

PROFESSIONAL SERVICES CONTRACT

In consideration of the mutual promises as set forth below, this Professional Services Contract ("Contract") is entered into this ___ day of _____, 200__ ("Effective Date"), by and between _____ ("ENGINEER"), with a mailing address of _____, and the Brazos River Authority, ("BRA"), with a mailing address of P. O. Box 7555, 4600 Cobbs Drive, Waco, TX 76714.

Section I. Performance of Work

1.1 The ENGINEER hereby agrees to provide, perform, and complete to the satisfaction of the BRA 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 ENGINEER, as established in "Exhibit A".

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

1.3 The ENGINEER 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 BRA 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 ENGINEER may accept or reject any such suggestions or recommendations. Acceptance of any such suggestions or recommendations shall not relieve the ENGINEER of any of ENGINEER'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 B", attached hereto and incorporated by reference herein.

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

2.3 BRA will not be required to make any payments to the ENGINEER, when the ENGINEER is in default under this contract, nor shall this paragraph constitute a waiver of any right, at law or in equity, which BRA may have if the ENGINEER 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 ENGINEER shall commence on the effective date of this agreement and shall continue on until the Work is completed.

3.2 The ENGINEER additionally agrees to abide by any and all schedules or timing representations set forth in "Exhibit A".

Section IV. Revisions to Work

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

4.2 Prior to the ENGINEER undertaking any substantial revisions as directed by BRA, BRA 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 ENGINEER'S error or omission, then such revisions shall be made by the ENGINEER without additional compensation and in a time frame as directed by BRA.

4.4 It is expressly understood and agreed by the ENGINEER that any compensation not specified in "Exhibit B" shall require prior written approval by BRA.

Section V. The Engineer's Coordination with BRA

5.1 The ENGINEER shall be available for conferences with BRA so that work can be completed with the full benefit of BRA experience and knowledge of existing needs and facilities and be consistent with current policies and standards of the BRA. BRA shall make available to the ENGINEER 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 BRA for any cause without penalty or liability. Upon receipt of such notice by BRA, the ENGINEER shall immediately discontinue all services and actions on behalf of BRA.

6.2 As soon as practicable after receipt of notice of termination, the ENGINEER 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 ENGINEER will forward to BRA all portions of the Work performed through the date of termination. BRA shall then pay the ENGINEER promptly the accrued and unpaid amounts due for services to the date of termination, to the extent the services are approved by BRA.

Section VII. Default

7.1 BRA may terminate this Contract without prejudice to any other remedy it may have, when the ENGINEER 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, BRA 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 BRA deems expedient. On such default by the ENGINEER, BRA may elect not to terminate the Contract, and in such event, BRA may make good the deficiency in which the default consists, and deduct the costs from the Contract sum to become due to the ENGINEER.

Section VIII. Ownership of Documents

8.1 All notes, letters, correspondence, drawings, specifications, and other documents or instruments of professional services prepared or assembled by the ENGINEER under this Contract shall become the sole property of BRA and shall be delivered to BRA.

Section IX. Insurance

9.1 The ENGINEER shall, at ENGINEER'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 ENGINEER shall not commence work under the Contract until the ENGINEER has obtained all the insurance required under this Contract and such insurance has been approved by BRA, nor shall the ENGINEER allow any sub-ENGINEER to commence work on the ENGINEER'S subcontract until all similar insurance of the sub-ENGINEER has been obtained and approved by BRA. All required policies shall name BRA 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 ENGINEER shall furnish to BRA 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 BRA. The insurance requirements shall remain in effect throughout the term of the Contract.

9.3 Concerning insurance to be furnished by the ENGINEER, 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 ENGINEER; 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 ENGINEER agrees to the following:

- i. The ENGINEER 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 BRA, 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 ENGINEER shall have no recourse against BRA for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of the ENGINEER.
- iii. Approval, disapproval or failure to act by BRA regarding any insurance supplied by the ENGINEER (or any sub-contractors) shall not relieve ENGINEER 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 ENGINEER from liability.

iv. No special payments shall be made for any insurance that the ENGINEER and sub-contractors, 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 by any person, firm, or corporation shall be made or be valid against the BRA, and the BRA shall not be liable for or be held to pay any money to any such person.

Section XI. Successors and Assigns

11.1 The ENGINEER 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 BRA.

11.2 Any attempted or purported assignment by the ENGINEER without the BRA'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 BRA shall not constitute nor be deemed a release of the responsibility and liability of the ENGINEER, its employees, agents, assigns or sub-contractors for the accuracy and competency of the Work contemplated by this agreement.

12.2 The ENGINEER 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 ENGINEER SHALL COMPLY WITH THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES AND REGULATIONS AND SHALL EXONERATE, INDEMNIFY AND HOLD THE BRA HARMLESS FROM ANY AND ALL LIABILITY OR DAMAGES RESULTING FROM FAILURE TO DO SO.

13.2 IN ADDITION, THE ENGINEER AGREES TO KEEP, SAVE AND HOLD BRA 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 BRA, ITS OFFICIALS, OFFICERS, AND EMPLOYEES IN CONSEQUENCE OF THIS CONTRACT FOR ANY NEGLIGENT ACT OR OMISSION OF THE ENGINEER IN THE PERFORMANCE OF THE WORK UNDER THIS CONTRACT, OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF THE ENGINEER OR THE ENGINEER'S AGENTS, SUB-ENGINEER, ASSIGNS OR EMPLOYEES. IN THE EVENT A JUDGMENT IS RECOVERED AGAINST BRA FOR ANY SUCH LIABILITY, COSTS OR EXPENSES, SUCH JUDGMENT SHALL BE CONCLUSIVE AGAINST THE ENGINEER.

13.3 IT IS SPECIFICALLY UNDERSTOOD AND AGREED BY THE ENGINEER THAT SUCH INDEMNITY IS INDEMNITY BY THE ENGINEER TO INDEMNIFY AND PROTECT BRA 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 ENGINEER, THE ENGINEER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL. BRA AGREES TO GIVE ENGINEER 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 ENGINEER has or will have access to confidential or proprietary information belonging to BRA. The ENGINEER herein agrees to maintain the confidentiality of the information received from BRA 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 ENGINEER covenants and agrees that ENGINEER is an independent Contractor and not an officer, agent, servant or employee of BRA. The ENGINEER

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 sub-contractors.

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

Section XVII. Disclosure

17.1 By signature of this Contract, the ENGINEER acknowledges to BRA that ENGINEER 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 ENGINEER further agrees that ENGINEER 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 ENGINEER 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 ENGINEER, his subconsultants, or his or their employees, agents or servants, engaged in performance of 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 BRA and the ENGINEER 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 BRA and the ENGINEER 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 BRA and the ENGINEER.

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 ENGINEER 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 ENGINEER'S provision, performance or completion of the Work, the Contract price or Contract schedule that have not been clarified in writing by the BRA to the satisfaction of the ENGINEER.

Section XXV. Notices

25.1 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 BRA, to:

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

If intended for the ENGINEER, to:

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed, intending to be bound thereby on this the ____ day of _____, 200__.

BRAZOS RIVER AUTHORITY

NAME

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 _____, 200__.

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 _____, 200__.

Notary Public, State of Texas