

## PROFESSIONAL SERVICES CONTRACT

In consideration of the mutual promises as set forth below, this Professional Services Contract ("Contract") is entered into this \_\_\_ day of \_\_\_\_\_, 2009 ("Effective Date"), by and between \_\_\_\_\_ ("CONSULTANT"), with a mailing address of \_\_\_\_\_, and the Brazos River Authority, ("AUTHORITY"), with a mailing address of P. O. Box 7555, 4600 Cobbs Drive, Waco, TX 76714.

### Section I. Performance of Work

**1.1** The CONSULTANT hereby agrees to provide, perform, and complete to the satisfaction of the AUTHORITY all of the "Work" specified in Exhibit "A", attached hereto and incorporated by reference herein. The term "Work" as used herein shall mean the detailed description of tasks to be performed by the CONSULTANT, as established in Exhibit "A". All Work shall be performed in accordance with the grant contract between the Texas Water Development Board ("TWDB") and the Authority for development of the 2016 Brazos G Regional Water Plan, attached hereto as Exhibit "B" and incorporated by reference herein.

**1.2** In performing the Work, the CONSULTANT shall provide all necessary labor, services, transportation, information, data, and other means and items necessary to perform the Work.

**1.3** The CONSULTANT hereby covenants and agrees, as an independent contractor, to perform the Work required in strict accordance with the terms and provisions of this contract and in a manner consistent with the level of care and skill ordinarily exercised for professional engineering service in the State of Texas.

**1.4** It is understood that the AUTHORITY has a vested interest in the quality of the Work to be performed under this contract, and thus may make suggested revisions or recommendations regarding the Work to be performed under this contract. The CONSULTANT may accept or reject any such suggestions or recommendations. Acceptance of any such suggestions or recommendations shall not relieve the CONSULTANT of any of CONSULTANT's responsibilities or obligations under this contract.

### Section II. Contract Price and Payment

**2.1** Payments for performance of the Work contemplated by this Contract shall be in the amount and in accordance with the provisions set forth in Exhibit "C", attached hereto and incorporated by reference herein.

**2.2** Nothing contained in this contract shall require AUTHORITY to pay for any work that is unsatisfactory as determined by AUTHORITY or which is not submitted in compliance with the terms of this contract.

**2.3** AUTHORITY will not be required to make any payments to the CONSULTANT, when the CONSULTANT is in default under this contract, nor shall this paragraph constitute a waiver of any right, at law or in equity, which AUTHORITY may have if the CONSULTANT is in default, including the right to bring legal action for damages or for specific performance of this contract. Waiver of any default under this contract shall not be deemed a waiver of any subsequent default. Nothing contained herein shall be construed as authorizing additional fees for services to complete actions not specifically listed for successful completion of the Work.

### **Section III. Term**

**3.1** The services of the CONSULTANT shall commence on the effective date of this agreement and shall continue on until the Work is completed.

**3.2** The CONSULTANT additionally agrees to abide by any and all schedules or timing representations set forth in Exhibits "A", "B", and/or "C".

### **Section IV. Revisions to Work**

**4.1** AUTHORITY reserves the right to direct substantial revision of the Work after acceptance by AUTHORITY as AUTHORITY may deem necessary; but in such event AUTHORITY shall pay the CONSULTANT equitable compensation for services rendered in making such revisions. In any event, when the CONSULTANT is directed to make substantial revisions that are in addition to or alter the scope of Work established in Exhibit "A", the CONSULTANT shall provide to AUTHORITY a written proposal for the entire cost involved in the revisions.

**4.2** Prior to the CONSULTANT undertaking any substantial revisions as directed by AUTHORITY, AUTHORITY must authorize in writing the nature and scope of the revisions, accept the method and amount of compensation, and the time required to perform all phases of the Work.

**4.3** If revisions of the Work are required by reason of the CONSULTANT'S error or omission, then such revisions shall be made by the CONSULTANT without additional compensation and in a time frame as directed by AUTHORITY.

