3. For actions located in the floodplain and/or wetlands, the applicant must issue a final public notice per Title 44 of the Code of Federal Regulations (44 C.F.R.) Part 9.12(e) at least 15 days prior to the start of work. The final notice shall include the following: (1) A statement of why the proposed action must be located in an area affecting or affected by a floodplain or a wetland; (2) A description of all significant facts considered in making this determination; (3) A list of the alternatives considered; (4) A statement indicating whether the action conforms to applicable state and local floodplain protection standards; (5) A statement indicating how the action affects or is affected by the floodplain and/or wetland, and how mitigation is to be achieved; (6) Identification of the responsible official or organization for implementation and monitoring of the proposed action, and from whom further information can be obtained; and (7) A map of the area or a statement that such map is available for public inspection, including the location at which such map may be inspected and a telephone number to call for information.

Technical Conditions:

1. The project and all its attendant utilities are supporting a critical action. The generator and all components must be elevated, or otherwise protected, to the 0.2% annual chance (500-year) BFE or the 100-year BFE plus the freeboard required per American Society of Civil Engineers-24, whichever is higher. The applicant must submit documentation of compliance to FEMA upon closeout.
   a) Determination of the BFE may be provided by the local floodplain administrator. This may include an issued permit or elevation certificate. An email or letter from the administrator is also acceptable. Other documentation may include a statement or study by a licensed engineer. A reference to a FEMA Flood Insurance Study or other flood product is also acceptable.
   b) If multiple sources of flood hazard data are available for a project site, use the best available information. The best available information is the source which provides the highest BFE or BFE plus freeboard.
   c) In rare situations, elevating or protecting to the BFE or BFE plus freeboard is not practicable. This may be due to engineering feasibility or cost. In those situations, the subrecipient must provide documentation to FEMA with a justification. The subrecipient must provide proof that non-compliance was due to unfeasibility or cost.

2. FEMA approved Benefit Cost Analysis (BCA) (file titled "4485-0142-SeabrookFireStationGenerator-FEMArevisedBCA-03-15-2024") is attached to this recommendation. This BCA file must be used for any future SOW and/or budget modifications.

FEMA will not establish activity completion timeframes for individual subawards. The Period of Performance (POP) for DR-4485-TX is February 1, 2028, which is 48 months from the close of the application period. It is the responsibility of the Recipient and subrecipient to ensure all approved activities associated with this subaward are completed by the end of the POP. Any costs incurred prior to the date of this approval or after the POP will be disallowed.

A change to the approved SOW requires prior approval from FEMA. The National Environmental Policy Act (NEPA) stipulates that additions or amendments to a HMGP SOW shall be reviewed by all state and federal agencies participating in the NEPA process. NEPA sign-off for all SOW additions or amendments is essential before the revised SOW can be approved by FEMA or implemented by the HMGP subrecipient.

In accordance with FEMA Policy #104-11-1 Interim HMGP Program, any MC provided will be obligated in increments sufficient to cover Recipient and subrecipient needs for no more than one year unless contractual agreements require additional funding. Actual subrecipient MC are to be reconciled quarterly during the review of expenditures submitted by the subrecipient through quarterly report process. Subrecipient MC can be expended for a maximum time of 180 days after work is completed for the subaward or the end of the POP, whichever is sooner.

The initial quarterly progress reports for the HMGP project are due at the end of the approving quarter. Please include this HMGP project in your future quarterly reports. 44 C.F.R. § 206.438(c) indicates the State must provide a quarterly progress report to FEMA indicating the status and completion date for each project funded. The report will include any problems or circumstances affecting completion dates, SOW, or project cost that may result in non-compliance with the approved grant conditions.

Pursuant to 2 C.F.R. 200.400 et seq. costs must be adequately documented, necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles except where otherwise authorized by statute. The non-Federal entity is responsible for the efficient and effective administration of the Federal award through the application of sound management practices. The non-Federal entity assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award. FEMA approval of budget estimates is not determination of the allowability of costs.

In accordance with HMGP rules and policy, we require the submittal of all closeout documentation within 90 days of the project completion, not to exceed POP. Section 206.438(d) of 44 C.F.R. requires the Governors Authority Representative to "certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measure is in compliance with the provisions of the FEMA-State Agreement."

The Obligation Report, Obligation Report with SRMC, REC, and Technical Recommendation Report are included for your records.

If you have any questions regarding the information, please contact Chandra Fugett Hazard Mitigation Assistance (HMA) Specialist, at 202-919-1509 or Chandra.Fugett@fema.dhs.gov.

Sincerely,

Marty Chester

Marty Chester
Acting HMA Disaster Branch Chief

Enclosures: Obligation Report
REC
Technical Recommendation Report
Obligation Report with SRMC

Texas Division of Emergency Management

Subrecipient Agreement for TDEM-Administered Grant Awards

Date Revised: February 22, 2024

Index

Letter to Subrecipient

Dear Subrecipient:

Congratulations on your new award!

The following document, in conjunction with the applicable State Administrative Plan (SAP) or Disaster State Administrative Plan (DSAP), lays out applicable laws, rules, and regulations set forth by local, State, and Federal authority that you, Subrecipient, agree to upon acknowledgement. Before you may request or receive any funding awarded to you, you must establish acceptance of this award. By accepting this award, you acknowledge that the terms of the following document are conditions of your award.

Please read this agreement in full. Acknowledgement by means of signature at the conclusion of the document, holds Subrecipient to the terms and conditions in the agreement. Failure to sign this agreement infringes on the ability to obtain Federal awards, or state or local grant awards, administered through the Texas Division of Emergency Management.

Subrecipient Information

Entity Information

Entity Name: ______________________________

EIN/TIN: ______________________________

UEI: ______________ UEI Expiration Date: ________

Address Line 1: ______________________________

Address Line 2: ______________________________

City ______________________________

State ______________ Zip (+4) ________ - ______

Subrecipient Contacts

Primary Contact
Serves as the primary point of contact for project(s).

Name: ______________ Position/Job Title: ______________

Email: ______________ Phone Number: ______________

Certifying Official
Serves as the official representative of the organization.
Must possess the authority to obligate funds & enter into contracts for the organization.

Name: ______________ Position/Job Title: ______________

Email: ______________ Phone Number: ______________

Primary Finance Contact
Serves as primary contact for all financial matters.

Name: ______________ Position/Job Title: ______________

Email: ______________ Phone Number: ______________

II

Texas Division of Emergency Management

Subrecipient Agreement for TDEM-Administered Grant Awards

III

Table of Contents

Revisions

Rev. 1. Change from Authorized Agent to Primary Finance Contact information on the Subrecipient Information page.

Rev. 2. Inclusion of language related to subrecipient reimbursement for Recipient management cost.

State of the Agreement

Agreement Authority

This agreement applies to all Department of Homeland Security Federal Emergency Management Agency (DHS/FEMA) awards or other awarding agency financial assistance awards administered by the Texas Division of Emergency Management (TDEM). The federal government, the State of Texas, and TDEM have the right to seek judicial enforcement of these actions.

Subrecipients are required to follow applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200, and adopted by DHS at 2 C.F.R Part 3002, as well as all other applicable federal, state, and local laws, regulations, policies, procedures, and executive orders.

By accepting this agreement, Subrecipient and its executives, as defined in 2 C.F. R. §170.315, certify that the subrecipient's policies are in accordance with guidance applicable to federal, state and local laws, and relevant executive guidance. This agreement, consisting of these terms and conditions and all exhibits, is between the Texas Division of Emergency Management (TDEM), an agency of the State of Texas, hereinafter referred to as TDEM, and Subrecipient.

TDEM and Subrecipient are collectively hereinafter referred to as the parties. All awards made under this agreement are subject to the same terms and conditions except where additional provisions may be added by TDEM to assure compliance with the aforementioned authority.

Subrecipient may not assign or transfer any interest in this award without prior written consent of TDEM and, if required, DHS/FEMA or other awarding agency.

Agreement

I. General Terms

1. The terms recipient and pass-through entity have the same meaning as grantee, as used in governing statutes, regulations, and DHS/FEMA guidance.

2. Throughout this document the terms grant and award will be used interchangeably.

3. A recipient is a non-Federal entity for administration purposes.

4. A subrecipient is known as a subgrantee as used in governing statutes, regulations, and DHS/FEMA guidance.

5. The grant referred to in this agreement is an award to the subrecipient passed through from TDEM to Subrecipient.

6. The “certifying official” is the mayor, judge, or executive director authorized to execute these terms and conditions, and to submit changes of subrecipient agents. Contracted staff and/or vendors may assist the certifying official in completing related grant tasks but may not act in lieu of the certifying official.

7. Project and any subsequent versions for those projects accepted by Subrecipient and subsequently obligated or de-obligated by DHS/FEMA are considered subawards to this agreement.

8. TDEM uses contractors to assist in administering subawards, both in communication with Subrecipient and the awarding agency. A subrecipient’s point of contact for all awards will be the assigned regional staff. TDEM may task various grant management tasks to contractors to work directly with subrecipients.

9. Within 10 calendar days of any change, Subrecipient must notify TDEM of any change in Designated Subrecipient Agents as submitted during the execution of this agreement, and any subsequent changes submitted by Subrecipient in TDEM’s Grants Management System (GMS).

10. In the event Subrecipient hires a consultant to assist them with managing its Public Assistance and Hazard Mitigation grants (or other), they must be listed on the Designated Subrecipient Agent Form (DSA) and may not act in lieu of the designated agent. TDEM will direct all correspondence to the Subrecipient. The Subrecipient is solely responsible for sharing written communications with the consultant. The Subrecipient is the primary point of contact and must be included in all decision-making activities.

II. Standard of Performance

Subrecipient must perform all activities as approved by TDEM and that is required in applicable grant/funding awards. Subrecipient must perform all activities in accordance with all terms, provisions and requirements set forth in the award, including, the following exhibits:

1. Assurances – Non-Construction Programs (Federal authority), hereinafter referred to as Exhibit A

2. Assurances – Construction Programs (Federal authority), hereinafter referred to as Exhibit B

3. Certifications for Grant Agreements (Federal authority), hereinafter referred to as Exhibit C

4. State of Texas Assurances (State authority), hereinafter referred to as Exhibit D

5. Environmental Review Certification (Federal authority), hereinafter referred to as Exhibit E

6. Additional Grant Certifications (State authority), hereinafter referred to as Exhibit F

7. Request for Information and Documentation Policy (State authority), hereinafter referred to as Exhibit G

8. Pre-Obligation Request for Information and Documentation Policy (State authority), hereinafter referred to as Exhibit H

9. Recoupment of Funds (State authority), hereinafter referred to as Exhibit I

III. Failure to Perform

In the event Subrecipient fails to implement and complete the project(s) approved and awarded, or comply with any provision of this grant, Subrecipient is liable to TDEM for an amount not to exceed the amount of this award and may be barred from receiving additional DHS/FEMA grant program funds or any other grant program funds administered by the State of Texas until repayment is made and any other compliance or audit finding is satisfactorily resolved, in addition to any other remedy specified in this grant. Failure to timely implement and complete projects may reduce future funding in additional DHS/FEMA and/or other grant programs administered by TDEM.

IV. Funding Obligations

TDEM is not liable to Subrecipient for any costs incurred by Subrecipient that are not allowable costs authorized under the applicable award.

1. Notwithstanding any other provision of this grant, the total of all payments and other obligations incurred by TDEM under this award must not exceed the total cumulative award amounts listed on the subawards (projects and subsequent versions).

2. Subrecipient must contribute the required cost share, also known as non-Federal share or match, listed on the subaward.

3. Subrecipient must provide supporting documentation that supports the totality of funding requests in accordance with program policy.

4. In the event that TDEM is required to continue to manage the subrecipients award after the Recipients (TDEM) allocated state management funds have been exhausted, subrecipient agrees to reimburse TDEM for such costs necessary to close FEMA awards including the final recoupment of any funds due to FEMA and/or TDEM and the State of Texas.

V. Recoupment of Funds

Subrecipient must refund to TDEM any sum of these award funds that TDEM and/or DHS/FEMA determines to be an overpayment to and/or has not been spent by Subrecipient in accordance with this award. Refund payment(s) may be made from local, state, or federal grant funds unless prohibited by federal regulation or other provision.

Nothing in Exhibit I-Recoupment of Funds shall limit TDEM's ability to implement alternative remedies for which it has authority to resolve outstanding recoupments or to limit TDEM's ability to take immediate recoupment action(s) after notice of required refund has been made.

VI. Uniform Administrative Requirements, Cost Principals and Audit Requirements

Except as specifically modified by law or this grant, Subrecipient shall administer this award through compliance with the most recent version of all applicable laws and regulations, including but not limited to DHS/FEMA program legislation, federal awarding agency regulations, and the terms and conditions of this grant. A non-exclusive list sanctioned by Federal Authority is provided below (not all may apply in every project):

a. Public Law 93-288, as amended (Stafford Act)

b. 44 C.F.R., Emergency Management and Assistance

c. 2 C.F.R., Grants and Agreements

d. Disaster Mitigation Act of 2000

e. Executive Order 11988, Floodplain Management

f. Executive Order 11990, Protection of Wetlands

g. Executive Order 12372, Intergovernmental Review of Programs and Activities

h. Executive Order 12549, Debarment and Suspension

i. Executive Order 12612, Federalism

j. Executive Order 12699, Seismic Design

k. Executive Order 12898, Environmental Justice

l. Coastal Barrier Resources Act, Public Law 97-348

m. Single Audit Act, Public Law 98-502

n. Sandy Recovery Improvement Act publications

o. Disaster Recovery Reform Act of 201816 U.S.C. § 470, National Historic Preservation Act

p. 16 U.S.C. § 1531, Endangered Species Act References

q. FEMA program publications, guidance, and policies

VII. State Requirements for Grants

Subrecipient must comply with all other federal, state, and local laws and regulations applicable to this award including but not limited to the laws and the regulations promulgated in Texas Government Code, Chapter 783, Uniform Grant and Contract Management (UGMS) at: http://www.window.state.tx.us/procurement/catrad/ugms.pdf and the most recent applicable version of the program State Administrative Plan (and all effective updates), available at: https://tdem.texas.gov. Subrecipient must, in addition to the assurances and certifications, comply and require each of its subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders, Office of Management and Budget (OMB) circulars, terms and conditions of this award and the approved application.

Grant funds must not be awarded to or expended by any entity which performs political polling. This prohibition does not apply to a poll conducted by an academic institution as part of the institution's academic mission that is not conducted for the benefit of a particular candidate or party.

Award funds may not be expended by a unit of local government unless the following limitations and reporting requirements are satisfied:

1. Texas General Appropriations Act, Art. IX, Parts 2 and 3, except there is no requirement for increased salaries for local government employees;

2. Texas Government Code Sections 556.004, 556.005, and 556.006, which prohibits using any money or vehicle to support the candidacy of any person for office, influencing positively or negatively the payment, loan, or gift to a person or political organization for a political purpose, and using grant funds to influence the passage or defeat of legislation including not assisting with the funding of a lobbyist, or using grant funds to pay dues to an organization with a registered lobbyist;

3. Texas Government Code Sections 2113.012 and 2113.101, which prohibits using grant funds to compensate any employee who uses alcoholic beverages on active duty and Subrecipient may not use grant funds to purchase an alcoholic beverage and may not pay or reimburse any travel expense for an alcoholic beverage;

4. Texas General Appropriations Act, Art. IX, Section 6.13, which requires Subrecipient to make every effort to attain key performance target levels associated with this grant, including performance milestones, milestone time frames, and related performance reporting requirements; and

5. General Appropriations Act, Art. IX, Sections 7.01 and 7.02, and Texas Government Code §2102.0091, which requires that this award may only be expended if Subrecipient timely completes and files its reports.

TDEM strongly encourages subrecipients to complete refresher training in federal procurement standards as variances from these standards account for the majority of funding de-obligation. TDEM will provide training or sources for subrecipients to attain training. Federal procurement training may be required of some recipients in advance of funding or as a condition of funding and/or if additional monitoring is deemed appropriate by TDEM.

VIII. Restrictions and General Conditions

DHS/FEMA grant funds must only be used for the purposes set forth in this award and must be consistent with the statutory authority for the grant. Award funds must not be used for matching funds for other federal grants/cooperative agreements, lobbying, or intervention in federal regulatory or adjudicatory proceedings. In addition, federal funds must not be used to sue the federal government or any other government entity.

1. Federal employees are prohibited from directly benefiting from any funds under this Grant.

2. In accordance with 2 C.F.R. §25.300, TDEM will not make a subaward unless the Subrecipient has obtained a unique entity identifier (UEI). A UEI is the identifier required for System for Award Management (SAM) registration to uniquely identify entities with which the federal government does business.

3. Subrecipient maintains that it has registered at SAM.gov or other federally established site for contractor registration and entered TDEM-required information. Subrecipient shall keep current, and then review and update the information at least annually. Subrecipient shall keep information current in the SAM database until the later of when it submits this grant's final financial report or receives final award payment. Subrecipient agrees that it must not make any subaward agreement or contract related to this award without first obtaining the vendor or subawardee's mandatory UEI. See 2 C.F.R. Part 25, Appendix A.

4. Subrecipient must report total compensation for each of the five most highly compensated executives for the preceding completed fiscal year if the following is applicable (2 C.F.R. Subtitle A; Chapter 1, Part 170, Appendix A to Part 170). See FEMA Information Bulletin 350.

   a. Subrecipient shall report whether Subrecipient received $25 million or more in Federal procurement contracts or financial assistance subject to the Transparency Act per 2 C.F.R. §170.320.

   b. Subrecipient shall report whether 80% or more of Subrecipient’s annual gross revenues were from Federal procurement contracts or Federal financial assistance. If Subrecipient answers “yes” to both questions, Subrecipient shall report, along with subrecipient’s UEI, the names and total compensation (see 17 C.F.R. §229.402(c)(2)) for each of subrecipient’s five most highly compensated executives for the preceding completed fiscal year.

   c. Subrecipient shall report executive total compensation at SAM.gov, or other federally established replacement site.

5. By signing this grant, Subrecipient certifies that, if required, Subrecipient has registered, entered the required information, and shall keep information in the System for Award Management (SAM) database current, and update the information at least annually until the subrecipient submits its final financial report, or receives final payment.

6. Subrecipient agrees that it shall not make any subaward agreement or contract without first obtaining the subawardee's mandatory UEI.

7. Subrecipient must comply with Federal Executive Orders 12549 and 12689, which provide protection against waste, fraud, and abuse by debarring or suspending those persons deemed irresponsible in their dealings with the Federal government

8. A completed direct deposit form from Subrecipient must be provided to TDEM, prior to receiving any funds under the provisions of this grant. The direct deposit form is currently available at https://tdem.texas.gov.

9. Subrecipient shall maintain property/inventory records which, at minimum, shall include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, the cost of the property, the percentage of federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property. Subrecipient shall develop and implement a control system to prevent loss, damage, or theft of property and Subrecipient shall investigate and document any loss, damage or theft of property funded under this grant.

10. DHS/FEMA and/or TDEM, through its authorized representatives, have the right at all reasonable times to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If any site visit is made by DHS/FEMA or TDEM on the premises of Subrecipient or a contractor under this grant, Subrecipient must provide and must require its contractors to provide all reasonable facilities and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner that will not unduly delay the work. A final physical site inspection for eligible scope of work and program compliance may be conducted after the subrecipient's Project Completion and Certification Report has been submitted.

IX. Procurement Contracting

Subrecipient shall comply with all applicable federal, state, and local laws and requirements, including but not limited to proper competitive solicitation processes where required, for any procurement which utilizes federal funds awarded under this award in accordance with 2 C.F.R. 200. 317-327 and Appendix II to Part 200 (A-C) and (E-J).

1. All contracts executed using funds awarded under this award shall contain the contract provisions listed under 2 C.F.R. 200.327 and Appendix II (A), Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

2. For each of the following types of procurement, activities must follow the most restrictive of federal, state, or local procurement regulations:

   a. Micro purchase
   b. Small purchase
   c. Sealed bid
   d. Competitive proposal
   e. Non-Competitive proposal (solely when the award of a contract is unfeasible under the other methods)

3. The State must approve the use of a noncompetitive procurement method. Federal regulations allow for noncompetitive procurements under certain circumstances, including when a non-state entity determines that immediate actions required to address the public exigency or emergency cannot be delayed by a competitive solicitation. Failure to follow eligible procurement methods will result in ineligible costs. Other types of agreements for services must have State approval prior to use or execution. A copy of the local procurement policy must be provided to the State before initial payment.

4. Contracts attributed as “cost-plus-percentage-of-cost" or "percentage-of-construction-cost" are explicitly prohibited by Federal procurement standards and are ineligible for DHS/FEMA grant.

5. Subrecipients must perform cost/price analysis for every procurement action in excess of the Simplified Acquisition Threshold.
6. Subrecipients must negotiate profit as a separate element where required.

