

THE STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

**AMERICAN RESCUE PLAN ACT (ARPA) FUNDING AGREEMENT FOR THE
REHABILITATION OF MCMILLAN DAM**

This ARPA Funding Agreement for Infrastructure Construction (the “Agreement”) Contract No. 2024-12-04 is entered into this 23rd day of December 2024, by and between Lubbock County (the “County”), a body corporate and politic under the laws of the State of Texas, and the Lubbock County Water Control and Improvement District Number 1 (the “Subrecipient”).

WHEREAS, the Coronavirus Disease 2019 (“COVID-19”) pandemic caused numerous public health and economic issues throughout the United States, including in Lubbock County; and

WHEREAS, on March 27, 2020, the President signed into federal law the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which established the Coronavirus Relief Fund; and

WHEREAS, on March 11, 2021, the President signed into federal law the American Rescue Plan Act (“ARPA”), which established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds (“CLFRF Fund”), which together make up the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) program. The SLFRF builds on and expands the support provided to the County, including through the Coronavirus Relief Fund; and

WHEREAS, pursuant to the SLFRF program, the United States Department of Treasury has provided the County with a direct payment from the CLFRF Fund to cover certain costs, which includes the requirement of the obligation of funds by December 31, 2024 for the following uses:

- (1) To respond to the public health emergency with respect to COVID–19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- (2) To respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers of the metropolitan city, non-entitlement unit of local government, or county that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
- (3) For the provision of government services to the extent of the reduction in revenue of such metropolitan city, non-entitlement unit of local government, or county due to the COVID–19 public health emergency relative to revenues collected in the most recent full

fiscal year of the metropolitan city, non-entitlement unit of local government, or county prior to the emergency; and

(4) To make necessary investments in water, sewer, or broadband infrastructure; and

WHEREAS, the County is a body corporate and politic under the laws of the State of Texas; and

WHEREAS, the County is allocating costs for the assistance provided under this Agreement prior to December 31, 2024; and

WHEREAS, the County has determined that the funds the County is providing to Subrecipient under this Agreement are reasonable and necessary expenditures to address the COVID-19 public health emergency to respond to and assist with water infrastructure investments; and

WHEREAS, the Subrecipient is a water improvement district operating in Lubbock County, Texas, that owns and operates McMillian Dam which was constructed in 1959 to impound spring flow and surface runoff to form Buffalo Springs Lake, which services as a water supply and a recreation area; and

WHEREAS, the County has previously provided funding for engineering services in the amount of \$1,025,550.00; \$99,250.00 for dam inspection, hydrologic assessment and conceptual alternatives and \$926,300.00 for project management, field investigation, geotechnical analysis, design documents, bid phase and breach and EAP update, environmental permitting and construction phase; and

WHEREAS, repair of the dam would mitigate the risks of flooding and would allow the public to enjoy an outdoor recreational venue with adequate spacing; and

WHEREAS, the engineering study found that dam safety conditions exist, including seepage at the downstream toe and various repairs and maintenance issues; and

WHEREAS, the County now obligates \$7,267,920.21 in additional ARPA funds toward the construction phase of the McMillian Dam Rehabilitation project; and

NOW THEREFORE, for and in consideration of the terms, covenants and conditions set forth in this Agreement, the County and the Subrecipient hereby agree as follows:

ARTICLE I. TERM

The term of this Agreement commences on the Effective Date and continues without interruption through December 31, 2026. An amendment to this Agreement resulting in an increase in the amount of the consideration must be approved by the County acting through its governing body.