**4.4** It is expressly understood and agreed by the CONSULTANT that any compensation not specified in Exhibit "C" shall require prior written approval by AUTHORITY.

### **Section V. The Consultant's Coordination with AUTHORITY**

**5.1** The CONSULTANT shall be available for conferences with AUTHORITY so that work can be completed with the full benefit of AUTHORITY experience and knowledge of existing needs and facilities and be consistent with current policies and standards of

the AUTHORITY. AUTHORITY shall make available to the CONSULTANT all existing plans, maps, field notes, and other data in its possession relative to the Work.

## **Section VI. Termination**

**6.1** This Contract may be terminated at any time by AUTHORITY for any cause without penalty or liability. Upon receipt of such notice by AUTHORITY, the CONSULTANT shall immediately discontinue all services and actions on behalf of AUTHORITY.

**6.2** As soon as practicable after receipt of notice of termination, the CONSULTANT shall submit a statement showing in detail the costs of services performed but not paid for under this Contract through the date of termination. The CONSULTANT will forward to AUTHORITY all portions of the Work performed through the date of termination. AUTHORITY shall then pay the CONSULTANT promptly the accrued and unpaid amounts due for services to the date of termination, to the extent the services are approved by AUTHORITY.

## **Section VII. Default**

**7.1** AUTHORITY may terminate this Contract without prejudice to any other remedy it may have, when the CONSULTANT defaults in performance of any provision herein, or fails to carry out the work in accordance with the provisions of this Contract.

**7.2** On such termination, AUTHORITY may take possession of all the intellectual property prepared or gathered to date in performance of the Work and finish the Work in whatever way AUTHORITY deems expedient. On such default by the CONSULTANT, AUTHORITY may elect not to terminate the Contract, and in such event, AUTHORITY may make good the deficiency in which the default consists, and deduct the costs from the Contract sum to become due to the CONSULTANT.

## **Section VIII. Ownership of Documents**

**8.1** The Brazos G Regional Water Planning Group ("Brazos G"), AUTHORITY, and TWDB shall have unlimited rights to technical or other data resulting directly from the performance of services under this Contract. It is agreed that all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this Contract and developed by CONSULTANT or its contracted parties pursuant to this Contract shall become the joint property of Brazos G, AUTHORITY, CONSULTANT, and the TWDB. These materials shall not be copyrighted or patented by CONSULTANT or by any consultants involved in this Contract unless the Executive Administrator of the TWDB approves in writing the right to establish copyright or patent; provided, however, that copyrighting or patenting by CONSULTANT or its subconsultants will in no way limit the TWDB's, Brazos G's, or AUTHORITY's access to or right to request and receive or distribute data and information obtained or developed pursuant to this Contract.

**8.2** Any material subject to a TWDB copyright and produced by CONSULTANT or TWDB pursuant to this Contract may be printed by CONSULTANT or the TWDB at their own cost and distributed by either at their discretion. CONSULTANT may otherwise utilize such material provided under this Contract as it deems necessary and appropriate, including the right to publish and distribute the materials or any parts thereof under its own name, provided that any TWDB copyright is appropriately noted on the printed materials.

**8.3** CONSULTANT agrees that neither Brazos G nor TWDB are parties to this contract and agrees that these entities have no liability under the terms of this contract. TWDB is solely a third-party beneficiary under this contract.

**8.4** CONSULTANT and its contracted parties agree to acknowledge the TWDB in any news releases or other publications relating to the work performed under this Contract.

### **Section IX. Insurance**

**9.1** The CONSULTANT shall, at CONSULTANT'S sole expense, maintain insurance coverage as set forth below:

**General Liability Insurance:**

Bodily Injury	\$ 500,000 per person
Bodily Injury	\$ 1,000,000 per occurrence
Property Damage	\$ 500,000 per occurrence
Aggregate	\$ 2,000,000