7. Subrecipients must not make any award to any party which is debarred or suspended, or is otherwise excluded from participation in the Federal assistance programs (Executive Order 12549, Debarment and Suspension).

   a. Subrecipient must maintain documentation validating review of debarment list of eligible contractors. Evidence of non-debarment for vendors must be documented through SAM.gov and http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred/ and submitted for review. TDEM will not reimburse any expense for a debarred vendor or a vendor or Subrecipient that does not have a valid SAM.gov registration.

8. Subrecipients must comply with rules related to underutilized businesses (small and minority businesses, women's enterprises and labor surplus firms) at 2 C.F.R §200.321.

9. Subrecipients must comply with the rules of recovered materials for procurements at 2 C.F.R §200.323.10. Subrecipients must comply with the rules for domestic preferences for procurements at 2 C.F.R § 200.322.

X. Monitoring

Subrecipient will be monitored periodically by federal, state, or local entities, both programmatically and financially, to ensure that project goals, objectives, performance requirements, timelines, milestone completion, budget, and other program-related criteria are met.

a. TDEM, or its authorized representative, reserves the right to perform periodic desk/office-based and/or on-site monitoring of subrecipient's compliance with this award and of the adequacy and timeliness of subrecipient's performance pursuant to this award.

b. After each monitoring visit, if the monitoring visit reveals deficiencies in subrecipient's performance under this grant, a monitoring report will be provided to the subrecipient that includes requirements for the timely correction of such deficiencies by subrecipient. Failure by subrecipient to take action(s) specified in the monitoring report may be cause for suspension or termination of this award pursuant to the Changes, Amendments, Suspensions or Termination Section (XIII) herein.

XI. Audit

Subrecipients expending $750,000 or more in total federal financial assistance in a fiscal year will be required to provide an audit made in accordance with OMB Uniform Guidance; Cost Principles, Audit, and Administrative Requirements for Federal Awards, Subpart F.

1. A copy of the Single Audit must be submitted to TDEM or your cognizant state agency within nine months of the end of the subrecipient's fiscal year. If not required to submit a single audit, a response to the request will suffice. Failing to follow the regulation can result in significant adverse consequences including any action listing in the Enforcement Section (XIV) of this agreement

Subrecipient must give DHS/FEMA, the Comptroller General of the United States, the Texas State Auditor, TDEM, or any of their duly authorized representatives access to and the right to conduct a financial or compliance audit of funds received, and performances rendered under this award. Subrecipient must permit TDEM or its authorized representative to audit subrecipient's records. Subrecipient must provide any documents, materials, or information necessary to facilitate such audit.

1. Subrecipient understands and agrees that it is liable to TDEM for any costs disallowed pursuant to any financial or compliance audit(s) of these funds. Subrecipient further understands and agrees that reimbursement to TDEM of such disallowed costs shall be paid by Subrecipient from funds that were not provided or otherwise made available to the subrecipient pursuant to this award or any other federal contract.

2. Subrecipient must take such action to facilitate the performance of such audit(s) conducted pursuant to this section as TDEM may require of Subrecipient. Subrecipient must ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Subrecipient and the requirement to cooperate is included in any subcontract it awards.

3. Subrecipient understands that acceptance of funds under this award acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. Subrecipient further agrees to cooperate fully with the State Auditor's Office's audit or investigation, including providing all records requested. Subrecipient must ensure that this clause concerning the State Auditor's Office's authority to audit funds and the requirement to cooperate fully with the State Auditor's Office is included in any subgrants or subcontracts it awards. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Subrecipient relating to this award.

XII. Retention and Accessibility of Records

Subrecipient shall follow its own internal retention policy, or the State's retention policy, whichever is more restrictive. At a minimum, the subrecipient must maintain fiscal records and supporting documentation for all expenditures of this award's funds pursuant to the applicable OMB 2 C.F.R. Subpart D – Post Federal Award Requirements, §200.334-338, and this agreement.

1. Subrecipient shall retain these records and any supporting documentation for a minimum of three (3) years from the later of the completion of this project's public objective, submission of the final expenditure report, or any litigation, dispute, or audit.

2. Records shall be retained for three (3) years after any real estate or equipment final disposition.

3. DHS/FEMA or TDEM may direct subrecipient to retain documents or to transfer certain records to DHS/FEMA custody when DHS/FEMA determines that the records possess long term retention value.

Subrecipient must give DHS/FEMA, the Comptroller General of the United States, the Texas State Auditor, TDEM, or any of its duly authorized representatives, access to and the right to examine all books,accounts, records, reports, files, other papers, things, or property belonging to or in use by subrecipient pertaining to this award including records concerning the past use of DHS/FEMA funds. Such rights to access shall continue as long as the records are retained by Subrecipient.

XIII. Changes, Amendments, Suspensions or Termination

TDEM may modify this agreement after an award has been made. Once notification has been made in writing, any subsequent request for funds indicates Subrecipient's acceptance of the changes to this subrecipient award. Any alteration, addition, or deletion to this agreement by subrecipient is not valid.

Any alterations, additions, or deletions to this agreement that are required by changes in federal and state laws, regulations, or policy are automatically incorporated into this agreement without written amendment to this award and shall become effective upon the date designated by such law or regulation. In the event DHS/FEMA or TDEM determines that changes are necessary to this agreement after an award has been made, including changes to the period of performance of the award, or terms and conditions, the certifying official shall be notified electronically of the changes in writing. Once notification has been made, any subsequent request for refunds will indicate subrecipients acceptance of the changes to this award.

1. In the event subrecipient fails to comply with any term of this grant or agreement, TDEM may, upon written notification to subrecipient, suspend this award, in whole or in part, withhold payments to Subrecipient, and prohibit Subrecipient from incurring additional obligations of this grant's funds.

2. TDEM has the right to terminate this award, in whole or in part, at any time before the end of the Performance Period, if TDEM determines that subrecipient has failed to comply with any terms of this grant. TDEM shall provide written notice of the termination that includes:

    a. The reason(s) for such determination;

    b. The effective date of such termination; and

c. The scope of the termination of the award.
d. Termination of an award is final.

XIV. Enforcement

If subrecipient materially fails to comply with any term of this award or agreement, whether stated in a federal or state statute or regulation, an assurance, in a state plan or application, a notice of award, or elsewhere, TDEM or DHS/FEMA may take one or more of the following actions, as appropriate in the circumstances:

1. Increased monitoring of projects and require additional financial and performance reports;
2. Require all payments as reimbursements rather than advance payments;
3. Temporarily withhold payments pending correction of the deficiency;
4. Disallow or deny use of funds and matching credit for all or part of the cost of the activity or action not in compliance;
5. Request DHS/FEMA to wholly or partially de-obligate funding for a project;
6. Withhold cash payments pending correction of the deficiency bysubrecipient or more severe enforcement action by TDEM or DHS/FEMA;
7. Withhold future awards for the grant program; and
8. Take other remedies that may be legally available

In taking an enforcement action, TDEM will adhere to any administrative proceeding to which Subrecipient is entitled under any statute or regulation applicable to the action involved, and where TDEM, as the recipient, is obligated to follow.

The costs to a subrecipient resulting from expenses incurred by the subrecipient during a suspension or after termination of this award are not allowable.

The enforcement remedies identified in this section, including suspension and termination, do not preclude subrecipient from being subject to “Debarment and Suspension” under Executive Order 12549. 2 C.F.R., Appendix II Part 200, (1).

XV. Conflicts of Interest

The subrecipient must maintain and provide upon request written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts and must establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

XVI. Closing of this Award

TDEM will close each subaward after receiving all required final documentation from the subrecipient. If the close out review and reconciliation indicates that subrecipient is owed additional funds, TDEM will send the final payment automatically to subrecipient. If Subrecipient did not use all the funds received, TDEM will recover the unused funds. This does not affect:

1. DHS/FEMA or TDEM's right to disallow costs and recover funds on the basis of a later audit or other review;

2. Subrecipient's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

3. Records retention requirements, property management requirements, and audit requirements, as set forth herein; and

4. Any other provisions of this award that impose continuing obligations on Subrecipient or that govern the rights and limitations of the parties to this award after the expiration or termination of this award.

XVII. Notices

All notices and other communications pertaining to this agreement shall be delivered in electronic format and shall be transmitted in TDEM's Grant Management System, hereinafter referred to as "GMS". TDEM reserves the right to use other delivery avenues as needed.

XVIII. TDEM Grants Management System

TDEM requires the use of the TDEM's Grants Management System (GMS) for subrecipient grant management functions. Subrecipient is required to access GMS for all grant related functions as required by TDEM unless written authorization from TDEM is given. Requested forms and processes may be adjusted and changed to accommodate GMS processes and requirements.

Subrecipient agrees to monitor GMS as necessary to properly manage and complete awarded projects under this agreement. Paper forms and email requests to initiate grant management functions within GMS are not accepted.

XIX. Performance Period

The performance period for this award is listed on the subaward letter for each project. All projects must be completed within the performance period and within the approved budget. Subrecipient shall have expended all award funds and must submit final requests for reimbursements, invoices, and any supporting documentation to TDEM no later than 60 calendar days after the end of the performance period. TDEM is not obligated to reimburse expenses incurred after the performance period or submitted after the deadline.

From time to time, the performance period for grants may be extended by TDEM. These extensions do not change the established performance periods for subrecipients to submit final requests for reimbursements, invoices, and any supporting documentation.

1. All work must be done prior to the approved project completion deadline assigned to each project.
    a. For Public Assistance projects written at 100% complete, documentation must be submitted within 60 days of the Recovery Scoping Meeting (or DHS/FEMA process equivalent).
    b. For projects not written at 100% complete for both Hazard Mitigation and Public Assistance awards, documentation must be submitted within 60 days of the work completion date.
2. Should additional time be required, a time extension request must be submitted which:
    a. Identifies the projects requiring an extension;
    b. Explains the reason for an extension;
    c. Indicates the percentage of work that has been completed;
    d. Provides an anticipated completion date;
    e. Provides detailed milestones documenting expected progress.

The reason for an extension must be based on extenuating circumstances, or unusual project requirements that are beyond the control of Subrecipient. Failure to submit a time extension request 90 days prior to the end of the period of performance may result in denial, or reduction or withdrawal of federal funds for approved work.

XX. Cost/Scope Modification

Any change to a project's approved scope of work must be reported and approved through TDEM and DHS/FEMA before starting the project. Failure to do so will jeopardize award funding.

Subrecipient shall submit requests for cost overruns to TDEM for review. Any requests sent for a Public Assistance project will be submitted to DHS/FEMA for review and approval. Approval of these requests is not guaranteed and is subject to funding availability. Costs incurred prior to approval of any scope or budget/cost changes may be denied.

XXI. Final Expenditures Report

The Project Completion and Certification Report (P4) must be submitted to TDEM within 90 days of all approved work being completed for each project. If any project requires the purchase of insurance as a condition of receiving federal funds, a copy of the current policy must be attached to this report and the Applicant’s Attestation for Duplication of Benefits (DOB) form certifying other funds were received to complete the project.

XXII. Net Small Project Overrun

If the total actual cost of all of a subrecipient’s Public Assistance small projects combined exceeds the total obligated for all small projects, the subrecipient may request additional funding through the appeal process, within 60 days of the latest work completion date of all its Small Projects, as described in the Public Assistance Program and Policy Guide. A net small project overrun appeal will require a review of all small projects and could result in a reduction of funding.

XXIII. Appeals

1. Public Assistance

   In the event that a subrecipient does not agree with the determinations made by DHS/FEMA, the subrecipient has the right to file an appeal. This appeal must be submitted in GMS by initiating a New Project Appeal, attaching documented justification supporting the subrecipient’s position, specifying the monetary figure in dispute and the provisions in federal law, regulation, or policy with which the subrecipient believes the initial action was inconsistent. Additionally, for disasters declared on or after January 1, 2022, subrecipients must submit appeals using DHS/FEMA’s Grants Portal system, in addition to GMS. An appeal must be submitted by the subrecipient within the following time frames:

a. Any DHS/FEMA determination – 60 days from the written notice of the determination being made.

b. Second Appeal – 60 days from the written notice of the determination made on the previous appeal.

Appeals should be addressed to the TDEM's Deputy Chief of Recovery & Mitigation and should contain additional information that the subrecipient wants to have considered. Upon receipt of an appeal from Subrecipient, TDEM will review the material submitted, and forward the appeal with a written recommendation to DHS/FEMA within 60 days.

For presidentially declared disasters on or after October 30, 2012, a subrecipient may choose to arbitrate in lieu of submitting a second appeal. The arbitration program is designed to offer an alternate second appeal process by providing final adjudication through an independent, neutral panel of arbitrators for particular PA projects involving a dispute equal to or in excess of $500,000 (or $100,000 if the Applicant is in a "rural area", defined as having a population of less than 200,000 living outside an urbanized area) and must be filed within 60 days of receipt of the first appeal decision. For specific information, refer to 44 CFR § 206.206.

2. Hazard Mitigation

In the event that a subrecipient does not agree with the determinations made by DHS/FEMA, the subrecipient has the right to file an appeal. This appeal must be submitted in GMS by initiating a New Project Appeal, attaching documented justification supporting the subrecipient's position, specifying the monetary figure in dispute and the provisions in federal law, regulation, or policy with which the subrecipient believes the initial action was inconsistent. In accordance with 44 C.F.R §206.440, an appeal must be submitted by the subrecipient within the following time frames:

a. Any DHS/FEMA or TDEM determination – 60 days from the date of the determination of the appeal written on the DHS/FEMA letter;

b. Second Appeal – 60 days from the written notice of the determination made on the previous appeal. The decision of the Second Appeal is final and not subject to arbitration.

Appeals must be addressed to the State Hazard Mitigation Officer (SHMO) and should contain additional information, in accordance with Hazard Mitigation Assistance (HMA) guidance, that the subrecipient wants to have considered by DHS/FEMA. Upon receipt of an appeal from the subrecipient, TDEM will forward the appeal to DHS/FEMA within 60 days.

XXIV. Requests for Reimbursement

Subrecipient will request payment of funds on projects by initiating a request for reimbursement (RFR) in GMS or an advance of funds request (AFR) through GMS. The request must include documentation supporting the request.

Payments for open projects must be requested at least quarterly if expenditures have been made in that quarter**.** If payment is not requested quarterly, Subrecipient is subject to enforcement mechanisms described in the Enforcement section (XIV). Additional monitoring may be required of subrecipients if funds are advanced.

Small projects will be paid upon completion of work and submission of all necessary closeout documentation to TDEM. Due to the increase of the small project maximum, subrecipients may require an Advance of Funds to pay eligible costs of approved project scopes of work.

XXV. Quarterly Report Requirements

Subrecipients must submit quarterly progress reports (QPR) for open, large projects in Public Assistance, all Hazard Mitigation Grant Program, Building Resilient Infrastructure and Committees (BRIC), and Pre-Disaster Mitigation Grant projects using GMS. QPRs are due to TDEM the 15th of the month after the reporting period ends. The reporting period consists of 4 3-month periods:

a. Quarter 1 (Q1): October – December
b. Quarter 2 (Q2): January – March
c. Quarter 3 (Q3): April – June
d. Quarter 4 (Q4): July – September

Failure to submit required QPRs that demonstrate appropriate project progress for two or more quarters, or Requests for Reimbursement (RFR) not submitted quarterly, can result in the withholding or de-obligation of funding for subrecipients until all QPRs are submitted to TDEM.

TDEM may use the data provided in QPRs when considering requests for overruns, period of performance extensions, or any other award activity. If projects are not progressing, TDEM will require additional reporting or may take any other appropriate action to comply with required standards.

XXVI. Equipment Records

When an individual item of equipment is no longer required for federally-funded programs or projects, Subrecipient must calculate the current fair market value of the individual item. If items have a fair market value in excess of $5,000.00, Subrecipient must make DHS/FEMA aware. For full rules and regulations regarding purchased equipment, reference 2 C.F.R. 200.313.

XXVII. FEMA Public Assistance Portal and FEMA GO

In addition to TDEM's Grants Management System, must utilize the required DHS/FEMA grant management systems. The FEMA Public Assistance Delivery Model, or Simplified Application process, is used to facilitate the writing of project worksheets in FEMA's Grants Portal system (Portal). The subrecipient must establish and maintain an active account in the Portal. It is the subrecipient's responsibility to provide and upload timely, all information requested that is needed to write accurate project worksheets. The Portal provides the subrecipient visibility of the entire project writing process.

The FEMA Grant Outcomes (FEMA GO) platform is used to facilitate the application, tracking, and management of Hazard Mitigation Grant Programs (HMGP) including Building Resilient Infrastructure and Communities (BRIC), Flood Mitigation Assistance (FMA), and HMGP Post Fire Assistance. The subrecipient is responsible for requesting and maintaining an active account in FEMA GO and responding timely to any information requested in order to complete the award process.

The use of FEMA's Grants Portal and FEMA GO do not eliminate the requirement to use TDEM's Grants Management System.

XXVIII. Indirect Cost Rates

The subrecipient may use the negotiated Indirect Cost Rate approved by its cognizant agency, or may use the 10 percent de minimis rate of modified total direct costs (MTDC) (as per 2 C.F.R. § 200.414) when receiving Management Costs.

XXIX. Request for Information

TDEM and/or DHS/FEMA may request additional information from the subrecipient throughout the life cycle of this grant. This process, the Request for Information, herein referred to as RFI. DHS/FEMA RFIs may be received directly from TDEM's Grants Management System (GMS), FEMA systems (FEMA Grants Portal & FEMA GO), DHS/FEMA employees, or indirectly through TDEM representatives. DHS/FEMA RFI timeframes may vary, but due dates are always communicated upon transmission of the RFI. The TDEM RFI policies can be found in Exhibits G & H.

Exhibits

Exhibit A: Assurance – Non-Construction Programs

(See Standard Form 424B)

As the duly authorized representative of subrecipient, I certify that subrecipient

1. Has the legal authority to apply for federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project cost) to ensure proper planning, management and completion of the project described in this grant.
2. Will give the Department of Homeland Security, the Texas Division of Emergency Management, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this grant and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C.§§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686 and 44 C.F.R. Part 19), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), as amended, relating to

confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C.§§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which agreement for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply or has already complied with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction sub-agreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000.00 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190 as amended by 42 U.S.C. 4311 et seq. and Executive Order (EO) 11514) which establishes national policy goals and procedures to protect and enhance the environment, including protection against natural disasters. To comply with NEPA for DHS grant-supported activities, DHS-FEMA requires the environmental aspects to be reviewed and evaluated before final action on the application; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C.§§1451 et seq.); (f) comply with the Clean Air Act of 1977, (42 U.S.C.§§7401 et seq. and Executive Order 11738) providing for the protection of and enhancement of the quality of the nation's air resources to promote public health and welfare and for restoring and maintaining the chemical, physical,

and biological integrity of the nation's waters; (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93- 205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348, 45 C.F.R. 46, and DHS Management Directive 026-044 (Directive) regarding the protection of human subjects involved in research, development, and related activities supported by this Grant. "Research" means a systematic investigation, including research, development, testing, and evaluation designed to develop or contribute to general knowledge. See Directive for additional provisions for including humans in the womb, pregnant women, and neonates (Subpart B); prisoners (Subpart C); and children (Subpart D). See also state and local law for research using autopsy materials.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) which requires the minimum standards of care and treatment for vertebrate animals bred for commercial sale, used in research, transported commercially, or exhibited to the public according to the Guide for Care and Use of Laboratory Animals and Public Health Service Policy and Government Principals Regarding the Care and Use of Animals.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C.§§4801 et seq.), which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133 (now OMB 2 C.F.R. 200.500), "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, grant guidance, and policies governing this Grant.

Exhibit B: Assurances – Construction Programs

(See Standard Form 424D)

As the duly authorized representative of subrecipient, I certify that subrecipient:

1. Has the legal authority to apply for federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project costs) to ensure proper planning, management and completion of project described in this Grant.
2. Will give the Department of Homeland Security, the Texas Division of Emergency Management, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to this grant and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of this Grant.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards of merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

10. Will comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 1683, and 1685-1686 and 44 C.F.R. Part 19), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29) U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statue(s) under which agreement for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statue(s) which may apply to the agreement.

11. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

12. Will comply or has already complied with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases

13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327- 333) regarding labor standards for federally- assisted construction sub-agreements.

14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

15. Will comply with environmental standards which may be prescribed pursuant to the

following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91- 190) as amended by 42 U.S.C. 4311 et seq. and Executive Order (EO) 11514 which establishes national policy goals and procedures to protect and enhance the environment, including protection against natural disasters; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) comply with the Clean Air Act of 1977, (42 U.S.C.§§7401 et seq. and Executive Order 11738) providing for the protection of and enhancement of the quality of the nation's air resources to promote public health and welfare and for restoring and maintaining the chemical, physical, and biological integrity of the nation's waters; (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq).

18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133 (now OMB 2 C.F.R. 200.500), "Audits of States, Local Governments, and Non-Profit Organizations."

19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, grant guidance and policies governing this grant.

Exhibit C: Certifications for Grant Agreements

The undersigned, as the authorized official, certifies the following to the best of his/her knowledge and belief:

1. No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL Disclosure of Lobbying Activities, in accordance with its instructions.