ARTICLE II. SCOPE OF SERVICES

The Subrecipient and its Engineer Design Report, attached hereto as Exhibit A have established the following design objectives:

- Improve dam embankment stability
- Address seepage concerns of the downstream slope
- Facilitate dam maintenance
- Protect public safety
- Protect infrastructure and transportation systems

To accomplish these design objectives the Subrecipient will make the following repairs to McMilliam Dam:

- Clearing and grubbing of the existing upstream and downstream slopes; and
- Supplementing rock riprap on the upstream slope; and
- Flattening the downstream slope to 3H:1V including a stability berm; and
- Installing an internal drainage system to mitigate seepage on the downstream slope; and
- Decommissioning the inoperable low-flow outlet works; and
- Miscellaneous structural repairs to the existing service spillway.

ARTICLE III. CONVEYANCE OF ARPA GRANT FUNDS

The County agrees to convey ARPA grant funds to the Subrecipient in the amount of seven million two hundred sixty seven thousand nine hundred twenty dollars and 21 one hundredths (\$7,267,920.21) which includes the cost of rehabilitation of McMilliam Dam, including cost of engineering and construction of the rehabilitation.

The transfer of ARPA grant funds to the Subrecipient shall be made in progress payments to the Subrecipient upon request by the Subrecipient. Notwithstanding any other provision of this Agreement, the County's total liability for payment of funds to Subrecipient under this Agreement shall not exceed \$7,267,920.21.

County will pay Subrecipient progress payments based upon the invoices of a request for funds and project expense summary for the Project. Subrecipient will submit to the County invoices relative to expenditures necessary for the rehabilitation of McMilliam Dam. Subrecipient and County will work together to mutually agree upon the frequency and format of documentation submissions.

Payment will be made payable and mailed, or electronically transferred to:

Lubbock County Water Control and Improvement District Number 1
Attn: Accounts Receivable
9999 High Meadow

ARTICLE IV. TERMINATION

A. General. The County may terminate this Agreement, for cause, upon thirty (30) days written notice to the Subrecipient, provided that Subrecipient does not cure its default within the time stated in the written notice. In the event this Agreement is so terminated, the County shall only provide ARPA grant funds to the Subrecipient for the infrastructure contemplated here which is constructed up to the date the Subrecipient is deemed to have received notice of termination, as provided herein. Further, any excess ARPA grant funds in the Subrecipient's possession shall be refunded to the County immediately upon termination.

B. Termination and Remedies. In the event that either party breaches any term and/or provision of this Agreement, the parties shall be entitled to exercise any right or remedy available to it by this Agreement, at law, equity, or otherwise, including without limitation, termination of this Agreement and assertion of an action for damages and/or injunctive relief. The exercise of any right or remedy shall not preclude the concurrent or subsequent exercise of any right or remedy and all rights and remedies shall be cumulative.

ARTICLE V. NON-ARBITRATION

The parties reserve the right to exercise any right or remedy available to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the parties shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this Agreement, this provision shall control.

ARTICLE VI. REPRESENTATIONS AND WARRANTIES

A. Existence. The Subrecipient is a validly existing and operating water control and improvement district under Article XVI, Section 59, of the Texas Constitution from and after its initial formation on October 10, 1955, by the Commissioner Court of Lubbock County, Texas under Chapter 25, General Laws, Acts of the 39th Legislature, Regular Session, 1925 which was confirmed, ratified, extended and enlarged by Senate Bill 1715 effective August 28, 1989, and in good standing under the laws of the State of Texas and is qualified to carry on its business in the State of Texas.

B. Corporate Power. The Subrecipient has the legal authority to enter into and perform this Agreement and all other activities contemplated hereby.

C. Authorization. Execution, delivery, and performance of this Agreement and the activities contemplated hereby have been duly and validly authorized by all the requisite action on the part of the Subrecipient. This Agreement constitutes legal, valid, and binding obligations of the Subrecipient and is enforceable in accordance with the terms thereof.

D. Subrecipient. The Subrecipient maintains a commercially proficient staff and employs, as needed, other qualified specialists experienced in completing the Project, and is familiar with all laws, rules, and regulations, both state and federal, including, without limitation the applicable laws, regarding the Project contemplated hereby.