**Professional Liability Insurance:** \$ 1,000,000 per claim/aggregate

**Workers Compensation:** Statutory

**Employer's Liability:** \$ 1,000,000 policy limit

**9.2** The CONSULTANT shall not commence work under the Contract until the CONSULTANT has obtained all the insurance required under this Contract and such insurance has been approved by AUTHORITY, nor shall the CONSULTANT allow any subconsultant to commence work on the CONSULTANT'S subcontract until all similar insurance of the subconsultant has been obtained and approved by AUTHORITY. All required policies shall name AUTHORITY as an additional insured, except Worker's Compensation and Employer's Liability Insurance and Professional Liability Insurance (as applicable). As proof of the insurance coverage, the CONSULTANT shall furnish to AUTHORITY valid certificates of insurance of the types and limits required herein, prior to commencing work on the project. In addition, the required insurance coverage shall contain a provision that coverage afforded under the policies will not be materially

changed or canceled without provision of thirty (30) days written notice to AUTHORITY. The insurance requirements shall remain in effect throughout the term of the Contract.

**9.3** Concerning insurance to be furnished by the CONSULTANT, it is a condition precedent to acceptability thereof that:

- i. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the requirements to be fulfilled by the CONSULTANT; and
- ii. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas.

**9.4** The CONSULTANT agrees to the following:

- i. The CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall not have the right to recovery or subrogation against AUTHORITY, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies;
- ii. Companies issuing the insurance policies and the CONSULTANT shall have no recourse against AUTHORITY for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of the CONSULTANT.
- iii. Approval, disapproval or failure to act by AUTHORITY regarding any insurance supplied by the CONSULTANT (or any subconsultants) shall not relieve CONSULTANT of full responsibility or liability, if any, for damages and accidents as set forth in the Contract. Neither shall the insolvency or denial of liability by the insurance company exonerate the CONSULTANT from liability.
- iv. No special payments shall be made for any insurance that the CONSULTANT and subconsultants, if any, are required to carry; all are included in the Contract price and the Contract unit prices; and
- v. Any of the insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

### **Section X. No Third Party Beneficiary**

**10.1** No claim as a third-party beneficiary under this Contract, except as otherwise provided herein, by any person, firm, or corporation shall be made or be valid against the AUTHORITY, and the AUTHORITY shall not be liable for or be held to pay any money to any such person.

## **Section XI. Successors and Assigns**

**11.1** The CONSULTANT shall not assign this Contract in whole or part, assign any of its rights or obligations under this Contract or assign any payment due or to become due under this Contract, without the prior, express written consent of the AUTHORITY.

**11.2** Any attempted or purported assignment by the CONSULTANT without the AUTHORITY's approval shall be void and of no force and effect and shall constitute a default under this Contract.

## **Section XII. Liability**

**12.1** Acceptance of the Work by AUTHORITY shall not constitute nor be deemed a release of the responsibility and liability of the CONSULTANT, its employees, agents, assigns or subconsultants for the accuracy and competency of the Work contemplated by this agreement.

**12.2** The CONSULTANT shall be solely and completely responsible for performing the Work with diligence and in a manner consistent with the level of care and skill ordinarily exercised for such professional service in the State of Texas.

## **Section XIII. Indemnification**

**13.1** THE CONSULTANT SHALL COMPLY WITH THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES AND REGULATIONS AND SHALL EXONERATE, INDEMNIFY AND HOLD THE AUTHORITY HARMLESS FROM ANY AND ALL LIABILITY OR DAMAGES RESULTING FROM FAILURE TO DO SO.

**13.2** IN ADDITION, THE CONSULTANT AGREES TO KEEP, SAVE AND HOLD AUTHORITY HARMLESS FROM ANY AND ALL ACTIONS, LIABILITIES, DAMAGES, JUDGMENTS, COSTS AND EXPENSES INCLUDING REASONABLE ATTORNEY'S FEES, IN CASE AN ACTION IS FILED OR DOES IN ANY WAY ACCRUE AGAINST AUTHORITY, ITS OFFICIALS, OFFICERS, AND EMPLOYEES IN CONSEQUENCE OF THIS CONTRACT FOR ANY NEGLIGENT ACT OR OMISSION OF THE CONSULTANT IN THE PERFORMANCE OF THE WORK UNDER THIS CONTRACT, OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF THE CONSULTANT OR THE CONSULTANT'S AGENTS, SUB-CONSULTANT, ASSIGNS OR EMPLOYEES. IN THE EVENT A JUDGMENT IS RECOVERED AGAINST AUTHORITY FOR ANY SUCH LIABILITY, COSTS OR EXPENSES, SUCH JUDGMENT SHALL BE CONCLUSIVE AGAINST THE CONSULTANT.