3. The undersigned shall require that the language of this certification prohibiting lobbying be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

4. As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 C.F.R. Part 67, for prospective participants in primary covered transactions, as defined at 28 C.F.R. Part 67, Section 67.510. (Federal Certification), the subrecipient certifies that it and its principals and vendors:

   a. Are not debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency. Subrecipient can access debarment information by going to www.sam.gov and the State Debarred Vendor List at: www.window.state.tx.us/procurement/prog/vendor_performance/debarred.

b. Have not within a three-year period preceding this grant been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (D)(2) of this certification;

d. Have not within a three-year period preceding this grant had one or more public transactions (federal, state, or local) terminated for cause or default; or

e. Where subrecipient is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this grant. (Federal Certification).

5. Federal funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose. Subrecipient may be required to supply documentation certifying that a reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

6. Subrecipient will comply with 2 C.F.R. Part 180, Subpart C as a condition of receiving grant funds and subrecipient will require such compliance in any subgrants or contract at the next tier.

7. Subrecipient will comply with the Drug-free Workplace Act, in Subpart B of 2 C.F.R. Part 3001.

8. Subrecipient is not delinquent on any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129 and form SF-424, item number 17 for additional information and guidance.

9. Subrecipient will comply with all applicable requirements of all other federal laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this grant.

10. Subrecipient understands that failure to comply with any of the above assurances may result in suspension, termination or reduction of funds in this grant.

Exhibit D: State of Texas Assurances

As the duly authorized representative of subrecipient, I certify that subrecipient:

1. Shall comply with Texas Government Code, Chapter 573, by ensuring that no officer, employee, or member of the Subrecipient's governing body or of the Subrecipient's contractor shall vote or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years, or such other period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.

2. Shall insure that all information collected, assembled, or maintained by the Subrecipient relative to a project will be available to the public during normal business hours in compliance with Texas Government Code, Chapter 552, unless otherwise expressly prohibited by law.

3. Shall comply with Texas Government Code, Chapter 551, which requires all regular, special, or called meetings of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.

4. Shall comply with Section 231.006, Texas Family Code, which prohibits payments to a person who is in arrears on child support payments.

5. Shall not contract with or issue a license, certificate, or permit to the owner, operator, or administrator of a facility if the Subrecipient is a health, human services, public safety, or law enforcement agency and the license, permit, or certificate has been revoked by another health and human services agency or public safety or law enforcement agency.

6. Shall comply with all rules adopted by the Texas Commission on Law Enforcement pursuant to Chapter 1701, Texas Occupations Code, or shall provide the grantor agency with a certification from the Texas Commission on Law Enforcement that the agency is in the process of achieving compliance with such rules if the Subrecipient is a law enforcement agency regulated by Texas Occupations Code, Chapter 1701.

7. Shall follow all assurances. When incorporated into a grant award or contract, standard assurances contained in the application package become terms or conditions for receipt of grant funds. Administering state agencies and subrecipients shall maintain an appropriate contract administration system to ensure that all terms, conditions, and specifications are met. (See UGMS Section _.36 for additional guidance on contract provisions).

8. Shall comply with the Texas Family Code, Section 261.101, which requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Child Protective and Regulatory Services. Subrecipient shall also ensure that all program personnel are properly trained and aware of this requirement.

9. Shall comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990 including Titles I, II, and III of the Americans with Disability Act which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities, 44 U.S.C. §§ 12101-12213; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g)§§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to this grant.

10. Shall comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction subagreements.

11. Shall comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91- 646), which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

12. Shall comply with the provisions of the Hatch Political Activity Act (5 U.S.C. §§7321-

29), which limit the political activity of employees whose principal employment activities are funded in whole or in part with Federal funds.

13. Shall comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable.

14. Shall insure that the facilities under its ownership, lease, or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA (EO 11738).

15. Shall comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition proposed for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

16. Shall comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1977, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

17. Shall comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

18. Shall assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

19. Shall comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) which requires the minimum standards of care and treatment for vertebrate animals bred for commercial sale, used in research, transported commercially, or exhibited to the public according to the Guide for Care and Use of Laboratory Animals and Public Health Service Policy and Government Principals Regarding the Care and Use of Animals.

20. Shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residential structures.

21. Shall comply with the Pro-Children Act of 1994 (Public Law 103-277), which prohibits smoking within any portion of any indoor facility used for the provision of services for children.

22. Shall comply with all federal tax laws and are solely responsible for filing all required state and federal tax forms.

23. Shall comply with all applicable requirements of all other federal and state laws, executive orders, regulations, and policies governing this program.

24. And its principals are eligible to participate and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and it is not listed on a state or federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement have Exclusions listed at SAM.gov.

25. Shall adopt and implement applicable provisions of the model HIV/AIDS workplace guidelines of the Texas Department of Health as required by the Texas Health and Safety Code, Ann., Sec. 85.001, et seq.

Exhibit E: Environmental Review

As the duly authorized representative of subrecipient, I certify that subrecipient:

1. Shall assess its federally funded projects for potential impact to environmental resources and historic properties.

2. Shall submit any required screening form(s) as soon as possible and shall comply with deadlines established by TDEM. Timelines for the Environmental Planning and Historic Preservation (EHP) review process will vary based upon the complexity of the project and the potential for environmental or historical impact.

3. Shall include sufficient review time within its project management plan to comply with EHP requirements. Initiation of any activity prior to completion of FEMA's EHP review will result in a non-compliance finding and TDEM will not authorize or release Grant funds for non-compliant projects.

4. As soon as possible upon receiving this grant, shall provide information to TDEM to assist with the legally required EHP review and to ensure compliance with applicable EHP laws and Executive Orders (EO) currently using the FEMA EHP Screening Form OMB Number 1660-0115/FEMA Form 024-0-01 and submitting it, with all supporting documentation, to TDEM for review. These EHP requirements include but are not limited to the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, EO 11988 – Floodplain Management, EO 11990 – Protection of Wetlands, and EO 12898 – Environmental Justice. Subrecipient shall comply with all Federal, State, and local EHP requirements and shall obtain applicable permits and clearances.

5. Shall not undertake any activity from the project that would result in ground disturbance, facility modification, or purchase and use of sonar equipment without the prior approval of FEMA. These include but are not limited to communications towers, physical security enhancements involving ground disturbance, new construction, and modifications to buildings.

6. Shall comply with all mitigation or treatment measures required for the project as the result of FEMA's EHP review. Any changes to an approved project description will require re-evaluation for compliance with EHP requirements before the project can proceed.

7. If ground disturbing activities occur during project implementation, subrecipient shall ensure monitoring of ground disturbance and if any potential archeological resources are discovered, subrecipient shall immediately cease construction in that area and notify FEMA and the appropriate State Historical Preservation Office.

Exhibit F: Additional Grant Certifications

1. Public Assistance and Hazard Mitigation Program Grant (HMGP)
   a. Match Certifications

      Subrecipient certifies that it has the ability to meet or exceed the cost share required for all subawards (projects) and amendments (versions) under this Grant Agreement.

   b. Duplication of Program Statement

      Subrecipient certifies there has not been, nor will be, a duplication of benefits for this project Match Certification.

   c. Federal Debt Disclosure

      Subrecipient certifies that it not delinquent on and Federal debt.

2. HMGP Only
   a. Maintenance Agreement

      Applicant certifies that there is a Maintenance Agreement needed for this facility and that a copy of that agreement will be provided to TDEM.

   b. Environmental Justice Statement

      Federal Executive Order 12898 compliance requirements – If there are any concentration of low income of minority populations in or near the HMGP projects:

      i. Applicant certifies that the HMGP project result will not result in a disproportionately high effect on low income or minority populations.

      OR

      ii. Applicant certifies that actions will be taken to ensure of environmental justice for low income and minority populations related to this HMGP project.

Exhibit G: Request for Information Policy

Timelines for providing complete and accurate information and documentation are crucial to the success of the overall Grant Program and to the timely completion and closure of awarded projects. TDEM has developed a framework following a progressive series of communications for the Subrecipient, referred to as Request for Information (RFI). TDEM will work with Subrecipients throughout the RFI process as communication is the key to success.

This policy will be applied to Public Assistance and Hazard Mitigation projects for management and closeout activities after obligation. This policy will address non-responsive and inadequate responses to requests for information. Although the timeline outlines milestones to be completed, nothing limits the ability of TDEM from sending communications.

Day 1	TDEM regional coordinators or the Support Affiliate will reach out to Subrecipient's primary contact requesting the information needed. Communication will be documented in GMS.
Day 10	If adequate response is not received, TDEM Regional Unit Chief will reach out to Subrecipient primary contact. Communication will be documented in GMS.
Day 20	If adequate response is not received, TDEM Regional Section Chief will reach out to Subrecipient primary contact. Communication will be documented in GMS.
Day 30	If adequate response is not received, TDEM regional coordinator or Support Affiliate will send a letter, signed by the Regional Unit or Section Chief notifying the subrecipient of the missed deadline and any action that will be taken.
Extension Request	If Subrecipient requires additional time a written request must be submitted to the Regional Coordinator no later than Day 30. Extensions will be approved at TDEM's discretion and up to 30 days may be granted; in total an RFI will have a window of no more than 60 days.
End of Extension	If adequate response is not received, TDEM regional coordinator will send a letter, signed by the Regional Unit or Section Chief notifying the subrecipient of the missed deadline and any action that will be taken.

Exhibit H: Pre-Obligation Request for Information Policy

Timelines for providing complete and accurate information and documentation are crucial to the success of the overall Grant Program and to the timely obligation of projects. TDEM has developed a framework following a progressive series of communications for the subrecipient, referred to as Request for Information (RFI). TDEM will work with subrecipients throughout the RFI process as communication is the key to success.

This policy will be applied to Hazard Mitigation projects for management activities pre-obligation. This policy will address non-responsive and inadequate responses to requests for information. The timeline outlined below represents a single, 15-day period beginning from TDEM's first review of Subrecipient's application. Failure to supply timely responses could result in dismissal of application or award submission. Although the timeline outlines milestones to be completed, nothing limits the ability of TDEM from sending communications.

Day 1

Upon initial review of Subrecipient's HMGP application, TDEM staff will initiate contact with Subrecipient via email. This first communication begins the 15-day pre-obligation request for information policy timeline.

Day 6

5 days after the first communication, if adequate response is not received, the Regional Unit Chief will issue a read receipt, high importance email to the Subrecipient's primary contact highlighting previous requests and notifying Subrecipient of the 10 remaining days to provide the requested information.

Day 11

5 days after the second communication, if adequate response is not received, TDEM staff will issue a formal reminder through a letter signed by the Regional Unit Chief and emailed to the Subrecipient's primary contact and Certifying Official informing them of the final 5 days remaining to provide the requested information. The Assistant Chief is to be copied on the email for visibility.

Day 16

5 days after the third communication, if adequate response is not received, TDEM staff will send a letter, signed by the Regional Unit Chief, to Subrecipient's primary contact notifying Subrecipient of missed deadline.

Exhibit I: Recoupment of Funds

Procedure Summary

1. This procedure is to ensure responsible spending of federal dollars, 2 CFR § 200.344 and 2 CFR § 200.345 require that the State of Texas and the Texas Division of Emergency Management (TDEM) act to identify and recover any improper payments.

2. This procedure applies to all Division subrecipients that receive funds from or through TDEM and explains the process by which funding to subrecipients will be recovered in the event that such funding is determined to be an overpayment or is not expended appropriately under the terms and conditions between TDEM and the subrecipient and/or applicable FEMA program, statue, regulations, or guidance.

3. The federal dollars described in this policy are passed through the Division, which serves as the Governor's authorized representative for certain federal grants and awards. Any amount of debt owed to the federal government is ultimately the responsibility of the State of Texas, not specifically the responsibility of the Division.

Procedure

1. Applicability of Recoupment

   1.1. This procedure will be applied to subrecipients that have been determined by the Division to have received an overpayment or that the Division determines has not spent federal funds in accordance with their grant or financial award.

2. Recipient's Responsibilities

   2.1. subrecipients are required to sign Grant Terms and Conditions prior to receipt of funds that stipulate subrecipients shall refund to the Division any sum that has been determined by the Division to be an overpayment to Subrecipient or that the Division determines has not been spent by Subrecipient in accordance with their grant or financial award.

   2.2. No refund payment(s) shall be made from local, state or federal grant funds unless repayment with grant funds is specifically permitted under the applicable program.

   2.3. Subrecipients shall make such refund to the Division within thirty (30) calendar days after the Division requests such refund.

3. Division Collection Actions

3.1. Upon determination that a subrecipient has received an overpayment or has not expended funds in accordance with the grant or fiscal award, the following steps will be taken:

3.1.1. First Formal Communication: A recoupment letter will be sent to the subrecipient’s Authorized Agent(s) highlighting the amount of federal funds owed, electronic transfer information, and the requirement to repay the amount within thirty (30) calendar days.

3.1.1.1. The communication will be sent using electronic mail to the designated agent identified in the grant/funding application, and;

3.1.1.2. Posted in TDEM’s Grants Management System (GMS), and;

3.1.2. The Division will confirm receipt of the recoupment letter by either receiving a written confirmation from the subrecipient or making documented verbal contact with the subrecipients designated agent, mayor, or county judge as applicable.

3.1.3. If the subrecipient fails to make repayment of the amount identified in the recoupment letter within thirty (30) business days of receipt of the letter, the Division may offset an applicant’s owed funds against current available funding due to applicant unless an agreement to return funding is reached with the applicant as approved by TDEM

3.1.4. If the repayment is not made, the Division shall send an additional notice to the subrecipient by electronic mail and posted to the TDEM Grants Management System (GMS) thirty (30) to forty-five (45) days after the first letter was sent and then confirm receipt of the recoupment letter by either receiving a written confirmation from the subrecipient or making documented verbal contact with the subrecipients designated agent, mayor, or county judge as applicable. This letter will indicate the amount of funds that have been transferred to offset the amount due and remaining balance or will confirm if offset will occur. In addition, the letter will contain information related to recoupment options that may be taken in accordance with section 3.2 Delinquent Accounts.

If the repayment is not made after the second letter, the Division shall send a third notice to the subrecipient by electronic mail and posted to the TDEM Grants Management System (GMS) thirty (30) to forty-five (45) days after the second letter was sent and then confirm receipt of the recoupment letter by either receiving a written confirmation from the subrecipient or making documented verbal contact with the subrecipients designated agent, mayor, or county judge as applicable. This letter will indicate the amount of funds that have been transferred to offset the amount due and remaining balance or will confirm if offset will occur. In addition, the letter will contain information related to recoupment options that may be taken in accordance with section 3.2 Delinquent Accounts.

3.1.5. If the subrecipient fails to make repayment of the amount identified in the recoupment letter or enter an agreement to repay the funding with the Division approved by TDEM within one hundred twenty (120) days from the date that the original recoupment letter was sent, the Division will take any and all authorized actions to withhold funding for other grants, including issuing a State Comptroller Warrant Hold and/or referring the matter to the attorney general. The Division shall notify the subrecipient of any such decision.

3.2. Delinquent Accounts

3.2.1. Delinquency Determination

3.2.1.1. If a subrecipient fails to make repayment of the amount identified in the recoupment letter or enter an agreement approved by TDEM to repay the funding with the Division within 120 days from the date the original recoupment letter was sent, the Division may determine that the account is delinquent.

3.2.1.2. At TDEM's sole discretion, TDEM may authorize payment plans that fully reimburse the full amount owed over a 1–9-month period or prior to the end of the grant period. From time to time, variances in approved timelines may occur based on the phase of the grant process and other timelines determined by FEMA such as periods of performance and closeout liquidation periods.

3.2.1.3. Should a subrecipient enter into a payment plan and then fail to make more than one timely payment, the payment plan shall be considered invalid and the full balance shall be due within 30 calendar days. If payment is not made within 30 days, the actions contained within Section 3.1.7 and Section 3.2.

3.2.2. Warrant Hold Process

3.2.2.1. Once the Division has determined that the debt is delinquent, the Division may utilize the state comptroller's warrant hold process to ensure payments are not issued to the individual or entity that is indebted to the state.

3.2.3. Referral to the Attorney General

3.2.3.1. Once the account is determined to be delinquent, the Division may determine whether to refer the account to the Attorney General through the System Office of the General Counsel.

3.2.3.2. The determination as to the manner in which to pursue the collection of the account must consider the following:

3.2.3.2.1. The size of the debt;

3.2.3.2.2. The existence of any security or collateral;

3.2.3.2.3. The likelihood of collection through passive means;

3.2.3.2.4. The cost to the Division or Attorney General in attempting to collect the obligation; and

3.2.3.2.5. The availability of resources within the Division or Attorney General to devote to the collection of the obligation.

3.2.4. Referral to the Attorney General

3.2.4.1. Upon a determination to refer to the Attorney General, the Division shall notify the subrecipient of the delinquency status of the account, including the amount in no more than two mailed letters.

3.2.4.1.1. The first demand letter shall be mailed USPS First Class Mail within 30 days after the debt has been determined delinquent and an Attorney General referral is desired.

3.2.4.1.2. The second demand letter shall be mailed USPS First Class Mail between 30-60 days after the first demand letter was mailed if repayment of the amount has not occurred.

3.2.4.2. If the Division determines that it will refer the matter to the Attorney General, it shall, through the System Office of the General Counsel, notify the Attorney General around the 90th day after the first demand letter was sent.

3.3. The Division shall maintain copies of all communications with the subrecipients regarding the recoupment of the grant or financial award funding.

4. TDEM's Ability to Remedy

Nothing in this procedure shall limit TDEM's ability to implement alternative remedies for which it has authority to resolve outstanding recoupments.

Nothing in this policy shall prohibit TDEM from immediately taking any recoupment action after the first thirty (30) day notice has been issued requesting repayment.

Related Statutes, Policies, or Requirements

- Texas A&M University System Regulation 21.01.04
- 1 Tex. Admin. Code Section 59.2
- Tex. Gov't Code Section 403.055
- Tex. Gov't Code Chapter 2107
- Texas A&M University System Office Collection and Write-off Guidance
- Texas A&M University System Regulation 09.04.01

Grant Acknowledgement, Agreement and Signature

Please provide your signature next to each item in acknowledgement you have received, read, understand, and agree to abide by the terms.

I, __________________________ , the undersigned and Certifying Official of
Printed Name

__________________________ understand that TDEM strongly encourages refresher
Subrecipient Name

training in federal procurement standards as variances from these standards account for the majority of funding deobligation. I also certify that I have read and understand each section of the above agreement. My signatures below serve as Subrecipient agreement to comply with all laws, rules, regulations, and policy presented.

__________________________ Signature	Agreement Authority
__________________________ Signature	Agreement (Section I – XXIX)
__________________________ Signature	Exhibit A: Assurance – Non-Construction Programs
__________________________ Signature	Exhibit B: Assurance – Construction Programs
__________________________ Signature	Exhibit C: Certifications for Grant Agreements
__________________________ Signature	Exhibit D: State of Texas Assurances
__________________________ Signature	Exhibit E: Environmental Review Certification

______________________ Signature	Exhibit F: Additional Grant Certifications
______________________ Signature	Exhibit G: Request for Information Policy
______________________ Signature	Exhibit H: Pre-Obligation Request for Information Policy
______________________ Signature	Exhibit I: Recoupment of Funds

Please sign below to acknowledge subrecipient's acceptance of this grant and all exhibits and subrecipient's agreement to abide by all terms and conditions.

______________________ **Signature of Certifying Official**	______________ **Date**
______________________ **Printed Name**	______________ **Title**

FEDERAL EMERGENCY MANAGEMENT AGENCY

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project HMGP-4485-0142-TX (1)

Title: City of Seabrook Fire Station Generator

NEPA DETERMINATION

Non Compliant Flag: No | **EA Draft Date:** | **EA Final Date:**

EA Public Notice Date: | **EA Fonsi** | **Level:** CATEX

EIS Notice of Intent | **EIS ROD Date:**

Comment Utilizing the proposed HMGP grant, the City of Seabrook proposes to replace an existing back-up generator on an existing elevated platform and conduct electrical and structural modifications at the City's Fire Department located at 1850 Meyers Ave., Seabrook, Harris County, TX (29.57547, -95.02541). By installing the new emergency generator dependable power supply will be immediately available to the City's Fire Station. This will assure emergency Fire services can be properly provided and coordinated for all the citizens of the City of Seabrook during events that can create power outages such as tropical storms, hurricanes and severe winter storms such as Winter Storm Uri.