E. Performance. The Subrecipient shall conduct all activities contemplated by this Agreement in accordance with the standard of care, skill and diligence normally provided by a professional person in performance of similar services, and comply with all applicable laws, rules, and regulations, both state and federal, relating to professional services, as contemplated hereby.

F. Use of Copyrighted Material. The Subrecipient warrants that any materials provided by the Subrecipient for use by County pursuant to this Agreement shall not contain any proprietary material owned by any other party that is protected under the Copyright Act or any other law, statute, rule, order, regulation, ordinance or contractual obligation relating to the use or reproduction of materials. The Subrecipient shall be solely responsible for ensuring that any materials provided by the Subrecipient pursuant to this Agreement satisfy this requirement and the Subrecipient agrees to indemnify and hold County harmless to the extent allowable by law from all liability or loss caused to County or to which County is exposed on account of the Subrecipient's failure to perform this duty.

ARTICLE VII. INDEPENDENT CONTRACTOR STATUS

The Subrecipient and the County agree that the Subrecipient shall perform the duties under this Agreement as an independent contractor and shall be considered as independent contractor under this Agreement and/or in its activities hereunder for all purposes. The Subrecipient has the sole discretion to determine the manner in which the Services are to be performed. During the performance of the Services under this Agreement, the Subrecipient and the Subrecipient's employees and/or sub-consultants, will not be considered, for any purpose, employees or agents of the County within the meaning or the application of any federal, state or local law or regulation, including without limitation, laws, rules or regulations regarding or related to unemployment insurance, old age benefits, workers compensation, labor, personal injury or taxes of any kind.

ARTICLE VIII. PERFORMANCE AND PAYMENT BONDS

Upon execution of this Agreement, and prior to any work on the Project, the Subrecipient shall obtain from the general construction contractor and present to the County performance and payment bonds in compliance with the Texas Government Code § 2253.021.

ARTICLE IX. INSURANCE

The Subrecipient shall procure and carry, at its sole cost and expense through the life of this Agreement, except as otherwise provided herein, insurance protection as hereinafter specified, in form and substance satisfactory to the County, carried with an insurance company authorized to transact business in the state of Texas, covering all aspects and risks of loss of all construction in connection with this Agreement, including without limitation, the indemnity obligations set forth herein. The Subrecipient shall obtain and maintain in full force and effect during the term of this Agreement, and as applicable shall cause each approved sub-contractor or sub-consultant of the Subrecipient to obtain and maintain in full force and effect during the term of this Agreement, commercial general liability, and automobile liability coverage for non-owned and hired vehicles with insurance carriers admitted to do business in the state of Texas. The insurance companies must carry a Best's Rating of A-VII or better. The policies will be written on an occurrence basis, subject to the following minimum limits of liability:

General Liability:

Per Occurrence Single Limit: \$1,000,000

General Aggregate Limit: \$2,000,000

Automobile Liability:

Combined Single Limit for any auto: \$1,000,000 Per Occurrence

Umbrella or Errors and Omissions Liability:

Per Occurrence Single Limit: \$1,000,000

Worker's Compensation

Per Occurrence Single Limit: \$500,000

The Subrecipient shall further cause any approved sub-contractor or sub-consultant to procure and carry, during the term of this Agreement, the insurance coverage required of Subrecipient herein, including without limitation, General Liability coverage, protecting the County against losses caused by the negligence of the approved sub-contractor or sub-consultant. The County shall be granted a waiver of subrogation under the sub-contractor or sub-consultants policies. The Subrecipient shall provide a Certificate of Insurance to the County as evidence of coverage.

The Certificate shall provide 30 days' notice of cancellation. A copy of the waiver of subrogation attached to the policy shall be included in the Certificate. The Subrecipient shall elect to obtain worker's compensation coverage pursuant to Section 406.002 of the Texas Labor Code. Further, the Subrecipient shall maintain said coverage throughout the

term of this Agreement and shall comply with all provisions of Title 5 of the Texas Labor Code to ensure that the Subrecipient maintains said coverage. The Subrecipient may maintain Occupational Accident and Disability Insurance in lieu of Worker's Compensation. If at any time during the life of the Agreement or any extension hereof, the Subrecipient fails to maintain the required insurance in full force and effect, the Subrecipient shall be in breach hereof and all work under the Agreement shall be discontinued immediately.