**13.3** IT IS SPECIFICALLY UNDERSTOOD AND AGREED BY THE CONSULTANT THAT SUCH INDEMNITY IS INDEMNITY BY THE CONSULTANT TO INDEMNIFY AND PROTECT AUTHORITY FROM LIABILITY, CLAIMS, SUITS, LOSSES, DAMAGES OR CAUSES OF ACTION CAUSED BY OR RESULTING FROM AN ACT

OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE CONSULTANT, THE CONSULTANT'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL. AUTHORITY AGREES TO GIVE CONSULTANT PROMPT NOTICE OF ANY CLAIM, CONTROL OF THE DEFENSE OR SETTLEMENT OF THAT CLAIM AND REASONABLE ASSISTANCE AND INFORMATION RELATED TO THE CLAIM.

#### **Section XIV. Confidentiality**

**14.1** During the performance of this Agreement, the CONSULTANT has or will have access to confidential or proprietary information belonging to AUTHORITY. The CONSULTANT herein agrees to maintain the confidentiality of the information received from AUTHORITY and information derived from performance of the Work.

**14.2** This obligation shall not apply to information already in the public domain or to disclosures required by law, including the Texas Public Information Act.

#### **Section XV. Severability**

**15.1** If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, or conditions of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, or conditions of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

#### **Section XVI. Independent Contractor**

**16.1** The CONSULTANT covenants and agrees that CONSULTANT is an independent contractor and not an officer, agent, servant or employee of AUTHORITY. The CONSULTANT hereby acknowledges that it shall have exclusive control of and exclusive right to control the details of the work, performed hereunder, and all persons performing same, and shall be liable for the acts and omissions of its officers, agents, employees, and subconsultants.

**16.2** In addition, the CONSULTANT agrees that the doctrine of respondent superior shall not apply as between AUTHORITY and the CONSULTANT and nothing herein shall be construed as creating a partnership or joint enterprise between AUTHORITY and the CONSULTANT.

#### **Section XVII. Disclosure**

**17.1** By signature of this Contract, the CONSULTANT acknowledges to AUTHORITY that CONSULTANT has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interests, direct or indirect.

**17.2** The CONSULTANT further agrees that CONSULTANT will make disclosure in writing of any conflicts of interest, which develop subsequent to the signing of this Contract and prior to final payment under the Contract.

### **Section XVIII. Compliance with Laws and Licenses**

**18.1** The CONSULTANT shall at all times observe and comply with all the provisions of the laws of the State of Texas and Federal laws, rules and regulations which in any manner limit, control, or apply to the actions or operations of the CONSULTANT, his subconsultants, or his or their employees, agents or servants, engaged in performance of the work.

**18.2** CONSULTANT shall additionally comply with TWDB rules and adhere to all requirements in state law pertaining to the procurement of professional services, including 31 TAC §355.93(e).

**18.3** CONSULTANT shall be solely and entirely responsible for procuring all appropriate licenses and permits, which may be required by any competent authority for CONSULTANT to perform the Work.

### **Section XIX. Venue and Choice of Law**

**19.1** The parties to this Contract agree and covenant that this Contract will be enforceable in McLennan County, Texas and that if legal action is necessary to enforce this Contract, exclusive venue will lie in McLennan, County, Texas

**19.2** This Contract shall be construed under Texas law (without regard for choice of law considerations).

### **Section XX. Entire Agreement**

**20.1** This Contract sets forth the entire agreement between the AUTHORITY and the CONSULTANT with respect to the accomplishment of the Work and the payment of the Contract price therefore, and there are no other understandings or agreements, oral or written, between the AUTHORITY and the CONSULTANT with respect to the Work and the compensation therefore, nor was the making and execution of this Contract induced by any representation, statement, warranty, agreement, or action other than those expressed or explicitly referenced herein.

### **Section XXI. Amendments**

**21.1** No modification, addition, deletion, revision, alteration or other change to this Contract shall be effective unless and until such change is reduced to writing and executed by the AUTHORITY and the CONSULTANT.

## **Section XXII. Headings**

**22.1** The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

## **Section XXIII. Remedies**

**23.1** No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition of this Contract.

## **Section XXIV. Review of Contract**

**24.1** The CONSULTANT has carefully examined, reviewed, and accepted this Contract and there are no discrepancies, errors, omissions, ambiguities or conflicts in this Contract that are material to the CONSULTANT'S provision, performance or completion of the Work, the Contract price or Contract schedule that have not been clarified in writing by the AUTHORITY to the satisfaction of the CONSULTANT.

**24.2** In the event that the provisions of this Contract conflict with the provisions of the TWDB grant contract with AUTHORITY, then the terms of the TWDB contract shall prevail and have precedence.

## **Section XXV. State Auditor Clause**

**25.1** By executing this Contract, CONSULTANT accepts the authority of the Texas State Auditor's Office, under direction of the legislative audit committee, to conduct audits and investigations in connection with any and all state funds received pursuant to this Contract. CONSULTANT shall comply with and cooperate in any such investigation or audit. CONSULTANT agrees to provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. CONSULTANT also agrees to include a provision in any subcontract related to this Contract that requires CONSULTANT to submit to audits and investigation by the State Auditor's Office in connection with any and all state funds received pursuant to the subcontract.

## **Section XXVI. Financial Records**

**26.1** CONSULTANT and its contracted parties shall maintain satisfactory financial accounting documents and records, including copies of invoices, receipts, time and attendance records, supporting salaries and wages, in accordance with generally accepted accounting principles for a term of three (3) years after completion of this Contract, and shall make them available for examination and audit by the Executive

Administrator of the TWDB at any time upon twenty-four (24) hours notice. Accounting by the CONSULTANT and its contracted parties shall be in a manner consistent with generally accepted accounting principles.

**Section XXVII. No Debt Against the State**

**27.1** This Contract shall not be construed as creating any debt by or on behalf of the State of Texas and the TWDB, and all obligations of the State of Texas are subject to the availability of funds. To the extent the performance of this Contract transcends the biennium in which this Contract is entered into, this Contract is specifically contingent upon the continued authority of the TWDB and appropriations therefore.

**Section XXVIII. Notices**

**28.1** All notices, communications, invoices, bills and reports required under the Contract shall be personally delivered or mailed to the respective parties by certified mail, return receipt requested at the addresses shown below, unless and until either party is otherwise notified in writing by the other party of a change in address. Mailed notices shall be deemed communicated as of five (5) days after mailing regular mail.

If intended for AUTHORITY, to:

If intended for the CONSULTANT, to:

P.O. Box 7555  
4600 Cobbs Drive  
Waco, Texas 76714

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed, intending to be bound thereby on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BRAZOS RIVER AUTHORITY**

By: \_\_\_\_\_

**PHILLIP FORD**

Title: **GENERAL MANAGER/CEO**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ACKNOWLEDGEMENTS**

THE STATE OF TEXAS       §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, a Notary Public in and for the state of Texas, on this day personally appeared \_\_\_\_\_ known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledge to me that the executed same for and as the act and deed of \_\_\_\_\_ and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

THE STATE OF TEXAS       §  
COUNTY OF McLENNAN     §

BEFORE ME, the undersigned authority, a Notary Public in and for the state of Texas, on this day personally appeared **Phillip Ford**, General Manager, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledge to me that the executed same for and as the act and deed of **BRAZOS RIVER AUTHORITY** and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