This project has been determined to be Categorically Excluded from the need to prepare either an Environmental Impact Statement or Environmental Assessment in accordance with FEMA Instruction 108-1-1 and DHS Instruction 023-01-001-01; CATEX M13. Particular attention should be given to the project conditions before and during project implementation. Failure to comply with these conditions may jeopardize federal assistance including funding.
- spandey3 - 05/04/2023 15:27:00 GMT

CATEX CATEGORIES

Catex Category Code	Description	Selected
*m13	(*m13) Construction or installation of structures, facilities, or equipment for the purpose of ensuring the continuity of operations during incidents such as emergencies, disasters, flooding, and power outages involving less than one acre of ground disturbance. Examples include the installation of generators, installation of storage tanks of up to 10,000 gallons, installation of pumps, construction of structures to house emergency equipment, and utility line installation. This CATEX covers associated ground disturbing activities, such as trenching, excavation, and vegetation removal of less than one acre, as well as modification of existing structures.	Yes

EXTRAORDINARY

Extraordinary Circumstance Code	Description	Selected ?
	No Extraordinary Circumstances were selected	

ENVIRONMENTAL LAW / EXECUTIVE ORDER

Environmental Law/ Executive Order	Status	Description	Comment
Clean Air Act (CAA)	Completed	Project will not result in permanent air emissions - Review concluded	
Coastal Barrier Resources Act (CBRA)	Completed	Project is not on or connected to CBRA Unit or otherwise protected area - Review concluded	

NOTE: All times are GMT using a 24-hour clock.

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project HMGP-4485-0142-TX (1)

Title: City of Seabrook Fire Station Generator

Environmental Law/ Executive Order	Status	Description	Comment
Clean Water Act (CWA)	Completed	Project would not affect any water of the U.S. - Review concluded	
Coastal Zone Management Act (CZMA)	Completed	Project is located in a coastal zone area and/or affects the coastal zone	Based on consultation with Texas General Land Office (GLO) and review of Coastal Coordination Council (CCC) General Concurrence #5, FEMA has determined that this project is deemed consistent with the goals and policies of the Texas Coastal Management Program (CMP) and consistency review procedures as implemented by the GLO. - spandey3 - 05/04/2023 15:31:35 GMT
	Completed	State administering agency does not require consistency review - Review concluded	
Executive Order 11988 - Floodplains	Completed	Located in floodplain or effects on floodplain/flood levels	The project is located within a shaded X zone, area of 500-yr flooding, per Flood Insurance Rate Map (FIRM) panel 48201C1085M, dated 01/06/2017. Initial Disaster Public Notice was published on 04/28/2020 and 08/05/2021. The proposed action is not likely to result in any potential direct impacts that will adversely affect the natural values and function of floodplains, nor is it likely to increase the risk of flood loss. 8-step checklist attached. - spandey3 - 05/04/2023 15:33:04 GMT
	Completed	Possible adverse effects associated with investment in floodplain, occupancy or modification of floodplain environment	
	Completed	8 Step Process Complete - documentation attached - Review concluded	
Executive Order 11990 - Wetlands	Completed	No effects on wetlands and project outside wetlands - Review concluded	A review of the National Wetland Inventory (NWI) online mapper, accessed on 05/04/23, for the site indicates that the area is not located within, nor does it affect a designated wetland. - spandey3 - 05/04/2023 15:35:38 GMT
Executive Order 12898 - Environmental Justice for Low Income and Minority Populations	Completed	Low income or minority population in or near project area	
	Completed	No disproportionately high and adverse impact on low income or minority population - Review concluded	

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project HMGP-4485-0142-TX (1)

Title: City of Seabrook Fire Station Generator

Environmental Law/ Executive Order	Status	Description	Comment
Endangered Species Act (ESA)	Completed	Listed species and/or designated critical habitat present in areas affected directly or indirectly by the federal action	
	Completed	No effect to species or designated critical habitat (See comments for justification) - Review concluded	
Farmland Protection Policy Act (FPPA)	Completed	Project does not affect designated prime or unique farmland - Review concluded	
Fish and Wildlife Coordination Act (FWCA)	Completed	Project does not affect, control, or modify a waterway/body of water - Review concluded	
Migratory Bird Treaty Act (MBTA)	Completed	Project located within a flyway zone	
	Completed	Project does not have potential to take migratory birds - Review concluded	
Magnuson-Stevens Fishery Conservation and Management Act (MSA)	Completed	Project not located in or near Essential Fish Habitat - Review concluded	
National Historic Preservation Act (NHPA)	Completed	Applicable executed Programmatic Agreement. Activity meets Programmatic Allowance (enter date and # in comments) - Review concluded	The scope of work has been reviewed and meets the criteria in Appendix B - Programmatic Allowances, Tier II.D.2.a of FEMA's Programmatic Agreement (PA) dated March 16, 2022. In accordance with this PA, FEMA is not required to determine the National Register eligibility of properties where work performed meets the Appendix B criteria. The scope of work has been reviewed and FEMA has determined, based on Tribal preferences, that the project will not require Tribal Consultation. - smcgove2 - 05/04/2023 14:48:01 GMT
Resource Conservation and Recovery Act, aka Solid Waste Disposal Act (RCRA)	Completed	Review concluded	
Wild and Scenic Rivers Act (WSR)	Completed	Project is not along and does not affect Wild and Scenic River - Review concluded	

CONDITIONS

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project HMGP-4485-0142-TX (1)

Title: City of Seabrook Fire Station Generator

Special Conditions required on implementation of Projects:

Applicant must coordinate with the local floodplain administrator, obtain required permits prior to initiating work, and comply with any conditions of the permit to ensure harm to and from the floodplain is minimized. All coordination pertaining to these activities should be retained as part of the project file in accordance with the respective grant program instructions.

Source of condition: Executive Order 11988 - Floodplains — Monitoring Required: No

The project and all its attendant utilities are supporting a critical action and must be elevated or otherwise protected to the 0.2% annual chance (500-year) base flood elevation (BFE) or higher. The applicant must submit documentation to FEMA upon closeout supporting compliance with this condition. Documentation related to determination of the 500-year BFE may consist of a permit issued by the local entity responsible for floodplain ordinance compliance; an email or letter from the local floodplain official; an elevation certificate; a statement or study signed by a qualified engineer; and/or reference to a FEMA Flood Insurance Study or other FEMA flood product or tool. Where multiple sources of flood hazard information are available for a proposed project site, such as where there is both an Effective and Preliminary FIRM or both an Effective FIRM and Advisory Flood Hazard Information, the best available information is the source which provides the highest 500-year BFE. In situations where elevating or otherwise protecting to the 500-year BFE, would not be practicable due to engineering feasibility and cost, then the documentation submitted to FEMA must also include proof/justification as to why doing so would not be practicable based on those factors.

Source of condition: Executive Order 11988 - Floodplains — Monitoring Required: No

For actions located in the floodplain and/or wetlands, the applicant must issue a final public notice per 44 CFR Part 9.12(e) at least 15 days prior to the start of work. The final notice shall include the following: (1) A statement of why the proposed action must be located in an area affecting or affected by a floodplain or a wetland; (2) A description of all significant facts considered in making this determination; (3) A list of the alternatives considered; (4) A statement indicating whether the action conforms to applicable state and local floodplain protection standards; (5) A statement indicating how the action affects or is affected by the floodplain and/or wetland, and how mitigation is to be achieved; (6) Identification of the responsible official or organization for implementation and monitoring of the proposed action, and from whom further information can be obtained; and (7) A map of the area or a statement that such map is available for public inspection, including the location at which such map may be inspected and a telephone number to call for information.

Source of condition: Executive Order 11988 - Floodplains — Monitoring Required: No

Unusable equipment, debris and material shall be disposed of in an approved manner and location. In the event significant items (or evidence thereof) are discovered during implementation of the project, applicant shall handle, manage, and dispose of petroleum products, hazardous materials and toxic waste in accordance to the requirements and to the satisfaction of the governing local, state and federal agencies.

Source of condition: Resource Conservation and Recovery Act, aka Solid Waste Disposal Act (RCRA) — Monitoring Required: No

Standard Conditions:

Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.

This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.

If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

Record of Technical Consideration and Benefit Cost Summary

Project Summary

FEMA Program:	HMGP
Project Number:	4485-0142
Subrecipient:	City of Seabrook
County or Parish:	Harris County
Project Title:	City of Seabrook Fire Station Generator
Project Type:	Generator
Phase:	Un-Phased
Project Cost:	$216,500

BCA Summary

Analyst:	Melanie Perello
Projected Benefit:	$638,698
Projected Cost:	$473,432
Benefit Cost Ratio:	1.35
Benefit Coast Analysis Tool Used:	Benefit-Cost Calculator V.6.0.
Damage and Frequency Relationship:	Professional Expected Damages
Hazard Type Analysis:	Severe Storm
Property Structure Type	Critical Facility
Type of Service:	Fire Station
Number of Generators:	1
BCA Reanalysis:	Yes
Subrecipient BCA File Name:	Seabrook_Fire_-BCA_874207

FEMA

FEMA Reanalysis BCA SUMMARY

Projected Benefits:	$234,628
Projected Cost:	$233,735
Benefit Cost Ratio:	1.05
Benefit Coast Analysis Tool Used:	Benefit-Cost Calculator V.6.0. Build 20240105.2249
Damage and Frequency Relationship:	Professional Expected Damages
Hazard Type Analysis:	Infrastructure Failure
Property Structure Type	Critical Facility
Type of Service:	Fire Station
Number of Generators:	1
FEMA:	Recommended
Reanalysis Summary:	RFI response did not include updated BCA based on previous RFI. Changed hazard to Infrastructure Failure. FEMA revised the BCA by lowering the distance between fire stations to 2.3 based on the nearest station at 94 Lakeshore Dr, El Lago, TX 77586. Reduced the population served to 13,708 based on US Census Bureau data. Lowered the project cost to match the project budget and added in maintenance costs.
BCA File Name:	4485-0142-SeabrookFireStationGenerator-FEMArevisedBCA-03-15-2024

Objective

FEMA funds projects that reduce the risk to people and property from natural hazards. FEMA reviews all subapplications for eligibility and compliance with program requirements. This includes a program, technical, and Environmental and Historic Preservation (EHP) review. The technical review determines if the proposed project is technically feasible and cost-effective. This review may also identify pre- or post-award conditions. The conditions listed below must be met by project closeout.

Scope of Work

The City of Seabrook proposes the procurement and installation of one permanent 200-kW diesel generator. The generator will mitigate the city fire station from power loss due to natural hazards. This generator will replace an older unit that failed to operate during Winter Storm Uri. Generator will be installed with automatic transfer switches and diesel fuel tank on a concrete pad. The generator will be in weather-proof housing units at the required elevation for each site. See Table 1 for location coordinates. The site is located in the 0.2% or 500-year floodplain. The project site has existing security fencing.

The subrecipient provided documentation from Brian F. Craig, PE (Texas license #105946) stating that the 200-kW generator capacity is sufficient to maintain the essential functions of the fire station.

The scope of work includes developing final designs. Site preparation and construction of a concrete pad. The procurement of a generator, automatic transfer switch, and diesel fuel tank. Installation of the generator with its components, including transfer switch and fuel tank. Electrical wiring and integration of the generator with the facility's electrical system. Generator testing will be completed after installation.

Minimum elevation of the generator and all electrical components will be 500-yr flood event or the 100-year plus freeboard required by ASCE-24, whichever is higher. The generator will be anchored per ASCE 24 requirements. All project components must be in compliance with latest edition of codes and standards required by Federal, State and Local Rules and regulations.

Table 1: Generator Locations

Name	Latitude	Longitude	Flood Zone	FIRM
City of Seabrook Fire Station – 1850 E. Meyer Ave	29.575054	-95.025551	0.2%	48201C1085M, effective on 1/6/2017

Benefit Cost Analysis

A Benefit Cost Analysis (BCA) was completed, the following information was applied:

	Data	Data Used in BCA	Source
1	Project Useful Life	19	Default value for BCA Toolkit
2	Cost	$216,500	Project budget for subapplication.
3	Maintenance Cost	$700	Estimated value.
4	Number of Customers	13,708	US Census Bureau estimate for the city population as of July 2022.
6	Damages Before Mitigation	Default	Default values from BCA Toolkit

	Data	Data Used in BCA	Source
7	Damages After Mitigation	Default	Default values from BCA Toolkit

Conditions

1. The project and all its attendant utilities are supporting a critical action. The generator and all components must be elevated, or otherwise protected, to the 0.2% annual chance (500-year) base flood elevation (BFE) or the 100-year BFE plus the freeboard required per ASCE-24, whichever is higher. The applicant must submit documentation of compliance to FEMA upon closeout.
   a) Determination of the BFE may be provided by the local floodplain administrator. This may include an issued permit or elevation certificate. An email or letter from the administrator is also acceptable. Other documentation may include a statement or study by a licensed engineer. A reference to a FEMA Flood Insurance Study or other flood product is also acceptable.
   b) If multiple sources of flood hazard data are available for a project site, use the best available information. The best available information is the source which provides the highest BFE or BFE plus freeboard.
   c) In rare situations, elevating or protecting to the BFE or BFE plus freeboard is not practicable. This may be due to engineering feasibility or cost. In those situations, the subrecipient must provide documentation to FEMA with a justification. The subrecipient must provide proof that non-compliance was due to unfeasibility or cost.
2. FEMA approved BCA (file titled “4485-0142-SeabrookFireStationGenerator-FEMArevisedBCA-03-15-2024”) is attached to this recommendation. This BCA file must be used for any future scope of work and/or budget modifications.

MELANIE M PERELLO

Digitally signed by MELANIE M PERELLO
Date: 2024.03.21 19:51:39 -04'00'

Melanie Perello

Program Analyst, Ph.D.

FEMA

Benefit-Cost Calculator v6.0.0

Welcome

Benefit-Cost Analysis (BCA) is the method by which the future benefits of a hazard mitigation project are determined and compared to its costs.

The end result is a Benefit-Cost Ratio (BCR), which is calculated by a project's total benefits divided by its total costs.

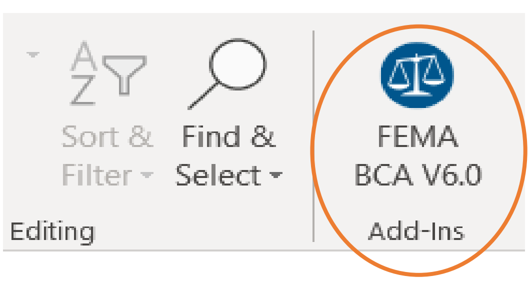
FEMA requires a BCA to validate cost effectiveness of proposed hazard mitigation projects prior to funding.

For a community and/or property, this tool will assist with:
- Estimating Annual Hazard Risks
- Evaluating Mitigation Cost Effectiveness
- Developing Aggregate Benefit-Cost Models

For more information, including methodologies of the calculation models used in this tool, visit FEMA BCA Website.

Getting Started

Click on the "BCA Calculator" button on the ribbon bar.



Template Last Updated: July 17, 2019

SEABROOK

Agenda Briefing

Date of Meeting: April 15, 2025

Responsible Department: City Manager's Office

Presenter: Gayle Cook, City Manager

Briefing Prepared By: Gayle Cook

Strategic Focus Area:

General Information:

Consider and take all appropriate action on the second reading of Ordinance 2025-06, Disannexation of additional property of Port of Houston Authority (PHA) pursuant to Amendment No. 3 of the Memorandum of Settlement Agreement.

Executive Summary / Background:

The purpose of this agenda item is to present the first reading of an ordinance to disannex a specified properties from the municipal boundaries, as outlined in the attached Memorandum of Settlement Amendment No. 3. In accordance with the settlement terms, Seabrook had by agreement agreed to place on the Council agenda for consideration and action: (i) a proposed ordinance for disannexation of the Additional Bayport Properties, (ii) an amendment to the Industrial District Ordinance enlarging the previously established Industrial District to include the Additional Bayport Properties, and (iii) an amendment and restatement of the Industrial District Agreement with PHA, as set forth in Exhibit I, which shall incorporate the Additional Bayport Properties.

Additionally, in consideration of the agreement to amend the Industrial District Property, the Port Authority shall pay Seabrook $700,000 no later than sixty (60) days after the Effective Date ("Payment Date"), along with the first "Annual Payment" amount, with subsequent Annual Payments to be made on the anniversary of the Payment Date.

The total amount to be paid to Seabrook over fifteen (15) years is $1,645,000. The disannexation process follows statutory requirements, including public notification, hearings, and ordinance adoption procedures.

Funding / Fiscal Information:

Supporting Materials Attached:

1. Ordinance 2025-06

Prior Action / Review by Council, Boards, Commissions:

Staff Recommendation:

All requests must be submitted to the City Secretary's Office no later than 12:00 p.m. on the Monday, one week prior to the regular Tuesday Council Meeting. All required attachments are to be submitted with the request. Incomplete items cannot be placed on the agenda.

CITY OF SEABROOK
ORDINANCE 2025-06

DISANNEXATION OF PORT OF HOUSTON AUTHORITY PROPERTY

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEABROOK, TEXAS APPROVING DISANNEXATION OF PORT OF HOUSTON AUTHORITY PROPERTY COMPRISING APPROXIMATELY 51.29 ACRES; BEING 34.926 ACRES OUT OF THE RITSON MORRIS SURVEY, ABSTRACT NO. 52, HARRIS COUNTY, TEXAS, BEING ALL OF A CALLED 17.298 ACRE TRACT AND ALL OF A 17.296 ACRES TRACT CONVEYED TO OOTZIE OF TEXAS, LLC AS RECORDED UNDER CLERK'S FILE NO. 20070662868 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY (O.P.R.R.P.H.C.); BEING 3.7054 ACRES, SITUATED IN THE RITSON MORRIS SURVEY, ABSTRACT 52, HARRIS COUNTY, TEXAS, BEING OUT OF LOT 1 OF THE EAST END OF LOT 2 OF THE SUBDIVISION OF RITSON MORRIS LEAGUE, A SUBDIVISION RECORDED IN VOLUME 470, PAGE 496 OF THE DEED RECORDS OF HARRIS COUNTY, TEXAS AND BEING ALL OF A TRACT OF LAND CONVEYED TO DAVID A. DEANE BY DEED RECORDED UNDER COUNTY CLERK'S FILE NO. X778689 OF THE OFFICIAL PUBLIC RECORDS OF HARRIS COUNTY, TEXAS, SAID 3.7054 ACRE TRACT, BEING THE SAME TRACT AS RECORDED UNDER COUNTY CLERK'S FILE NO. 2016-185573 OF THE OFFICAL PUBLIC RECORDS OF HARRIS COUNTY, TEXAS; BEING 3.7818 ACRES SITUATED IN THE RITSON MORRIS SURVEY, ABSTRACT NO. 52, HARRIS COUNTY, TEXAS, AND BEING OUT OF AN PART OF A CERTAIN 8 ACRE TRACT AS DESCRIBED IN A DEED FROM MRS. VIRGINIA B. LARRABEE, A WIDOW, TO OLIVER P.C CHRISTY, JR., AND WIFE, IRMA LARRABEE CHRISTY, DATED MAY 2, 1946, RECORDED IN VOLUME 1457, PAGE 95, OF THE DEED RECORDS OF HARRIS COUNTY, TEXAS, TO WHICH DEED REFERENCE IS HERE MADE FOR PURPOSES OF DESCRIPTION, SAID 3.7818 ACRE TRACT BEING THE SAME TRACT AS RECORDED IN HARRIS COUNTY CLERK'S FILE NO. 20130646764; AND BEING 8.88 ACRES, MORE OR LESS, OUT OF THE RITSON MORRIS SURVEY ABSTRACT 52, HARRIS COUNTY, TEXAS, AND BEING THAT SAME LAND DESCRIBED IN DEED DATED APRIL 10, 1937, FORM OSCIE J. MENARD, ET AL, TO VIRGINIA LARRABEE, RECORDED IN VOLUME 1209, PAGE 715 OF THE DEED RECORDS OF HARRIS COUNTY, TEXAS; ALL SUCH PROPERTY BEING MORE SPECIFICALLY DESCRIBED IN EXHIBITS "A-1" AND "A-2", ATTACHED HERETO.

WHEREAS, under the provisions of Chapter 43.142, Texas Local Government Code, as amended, and pursuant to the provisions of Section 1.09 of the City Charter of Seabrook, a request has been received by the City Council of the City of Seabrook, Texas (the "City") for its consent to disannexation in accordance with that certain Memorandum of Settlement approved by the parties hereto on November 5, 2007, amended on October 5, 2015, May 10, 2018, and as amended further from time to time, attached as Exhibit "2" and for creation of an Industrial District Agreement by and between the **City of Seabrook, Texas**, a home rule municipality ("Seabrook" or "City"), and the **Port of Houston Authority** of Harris County, Texas, a governmental subdivision of the State of Texas

("PHA"); and

WHEREAS, attached to this Ordinance as Exhibit "1" and made a part hereof is a petition from PHA requesting the City's consent to the disannexation of the certain territories it owns, described therein as Exhibits “A-1” and “A-2”, which is the same property as defined and described in the subject Industrial District Agreement as part of the Memorandum of Settlement encompassing the land identified therein and referenced as the Industrial District Property; and

WHEREAS, the City Council desires to consent to the requested disannexation of the property to be added to the **Seabrook Industrial District 1** and specifically subject to the terms and conditions contained in the subject Industrial District Agreement;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEABROOK, STATE OF TEXAS, THAT:

SECTION 1. All the matters and facts set out in the preamble hereof are true and correct.

SECTION 2. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Texas Government Code, Chapter 551 and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves, and confirms such written notice and the contents and posting thereof.