Notwithstanding anything contained herein to the contrary, the general liability policy shall be maintained at the Subrecipient's sole cost and expense, unless attributable to the work of a sub-contractor. The retroactive date shall be no later than the commencement of the performance of this Agreement and the discovery period (possibly through tail coverage) shall be no less than 10 years after the completion of the Services provided for in this Agreement. The provisions of this Article IX shall survive the termination or expiration of this Agreement.

ARTICLE X. EMPLOYMENT OF AGENTS/RETAINING OF CONSULTANTS

The Subrecipient may employ or retain consultants, sub-contractors, or third parties (any of which are referred to herein as "Sub-consultant"), to perform certain duties of Subrecipient under this Agreement. The Subrecipient is at all times responsible to the County to perform the Services as provided in this Agreement and the Subrecipient is in no event relieved of any obligation under this Agreement upon retainage of any Sub-consultant. Any agent and/or Sub-consultant retained and/or employed by the Subrecipient shall be required by the Subrecipient to carry, for the protection and benefit of the County and the Subrecipient and naming said third parties as additional insureds, insurance as described above required to be carried by the Subrecipient in this Agreement.

The Subrecipient agrees to follow all applicable notice and/or bid requirements under Texas Law.

ARTICLE XI. CONFIDENTIALITY

The parties shall retain all information received from or concerning the Subrecipient, the Subrecipient's business, the County and the County's business in strictest confidence and shall not reveal such information to third parties without prior written consent of the County, unless otherwise required by law.

ARTICLE XII. INDEMNITY

TO THE EXTENT ALLOWABLE UNDER THE LAW, THE SUBRECIPIENT SHALL INDEMNIFY AND HOLD HARMLESS LUBBOCK COUNTY AND ITS ELECTED OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES FROM ALL

SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY KIND, CHARACTER, TYPE, OR DESCRIPTION, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY OR DEATH TO ANY PERSON, OR INJURY TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, TO THE EXTENT ARISING OUT OF, RELATED TO OR OCCASIONED BY, THE NEGLIGENT ACTS OF THE SUBRECIPIENT, ITS AGENTS, EMPLOYEES, RELATED TO THE PERFORMANCE, OPERATIONS OR OMISSIONS UNDER THIS AGREEMENT AND/OR THE USE OR OCCUPATION OF COUNTY OWNED PROPERTY. THE INDEMNITY OBLIGATION PROVIDED HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

FOR AVOIDANCE OF DOUBT, THE PARTIES EXPRESSLY AGREE THAT LUBBOCK COUNTY AND ITS ELECTED OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES ARE NOT PROVIDING GOODS OR SERVICES TO THE SUBRECIPIENT AND NOTHING CONTAINED HEREIN IS EITHER AN EXPRESS OR IMPLIED WAIVER OF ANY IMMUNITY SUBRECIPIENT IS AFFORDED UNDER THE EXISTING LAWS OF THE STATE OF TEXAS AND SUBRECIPIENT'S STATUS AS A GOVERNMENTAL ENTITY.

ARTICLE XIII. COMPLIANCE WITH APPLICABLE LAWS

The Subrecipient shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations relating, in any way, manner or form, to the activities under this Agreement, and any amendments thereto.

ARTICLE XIV. NOTICE

A. General. Whenever notice from the Subrecipient to the County or the County to the Subrecipient is required or permitted by this Agreement and no other method of notice is provided, such notice shall be given by (1) actual delivery of the written notice to the other party by hand (in which case such notice shall be effective upon delivery) or (2) by depositing the written notice in the United States mail, properly addressed to the other party at the address provided in this article, registered or certified mail, return receipt requested, in which case such notice shall be effective on the third business day after such notice is so deposited.