## **Exhibit A**

1. CONSULTANT will fulfill the requirements specified for “CONTRACTOR” in Section II., Article II. A. of the Texas Water Development Board grant contract with AUTHORITY, which is attached as Exhibit B.
2. CONSULTANT will fulfill the requirements specified for “CONTRACTOR” in Section II., Article II. D. of the Texas Water Development Board grant contract with AUTHORITY, which is attached as Exhibit B.
3. CONSULTANT will fulfill the requirements specified for “CONTRACTOR” in Section II., Article II. E. of the Texas Water Development Board grant contract with AUTHORITY, which is attached as Exhibit B.
4. CONSULTANT will provide a written progress report with each invoice submitted to AUTHORITY. The progress reports shall be prepared as described in Section II., Article III. C. of the Texas Water Development Board grant contract with AUTHORITY, which is attached as Exhibit B.
5. CONSULTANT will fulfill the requirements specified for “CONTRACTOR” in Section II., Article III. D. of the Texas Water Development Board grant contract with AUTHORITY, which is attached as Exhibit B.
6. CONSULTANT will fulfill the requirements specified for “CONTRACTOR” in Section II., Article III. E. of the Texas Water Development Board grant contract with AUTHORITY, which is attached as Exhibit B.
7. CONSULTANT will submit to the Regional Water Planning Group the “INITIALLY PREPARED REGIONAL WATER PLAN” on or before January 15, 2010 in order to provide the Regional Water Planning Group sufficient time to review and for CONSULTANT to address review comments prior to the “INITIALLY PREPARED REGIONAL WATER PLAN DEADLINE” of March 1, 2010.
8. CONSULTANT will submit the “REGIONAL WATER PLAN” to the AUTHORITY on or before July 15, 2010 in order to provide the AUTHORITY sufficient time to review and for CONSULTANT to address review comments prior to the “REGIONAL WATER PLAN DEADLINE” of September 1, 2010. The AUTHORITY will provide review comments on or before August 10, 2010. This schedule assumes that the TWDB will provide review comments concerning the “INITIALLY PREPARED REGIONAL WATER PLAN” on or before June 15, 2010. If the TWDB provides review comments after June 15, 2010, then this schedule will be adjusted per mutual agreement between the AUTHORITY and CONSULTANT.
9. CONSULTANT will attend meetings of the Regional Water Planning Group and meetings of subcommittees of the Regional Water Planning Group that pertain to

technical, legal or financial aspects of water planning as necessary to complete the Work.

10. CONSULTANT will attend coordination meetings, workshops, and conference calls with other entities in the planning area and in adjacent regions, as necessary to complete the Work..
11. CONSULTANT will all attend meetings, workshops, and conference calls scheduled by the Texas Water Development Board pertaining to technical, legal or financial aspects of regional water planning for which CONSULTANT participation is required.
12. CONSULTANT will produce electronic and hard copies of the "INITIALLY PREPARED REGIONAL WATER PLAN" and the "REGIONAL WATER PLAN" as specified in Section II, Article III, D. and Section II, Article III, E. of the Texas Water Development Board grant contract with AUTHORITY, which is attached as Exhibit B.
13. In addition to those copies required by the Texas Water Development Board grant contract with AUTHORITY, CONSULTANT will produce up to 15 (fifteen) additional hard copies of each "INITIALLY PREPARED REGIONAL WATER PLAN" for use by AUTHORITY and members of the Regional Water Planning Group for their review. CONSULTANT will also make available electronic copies of each "INITIALLY PREPARED REGIONAL WATER PLAN" in Portable Document Format (PDF) for posting on the Brazos G website.
14. CONSULTANT will compile electronic copies of each "REGIONAL WATER PLAN" in Portable Document Format (PDF) onto a single compact disk, and prepare 100 copies of the compact disk for distribution by AUTHORITY to interested parties. CONSULTANT will also make available an electronic copy of the "REGIONAL WATER PLAN" for posting on the Brazos G website.
15. CONSULTANT will provide ongoing website hosting and technical support services for the Brazos G website through a third-party vendor. This vendor is a provider of commodity online hosting and technical support services, which are not considered professional services. AUTHORITY will reimburse these third-party vendor costs to CONSULTANT as reimbursable direct expenses. CONSULTANT will participate in coordination activities related to the Brazos G website between the vendor and the AUTHORITY. AUTHORITY will be responsible for posting content (meeting notices, news releases, etc.) to the website using the system maintained by the vendor. CONSULTANT will assist AUTHORITY as needed to ensure posting of material on a timely basis.
16. CONSULTANT shall notify AUTHORITY's Administrative Agent as soon as reasonably practicable, but in no event less than ten (10) days before giving any

presentation on behalf of Brazos G or related to the Work performed under this Contract.

17. CONSULTANT understands that the last day that work performed under this Contract shall be eligible for reimbursement shall be January 1, 2011.

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## Exhibit C

1. As stated in Section I., Article II. of the Texas Water Development Board grant contract with AUTHORITY, which is attached as Exhibit B, the Texas Water Development Board was not appropriated sufficient funds to provide for the "TOTAL STUDY COSTS", as defined by that agreement. Therefore, CONSULTANT shall not incur costs in excess of \$732,316.00 ("COMMITTED FUNDS"), which is the amount currently available to the Authority for this project. The AUTHORITY shall not be liable for any costs incurred in violation of the Contract, and CONSULTANT will not be compensated for any Work performed in violation of the Contract. If additional funds are appropriated and committed to the AUTHORITY by the Texas Water Development Board, this Contract will be amended to provide the additional funding. If additional funds are not appropriated and committed to the AUTHORITY by the Texas Water Development Board, the AUTHORITY shall either terminate this Contract pursuant to Section VI., above, or amend the scope of work to reflect amendments negotiated with the Texas Water Development Board as contemplated by Section I. Article II. of the Texas Water Development Board grant contract with AUTHORITY, which is attached as Exhibit B. In no event, shall the AUTHORITY be liable for costs in excess of the COMMITTED FUNDS.
  
2. The following Task and Expense budgets are established for Work to be performed by CONSULTANT:

### TASK BUDGET

Task	Description	Total Amount
Task 1	Planning area description	\$ 16,000
Task 2	Review and revision of population and water demand projections	\$ 58,370
Task 3a	Water supply analysis (Groundwater)	\$ 73,460
Task 3b	Water supply analysis (Surface Water)	\$ 87,940
Task 3c	Develop Final Estimates of Water Supply	\$ 55,255
Task 4a	Identify water management strategies, update water needs and compile information on planned water management strategies	\$ 149,090
Task 4b	Update water management strategies	\$ 227,150
Task 4c	Evaluate additional water management strategies	\$ 55,250
Task 4d	Additional WMS analysis and plan updates	\$ 95,020
Task 5	Impacts of selected water management strategies on key parameters of water quality and impacts of moving water from rural and agricultural areas	\$ 15,640
Task 6	Water conservation and drought management recommendations	\$ 10,000

Task 7	Description of how the regional water plan is consistent with long-term protection of the State's water resources, agricultural resources, and natural resources	\$ 10,000
Task 8	Unique stream segments/reservoir sites/legislative recommendations	\$ 15,000
Task 9	Report to Legislature on Water Infrastructure Funding Recommendations	\$ 25,800
Task 10a	Develop Initially Prepared Plan	\$ 99,680
Task 10b	Adoption of plan	\$ 27,900
Task 10c	Scope of Work Development	\$ 10,000
Task 10d	Administration Expenses	\$ 0
<b>TOTAL STUDY COSTS</b>		<b>\$ 1,031,555</b>

Notes: \* may not exceed \$10,000

### EXPENSE BUDGET

Category	Total Amount
Salaries & Wages <sup>1</sup>	\$ 326,108
Fringe <sup>2</sup>	\$ 146,683
Travel	\$ 6,600
Other Expenses <sup>3</sup>	\$ 25,000
Subcontract Services	\$
Overhead <sup>5</sup>	\$ 424,008
Profit	\$ 103,156
<b>TOTAL STUDY COSTS<sup>5</sup></b>	

<sup>1</sup> Salaries and Wages is defined as the cost of salaries of engineers, draftsmen, stenographers, surveyors, clerks, laborers, etc., for time directly chargeable to this contract.