SECTION 3. The City Council of the City hereby specifically gives its written consent, as provide by Chapter 43, Texas Local Government Code, and Section 1.09 of the City Charter, to the disannexation of the property owned by the Port of Houston Authority encompassing the land described in Exhibits “A-1” and “A-2” to the petition attached hereto as Exhibit “1”, to be added to the **Seabrook Industrial District 1**, expressly subject to the terms and conditions set forth in the petition, those set out in the Memorandum of Settlement Agreement with approved amendments and the Industrial District Agreement contained therein, attached and incorporated as Exhibit “2” with respect to the land within the District approved by the City on this date.

PASSED, APPROVED, AND ADOPTED on first reading with a quorum present, by an affirmative vote of a majority of Councilmembers present, in accordance with Seabrook City Charter Section 2.10 on this __th day of _________, 2025

PASSED, APPROVED, AND ADOPTED, on second and final reading with a quorum present, by an affirmative vote of a majority of Councilmembers present, in accordance with Seabrook City Charter Section 2.10 on this ___th day of ___, 2025

By:

____

Thomas G. Kolupski, Mayor

ATTEST:

By: _______________________________

Rachel Lewis, TRMC
City Secretary

APPROVED AS TO FORM:

By: _______________________________

David W. Olson, City Attorney

SEABROOK

Agenda Briefing

Date of Meeting: April 15, 2025

Responsible Department: City Secretary's Office

Presenter: Joe Machol, At-Large Position 6

Briefing Prepared By:

Strategic Focus Area:

General Information:
Consider and take all appropriate action regarding cleaning the ditch located between the two Carothers Coastal Gardens properties.

Executive Summary / Background:

Funding / Fiscal Information:

Supporting Materials Attached: None

Prior Action / Review by Council, Boards, Commissions:

Staff Recommendation:

SEABROOK

Agenda Briefing

Date of Meeting: April 15, 2025

Responsible Department: City Manager's Office

Presenter:

Briefing Prepared By:

Strategic Focus Area:

General Information:

Consider and take action to approve Resolution 2025-09, "Authorization for Acquisition of Property for Park Use" in the amount of $81,592.00, and authorize the City Manager to expend funds and execute all necessary documents.

Executive Summary / Background:

Funding / Fiscal Information:

Supporting Materials Attached:

1. Resolution 2025-09

Prior Action / Review by Council, Boards, Commissions:

Staff Recommendation:

CITY OF SEABROOK
RESOLUTION 2025-09
AUTHORIZATION FOR ACQUISITION OF PROPERTY

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEABROOK, AUTHORIZING PROCEEDING WITH THE ACQUISITION OF CERTAIN REAL PROPERTY FOR ONGOING USE IN THE SEABROOK PARK SYSTEM; CONSISTING OF UNDIVIDED INTERESTS IN AND TO LOTS 1, 2, 3, 4, 5, 6, AND 7 IN BLOCK H OF MORRISSTOWN, A SUBDIVISION IN HARRIS COUNTY, TEXAS ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 1, PAGE 34 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS (THE "PROPERTY"); DETERMINING THE PUBLIC NECESSITY AND JUST COMPENSATION FOR THE PROPERTY FOR SUCH PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE SETTLEMENT AGREEMENT AND MUTUAL RELEASE ATTACHED HERETO; AUTHORIZING THE CITY MANAGER TO TAKE ALL STEPS NECESSARY TO ACQUIRE THE PROPERTY, INCLUDING IDENTIFYING FUNDS FOR PAYMENT AND PURCHASE, THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Council of the City of Seabrook considers it necessary to acquire undivided interests in certain real property within the City of Seabrook (the "Property"), legally described in the caption above and further identified in the Exhibits provided herein, to continue the Property's current park use as a frisbee disk golf course; and

WHEREAS, the City is party to a partition lawsuit concerning the partial ownership of the Property, and City Council has determined that a public necessity exists for proceeding to acquire the necessary improvements and certain property rights from other ownerships interests in the Property to continue its current park use; and

WHEREAS, the City Council has accordingly negotiated with two of the parties to the partition lawsuit that have partial interests in the Property, and agreed that the City shall purchase the two parties partial interests for a total purchase price of $81,592.00, as provided for in the Settlement Agreement and Mutual Release and the Deeds in Lieu of Partition, which are both attached hereto as Exhibits "A" and "B," respectively, and made a part of this Resolution hereof.; and

WHEREAS, it is the specific intent of the City Council of the City of Seabrook to comply with all legal requirements for acquisition and funding of the subject Properties specifically including the Seabrook Charter; and

WHEREAS, the City Council of the City of Seabrook finds and determines that providing authorization to the City Manager to immediately expend funds for acquisition is now appropriate and return budget amendment for FY 2025.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEABROOK, TEXAS:

Section 1. That the City Council of Seabrook hereby officially finds and determines that the meeting at which this Resolution is passed is open to the public as required by law and that public notice of the time, place, and purpose of said meeting was given as required. The facts and matters set forth in the preamble of this Resolution are hereby found to be true and correct.

Section 2. A public purpose and necessity exits for the City of Seabrook to acquire the Property for the City of Seabrook for the purposes expressed herein, for ongoing open space and park use.

Section 3. The City Manager is hereby authorized to execute transfer of funds for acquisition of the partial interests in the Property for the sum of $ 81,592.00, and the City Manager is authorized to execute any documentation necessary to accept, acquire, document, facilitate, and record the conveyance of the subject Property as provided for in the Contract, together with the appropriate expenditure of funds.

Section 4. The City Council finds that proceeding to acquire the Properties, identified in the attached Settlement Agreement and Mutual Release, as provided herein, is in compliance with the requisites of law.

PASSED AND APPROVED this ___ day of __________, 2025.

Thomas G Kolupski
Mayor

ATTEST:

Rachel Lewis, TRMC
City Secretary

APPROVED AS TO FORM:

David Olson
City Attorney

Exhibit A

Settlement Agreement and Mutual Release

SETTLEMENT AGREEMENT and MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered into by Plaintiff, DHI Fund, LP ("DHI"), Defendant Mercury Oil Company, LLC ("Mercury Oil"), and Defendant City of Seabrook ("City"), effective on the dates all parties have executed the Agreement.

A. RECITALS

1. DHI filed suit seeking partition of real property located at 0 Todville Road, Seabrook, TX 77586, described as Lots 1-7, Block H, Morristown Subdivision, Harris County, Texas, in the case styled DHI Fund, LP v. City of Seabrook, et al., Cause No. 2022-18911, in the 127th Judicial District Court of Harris County, Texas ("the Litigation").
2. The City and Mercury Oil have filed responsive pleadings denying the allegations and disputing liability in the Litigation.
3. To avoid further litigation and without admission of liability or wrongdoing, the parties desire to enter into conveyances of certain property interests and then to fully and finally settle all claims and disputes related to the Litigation.

B. AGREEMENT, RELEASES & COVENANTS

4. The City agrees to pay the sum of SIXTY-TWO THOUSAND AND NO/100 DOLLARS ($62,000.00) to DHI in exchange for DHI's conveyance to the City of DHI's undivided 22.5% interest in the Property as described more fully in the pleadings filed in the Litigation. This conveyance will be by Deed in Lieu of Partition in the form attached as Exhibit A. DHI agrees to sign and deliver to the City the Deed in Lieu of Partition within 10 business days after this Agreement is effective. All funds due to DHI shall be paid to DHI's attorney, Jeffrey C. Jackson, at 11767 Katy Fwy., Ste. 813, Houston, TX 77079. The check shall be made out to: Jeffrey Jackson & Assoc. in Trust for DHI Fund, LP.
5. The City agrees to pay the sum of NINETEEN THOUSAND FIVE HUNDRED NINETY-TWO AND NO/100 DOLLARS ($19,592.00) to Mercury Oil in exchange for Mercury Oil's conveyance to the City of Mercury Oil's undivided 7.0875% interest in the Property as described more fully in the pleadings filed in the Litigation. This conveyance will be by Deed in Lieu of Partition in the form attached as Exhibit B. Mercury Oil agrees to sign and deliver to the City the Deed in Lieu of Partition within 10 business days after this Agreement is effective. All funds due to Mercury Oil shall be paid to Mercury Oil Company, LLC, by delivery to its attorneys Holman Robertson P.C.
6. DHI agrees, in consideration of the Agreement and the conveyance of the ownership interests reflected in the Deed in Lieu of Partition, to nonsuit with prejudice within 5 business days of the effective date of this Agreement all claims asserted in its Second Amended Petition. The parties to this Agreement acknowledge the nonsuit will be effective on filing and no further action by the trial court will be necessary to effectuate this portion of the Agreement.
7. DHI releases, acquits, and forever discharges the City, Mercury Oil, and their respective officers, directors, employees, agents, legal representatives, subsidiary organizations, parent organizations, successor entities, insurers, assigns, and all other persons, firms, or corporations potentially liable, from all claims, demands, causes of action, costs,

expenses, attorney's fees, damages, and liabilities of any kind or character arising out of or related to the claims asserted or that could have been asserted in the Litigation, whether those claims are known or unknown.

8. Mercury Oil releases, acquits, and forever discharges the City and DHI, and their respective officers, directors, employees, agents, legal representatives, subsidiary organizations, parent organizations, successor entities, insurers, assigns, and all other persons, firms, or corporations potentially liable, from all claims, demands, causes of action, costs, expenses, attorney's fees, damages, and liabilities of any kind or character arising out of or related to the claims asserted or that could have been asserted in the Litigation, whether those claims are known or unknown.
9. The City releases, acquits, and forever discharges the Mercury Oil and DHI, and their respective officers, directors, employees, agents, legal representatives, subsidiary organizations, parent organizations, successor entities, insurers, assigns, and all other persons, firms, or corporations potentially liable, from all claims, demands, causes of action, costs, expenses, attorney's fees, damages, and liabilities of any kind or character arising out of or related to the claims asserted or that could have been asserted in the Litigation, whether those claims are known or unknown.
10. All parties understand and acknowledge that this settlement is a compromise of disputed claims, and the payments made hereunder are not to be construed as admissions of liability or of property valuation by any party.
11. All parties acknowledge they have read this Agreement, fully understand its contents, and sign it voluntarily and without coercion, and that they have had the benefit and advice of legal counsel.
12. Each party shall bear its own court costs and attorney's fees incurred to date and that may be incurred in any enforcement of this Agreement.

C. OTHER PROVISIONS

13. This Agreement constitutes the entire agreement between the parties and supersedes any prior agreements or understandings, whether written or oral, regarding the subject matter hereof.
14. This Agreement shall be governed and interpreted under the laws of the State of Texas. The sole and exclusive venue for any litigation arising from this Agreement or from the terms of the Exhibits A and B shall be Harris County, Texas.

DHI FUND, LP

By: ______________________________ Date:____________________

Title: ______________________________

CITY OF SEABROOK

By: ______________________________ Date: __________________

Title: ______________________________

MERCURY OIL COMPANY, LLC

By: Jan B Norris Date: 3-28-2025

Title: Vice President

Exhibit B

Deeds in Lieu of Partition

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

DEED IN LIEU OF PARTITION

STATE OF TEXAS §
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

That **DHI FUND, LP**, a foreign limited partnership, whose mailing address is c/o Jeffrey C. Jackson, 11767 Katy Fwy., Ste. 813, Houston, TX 77079 (hereinafter referred to as "Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby GRANT, SELL, and CONVEY unto the **CITY OF SEABROOK**, a Texas municipal corporation, whose address is 1700 First Street, Seabrook, Texas 77586 (hereinafter referred to as "Grantee"), all of Grantor's right, title, and interest in and to the following described real property located in Harris County, Texas:

> **AN UNDIVIDED 0.2250 INTEREST IN AND TO LOTS 1, 2, 3, 4, 5, 6, AND 7 IN BLOCK H OF MORRISSTOWN, A SUBDIVISION IN HARRIS COUNTY, TEXAS ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 1, PAGE 34 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS; AND BEING THAT SAME PROPERTY IDENTIFIED ON THE COUNTY TAX ROLL AS ACCOUNT NUMBER 026-253-000-0031**

the "Property."

TO HAVE AND TO HOLD all of Grantor's undivided interest in and to the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said Grantee, its successors and assigns forever, and Grantor does hereby bind itself and its successors to WARRANT AND FOREVER DEFEND all and singular the said interest in the Property unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

GRANTOR:

DHI Fund, LP

By: Brandon Dutch Mendenhall.

Its: CEO.

THE STATE/COMMONWEALTH OF Florida

COUNTY OF Hillsborough

Before me, the undersigned notary public, on this the 4TH day of April, 2025, personally appeared Brandon Dutch Mendenhall ☑ known to me or, ☐ shown through production of valid identification document, who identified him/herself to be the ______________ of DHI Fund, LP, the person and officer whose name is subscribed to the foregoing instrument, and being authorized to do so, acknowledged that he/she had executed the foregoing instrument as the act of such entity for the purpose and consideration described and in the capacity stated.

(seal)

NOTARY PUBLIC, STATE OF FLORIDA
MARIA M. GARCIA
Commission # HH 479227
Expires May 6, 2028

NOTARY PUBLIC
STATE/COMMONWEALTH OF Florida

Return Address:

George W Vie III PC
4249 Dickson Street
Houston, Texas 77007

SETTLEMENT AGREEMENT and MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered into by Plaintiff, DHI Fund, LP ("DHI"), Defendant Mercury Oil Company, LLC ("Mercury Oil"), and Defendant City of Seabrook ("City"), effective on the dates all parties have executed the Agreement.

A. RECITALS

1. DHI filed suit seeking partition of real property located at 0 Todville Road, Seabrook, TX 77586, described as Lots 1-7, Block H, Morristown Subdivision, Harris County, Texas, in the case styled DHI Fund, LP v. City of Seabrook, et al., Cause No. 2022-18911, in the 127th Judicial District Court of Harris County, Texas ("the Litigation").
2. The City and Mercury Oil have filed responsive pleadings denying the allegations and disputing liability in the Litigation.
3. To avoid further litigation and without admission of liability or wrongdoing, the parties desire to enter into conveyances of certain property interests and then to fully and finally settle all claims and disputes related to the Litigation.

B. AGREEMENT, RELEASES & COVENANTS

4. The City agrees to pay the sum of SIXTY-TWO THOUSAND AND NO/100 DOLLARS ($62,000.00) to DHI in exchange for DHI's conveyance to the City of DHI's undivided 22.5% interest in the Property as described more fully in the pleadings filed in the Litigation. This conveyance will be by Deed in Lieu of Partition in the form attached as Exhibit A. DHI agrees to sign and deliver to the City the Deed in Lieu of Partition within 10 business days after this Agreement is effective. All funds due to DHI shall be paid to DHI's attorney, Jeffrey C. Jackson, at 11767 Katy Fwy., Ste. 813, Houston, TX 77079. The check shall be made out to: Jeffrey Jackson & Assoc. in Trust for DHI Fund, LP.
5. The City agrees to pay the sum of NINETEEN THOUSAND FIVE HUNDRED NINETY-TWO AND NO/100 DOLLARS ($19,592.00) to Mercury Oil in exchange for Mercury Oil's conveyance to the City of Mercury Oil's undivided 7.0875% interest in the Property as described more fully in the pleadings filed in the Litigation. This conveyance will be by Deed in Lieu of Partition in the form attached as Exhibit B. Mercury Oil agrees to sign and deliver to the City the Deed in Lieu of Partition within 10 business days after this Agreement is effective. All funds due to Mercury Oil shall be paid to Mercury Oil Company, LLC, by delivery to its attorneys Holman Robertson P.C.
6. DHI agrees, in consideration of the Agreement and the conveyance of the ownership interests reflected in the Deed in Lieu of Partition, to nonsuit with prejudice within 5 business days of the effective date of this Agreement all claims asserted in its Second Amended Petition. The parties to this Agreement acknowledge the nonsuit will be effective on filing and no further action by the trial court will be necessary to effectuate this portion of the Agreement.
7. DHI releases, acquits, and forever discharges the City, Mercury Oil, and their respective officers, directors, employees, agents, legal representatives, subsidiary organizations, parent organizations, successor entities, insurers, assigns, and all other persons, firms, or corporations potentially liable, from all claims, demands, causes of action, costs,

expenses, attorney's fees, damages, and liabilities of any kind or character arising out of or related to the claims asserted or that could have been asserted in the Litigation, whether those claims are known or unknown.

8. Mercury Oil releases, acquits, and forever discharges the City and DHI, and their respective officers, directors, employees, agents, legal representatives, subsidiary organizations, parent organizations, successor entities, insurers, assigns, and all other persons, firms, or corporations potentially liable, from all claims, demands, causes of action, costs, expenses, attorney's fees, damages, and liabilities of any kind or character arising out of or related to the claims asserted or that could have been asserted in the Litigation, whether those claims are known or unknown.
9. The City releases, acquits, and forever discharges the Mercury Oil and DHI, and their respective officers, directors, employees, agents, legal representatives, subsidiary organizations, parent organizations, successor entities, insurers, assigns, and all other persons, firms, or corporations potentially liable, from all claims, demands, causes of action, costs, expenses, attorney's fees, damages, and liabilities of any kind or character arising out of or related to the claims asserted or that could have been asserted in the Litigation, whether those claims are known or unknown.
10. All parties understand and acknowledge that this settlement is a compromise of disputed claims, and the payments made hereunder are not to be construed as admissions of liability or of property valuation by any party.
11. All parties acknowledge they have read this Agreement, fully understand its contents, and sign it voluntarily and without coercion, and that they have had the benefit and advice of legal counsel.
12. Each party shall bear its own court costs and attorney's fees incurred to date and that may be incurred in any enforcement of this Agreement.

C. OTHER PROVISIONS

13. This Agreement constitutes the entire agreement between the parties and supersedes any prior agreements or understandings, whether written or oral, regarding the subject matter hereof.
14. This Agreement shall be governed and interpreted under the laws of the State of Texas. The sole and exclusive venue for any litigation arising from this Agreement or from the terms of the Exhibits A and B shall be Harris County, Texas.

DHI FUND, LP

By: ______________________ Date: 04/04/25 Title:

CEO.

CITY OF SEABROOK

By: ______________________ Date:______________ Title:

____

MERCURY OIL COMPANY, LLC

By: ______________________ Date:______________ Title:

____

<u>Notice of confidentiality rights</u>: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

<u>DEED IN LIEU OF PARTITION</u>

STATE OF TEXAS §
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

That **Mercury Oil Company, LLC**, whose mailing address is 1221 Campbell Road, Suite 233, Richardson Texas 75080 (hereinafter referred to as "Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby GRANT, SELL, and CONVEY unto the **CITY OF SEABROOK**, a Texas municipal corporation, whose address is 1700 First Street, Seabrook, Texas 77586 (hereinafter referred to as "Grantee"), all of Grantor's right, title, and interest in and to the following described real property located in Harris County, Texas:

> **AN UNDIVIDED 0.070875 INTEREST IN AND TO LOTS 1, 2, 3, 4, 5, 6, AND 7 IN BLOCK H OF MORRISSTOWN, A SUBDIVISION IN HARRIS COUNTY, TEXAS ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 1, PAGE 34 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS**

the "Property."

TO HAVE AND TO HOLD all of Grantor's undivided interest in and to the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said Grantee, its successors and assigns forever, and Grantor does hereby bind itself and its successors to WARRANT AND FOREVER DEFEND all and singular the said interest in the Property unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

GRANTOR:

Jan B Norris
Mercury Oil Company, LLC

By: Jan B Norris

Its: Vice President

THE STATE/COMMONWEALTH OF TEXAS

COUNTY OF DALLAS

Before me, the undersigned notary public, on this the 28th day of March, 2025, personally appeared Jan B. Norris, ☐ known to me or, ☐ shown through production of valid identification document, who identified him/herself to be the Vice President of Mercury Oil Company, LLC, the person and officer whose name is subscribed to the foregoing instrument, and being authorized to do so, acknowledged that he/she had executed the foregoing instrument as the act of such entity for the purpose and consideration described and in the capacity stated.

(seal)

NOTARY PUBLIC STATE OF TEXAS

Lynda M Anderson
My Commission Expires
1/27/2029
Notary ID 7074514

Lynda M. Anderson

NOTARY PUBLIC
STATE/COMMONWEALTH OF TEXAS

Return Address:

George W Vie III PC
4249 Dickson Street
Houston, Texas 77007

SEABROOK

Agenda Briefing

Date of Meeting: April 15, 2025

Responsible Department: City Manager's Office

Presenter: Gayle Cook, City Manager

Briefing Prepared By: Gayle Cook

Strategic Focus Area:

General Information:
Consider and take all appropriate action to approve Resolution 2025-10, Expressing Support for H.B. 4538.

Executive Summary / Background:

House Bill 4538 seeks to strengthen the authority and capacity of local governments, port authorities, and relevant state agencies to address the growing issue of abandoned and derelict vessels (ADVs) in Texas coastal and inland waterways.