B. Subrecipient's Address. The Subrecipient's address for purposes of notice is:

Lubbock County Water Control and Improvement District Number 1
General Manager
9999 High Meadow Road
Lubbock, Texas 79404
Email: bpowell@buffalospringslake.ent

C. County's Address. The County's addresses for purposes of notice are:

Lubbock County Judge
P.O. Box 10536
Lubbock, Texas 79408
Email: commissionerscourt@lubbockcounty.gov

With a copy to:
Lubbock County Contract Manager
P.O. Box 10536
Lubbock, TX 79408
Email: contracts@lubbockcounty.gov

And to:
Lubbock County Auditor
P.O. Box 10536
Lubbock, TX 79408
Email: cstaats@lubbockcounty.gov

D. Change of Address. Either party may change its address(es) for purposes of notice by giving written notice to the other party as provided herein, referring specifically to this Agreement, and setting forth such new address(es). The address(es) shall become effective on the 15th day after such notice is effective.

ARTICLE XV. MISCELLANEOUS

A. Captions. The captions for the articles and sections in this Agreement are inserted in this Agreement strictly for the parties' convenience in identifying the provisions to this Agreement and shall not be given any effect in construing this Agreement.

B. Audit. The Subrecipient shall upon written request provide access to its corporate books and records to the County. The County may audit, at its expense and during normal business hours, the Subrecipient's books and records with respect to this Agreement between the Subrecipient and the County. Subrecipient must respond in a timely and accurate manner to any request for information from the County relating to the project.

C. Records. The Subrecipient shall maintain records that are necessary to substantiate the activities contemplated under this agreement.

D. Assignability. The Subrecipient may not assign this Agreement without the prior written approval of the County, which approval shall not be unreasonably withheld.

E. Successor and Assigns. This Agreement binds and inures to the benefit of the County and the Subrecipient, and in the case of the County, its respective successors, legal representatives, and assigns, and in the case of the Subrecipient, its permitted successors and assigns.

F. Construction and Venue.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THIS AGREEMENT IS PERFORMABLE IN LUBBOCK COUNTY, TEXAS. THE PARTIES HERETO HEREBY IRREVOCABLY CONSENT TO THE SOLE AND EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS OF COMPETENT JURISDICTION OF THE STATE OF TEXAS, COUNTY OF LUBBOCK, FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS THAT ARE CONTEMPLATED HEREBY.

G. Severability. If any provision of this Agreement is ever held to be invalid or ineffective by any court of competent jurisdiction with respect to any person or circumstance, the remainder of this Agreement and the application of such provision to persons and/or circumstances other than those with respect to which it is held invalid or ineffective shall not be affected thereby.

H. Amendment. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless such amendment, modification, or alteration is in writing, dated subsequent to this Agreement, and duly authorized and executed by the Subrecipient and the County.

I. Entire Agreement. This Agreement, including Exhibit "A" attached hereto, contains the entire agreement between the County and the Subrecipient, and there are no other written or oral promises, conditions, warranties, or representations relating to or affecting the matters contemplated herein.

J. No Joint Enterprise. Nothing contained herein shall be construed to imply a joint venture, joint enterprise, partnership or principal-agent relationship between the Subrecipient and the County.

K. Notice of Waiver. A waiver by either the County or the Subrecipient of a breach of this Agreement must be in writing and duly authorized to be effective. In the event either party shall execute and deliver such waiver, such waiver shall not affect the waiving party's rights with respect to any other or subsequent breach.

L. Third Party Activities. Nothing in this Agreement shall be construed to provide any rights or benefits whatsoever to any party other than the County and the Subrecipient.

M. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited. Pursuant to Section 2252.152 of the Texas Government Code, the County is prohibited from entering into a contract with a vendor that is identified by The Comptroller as a company known to have contracts with or provide supplies or service with Iran, Sudan or a foreign terrorist organization.