<sup>2</sup> Fringe is defined as the cost of social security contributions, unemployment, excise, and payroll taxes, employment compensation insurance, retirement benefits, medical and insurance benefits, sick leave, vacation, and holiday pay applicable thereto.

<sup>3</sup> Other Expenses is defined to include expendable supplies, communications, reproduction, postage, and costs of public meetings.

<sup>4</sup> Voting Planning Member Travel Expenses is defined as eligible travel expenses incurred by regional water planning members that cannot be reimbursed by any other entity, political subdivision, etc.

<sup>5</sup> Overhead is defined as the costs incurred in maintaining a place of business and performing professional services similar to those specified in this contract. These costs shall include the following:

- Indirect salaries, including that portion of the salary of principals and executives that is allocable to general supervision;
- Indirect salary fringe benefits;
- Accounting and legal services related to normal management and business operations;
- Travel costs incurred in the normal course of overall administration of the business;
- Equipment rental;
- Depreciation of furniture, fixtures, equipment, and vehicles;
- Dues, subscriptions, and fees associated with trade, business, technical, and professional organizations;
- Other insurance;
- Rent and utilities; and
- Repairs and maintenance of furniture, fixtures, and equipment.

Ineligible expenses include, but are not limited to: (1) Food and lodging for Regional Water Planning Group members; (2) Tips; (3) Purchase of equipment (e.g. computers); and (3) Costs associated with social events and tours.

3. At the discretion of the Executive Administrator of the Texas Water Development Board and upon prior written approval by AUTHORITY, CONSULTANT has budget flexibility within the Task and Expense Budget categories above to the extent that the resulting change in amount in any one Task or Expense category does not exceed thirty five percent (35%) of the total amount authorized by this Contract for the task or category to be changed. Larger deviations shall require a formal contract amendment.
4. CONSULTANT is responsible for determining and abiding by the Texas Water Development Board's definitions and rules pertaining to Authorized Reimbursable Expenses and agrees to charge AUTHORITY in accordance with those definitions and rules.
5. CONSULTANT shall fulfill the requirements for "subcontractor" in Section II., Article IV.G., of the Texas Water Development Board grant contract with AUTHORITY, which is attached as Exhibit B.
6. CONSULTANT shall submit monthly invoices to AUTHORITY in accordance with the Task and Expense budgets in 2) above. AUTHORITY's monthly payments, in response to CONSULTANT's monthly invoices, shall depend on satisfactory completion of Work billed. AUTHORITY shall pay ninety five percent (95%) of each invoice until CONSULTANT delivers, on or before the Regional Water Plan Deadline, a Regional Water Plan that meets statutory and rule requirements as determined by the Executive Administrator of the Texas Water Development Board, at which time the retained five percent (5%) will be paid.

CONSULTANT may obtain a performance bond or letter of credit naming the Texas Water Development Board and the AUTHORITY as beneficiaries, in lieu of

the five percent retainage, if both the Brazos G Regional Water Planning Group and the Executive Administrator of the Texas Water Development Board determine that such action would accomplish the same purpose as holding retainage. In such instance, CONSULTANT's invoices shall be paid at one hundred percent (100%).

The five percent retainage is to encourage satisfactory completion of the Work. CONSULTANT acknowledges that if a performance bond or letter of credit is obtained in lieu of the five percent retainage, such performance bond or letter of credit may be drawn upon if the Work is not satisfactorily completed according to the terms of this Contract.

All payment of invoices is subject to AUTHORITY's right to timely review invoices and timely request additional information on the charges.

7. CONSULTANT shall submit a progress report with each invoice. CONSULTANT shall also provide with each invoice the documentation described in Section II., Article IV. K. of the Texas Water Development Board grant contract with AUTHORITY, which is attached to the Contract as Exhibit B.