Derelict boats pose serious environmental, navigational, and safety hazards. Across Texas, especially in coastal areas and high-traffic recreational zones, these vessels leak oil, fuel, and debris into sensitive marine ecosystems, threaten maritime navigation, and diminish waterfront aesthetics—impacting tourism and local economies.

Current laws limit rapid intervention due to ownership identification challenges, jurisdictional overlaps, and limited funding.

Key Provisions of HB 4538

- Establishes a state-supported grant fund or reimbursement program to assist local entities with removal and disposal costs.
- Enhances coordination between the Texas General Land Office, Texas Parks & Wildlife, and local authorities for enforcement and disposal.

Funding / Fiscal Information:

Supporting Materials Attached:

1. Resolution 2025-10 Support of HB 4538

Prior Action / Review by Council, Boards, Commissions:

Staff Recommendation:

All requests must be submitted to the City Secretary's Office no later than 12:00 p.m. on the Monday, one week prior to the regular Tuesday Council Meeting. All required attachments are to be submitted with the request. Incomplete items cannot be placed on the agenda.

RESOLUTION NO. 2025-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEABROOK, TEXAS, EXPRESSING SUPPORT FOR HOUSE BILL 4538 DURING THE 89TH TEXAS LEGISLATIVE SESSION SUPPORTING FUNDING TO ASSIST WITH THE REMOVAL OF DERELICT VESSELS FROM TEXAS WATERWAYS AND REFERENCING SECTION 40.108 OF THE TEXAS NATURAL RESOURCES CODE

WHEREAS, the City of Seabrook is a coastal community dedicated to preserving and protecting its natural waterways, bayous, and coastal environments, which are vital to the economic, recreational, and ecological well-being of the region; and

WHEREAS, derelict and abandoned vessels in navigable waterways pose significant environmental hazards, impede navigation, diminish coastal aesthetics, and place a financial burden on local governments; and

WHEREAS, House Bill 4538, introduced in the 89th Texas Legislative Session by Representative Paul, amends Section 11.032 of the Texas Parks and Wildlife Code and creates Section 40.163 of the Natural Resources Code to establish a dedicated Derelict Vessels and Structures Account; and

WHEREAS, under H.B. 4538, a portion of vessel registration fees collected by the Parks and Wildlife Department will be transferred monthly to the General Land Office to support the removal and disposal of derelict vessels and structures described in Section 40.108(a) of the Natural Resources Code; and

WHEREAS, this measure provides essential funding and support to coastal and waterfront communities such as Seabrook in addressing the challenges of abandoned marine debris without relying solely on local resources; and

WHEREAS, the City of Seabrook recognizes the importance of proactive stewardship of marine and coastal assets and believes H.B. 4538 provides a sustainable and collaborative approach to protecting Texas waters;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEABROOK, TEXAS, THAT:

Section 1. The City Council of Seabrook expresses its full support for H.B. 4538 in the 89th Texas Legislative Session.

Section 2. The City urges the Texas Legislature to pass H.B. 4538 and encourages the Governor of Texas to sign the bill into law upon passage.

Section 3. A copy of this Resolution shall be forwarded to the offices of Representative Paul, and the appropriate House and Senate committees for Natural Resources and Environmental Affairs.

PASSED AND APPROVED, this ___ day of __________, 2025.

CITY OF SEABROOK, TEXAS

____

Thomas G Kolupski
Mayor

ATTEST:

____

Rachel Lewis, TRMC
City Secretary

APPROVED AS TO FORM:

____

David Olson
City Attorney

Exhibit “A” -- PROPOSED GARDEN PLAN (PHASE I)

Exhibit “B” – CAROTHERS COMMUNITY GARDEN BUDGET (PHASE I)

SEABROOK

Agenda Briefing

Date of Meeting: April 15, 2025

Responsible Department: City Manager's Office

Presenter:

Briefing Prepared By: Gayle Cook

Strategic Focus Area:

General Information:
Consider and take all appropriate action on the approval of a License Agreement between the City of Seabrook and Pasadena Farmers Market, DBA.

Executive Summary / Background:

A specific agreement between the City of Seabrook and a private farmers market business that previously appeared before City Council requesting use of public land for hosting a bi-weekly farmers market event.

Summary:
The attached item outlines a proposed agreement that would grant the farmers market business a limited license to utilize designated public land for a recurring bi-weekly event. The initial term of the license is for a period of six (6) months. Upon completion of the term, City Council will reevaluate the agreement and determine whether to renew, modify, or terminate the license.

- The agreement is **exclusive to the applicant** that came before City Council.
- It authorizes use of public land **on a temporary basis**, not to exceed six months.
- City Council retains full discretion for renewal or changes to the terms.
- This agreement does not create a precedent for future events or vendors.
- Compliance with all applicable regulations, including insurance, cleanup, and event management responsibilities, will be required.

Recommendation:
Staff recommends proceeding with the proposed agreement to allow a structured, limited-use opportunity that supports local business and community engagement, while preserving the City's oversight and flexibility for future use of public land.

Funding / Fiscal Information:

Supporting Materials Attached:
1. License Agreement

Prior Action / Review by Council, Boards, Commissions:

Staff Recommendation:

All requests must be submitted to the City Secretary's Office no later than 12:00 p.m. on the Monday, one week prior to the regular Tuesday Council Meeting. All required attachments are to be submitted with the request. Incomplete items cannot be placed on the agenda.

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS §

LICENSE AGREEMENT

This License Agreement (the "Agreement") is entered into as of the _____ day of ______________, 2025, by and between the City of Seabrook, Texas, a home-rule city (the "City") and Pasadena Farmers Market DBA (the "Licensee").

RECITALS

WHEREAS, the Licensee has proposed to the City the institution of Seabrook Market Days (the "Event") at the Real property, 1209 Main Street (the "real property") including additional real property, City Owned Parking Lot, if necessary, based on availability, but **no more than once in a two week period**;

WHEREAS, the City is the owner of the Real property real property located in Seabrook, Texas;

WHEREAS, the City desires to encourage the licensing of the real property by Licensee for use of a market;

WHEREAS, the Licensee agrees to provide space for vendors for the sale of sale of locally produced agricultural products or locally produced non-agricultural products such as art, artisan crafts and goods, jewelry and accessories, foods, snack and beverages, and other similar type ventures; provided however, the Licensee agrees not to provide space for flea market or garage sale items;

WHEREAS, the City does therefore find the addition of the Event to the city owned real property to be a benefit to the patrons of the city; and

WHEREAS, the purpose of this Agreement is to set forth the general terms and conditions for the license granted Licensee for use of the real property;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
STATUS OF TITLE

The parties acknowledge that the City is and shall remain the owner of the real property, more fully described in **Exhibit "A."** Licensee acknowledges and agrees that it does not now have, and never shall have, title or other property interest in the real property; provided however, upon termination or expiration of the Agreement, Licensee shall be allowed to remove items considered to be non-fixtures.

ARTICLE II
LICENSE AGREEMENT

The City hereby grants a license to Licensee for use of real property located 1209 Main Street, as the exclusive promoter/operator of events. The events shall include: Set-up on Saturday mornings, hours of operation for vendors on Saturday from 9:00 a.m. until 3:00 p.m., and vacation of the real property by 5:00 p.m. on Saturday evening. Clean-up and coordination of waste removal shall be conducted throughout the event.

Beginning on May 1, 2025, the City shall grant Licensee a license for ***6 months***, with an option to renew the license for an additional 6 months. Rent shall be at the regular rate of 300.00 per day. Total payment for each day shall be made payable to the City of Seabrook and must be delivered to the City Manager prior to 4:00 pm on the Thursday before such event. If the City's office is closed due to a holiday or other scheduled "off-day" on the Thursday before the Event, then total payment for such Event shall be due by 4:00 pm on closest business day the City's office is open prior to the Event. The Licensee and City agree to have review and possible renegotiation of this Agreement.

The Licensee agrees to the following as conditions of this Agreement and the license provided herein:

1. Licensee shall provide all clean-up and waste removal resulting from the Event, and

make arrangements for such waste removal with the City,

2. Licensee shall promote the Event and supply local businesses with flyers and promotional materials advertising,
3. Licensee shall maintain a general liability insurance policy in an amount not less than $1,000,000, include the City as a named insured party to such insurance policy, and provide the City a copy of the insurance policy. The insurance policy shall contain a provision requiring the insurer to give the City at least thirty (30) days notice if such policy is terminated or altered,
4. Licensee shall conduct business as an independent contractor,
5. Licensee shall provide temporary toilet facilities,
6. Licensee shall provide security for the Event, if deemed necessary
7. Licensee shall provide a real property attendant for all cars located in the real property areas,
8. Licensee acknowledges and understands that the Event is subordinate to the other planned events at the real property, including, but not limited to events for, July 4^{th}, Christmas, or other
9. Licensee shall pay for all applicable public utilities, either on a mutually agreed lump sum amount or by monitoring actual meter usage. If the City and the Licensee mutually agree to a lump sum amount, payment for such utilities shall be due at the same time and in the same manner as the total rent payment established in this Article. If the City and the Licensee agree that the Licensee is responsible for actual meter usage, then payment for such utilities shall be due on the following Thursday, prior to the next Event, in accordance with the schedule established in this Article for total rent payment,
10. Licensee shall submit a site plan, including policies, to be approved by the City,
11. Licensee shall formulate a vendor application and selection process that shall be reviewed and approved by the City, and Licensee shall select quality vendors in accordance with recitals provided for in this Agreement,
12. Licensee shall pay for all other expenses not provided for in this Agreement.

As a condition of this Agreement, the City acknowledges and agrees, as permitted by law, to the following:

1. City shall provide non-financial guidance and assistance to the Licensee in the process for obtaining necessary permits and/or licenses for providing both beer/wine and food concessions at the Event,
2. City may provide police officers during the Event, as determined by the City,
3. City shall provide non-financial assistance and guidance to the Licensee in the process for obtaining a contract for the clean-up before and after the Event, and may elect, at its discretion, to become a party to the contract for such services; however, in either instance, the City shall not be responsible for financial obligations under the contract,
4. City shall not require the Licensee, unless otherwise required by law, to pay any other tax other than normal City tax that is paid by businesses throughout the rest of the City,

ARTICLE III
TERMINATION

The City may terminate this Agreement at any time if any of the following conditions occur:

1. Licensee ceases to own and/or operate Pasadena Farmers Market DBA, unless a successor and/or assign is authorized by the City,
2. Licensee ceases to use the real property for the Event,
3. Licensee fails to make timely rent or utility payments as described in Article II of this Agreement,
4. Licensee fails to adhere to the conditions of the license as enumerated in Article II of this Agreement,

5. Licensee fails to give the City at least thirty (30) days notice of termination or change in the general liability insurance policy required in Article II of this Agreement, and
6. As provided for by law, the City determines that the use of the Facilities and Lots by Licensee is inconsistent with an authorized use for real property purposes.

The Licensee may terminate this Agreement at any time if any of the following conditions occur:

1. City fails to adhere to the conditions of this Agreement as enumerated in Article II of this Agreement.

ARTICLE IV
RIGHTS UPON TERMINATION

Should this Agreement be terminated, unless otherwise provided for in Article III above, title to all any improvements located on Property shall vest in the City.

ARTICLE V
DEFAULT AND BREACH OF THIS AGREEMENT

Licensee and the City will give prompt written notice to the other party when either party becomes aware of the occurrence or failure to occur, or the impending or threatened occurrence or failure to occur, of any fact or event that would cause any of its representations or warranties contained in this Agreement to be untrue or the failure by such party to perform any of its obligations contained in this Agreement. If either party desires to bring action against the other party for the breach of this Agreement, it shall deliver a written notice to the other party of the reason for such decision, specifying the factual basis therefore in reasonable detail. The party receiving such notice may cure the alleged breach within thirty (30) days following receipt of the notice; provided however, this shall not limit the City's ability to terminate all or part of this Agreement, in accordance with Condition 4. of Article III of this Agreement.

ARTICLE VI
FORCE MAJEURE

The obligations of Licensee hereunder and of the City shall be suspended during any period of Force Majeure. The term "Force Majeure" shall mean any cause beyond the control of Licensee or the City, including, but not restricted to, flood, earthquake, storm, fire, lightning, epidemic, war, acts of the public enemy, riot, civil disturbance or disobedience, strike, lockout, work stoppages, other industrial disturbance or dispute, whether determined to have arisen out of an unfair labor practice of any party hereto, labor or material shortage, sabotage, restraint by court order or other public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by the exercise of due diligence such party could not reasonably have been expected to avoid. Nothing contained herein shall be construed so as to require a party to settle any strike lockout, work stoppage, or other industrial disturbance or dispute in which it may be involved. Any party rendered unable to fulfill any of its obligations under this Agreement by reason of uncontrollable force shall exercise due diligence to remove such inability with all reasonable dispatch.

ARTICLE VII
SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of each such deleted provision, there shall be added automatically as part of this Agreement a provision as similar in terms and substance to such deleted provision as may be possible and yet be legal, valid and enforceable.

ARTICLE VIII
ATTORNEYS' FEES

If, on account of any breach or default by the City or Licensee of their obligations to the other party hereto under the terms, conditions or covenants of this Agreement, it shall become necessary for either party hereto to engage an attorney, or to use an attorney employed by either party, to enforce and defend any of its rights or remedies hereunder and should such party prevail, such prevailing party shall be entitled to any reasonable attorneys' fees, costs or expenses incurred by such party in connection herewith.

ARTICLE IX
AMENDMENTS

This Agreement may be amended at any time, by a written instrument signed by both Licensee and the City.

ARTICLE X
MEDIATION

In the event of any dispute hereunder, the parties shall first resort to mediation, to be held in Seabrook, Texas, before a mediator or mediators acceptable to the parties and in accordance with Chapter 154 of the Texas Civil Practice and Remedies Code.

ARTICLE XI
MISCELLANEOUS

The City and Licensee shall execute such further assurances, in writing, as are necessary to carry out the intent and purposes of this Agreement.

The laws of the State of Texas shall govern this Agreement. Venue of any dispute arising out of this agreement shall be in Harris County, Texas.

Neither the consummation of the transactions contemplated in this Agreement, the delay or omission of a party to exercise any of its rights hereunder, nor any investigation or disclosure of any party, shall affect the liability of the parties to one another for breaches of this Agreement or prevent any party from relying upon the representations and warranties made in this Agreement.

This Agreement including all exhibits or schedules constitutes the full and entire understanding and agreement between the parties and supersedes any prior or contemporaneous written or oral agreements between the parties. Except as expressly provided in this Agreement, it may not be amended, waived, discharged, or terminated except by written instrument signed by both parties.

Notices shall be in writing mailed by first-class mail, telecopied, or delivered by messenger, or overnight courier and shall be deemed given when received at the address of the parties set forth below.

If, to the City:

City of Seabrook
1700 First Street
Seabrook, TX 77586
Attention: City Manager

With a copy to:

Olson & Olson, LLP
2727 Allen, Suite 600
Houston, TX 77019
Attention: City Attorney, City of Seabrook

If, to the Licensee:

____
____
____
Attention: ____________

With a copy to:

____
____
____
Attention: ____________

Nothing in this Agreement is intended to create any partnership or joint venture between the parties, and any implication to the contrary is expressly disapproved. This Agreement does not create a joint enterprise of any kind and does not appoint either party as an agent of the other for any purpose whatsoever. Neither party shall in any way assume any liability of the other for the acts of the other or obligations of the other. In particular, the City shall have no liability whatsoever with regard to any fixtures or permanent improvements unless title has passed to the City.

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

No member of the City Council, officer, official, agent, or employee of the City shall be personally liability for any requirement, term, condition, dispute, cause of action, or other matter occurring as a result of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of ________________________, 2025, to be effective from and after such date.

THE CITY OF SEABROOK, TEXAS

BY:____________________________
Thomas G. Kolupski
Mayor

ATTEST:

____
Rachel Lewis
City Secretary

Pasadena Farmers Market, dba

BY:____________________________

Exhibit "A"

Real property

SEABROOK

Agenda Briefing

Date of Meeting: April 15, 2025

Responsible Department: City Manager's Office

Presenter: Jackie Rasco, At-Large Position 1

Briefing Prepared By:

Strategic Focus Area:

General Information:

Discussion on the Involuntary Terminated Status with the Secretary of State by Carothers Coastal Gardens 501(c)(3) as associated with the agreement for the Development, Operation and Maintenance of the Project: *Carothers Community Gardens*.

Executive Summary / Background:

Funding / Fiscal Information:

Supporting Materials Attached:

1. Carothers Coastal Gardens Agreement SIGNED
2. BUSINESS ORGANIZATIONS INQUIRY - filing status

Prior Action / Review by Council, Boards, Commissions:

Staff Recommendation:

AGREEMENT BETWEEN CITY OF SEABROOK AND CAROTHERS COASTAL GARDENS 501 (c)(3) FOR DEVELOPMENT, OPERATION AND MAINTENANCE OF PROJECT: CAROTHERS COMMUNITY GARDENS

This Agreement ("Agreement") is made and entered into this **16th day of April, 2024**, by and between the CITY OF SEABROOK, TEXAS, a Texas municipality **("City")** and CAROTHERS COASTAL GARDENS a 501c(3) not-for profit licensed to do business in the State of Texas, as sponsor and managing operator **("Operator")** of a not-for-profit community garden activity at the City's Carothers Coastal Garden land.

SECTION 1. DEFINITIONS

1. **ROUTINE MAINTENANCE**: Routine maintenance encompasses the regular upkeep and minor repairs necessary to preserve the condition of the leased premises over time as first granted to Operator. This includes tasks such as damage or safety issues with insured structures, replacing light bulbs, servicing any existing AC systems, and repairing minor plumbing or electrical issues that do not include upgrades or expansion.
2. **ELECTIVE IMPROVEMENTS:** Elective improvements refer to any alterations, renovations, or enhancements made to the City property that are not required for the basic functioning of the property as first granted to the Operator. These improvements are typically at the discretion of the Operator and may include aesthetic upgrades, non-essential repairs, or modifications tailored to the Operator's preferences. Elective improvements are initiated and funded by the Operator and may require prior written consent from the City, as specified in this Agreement.
3. **COMMUNITY GARDEN MEMBER A** Community Garden Member is an individual who has formally joined a community garden initiative as a participant or stakeholder by filling out an application and acceptance by Operator. As a member, they typically have certain rights and responsibilities, such as access to garden plots, participation and adherence to any rules or guidelines established by the community garden organization. Community Garden Members may contribute financially, through work hours, or through other forms of participation to support the maintenance and operation of the community garden.
4. **COMMUNITY GARDEN VOLUNTEER** A Garden Volunteer is an individual who offers their time, skills, and labor on a voluntary basis to support the maintenance, development, or operation of a garden, often without formal membership or obligations. Garden Volunteers may engage in tasks such as planting, weeding, watering, harvesting, or general upkeep of the garden under the direction of the garden coordinator or leadership team. Unlike Community Garden Members, Garden Volunteers may not have access to individual garden plots, although they may still play a valuable role in its success through their contributions.

SECTION 2. GENERAL

1. **PROPERTY:** The City hereby acknowledges and agrees that as part of this agreement and a continuance of the Carothers Community Garden project, the City hereby allows the usage of the public property for the term and upon the conditions set forth herein, certain property located at 502B Pine Gully Road. A portion of the public property of the Carothers Coastal Gardens acreage will be allowed to be used for a public purpose as the Carothers Community Garden.

2. **TERM:** The term of this Agreement shall be for the duration of three (3) years commencing on the effective date at the beginning of this agreement.

3. **FUNDING FOR PROJECT**

   a. **Annual Funding Allocation**: The City agrees to provide the Operator with an annual funding allocation of **$5,000.00 beginning FY 2023-24**, subject to the availability of funds in the City's budget for each subsequent fiscal year during the term of this agreement.

   b. **Contingency Clause:** The obligation of the City to provide the annual funding allocation specified herein is contingent upon the appropriation of sufficient funds by the City's governing body or other funding sources. If funds are not appropriate or become unavailable for any reason, the City shall not be liable for the provision of the annual funding allocation specified herein.

   c. **Notification:** The City shall notify the Operator in writing of the availability of funds for each fiscal year. Such notification shall specify the amount of funding allocated to the Operator for that fiscal year.

   d. **Utilization of Funds**: The Operator shall utilize the annual funding allocation provided by the City in accordance with the terms and conditions of this agreement and for the purposes specified herein:

      i. Utilities (
      ii. Improvements with the boundaries of the Community Garden
      iii. Supplies or Equipment for Community Garden

   e. **Carryover of Unspent Funds:** Any unspent funds from the annual allocation provided by the City may be carried over to subsequent fiscal years.

   f. **Audit and Reporting:** The Operator shall maintain accurate records of the utilization of funds received from the City and shall provide annual report as noted in this agreement, detailing the expenditure of funds and the achievement of objectives funded by the City.

4. USE OF PUBLIC PROPERTY

Operator shall use the public property solely for the purpose of a Community Garden, consistent with the public and educational purposes of the Carothers Coastal Gardens.