N. No Boycott of Israel. Pursuant to Section 2271.002 of the Texas Government Code, a) This section applies only to a contract that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. (b) A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

O. Texas Government Code 2274. By entering into this Agreement, Subrecipient verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Subrecipient is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Subrecipient verifies that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

P. Subrecipient represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Subrecipient is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Subrecipient verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

Q. Texas Public Information Act. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Subrecipient agrees that the Agreement can be terminated if the Subrecipient knowingly or intentionally fails to comply with a requirement of that subchapter.

To the extent Subchapter J, Chapter 552, Government Code applies to this Agreement, Subrecipient agrees to: (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the governmental body for the duration of the contract; (2) promptly provide to the governmental body any

contracting information related to the contract that is in the custody or possession of the entity on request of the governmental body; and (3) on completion of the contract, either: (A) provide at no cost to the governmental body all contracting information related to the contract that is in the custody or possession of the entity; or (B) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the governmental body.

R. Professional Responsibility. All architectural or engineering services to be performed shall be done with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license.

ARTICLE XVI. AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS TERMS AND CONDITIONS

1. Use of Funds.

- a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.
- b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such Project.

2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in the Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on December 23, 2024, and ends on December 31, 2026.

3. Reporting. Subrecipient agrees to comply with any reporting obligations established by the Treasury as they relate to this award.

4. Maintenance of and Access to Records

- a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c), Treasury's regulations implementing that section, and guidance issued by the Treasury regarding the foregoing.
- b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
- c. Records shall be maintained by Subrecipient for a period of five (5) years

after all funds have been expended or returned to the Treasury, whichever is later.

5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
8. Conflicts of Interest. Lubbock County understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipients and Subrecipients must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to the Treasury.
9. Compliance with Applicable Law and Regulations.
 - a. Subrecipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by the Treasury pursuant to section 603(f) of the Act, and guidance issued by the Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
 - b. Federal regulations applicable to this award include, without limitation, the following:
 - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A

to 2 C.F.R. Part 170 is hereby incorporated by reference.

iv. OMB Guidelines to Agencies on Government Wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and sub-contractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

v. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

vi. Government Wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.

viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

ix. Generally applicable federal environmental laws and regulations.

c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000(d) et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (42

U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. Remedial Actions. In the event of Subrecipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, the Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act and any additional payments may be subject to withholding as provided in section 603(e) of the Act, as applicable.
11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. Copeland Anti-kickback Act. Subrecipient agrees to comply with the requirements of the Copeland Anti-kickback Act (40 U.S.C. § 3145), prohibiting a federal funds grantee engaged in constructing, carrying out, completing, or repairing public buildings, public works, or buildings or works that at least partly are financed by a loan or grant from the Federal Government from inducing an employee into giving up any part of the compensation that he or she is entitled to under the terms of his or her employment contract.
13. Contract Work Hours and Safety Standards Act. Subrecipient agrees to comply, as applicable, with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), regarding contracts for public works involving the employment of laborers or mechanics.
14. Rights to Inventions Made Under a Contract or Agreement. Subrecipient agrees to comply, as applicable, with the Rights to Inventions Made Under a Contract or Agreement (37 C.F.R. Part 401). For any federally assisted contract, awarded to a small business firm or nonprofit organization as defined in 37 CFR 401.2 for the performance of experimental, developmental, or research work, the Subrecipient. Subrecipient agrees to all of the terms in 37 CFR 401.14(a).
15. Clean Air and Water Pollution Control Acts. Subrecipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection

Agency (EPA).

16. Byrd Anti-Lobbying Amendment. Subrecipient agrees to comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352), prohibiting the use of funds appropriated by any Act to be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with certain Federal actions.
17. Procurement of Recovered Materials. Subrecipient agrees to comply, as applicable, with 2 C.F.R. § 200.323 pursuant to section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
18. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Subrecipient agrees to comply with 2 C.F.R. § 200.216 regarding the prohibition of the utilization of grant funds for certain telecommunications and video surveillance services or equipment.
19. Domestic Preferences for Procurements. Subrecipient agrees to comply with 2 C.F.R. § 200.322 to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
20. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.
21. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRP2653 awarded to the Lubbock County by the U.S. Department of the Treasury.”
22. Debts Owed the Federal Government.
 - a. Any funds paid to the Subrecipient:
 - i. in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award;
 - ii. that are determined by the Treasury Office of Inspector General to have been misused; or
 - iii. that are determined by Treasury to be subject to a repayment obligation

pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.

b. Any debts determined to be owed to the Federal Government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

23. Disclaimer.

a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or sub-contractor under this award.

b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.

24. Protections for Whistleblowers.

a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.

b. The list of persons and entities referenced in the paragraph above includes the following:

- i. A member of Congress or a representative of a committee of Congress;
- ii. An Inspector General;
- iii. The Government Accountability Office;
- iv. A Treasury employee responsible for Agreement or grant oversight or management;

- v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Subrecipient, Subrecipient, or Sub-contractor who has the responsibility to investigate, discover, or address misconduct.
- b. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
25. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Subrecipients to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
26. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees and contractors to adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ARTICLE XVII. ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the

assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.

3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.

5. Subrecipient acknowledges and agrees that it must require any sub-grantees, Subrecipients, sub-contractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Subrecipients, sub-contractors, successors, transferees, and assignees:

The sub-grantee, Subrecipient, sub-contractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.

7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.

8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.

9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub-contractor.

The United States of America has the right to seek judicial enforcement of the terms of these assurances and nothing in this Agreement alters or limits the federal enforcement measures that the United States may take in order to address violations of applicable federal law.

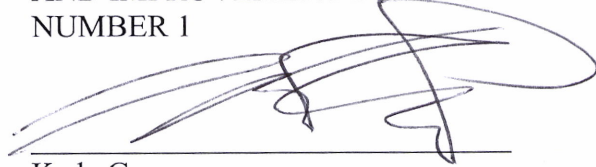
EXECUTED as of the Effective Date hereof.

LUBBOCK COUNTY



Curtis Parrish
County Judge

LUBBOCK COUNTY WATER CONTROL
AND IMPROVEMENT DISTRICT
NUMBER 1



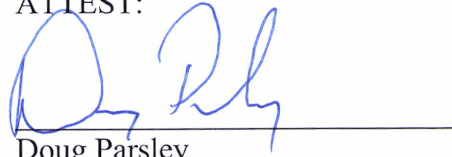
Kade Garner
Board President

ATTEST:



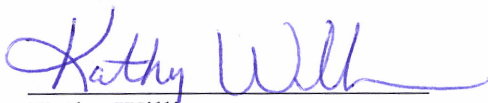
Kelly Pinion
County Clerk

ATTEST:



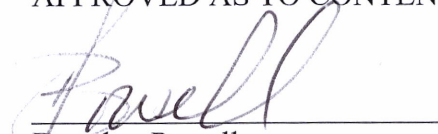
Doug Parsley
Board Secretary

APPROVED AS TO CONTENT:



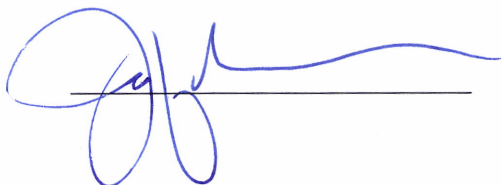
Kathy Williams
Lubbock County Auditor

APPROVED AS TO CONTENT:



Brandon Powell
General Manager

APPROVED AS TO FORM:



APPROVED AS TO FORM:



Jennifer Irlbeck
Lubbock County District
Attorney's Office, Civil Division

Jody Jenkins
Jenkins & Young, P.C.
Attorney