Elective Improvements:

a. Operator Responsibilities:

The Operator shall have the right to make reasonable **Elective Improvements** to the public property, subject to written approval of the City through the City Manager's office.

b. City Authorization

If the Operator should contact the City Manager's office and submit the following:

Detailed Scope of Improvement(s)

- Be specific about the nature of the improvements.
- Intended Purpose
- Timeline
- Relevant backup information and documents
- Estimated cost and proposed funding.
- Proposed vendors

c. City's Procurement Policy

Under the terms of this agreement, the Operator acknowledges that certain Elective Improvements may be subject to procurement procedures as with securing bond funding initially for this Pine Gully enhancement between the City and relevant authorities that debt was issued.

The Operator agrees to comply with any procurement requirements imposed by the City when undertaking such improvements. This includes but is not limited to obtaining multiple quotes or bids for the proposed improvements, adhering to specified timelines, and ensuring transparency and accountability in the procurement process.

The Operator further agrees to provide the City with any necessary documentation or information related to procurement activities upon request. Failure to comply with procurement requirements may result in consequences for the City.

5. **TITLE TO IMPROVEMENTS:** Title to Improvements that shall be placed upon the Property by Operator shall vest in City upon the completion of the Improvements, and Operator acknowledges that it shall have no right to remove such fixed or permanent improvements from the Property.

6. **MAINTENANCE AND REPAIR**

Routine Maintenance:

a. **Operator Responsibilities:** Operator shall be responsible for the routine maintenance and upkeep of the public property, including but not limited to routine trash removal, weed removal and general lawn upkeep for the gardens as specified in the original establishing Resolution 2021-14 to ensure that the area is well-maintained and free of weeds, litter, rotten produce, plant debris, rubbish, or junk items.

b. **City Responsibilities:** City will provide and pay for facility maintenance that may be deemed a building safety issue or would not keep the structure in usable condition on the following structures as established by Resolution 2021-14.

City Insured Property

502A PINE GULLY – YELLOW PARKS BUILDING (TMLIRP# 53)

502B PINE GULLY – METAL AWNING (TMLIRP# 54)

All expenditures for Routine Maintenance are subject to the securing and approving of funds for the City's responsibility either through the annual Parks Department budget or a special City Council budget allocation. Should a routine maintenance item on a city insured structure be deemed an immediate safety or health concern, the city reserves the right as in all public facilities to close or secure it until proper repairs can be made.

7. **INSPECTION AND ACCESS TO PROPERTY:** During the term of the Agreement and any renewal or extension hereof, Operator shall always permit the representatives of City access to the Property and may perform inspections on an as needed basis, with or without notice. A formal inspection shall occur at least once per year by a representative of the City and shall include but not be limited to documenting

improvements, condition of the property, safety related issues, and compliance with the City code.

8. **UTILITIES**

The utilities for the Community Garden site will be metered separately from other public property, allowing for accurate monitoring, and reporting of usage specific to that location.

The expectation for the Operator and its members and volunteers of the public property is to exercise reasonable usage and care when consuming utilities. This includes avoiding excessive use and being mindful of conserving resources responsibly.

9. **CONSIDERATIONS**: The City and the Operator hereby acknowledge that this Agreement is supported by good and valuable consideration, the sufficiency and delivery of which is hereby acknowledged. The parties agree that the Operator is responsible for all expenses not otherwise mentioned in the agreement.

SECTION 3. OPERATOR'S RESPONSIBILITIES

1. The Operator shall have the right to occupy and use the Property for the purpose of growing and harvesting legal plants and produce and operating a community gardening program for the purposes described herein under this Agreement and in accordance with the following limitations:

   a. **Annual Review:** The Operator shall present to City Council a formal annual performance review each **June** on:
      a. the activities and accomplishments of the Operator
      b. level of participation by Seabrook residents
      c. any significant change in the Operator's purpose, goals, objectives in relation to establishment Resolution 2021-14 and this agreement

   b. **Community Garden Member Participation:** Operator shall assign approximately 80% of gardening plots for City of Seabrook residents. For the purpose of this agreement, Seabrook residents are citizens that reside within the city limits proper.

   c. **Garden Access to Public:** City shall provide a combination lock to the facility and to serve the citizenry, the garden shall be open to the public upon request and there shall be appropriate signage that states "Garden Access" and contact information.

   d. **Accidents:** The Operator will notify the City immediately if any incidents occur at the Property which require medical attention or whenever public safety personnel are called to assist in any circumstance.

   e. **Fundraising Events:** The Operator may conduct fundraising events on the public property (but must comply with the special event process if it is triggered or they are utilizing other park property for an event, Chapter 65 – *Parks, Recreation and Municipal Facilities, Division 2, and all future amendments*).

   f. **Hold Harmless Waivers:** The Operator will secure and maintain on file a valid hold harmless agreement approved by the City with respect to each Community Garden Member admitted entering onto the Property. The individual Hold Harmless Agreements signed by the Community Garden Member will include full name and address of each member on the approved form. The individual Hold Harmless Agreements will be renewed annually and submitted to the City by ***June 1st*** each calendar year.

   g. **Other Activities:** The City maintains the right to disallow any specific activity which it deems to be contrary to the best interests of the City of Seabrook on the Property and shall notify the Operator of such disallowance in writing.

h. **<u>Content Coverage:</u>** Any loss or damage to equipment (contents) and or materials owned by the Operator shall be the full responsibility of the Operator. The City will have no liability for losses.

i. **<u>Outside Vendors:</u>** Any outside vendor engaged by the Operator to perform work in the Garden shall be in accordance with the City's procurement policies in accordance with local, county, state, or federal laws.

j. **<u>Damages:</u>** Damage to City owned property caused by the Operator shall be the responsibility of the Operator.

k. **<u>Work Order Requests</u>:** Requests by the Operator for support for Routine Maintenance on City Covered Property Items to City staff shall be made through the City Manager's Office.

l. **<u>Signage</u>:** Operator shall ensure any City signage on the Property remains visible and shall not obscure such signage, nor permit others to do the same without prior written consent of the City.

<u>SECTION 4. LIABILITY AND COMPLIANCE</u>

1. **<u>PROVISION REGARDING TAX-EXEMPT BONDS</u>** City has financed this public property with proceeds from tax-exempt bonds (the "Bonds"). The City reserves the right to terminate the agreement without notice if, at its sole discretion, termination is deemed necessary to maintain the tax-exempt status of the Bonds.

2. **<u>BACKGROUND CHECKS FOR VOLUNTEERS ENGAGING WITH MINORS</u>** Operator shall require any Community Garden Member or Community Garden Volunteer participating in activities on the Property involving <u>direct contact</u> with minors to complete a background check. The background check can be initiated by the Operator and kept on file by the Operator.

Each year along with the Hold Harmless Agreements, the Operator is to disclose the individuals that background checks have been performed for the City's record. The Operator will be responsible for all personal and private data of the member or volunteer, the City will just require the number and names of authorized individuals.

Ongoing Monitoring and the right to conduct additional periodic background checks as deemed necessary or triggered by specific events shall be stated in the Operator's authorization document and signed by the member or volunteer.

3. **<u>CONFLICTS OF INTEREST</u>:** No officer or employee of the City shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this agreement, the Operator and 501 (c)(3) board members of the

Operator's organization shall not accept employment or an obligation which is inconsistent under this agreement.

4. **OPERATOR'S ACKNOWLEDGEMENTS AND REPRESENTATIONS:** Operator represents to and covenants with City that the representations made by it are true and correct and that Operator shall use the Property only for such purposes as described.

5. **FINANCIAL TRANSPARENCY:** The Operator and the City agree that any all financial documents (including any all records of donations), receipts and information shall be available to each party at any time.

6. **RELATIONSHIP OF THE PARTIES:** The Operator shall be an independent contractor of its activities on the Property and shall not be an agent of the City of Seabrook. The City is granting the Operator the right to use the Property for gardening purposes only, and it is not the intent of the parties that a Landlord/Tenant relationship is created by this Agreement, nor is it the intent that this Agreement creates any third-party beneficiaries. It is also not the intent that no commercial or property value benefit be derived from the current Operator.

7. **REVENUE GENERATING ACTIVITIES AND PRIVATE USE:** The City shall be notified before any revenue-generating activities are conducted by the Operator on the public property and it must receive prior approval from the City. The City reserves the right to assess whether these activities constitute private business use of the proceeds of the Bonds. Any activities determined by the City of the Operator to result in private business use may be prohibited from taking place on the property at the discretion of the City.

8. **THIRD PARTY REPRESENTATIONS AND USE OF CITY LOGO:** The Operator shall not use the City logo as representation or imply association as a representative of the City for soliciting funds, grants, or other income.

9. **SOVEREIGN IMMUNITY:** The City does not waive its right of sovereign immunity, its police power to provide for the public interest and safety, nor its municipal authority to provide for and protect its assets by entering into this Agreement.

10. **INDEMNITY: THE OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, AGENTS, EMPLOYEES AND VOLUNTEERS FROM ANY AND ALL CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, LOSSES, DAMAGES, LIABILITIES KNOW OR UNKNOWN, AND ALL COSTS AND EXPENSES, INCLUDING ATTORNEY'S FEES, IN CONNECTION WITH ANY INJURY OR DAMAGE TO PERSONS OR PROPERTY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.**

11. **INSURANCE REQUIRED:** The Operator will maintain current Commercial General Liability Insurance Policy with limits of $1,000,000 per occurrence, with the City named as an additional named insured, and Operator will provide the City's Risk Manager with a current copy of each such policy.

A Certificate of Insurance in an acceptable format and in compliance with this subsection is attached to this Agreement as ***Exhibit C***. Failure of the Operator to maintain Commercial General Liability Insurance could result in the immediate termination of the agreement. The City shall have the right to make reasonable increases to the minimum required limits of liability during the term of this Agreement or any renewal or extension hereof. Operator shall be responsible for all deductibles and self-insured retentions under its insurance policies.

12. **COMPLIANCE WITH LAWS:** Operator, by exercising the rights granted herein, shall not discriminate, or permit discrimination against any person or group of persons in any manner on the grounds of race, color, sex, sexual orientation, religion, national origin or ancestry, age, physical handicap, or disability. Non-compliance with such assurances shall constitute a breach of this Agreement, and in the event of non-compliance, City may take appropriate action to enforce compliance and, at its option, may terminate this Agreement or seek judicial enforcement thereof. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with all federal state, county and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies in any manner affecting performance of the agreement, and venue shall lie in Harris County, Texas. Notices. All notices regarding this Agreement shall be addressed from one party to the other according to the following: 1) City of Seabrook, City Manager, 1700 First Street, Seabrook, TX; 2) Carothers Coastal Gardens Non-Profit, 15150 Middlebrook Dr, Houston, Texas 77585

13. **TERMINATION**

a. **Termination by Mutual Agreement:** This agreement may be terminated by mutual written agreement of both parties. Any such termination shall specify the effective date of termination and any other relevant terms or conditions agreed upon by the parties.

b. **Termination for Cause:** Either party may terminate this agreement for cause upon written notice to the other party if the other party materially breaches any provision of this agreement and fails to cure such breach within 30 days after receiving written notice specifying the nature of the breach.

c. **Termination for Convenience:** The City reserves the right to terminate this agreement for its convenience upon 30 days' written notice to Carothers Coastal Garden 501(c)(3).

d. **Termination Due to Funding Constraints:** If funding for this agreement is reduced or discontinued by the City, either party may terminate this agreement upon 30 days' written notice to the other party.

e. **Effect of Termination:** Upon termination of this agreement for any reason:

a. Operator shall promptly cease all activities under this agreement and return any property or materials provided by City.

b. The Operator shall pay the City for any services satisfactorily performed up to the effective date of termination, subject to any applicable deductions or adjustments as provided for in this agreement.

c. Both parties shall cooperate in good faith to effectuate an orderly transition of responsibilities and obligations arising from the termination of this agreement.

d. Survival of Certain Provisions: Termination of this agreement shall not affect any rights or obligations of the parties that by their nature should survive termination, including but not limited to confidentiality, indemnification, and dispute resolution provisions.

14. **AMENDMENTS:** No modification to this agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

IN WITNESS WHEREOF the parties hereto have subscribed their names the date first written above.

CITY:	**OPERATOR:**
City of Seabrook	**CAROTHERS COASTAL GARDENS 501(c)(3)**

04/11/2024

By: Thomas G. Kolupski

Thomas Kolupski
Mayor

4/30/24

By: Jesse W. Jones

Name: Jesse W. Jones

Title: President
Carothers Coastal Gardens 501(c)(3)

04/11/2024

AERIAL PHOTOGRAPH AND BOUNDARY **Exhibit A**

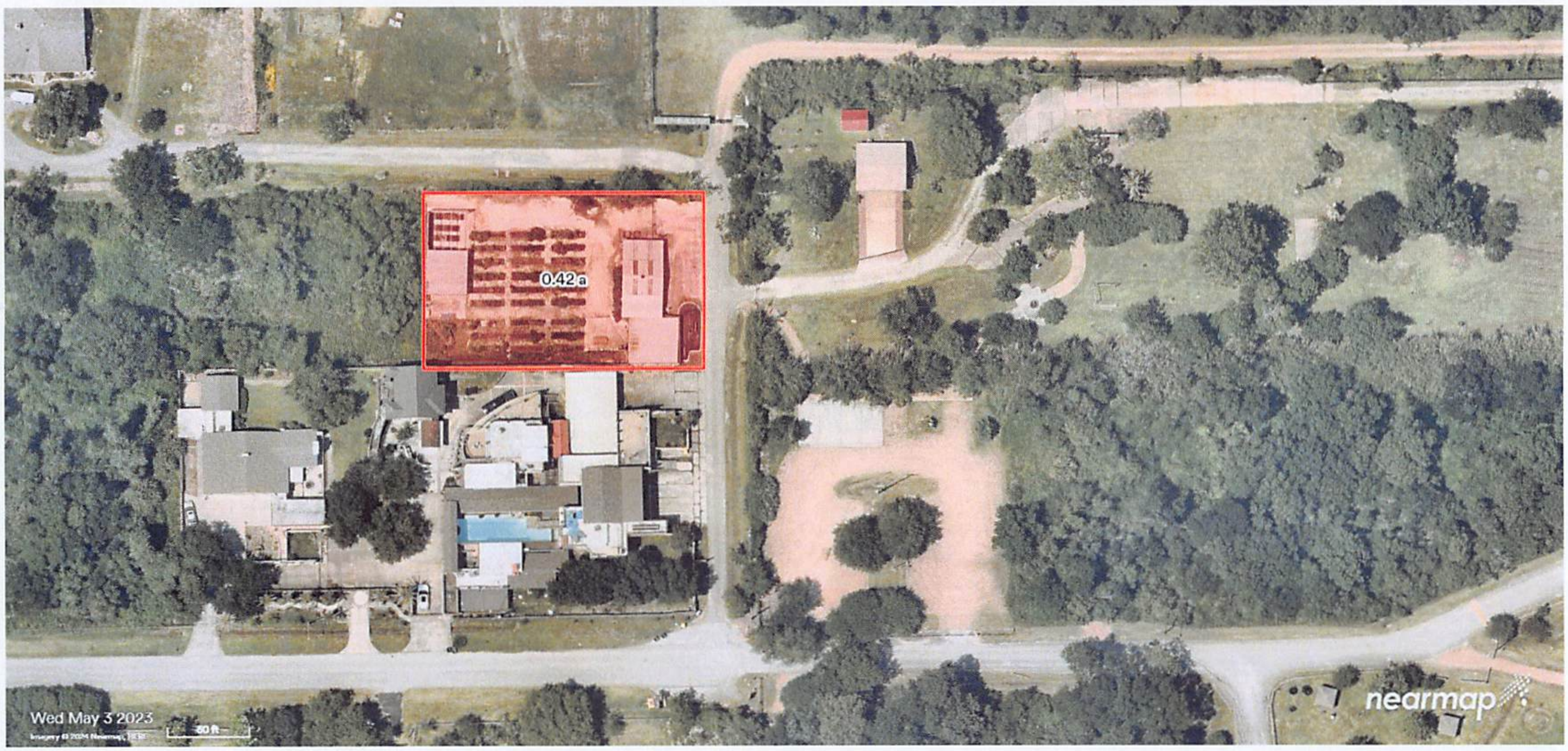


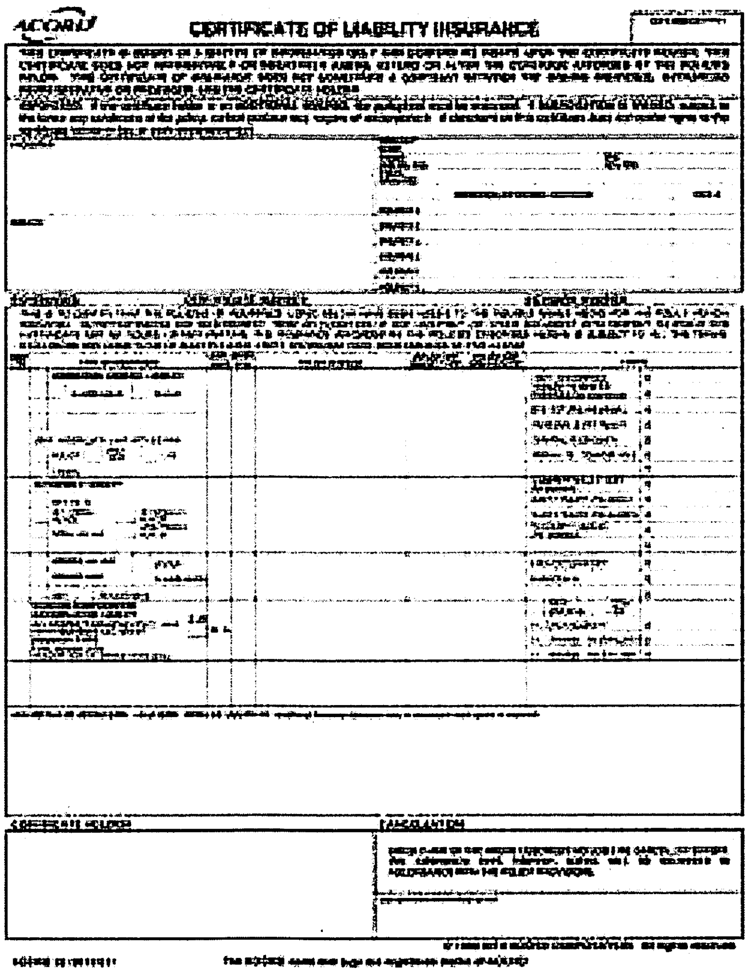
EXHIBIT B

RESOLUTION 2021-21

CITY COUNCIL –ESTABLISHING CAROTHERS COASTAL COMMUNITY GARDEN

EXHIBIT C

CERTIFICATE OF INSURANCE



ACORD

CERTIFICATE OF LIABILITY INSURANCE

CERTIFICATE HOLDER

CANCELLATION

TEXAS SECRETARY of STATE
JANE NELSON

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number:	804444093	**Entity Type:**	Domestic Nonprofit Corporation
Original Date of Filing:	February 22, 2022	**Entity Status:**	Involuntarily terminated
Formation Date:	N/A	**Non-Profit Type:**	N/A
Tax ID:	32083330566	**FEIN:**	
Duration:	Perpetual		

Name: Carothers Coastal Gardens
Address: 15150 MIDDLEBROOK DR
HOUSTON, TX 77058 USA

REGISTERED AGENT | FILING HISTORY | NAMES | MANAGEMENT | ASSUMED NAMES | ASSOCIATED ENTITIES | INITIAL ADDRESS

View Image	Document Number	Filing Type	Filing Date	Effective Date	Eff. Cond	Page Count
	1122770700003	Certificate of Formation	February 22, 2022	February 22, 2022	No	3
	1320266340001	Public Information Report (PIR)	December 31, 2023	January 7, 2024	No	1
	1407145900002	Resignation of Registered Agent	September 24, 2024	September 24, 2024	No	1
	1431417430001	Public Information Report (PIR)	December 31, 2024	December 7, 2024	No	1
	1451069150001	Certificate of Involuntary Termination	February 10, 2025	February 10, 2025	No	1

Order | Return to Search

Instructions:
- To place an order for additional information about a filing press the 'Order' button.

SEABROOK

Agenda Briefing

Date of Meeting: April 15, 2025

Responsible Department: City Manager's Office

Presenter: Jackie Rasco, At-Large Position 1

Briefing Prepared By:

Strategic Focus Area:

General Information:

Discuss potential amendments to Chapter 22-51, “Mobile Food Vendor Regulations,” of the Seabrook Code of Ordinances, and direct staff regarding preparation of a revised ordinance for future Council consideration.

Executive Summary / Background:

Funding / Fiscal Information:

Supporting Materials Attached:

1. Sec._22_51.___Mobile_food_vendors. Council Members' Suggested Amendments
2. Harris County Public Health Permit Requirements

Prior Action / Review by Council, Boards, Commissions:

Staff Recommendation:

Sec. 22-51. Mobile food vendors.

(a) *Purpose and applicability.* The purpose of this section is to permit mobile food vendors to operate on private property within the city and establish regulations to protect the health, safety and welfare of the public.

(1) *Definitions.*

a. *Concept plan* means a diagramed plan that includes property lines, adjacent rights-of-way, location of all mobile food vending units, parking areas and surface material, maneuvering areas and surface material, seating areas, and any other information reasonably required by the director of planning and development. Concept plans may be approved by the director of planning and development.

b. *Site* means a lot or parcel of property on which a mobile food service unit is permitted to operate.

c. *Commissary* means a central preparation facility or other fixed food establishment that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption to mobile, temporary and portable food vendors.

d. *Health authority* means the Harris County Public Health Department, or its designee, or any other agency charged with enforcement of regulations applicable to establishments regulated under this section.

e. *Mobile concession trailer* means a vending unit selling items defined as edible goods, which is pulled by a motorized unit and has no power to move on its own.

f. *Mobile food cart or concession cart* means a mobile vending unit, selling items defined as edible goods, that must be moved by non-motorized means.

g. *Mobile food truck* means a self-contained motorized unit selling items defined as edible goods.

h. *Mobile food vending unit* means a mobile food truck, mobile food cart, concession cart, or mobile concession trailer.

i. *Mobile food vendors* shall mean any business that operates or sells food for human consumption, hot or cold, from a mobile food vending unit.

j. *Mobile food vendor food court* means a site designed for the operation of one or more mobile food vendors as the primary use.

k. *Texas Food Establishment Rules* or *the Rules* means 25 Texas Administrative Code chapter 228, as amended.

(2) *Regulations for mobile food vendors.*

a. No person shall act as a mobile food vendor in the city without a permit issued by the city.

b. Each mobile food vendor shall display at all times, in a conspicuous place where it can be read by the general public, the City of Seabrook permit under this article and permit number.

c. Mobile food vendors shall not operate within a public park, public right-of-way, publicly owned property or site without written permission from the city manager or the city managers designee.

d. Mobile food vendors must meet all applicable state, county, and local laws.

e. Mobile food vendors must meet all applicable laws regarding mobile food vendors as described in most recently adopted edition of the International Fire Code (IFC) or any subsequent amendments thereto.

f. Mobile food vendors must operate from an approved commissary in good standing as defined in and required by the Texas Food Establishment Rules.

g. The mobile food vendor shall secure and display at all times in a conspicuous place where it can be read by the general public, a health permit from Harris County Public Health Department.

h. All employees of the permit holder must have a valid food handlers training certificate.

i. When required, mobile food vending units must be equipped with commercial mechanical facilities sufficient to provide proper cooking ventilation and fire suppression for eating establishments, as established under the city's adopted building codes. All equipment on the vehicle shall be NSF International (formerly National Sanitation Foundation) approved, American National Standards Institute (ANSI) approved, or of commercial grade.

j. Mobile food vendors shall provide covered garbage and storage facilities for employee and customer use, of sufficient size that refuse is fully contained in a manner that prevents litter and remains insect- and rodent-proof. The mobile food vendors are responsible for the disposal of all the subject refuse prior to leaving the point of sale site.

k. The mobile food vending unit must meet the following plumbing standards:

    1. All liquid waste shall be discharged to an approved sanitary sewage disposal system at the commissary or through an authorized service provider. All used fats, oil, or grease shall be discharged to an approved grease interceptor at the commissary or through an authorized service provider. Used fats, oils or grease shall not be discharged to any unauthorized food establishment grease interceptor.

    2. Liquid waste shall not be discharged from the retention tank when the mobile food vending unit is open to the public or in the process of preparing food.

    3. The waste connection shall be located below the water connection to preclude contamination of the potable water system.

    4. Connections to a water or sewage system on site is prohibited.

l. The mobile food vendor shall display at all times, in a conspicuous place where it can be read by the general public, a copy of a Texas sales tax and use certificate.

m. Mobile food vending units shall be separated from property lines, public rights-of ways, existing buildings, and other mobile food vehicles by a minimum of 25 feet. Food vendors shall not set up, or be located in fire lanes or parking spaces that are required for the use of an existing business.

Jackie's Recommendation: Remove 25' Setback Requirement.

n. The mobile food vending unit and any parking areas used by the mobile food vendor or its customers, shall be located on a paved surface, or an alternative all-weather surface, as approved by the city planning director or designee.

Jackie's Recommendation; Remove paved surface, all-weather surface requirements.

o. Each mobile food vending unit shall be clearly marked with the food establishment's name or a distinctive identifying symbol and shall display the name while in service within the city.

p. Except as shown on an approved concept plan, the mobile food vendor shall prepare, serve, store and display food and beverages on or in the mobile food vending unit itself; and shall not attach, set up, locate, or use any other device or equipment intended to increase the selling, serving, storing or displaying capacity of the mobile food vendor.

q. No mobile food vendor may operate outside of the hours of 8:00 a.m. to 10:00 p.m., unless otherwise authorized within the permit.

Jackie's Recommendation: Modify the hours of operation.

r. Mobile food vendors must comply with city Code chapter 55, article II, "Noise."

s. Drive-through service from mobile food vendors is prohibited.

t. Alcohol sales from mobile food vendors is prohibited.

Jackie's Recommendation: Remove this regulation.

u. Access to restroom facilities.

1. Any mobile food vendor that will be in one location for more than one hour, must submit to the city written proof of a restroom facility agreement that provides the availability of a fixed establishment restroom facility for the use of the mobile food vendor employees and customers, located in a business establishment within 300 feet of each location where the mobile food vending unit will be in operation.

2. Proof of availability of a fixed establishment restroom shall be in the form of a written and notarized statement from the property owner, or owner's authorized agent, including the name, address, and telephone number of the property owner or authorized agent, and the type of business and hours of operation of the business, granting permission for the use of the facilities. If the business owner is a partnership or corporation, the statement shall include the name, address and telephone number of one of the partners or officers.

3. A copy of the records shall be immediately available for inspection by the city on the mobile food vending unit.

v. Mobile food vehicles shall be movable by motorized or non-motorized means.

w. No mobile food vendor shall operate within (300) feet from the primary entrance of full service or fast food restaurant(s). This separation requirement shall only apply during normal hours of operation of the full service or fast food restaurant(s).

Exception, mobile food vendors may locate:

1. Within 300 feet of a full service or fast food restaurant(s), if the restaurant owner/owners have provided the food vendor written consent to located on the same lot as his/her restaurant(s), or if all applicable restaurant owners within the 300-foot buffer area provide written consent to the mobile food vendor.

2. Written consent shall be in the form of a written and notarized statement from the property owner, or owner's authorized agent, including the name, address, and telephone number of the property owner or authorized agent, and the type of business and hours of operation of the business. If the business owner is a partnership or corporation, the statement shall include the name, address and telephone number of one of the partners or officers. The notarized statement shall be provided to the city at the time of permitting.

(3) *Mobile food vendors on private property.* Mobile food vending units located on private property must comply with the following:

a. The private property must be located in a zoning district that allows restaurants, as provided for in Table 3-A "Comprehensive Land Use Regulation Matrix."

b. The private property must be developed and improved, and contain an existing permanent business operating in a building with a certificate of occupancy at all times while the mobile food vending unit occupies the property.

c. Electricity shall be from a generator and the mobile food vendor shall utilize electrical cords in conformance with the National Electrical Code as adopted and amended by the city.

Jackie's Recommendation: Remove the regulation.

d. The mobile food vendor must submit with the permit application, written authorization or other suitable documentation showing that the owner of the property, or the owner's authorized agent, consents to the mobile food vendor operating on said property.

(4) *Mobile food vendors on construction sites.* For subdivisions or sites in any zoning districts that are actively under construction and have not yet been issued a certificate of occupancy, a mobile food vendor may operate for less than one hour.

Jackie's Recommendation: To modify this regulation.

(5) *Mobile food vendor permit application.* The application for a mobile food vendor permit shall include the following information:

a. An application fee of $250.00;

Jackie's Recommendation: Change the fee to $150.00 for 1st year permit, Renewal $100.00. Permit change from a 90-day permit to an annual permit.

b. Name, legal name of business or entity, business address, telephone number, and email address of the applicant;

c. The applicant's identification number as shown on a current and valid government-issued identification document that includes a photograph of the applicant;

d. If the applicant represents a corporation, association or partnership, the names and addresses of the officers or partners;

e. Name, legal name of business or entity, business address, telephone number, and email address of the owner if the owner is not the applicant;

f. Signed and notarized permission from all private property owners where the mobile food vending unit will be stationed;

g. The manner of mobile food vending operation to be conducted (for example, foot vending, truck, trailer, pushcart, etc.); the make, model, year, license or registration, and vehicle identification number of each vehicle to be used in the mobile food vending operation;

h. Proof of motor vehicle insurance for each vehicle to be used in the mobile food vending operation;

i. An itinerary of locations where sales will occur; and a location map and sketch of site location for each location to be used by the mobile food vendor;

j. A concept plan, if applicable;

k. A copy of the vendor's current health permit from Harris County Public Health Department;

l. If the mobile vending unit will be placed in one location for more than one hour, a written agreement from a business within 300 feet for employees of the mobile food establishment to have use of flushable restrooms during hours of operation, portable restrooms are prohibited;

m. Proof of water/wastewater service;

n. Documentation indicating the volume capacity of any required water and wastewater storage tanks either on the tank itself or in writing;

o. A description of the type of food or the specific foods to be vended;

p. A notarized statement from the owner of the commissary stating that the mobile food establishment will use the facility as its base of operation and providing the address and food establishment permit number of the facility;

q. A valid copy of the applicant's sales tax and use tax permit; and

r. Any other information reasonably required by the director of planning and development.

(6) *Mobile food vendor permits.*

a. Permit determinations. The city will evaluate the data furnished by the applicant and may require additional information. Within 14 days of receipt of a completed permit application, the city will determine whether or not to issue a mobile food vendor permit. The city may deny an application for a permit on any of the following grounds:

1. Failing to provide all of the information required by the city;

2. The applicant's past record of ordinance violations;

3. Safety record of the applicant or any driver, based on such things as civil and criminal lawsuits and violations of environmental laws and ordinances; and

4. Providing false, misleading or inaccurate information to the city.

b. Permits are not transferable.

c. Mobile food vendor permits shall be for a 90-day period.

(7) *Permit revocation and appeal.*

a. The city manager or city manager's designee may revoke a permit issued under this section by a mobile food vendor if the permit holder or the permit holder's employee:

1. Commits critical or repeated violations of applicable law; or

2. Knowingly provides false information on an application; or

3. Interferes with the health authority in the performance of the health authority's duties; or

4. If a permitted establishment under this article changes ownership and there are violations that must be corrected to meet applicable standards.

b. Before revoking a permit, the city shall provide the permit holder or person in charge with written notice of the pending permit revocation, unless circumstance and conditions require immediate revocation and closing of the unit. In the event of immediate revocation, written notice shall be provided after revocation in a timely manner.

The written notice shall include:

1. The reason(s) the permit is subject to revocation; and

2. If applicable:

i. The date on which the permit is scheduled to be finally revoked; and

ii. A statement that the permit will be revoked on the scheduled date unless the permit holder files a written request for a meeting with the city no later than the tenth day after the date the notice is served.

c. The applicant may appeal a final revocation of a permit by submitting a written request for appeal along with any evidence supporting the appeal to the board of adjustment within ten days of receiving the notice of final revocation. The board of adjustment will make a decision within a reasonable time of receipt of the appeal, but no later than 30 days after receipt. The board of adjustment's decision shall be final.

(8) *Inspections.*

a. The city may inspect a mobile food vendor during regular business hours and at other reasonable times to determine compliance with this section.

b. After conducting an inspection, the city shall inform the mobile food vendor of findings.

c. If a violation is found, the city shall:

1. Close the unit; or

2. Prescribe a reasonable time period for correction of violations. Reinspection's at prescribed time intervals will be conducted to determine whether required corrections have been made.

(Ord. No. 2019-28, § 2, 11-19-2019)

Jackie's recommended additions to the ordinance:

- Add a regulation that states: No overnight parking; a Mobile Food Vending Unit shall be removed from the premises daily unless otherwise approved by the city.

Additional Requests:

- Add a link to the City's Website for the Mobile Food Vending Permit.
- Limit the City's authority to inspect the Mobile Food Vending units as it relates to the authority granted within the current ordinance.
- Add a map to the City's Website that indicates where a Mobile Food Vender may operate legally.

Harris County
Public Health
ENVIRONMENTAL PUBLIC HEALTH

MOBILE FOOD UNIT PERMIT REQUIREMENTS

A Mobile Food Unit (MFU) is a self-contained food service operation, designed to be **readily movable** (such as motorized mobile food truck, trailers, pushcarts, and roadside vendors) and used to store, prepare, display, serve or sell food. Units must be mobile and remain readily movable at all times. To obtain a Mobile Food Unit Permit, the MFU must be brought to the Environmental Public Health Division (EPH) of Harris County Public Health (HCPH) on the designated day and the following criteria must be met.

1. **Request an Inspection Appointment** - email ephmfu@phs.hctx.net or call 713-274-6300 to request an inspection appointment. MFU inspections are scheduled on Tuesday and Thursday between 7:30 am and 3:00 pm. Do not bring the MFU without an appointment. MFU must have an approval notice from the Harris County Fire Marshal's Office (HCFMO) prior to inspection. Contact HCFMO at 713-274-1700 for Fire Marshal information.
2. **Document Submittal** - All documents are required at the time of inspection if not already uploaded during the application process. To streamline the process, you may email all documents to ephmfu@phs.hctx.net no less than 5 business days before the appointment. Please include the establishment number in the subject line of the email. Failure to provide current copies of all documents will result in a re-inspection fee, failed inspection, and re-scheduled appointment.
   Required Documentation
   - US issued government identification of owner (TXDL, State ID, Passport, Work Visa)
   - If the owner does not have a current Texas Driver's License, provide:
     - A valid Texas Driver's License for the driver of the MFU and
     - Notarized driver/ operator contract
   - A Certified Food Manager Certificate for an employee of the establishment
   - A State of Texas Sales Tax Permit Taxpayer ID. Contact the Texas Comptroller at www.window.state.tx.us or 1-800-252-5555
   - Valid vehicle registration for truck or tow vehicle and trailer (if applicable)
   - Valid vehicle insurance for truck or tow vehicle
   - Copy of the menu
   - If the MFU will operate at a location for more than 2 hours, the following letters, written in English are required even if the property is owned by the MFU owner.
     - Notarized letter to allow use of a restroom located within 300 feet of the MFU operation address. The restroom must be a public use facility, located in a fixed structure within 300-ft of the unit that includes a flushing toilet, hand wash sink with hot and cold running water, soap & hand drying provision, and open during the hours the unit will be open. Private residences and portable restrooms **are not accepted.**
     - Notarized letter to allow property use from the property owner
3. **Mobile Unit Inspection Appointment** – After an appointment request is made, EPH will call within five business days to schedule the permitting inspection appointment. At EPH, the MFU will be inspected by EPH and Harris County Fire Marshal staff. Please contact (713) 274-1700 for information regarding the FMO safety inspection. All equipment on the unit must be functioning at the time of the inspection. Each MFU will only be inspected one time per day. The owner must be present with his/her current/valid TXDL. If the owner does not have a TXDL, the owner must bring current photographic identification issued by the State of Texas or United States agency and the driver must be present with his/her TXDL.

New Permits or New Owners
If the MFU will be permitted for the first time or has a new owner, complete the MFU application online, upload required documents, and pay the $150 Plan Review Fee. The application & fee must be received by EPH before an appointment will be set.

> ***NOTE: Plan Review fees are non-refundable.** Please ensure Harris County Public Health is your regulatory jurisdiction before the fee is paid.

Mobile Unit Requirements

- All units must have current/valid TX license plates and Vehicle Identification Number (VIN), if required.
- If the unit is a trailer or pushcart towed or hauled by a separate vehicle, the VIN, current/valid license plates for the tow vehicle will also be confirmed during the inspection.
- MFUs brought in by a commercially rented or commercial tow vehicle will not be inspected.
- A power source (generator) must be brought to demonstrate the functionality of equipment, including the vent hood (if applicable), and hot/cold running water. Hot water must reach a minimum of 100°F.
- The mobile unit must have at least one three-compartment sink large enough to accommodate immersion of the largest equipment and utensils and a separate hand washing sink.
- Only single service (plastic or paper) utensils, tableware, plates, etc. shall be provided for customers.
- All equipment must be permanently installed on the MFU. No equipment such as BBQ pits or cookers can be used unless it is on the unit.
- Food cannot be prepared at home. All foods served on the MFU must be prepared on the unit or permitted food establishment.
- The unit must have the name clearly posted on at least 2-sides of the unit in **bold** letters at least 6 inches high, not less than 1 ½ inches in width, permanently affixed, and prominently displayed.
- Name posted on the unit must match the business name listed on the Texas Sales Tax Permit.
- The waste water tank shall be at least 15% larger than the fresh water tank, sloped to drain with a 1" minimum diameter valve and labeled **Waste Water**.
- The fresh water tank shall have a capped or protected inlet with a ¾" maximum diameter and be labeled **Potable Water** on both the tank and the inlet.
- The hose used to fill the fresh water tank must be kept clean, protected, and used for no other purpose.
- If provided, the water tank vent shall end in a downward direction and be protected from windblown dirt and debris with either a protective filter or a 1/16" mesh screen or equivalent.
- Live animals shall be excluded from the immediate adjacent surrounding areas of all mobile food establishments while in operation.
- The unit must go to an approved commissary for servicing in the 24 hours before every day of operation. Commissary trip tickets must be available on the unit.
- Pushcarts have additional requirements listed on the **MFU PUSHCART REQUIREMENTS** handout.

Once permit application is issued, the permit fee may be paid in the EPH office by cash, card, money order, or cashier's check before 3:30pm. Only cash is accepted after 3:30pm. The permit is valid for all locations in the jurisdiction of HCPH. If for any reason a MFU does not pass the permitting inspection a $150 re- inspection fee must be made before a follow up inspection can be scheduled.
ALL FOLLOW-UP INSPECTIONS ARE SCHEDULED BY APPOINTMENT ONLY.

All rules and laws must be followed during operation to avoid issuance of a citation. By law, all units are required to visit an approved commissary daily. Failure to provide an inspector with a current/valid commissary ticket will result in a citation. **The unit must remain movable at all times regardless of the size or condition of the unit.** Any food prep, storage, or cooking performed outside the permitted unit will result in a citation for operating outside the bounds of the MFU permit. The permit is only valid for the unit itself and the activities conducted inside the unit. All approved paperwork for the MFU must be kept on the unit at all times. Falsification of any documents will result in denial of the permit and may result in a citation, suspension, and/or revocation of the permit.

> **MFU permit inspections will be scheduled by appointment only. For inspection location, please visit our website or call 713-274-6300.** Inspections may be cancelled or postponed due to unforeseen circumstances at the discretion of EPH management.

Agenda Briefing

Date of Meeting: April 15, 2025

Responsible Department: City Secretary's Office

Presenter: Joe Machol, At-Large Position 6

Briefing Prepared By:

Strategic Focus Area:

General Information:
Discussion regarding the City of Seabrook light ordinances.

Executive Summary / Background:

Funding / Fiscal Information:

Supporting Materials Attached: None

Prior Action / Review by Council, Boards, Commissions:

Staff Recommendation:

SEABROOK

Agenda Briefing

Date of Meeting: April 15, 2025

Responsible Department: City Secretary's Office

Presenter: Joe Machol, At-Large Position 6

Briefing Prepared By:

Strategic Focus Area:

General Information:
Discussion regarding the progress of plans for Pine Gully Pier.

Executive Summary / Background:

Funding / Fiscal Information:

Supporting Materials Attached: None

Prior Action / Review by Council, Boards, Commissions:

Staff Recommendation:

SEABROOK

Agenda Briefing

Date of Meeting: April 15, 2025

Responsible Department: City Secretary's Office

Presenter: Michael Gibbs, Director of Finance

Briefing Prepared By:

Strategic Focus Area:

General Information:
Presentation of the Monthly Financial Report for March, 2025

Executive Summary / Background:

Funding / Fiscal Information:

Supporting Materials Attached: None

Prior Action / Review by Council, Boards, Commissions:

Staff Recommendation:

Agenda Briefing

Date of Meeting: April 15, 2025

Responsible Department: City Secretary's Office

Presenter:

Briefing Prepared By:

Strategic Focus Area:

General Information:
City Manager update and report to City Council on various items that require no action, including Seabrook Boards and Commissions, Transportation Projects, and City of Seabrook CIP Projects.

Executive Summary / Background:

Funding / Fiscal Information:

Supporting Materials Attached: None

Prior Action / Review by Council, Boards, Commissions:

Staff Recommendation:

SEABROOK

Agenda Briefing

Date of Meeting: April 15, 2025

Responsible Department: City Secretary's Office

Presenter:

Briefing Prepared By:

Strategic Focus Area:

General Information:
Establish future meeting dates and agenda items.

Executive Summary / Background:

Funding / Fiscal Information:

Supporting Materials Attached: None

Prior Action / Review by Council, Boards, Commissions:

Staff Recommendation: