



# Brazos River Authority

## Request for Proposals for Professional Services

April 4, 2024

RFP No. 24-1343

Dear Prospective Respondent:

Statements of Qualifications hereafter referred to Request for Proposals (RFP or Proposal(s)) will be received by the Purchasing Agent or other designee of the Brazos River Authority no later than **10:00 AM, April 19, 2024**, for **Development of the 2028 Region 8 – Lower Brazos Regional Flood Plan**. All qualified firms including Small, Minority, Women Owned Businesses and Historically Underutilized Businesses are encouraged to submit proposals in response to this request.

Proposals must be submitted and received no later than the due date and time specified. Any Proposal received later than the specified time, shall not be considered. The BRA is **NOT** responsible for ensuring the delivery of Proposals.

**Refer to Section 15. Delivery of Proposal Submittals for instructions on submitting a response to this solicitation.**

**Proposal must be clearly identified as follows on the outside of the sealed physical submission or the electronic submission subject line. The BRA shall not be responsible for submissions that are not properly identified. Proper identification of Respondent’s proposal is the sole responsibility of the Respondent and failure to do so may result in the submission not being included in the proposal opening:**

<b>RFP TITLE:</b>	<b><u>Development of the 2028 Region 8 - Lower Brazos Regional Flood Plan</u></b>
<b>RFP NO:</b>	<b><u>24-1343</u></b>
<b>RFP DUE DATE:</b>	<b><u>10:00 AM, April 19, 2024</u></b>

The BRA shall have the right to accept or reject any or all Proposals, or any part thereof, and to waive any technicalities in the interest of the BRA.

**BRA will evaluate all relevant, health, safety and business factors on all solicitations to determine when to initiate a notice to proceed on all projects, delivery of goods and/or services or procurement of construction related services to best attempt to balance BRA needs and to protect the health and safety of BRA employees, the employees of respondents and the public at large.**

Sincerely,

*Bryan Gray*

Bryan Gray  
Purchasing Manager

4600 Cobbs Drive • Waco, Texas 76710  
254-761-3123

## SUPPLIER DIVERSITY PURCHASING POLICY

The Brazos River Authority (BRA) will ensure that purchases of equipment, materials, supplies, and/or services conform with Texas Procurement law as applicable to the BRA, are cost effective, and contribute to the competitiveness of the BRA and its customers.

Procurement activities will be conducted in an open and fair manner with equal opportunity provided to all qualified parties. The BRA will provide equal contracting opportunities as provided by all applicable State and Federal laws to small business enterprises, Historically Underutilized Businesses and Disadvantaged Business enterprises.

## GENERAL INSTRUCTIONS TO RESPONDENTS

The Work consists of the furnishing of all labor, materials, services, equipment, and appliances required for the delivery and the supplying of products and/or services as described herein and in the contract documents.

**1. PROPOSAL SUBMISSION:** Proposals must be received no later than the Proposal opening date and time specified above. All Proposals received after closing time will not be considered.

- A. To be considered as eligible, a Respondent shall have complied with all legal requirements to permit them to operate in the State of Texas.
- B. Proposals must be emailed, mailed or hand delivered to be considered.

**2. WITHDRAWAL OF PROPOSALS:** No Proposal may be withdrawn for a period of ninety (90) days after Proposal opening, except by: 1) mutual consent of the BRA and Respondent; or 2) a previously submitted Proposals may be withdrawn upon written request received from Respondent prior to time established for receipt of Proposals.

**3. SIGNATURE ON PROPOSALS:** To be valid, Proposals must be signed by an authorized person. By such signature, Respondent agrees to strictly abide by the terms, conditions, and Scope of Services embodied in this Request for Proposal.

**4. EXAMINATION OF PROPOSAL DOCUMENTS:** Before submitting a Proposal, all Respondents shall examine the complete Proposal documents, including Proposal Notice, Instruction to Respondent, and Scope of Services, all of which are part of the Proposal documents.

**5. ADDENDA:** *Unless otherwise stated in the Proposal*, answers to all questions, inquiries, and request for additional information will be issued in the form of Addenda. During the Proposal period, prospective Respondent may be advised by Addenda of additions, deletions from, or changes in the requirements of the Proposal documents. The BRA will not be responsible for the authenticity or correctness of oral interpretations of the Proposal documents or for information obtained in any other manner than through the media of Addenda. Receipt of each Addendum shall be acknowledged by the Respondent.

Any questions concerning this Proposal should be emailed to Bryan Gray, Purchasing Manager no later than five (5) days prior to the opening of the Proposal at [submissions@brazos.org](mailto:submissions@brazos.org). This is to allow the BRA sufficient time to respond to inquiries and provide information to all interested Respondents by Addendum. *Unless otherwise stated in the Proposal*, Addenda will be posted on the BRA web site at [www.brazos.org](http://www.brazos.org), Doing Business, Purchasing and Professional Services, Request for Proposals.

Respondent is responsible for checking the BRA web site ([www.brazos.org](http://www.brazos.org)) for updates and Addenda until the time at which the submission is due. Failure to respond to all requirements, including those Addenda, shall be grounds for rejection of your Proposal.

**6. TAXATION:** The BRA is exempt under the Texas Sales Tax and Use Tax Laws, and the Respondent shall not include such taxes in the Proposal.

**7. QUALIFICATION OF RESPONDENTS:** The BRA reserves the right to reject any Proposal if the evidence submitted by, or investigation of, such Respondent fails to satisfy the BRA that such Respondent is properly qualified to carry out the obligations of the contract and to complete the Services contemplated herein. Conditional Proposals will not be accepted.

**8. CONSIDERATION OF PROPOSALS:** Unless stated otherwise in the Advertisement or Request for Proposal, the properly identified Proposals received on time will be opened publicly and only the names of the Respondent will be read aloud. Respondents are invited to be present.

**9. COMPLIANCE WITH SCOPE OF SERVICES AND RIGHT OF SELECTION:** The Respondent shall abide by and comply with the true intent of the scope of services and not take advantage of any unintentional error or omission.

**10. DEVIATION FROM SCOPE OF SERVICES:** All deviations from the scope of services must be noted in detail by the Respondent, in writing, at the time of submittal of the formal Proposal. The absence of a written list of deviations at the time of submittal of the Proposal will be considered acceptance of the Scope of Services as written. Any deviations from the Scope of Services as written not previously submitted, as required by the above, will be grounds for rejection of the material and/or item when delivered.

In case of ambiguity or lack of clarity, the BRA reserves the right to consider the most advantageous Proposal or reject the Proposal.

**11. REPRESENTATIONS:** By execution and submission of this Proposal, the Respondent hereby represents and warrants to the BRA that Respondent has read and understands the Proposal Documents and this Proposal is made in accordance with the Proposal Documents.

**12. INDEMNIFICATION:**  
THE RESPONDENT SHALL COMPLY WITH THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES, AND REGULATIONS AND SHALL EXONERATE, INDEMNIFY AND HOLD HARMLESS THE BRA FROM ANY AND ALL LIABILITY OR DAMAGES RESULTING FROM FAILURE TO DO SO.

IN ADDITION, THE RESPONDENT AGREES TO INDEMNIFY, KEEP, SAVE AND HOLD THE 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 THE BRA, ITS OFFICIALS, OFFICERS, AND EMPLOYEES IN CONSEQUENCE OF THE AWARDED CONTRACT FOR ANY NEGLIGENT ACT OR OMISSION OF THE RESPONDENT IN THE PROVISION OF SERVICES UNDER THE AWARDED CONTRACT, OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF THE RESPONDENT OR THE RESPONDENT'S OFFICERS, AGENT, CONTRACTORS, ASSIGNS OR EMPLOYEES. IN THE EVENT A JUDGMENT IS RECOVERED

AGAINST THE BRA FOR ANY SUCH LIABILITY, COSTS OR EXPENSES, SUCH JUDGMENT SHALL BE CONCLUSIVE AGAINST THE RESPONDENT.

IT IS SPECIFICALLY UNDERSTOOD AND AGREED BY THE RESPONDENT THAT SUCH INDEMNITY IS INDEMNITY BY THE RESPONDENT TO INDEMNIFY AND PROTECT THE BRA FROM LIABILITY, CLAIMS, SUITS, LOSSES, DAMAGES OR CAUSES OF ACTION DUE TO THE RESPONDENT'S NEGLIGENCE, ERROR OR OMISSION.

**13. CRITERIA FOR AWARD:** The BRA will select the most highly qualified Respondent on the basis of demonstrated competence and qualifications and then attempt to negotiate with that Respondent a contract at a fair and reasonable price. If a satisfactory contract cannot be negotiated with the most highly qualified Respondent, the BRA will select the next most highly qualified Respondent and attempt to negotiate a contract with that Respondent at a fair and reasonable price.

**14. TERMINATION:** The awarded contract may be terminated at any time by the BRA, in BRA's sole discretion, for any cause or for convenience without penalty or liability. Upon receipt of such notice, the supplier shall immediately discontinue all services and actions. The BRA shall pay the Respondent promptly the accrued and unpaid amounts due for services to the date of termination, to the extent the services are approved by the BRA.

**15. CHANGE OF CONTRACT PRICE:**

The agreed upon contract price shall not be exceeded without the prior written consent of the BRA and may only be modified by a written amendment to the contract executed by both BRA and Respondent.

**16. PAYMENT:** Unless otherwise specified, payment for services and/or product will be processed within thirty (30) days from invoice date and acceptance of Services and/or product. Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing. Unit price on invoice shall be in two (2) decimal places only, i.e., \$.XX.

The BRA has set a goal to have as much paperwork submitted electronically. Respondents are asked to submit invoices electronically to the following Accounts Payable email address: [accounts.payable@brazos.org](mailto:accounts.payable@brazos.org). Respondents who use the electronic service should not mail the original invoice.

**17. CONFIDENTIALITY OF DOCUMENTS:** The BRA is subject to the Texas Public Information Act (PIA). Any information submitted to the BRA by a Respondent shall be considered non-confidential and available to the public, except as follows:

In the event a Respondent considers a specific portion of their Proposal to be confidential and subject to an exception to disclosure under the PIA, such portion must be clearly identified and marked "CONFIDENTIAL". Do not mark an entire Proposal confidential, as this is not in conformance with the PIA and is not acceptable. Only the specific portion or portions of the Proposal that the Respondent considers to be confidential pursuant to the PIA should be marked. **IF AN ENTIRE PROPOSAL IS MARKED CONFIDENTIAL, THE BRA WILL NOT TREAT ANY PORTION OF THE PROPOSAL AS CONFIDENTIAL AND THE PROPOSAL MAY BE REJECTED AS NON-CONFORMING.** The BRA will honor notations of confidentiality made in accordance with this paragraph and decline to release such information initially. However, final determination of whether a particular portion of a Proposal may in fact be withheld pursuant to the PIA will be made by the Texas Attorney General or a court of competent jurisdiction.

In the event a public information request is received for a portion of a Proposal that has been marked confidential, the BRA shall ask the affected Respondent if the information may be released. If the release is agreed to, the BRA shall release the information.

If the release is denied, the matter shall be referred to the Texas Attorney General's Office in accordance with the process set forth in the PIA. The Respondent shall be fully and solely responsible for submitting arguments and evidence within the statutory timeframes to the Texas Attorney General's Office regarding its claim of confidentiality. The BRA will **NOT** submit arguments on behalf of the Respondent.

The Texas Attorney General's office shall rule on the matter. In the event that it is determined by opinion or order of the Texas Attorney General or a court of competent jurisdiction that such information may not be withheld, then such information will be made available to the requester. If it is determined that the information may be withheld, BRA will withhold the information from the requester.

Pricing information contained in Proposals or contracts is not considered confidential under the PIA and will be disclosed without making a request to the Texas Attorney General.

**18. NO PRICE:** The selection of the Selected Respondent under this RFP shall be in accordance with Chapter 2254 of the Texas Local Government Code. Do not include any price information within the submittal. Any submittal containing any price information will be automatically disqualified.

**REQUEST FOR PROPOSALS  
DEVELOPMENT OF THE 2028 REGION 8 – LOWER BRAZOS REGIONAL FLOOD PLAN  
RFP NO. 24-1343**

**SUBMITTAL SCHEDULE**

Proposals are posted on the BRA website and prospective Respondents should check [www.brazos.org](http://www.brazos.org)> Doing Business>, Purchasing & Professional Services>, Request for Proposals for potential updates to Proposal requirements.

Thursday, April 4, 2024	RFP is available to download from the BRA website at <a href="https://brazos.org/Doing-Business/Purchasing-Professional-Services/Request-for-Proposals">https://brazos.org/Doing-Business/Purchasing-Professional-Services/Request-for-Proposals</a> and click on “ <i>View this RFP</i> ”.
4:00 PM, Thursday, April 11, 2024	Last date and time to ask questions or request additional information. Email questions to <a href="mailto:submissions@brazos.org">submissions@brazos.org</a> .
4:00 PM, Monday, April 15, 2024	Post response to questions received as of the deadline or as soon thereafter, as an Addendum on the BRA website –  <a href="https://brazos.org/Doing-Business/Purchasing-Professional-Services/Request-for-Proposals">https://brazos.org/Doing-Business/Purchasing-Professional-Services/Request-for-Proposals</a>
10:00 AM, Friday, April 19, 2024	Proposals are due.
10:30 AM Friday, April 19, 2024	Proposals will be opened virtually at the link below:  <a href="https://youtube.com/live/6x3Z51246dU?feature=share">https://youtube.com/live/6x3Z51246dU?feature=share</a>

**REQUEST FOR PROPOSALS  
DEVELOPMENT OF THE 2028 REGION 8 – LOWER BRAZOS REGIONAL FLOOD PLAN  
RFP NO. 24-1343**

**1. General**

The Texas Water Development Board (TWDB) has been tasked with the requirements of Section 16.061 of the Texas Water Code (TWC) requiring the TWDB to develop and adopt a comprehensive state flood plan every five (5) years that incorporates the 15 regional flood plans developed by the regional flood planning groups (RFPGs) under TWC Section 16.062.

This request for proposals is for conducting the task of developing the 2028 Region 8 – Lower Brazos Regional Flood Plan.

The Region 8 – Lower Brazos Regional Flood Planning Group (“Lower Brazos RFPG”) acting through its Sponsor, the Brazos River Authority (BRA), invites all qualified parties to submit a proposal for preparing a Regional Flood Plan for the “Lower Brazos RFPG”. In the role of serving as the group’s Sponsoring Political Subdivision, the BRA will take on conducting tasks as part of being the administrative and fiscal agent for the “Lower Brazos RFPG”. This includes applying for grant funding from TWDB, entering into a contract with TWDB for the administration of the 2<sup>nd</sup> cycle of regional flood planning, coordinating the procurement of a Technical Consultant, and delivering the 2028 Lower Brazos Regional Flood Plan.

**2. Scope of Services**

**Task 1 – Planning Area Description**

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 Texas Administrative Code (TAC) Chapters 361 and 362, this portion of work must specifically include all work necessary to meet all the requirements of 31 TAC §§ 361.30, 361.31, and 361.32.

The objective of this task is to prepare a standalone chapter to be included in the 2028 Regional Flood Plan that describes the Flood Planning Region (FPR).

**This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to prepare a chapter that includes:**

1. Brief, general descriptions of the following:
  - a. social and economic character of the region such as information on development, population, and economic activity.
  - b. the areas in the FPR that are flood-prone and the types of major flood risks to life and property in the region.
  - c. key historical flood events within the region including associated fatalities and loss of property when the information is available.
  - d. key political subdivisions with flood-related regulatory authority or political subdivisions that perform flood planning, floodplain management, or flood mitigation activities.
  - e. the general extent of local regulation and development codes relevant to existing and future flood risk.
  - f. agricultural and natural resources most impacted by flooding; and
  - g. existing local and regional flood plans within the FPR.
2. A general description of the location, condition, and functionality of existing natural flood mitigation features and constructed major flood infrastructure within the FPR as identified in the rules and guidance document.
3. Include a tabulated summary and GIS map of existing infrastructure.

4. Include an inventory and feature class of low water crossings.
5. Include a specific levee and dam inventory including the location, designated owner of every major levee and dam located within the regional planning area, and an indication of whether levees have FEMA accreditation or not.
6. Include an assessment of condition and functionality for existing major flood risk reduction infrastructure.
7. Please provide a general description by general geographic location (e.g., within political subdivisions) of the condition and functionality of key natural flood mitigation features or major flood infrastructure by feature type and provide the name of the owner and operator of the flood infrastructure. For non-functional or deficient natural flood mitigation features or major flood infrastructure, explain, in general, the reasons for the features or infrastructure being non-functional or deficient by feature type.
8. A general description of the location, source of funding, and anticipated benefits of proposed or ongoing major infrastructure and flood mitigation projects in the FPR, including:
  - a. new structural flood mitigation projects currently under construction.
  - b. non-structural flood mitigation projects currently being implemented; and
  - c. structural and non-structural flood mitigation projects with dedicated funding to construct and the expected year of completion.
9. A review and summary of relevant existing planning documents in the FPR. Documents to be summarized include those referenced under 31 TAC § 361.22.  
The information gathered and developed in preparation of this chapter must be subject to the following review process prior to submission of any deliverables:
  1. Review of the Regional Flood Plan chapter documents and related information by RFPG members.
  2. Modifications to the chapter document based on RFPG, public, and/or agency comments.
  3. Submittal of chapter document to TWDB for review and approval.
  4. All effort required to obtain final approval of the Regional Flood Plan chapter by TWDB.

**Deliverables:**

- A complete Chapter 1 describing the FPR, existing natural flood mitigation features, constructed major flood infrastructure, and major infrastructure and flood mitigation projects currently under development.
- A tabulated summary and GIS map of existing infrastructure including condition and functionality.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

**Task 2A – Existing Condition Flood Risk Analyses**

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must specifically include all work necessary to meet all the requirements of 31 TAC § 361.33.

The objective of this task is to prepare a chapter to be combined with Task 2B and included in the 2028 Regional Flood Plan that describes the existing and future condition flood risk in the FPR.

The RFPGs must perform existing condition flood risk analyses for the region comprising: (1) flood hazard analyses that determine the location, magnitude, and frequency of flooding; (2) flood exposure analyses to identify who and what might be harmed within the region; and (3) vulnerability analyses to identify vulnerabilities of communities and critical facilities.

The information developed must be used to assist the RFPG to establish priorities in subsequent planning tasks, to identify areas that need Flood Management Evaluations (FMEs), and to efficiently deploy its resources.

**This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to:**

1. Perform existing condition flood hazard analyses to determine the location and magnitude of 10% annual chance, 1% annual chance and 0.2% annual chance flood events as follows:
  - a. collect data and conduct analyses sufficient to characterize the existing conditions for the planning area.
  - b. identify areas within each FPR where hydrologic and hydraulic model results are already available and summarize the information.
  - c. utilize best available data, including hydrologic and hydraulic models for each area.
  - d. identification of known flood-prone areas based on location of hydrologic features, historic flooding, and local knowledge obtained from outreach activities and public meetings.
  - e. existing condition flood hazard analyses may consider and include only those flood mitigation projects with dedicated construction funding and scheduled for completion prior to adoption of the next state flood plan
  - f. all analyses shall consider the location of existing levees that do not meet FEMA accreditation as inundated by flooding without those structures in place. Provisionally accredited levees may be allowed to provide flood protection, unless the best available information demonstrates otherwise.
  - g. the analyses shall consider existing dams when data is available.
  - h. prepare a map showing areas identified by the RFPG as having an annual likelihood of inundation of greater than or equal to 10%, 1%, and 0.2%; the areal extent of this inundation; and the sources of flooding for each area; and
  - i. prepare a map showing gaps in inundation boundary mapping and identify known flood-prone areas based on location of hydrologic features, historic flooding and/or local knowledge.
  
2. Develop existing condition flood exposure analyses, using the information identified in the flood hazard analyses to identify who and what might be harmed within the region for, at a minimum, 10% annual chance, 1% annual chance, and 0.2% annual chance flood events as follows:
  - a. analyses of existing development within the existing condition floodplain and the associated flood hazard exposure.
  - b. must consider the population and property located in areas where existing levees do not meet FEMA accreditation as inundated by flooding without the levees in place. Provisionally accredited structures may be allowed to provide flood protection, unless the best available information demonstrates otherwise.
  - c. must consider available datasets to estimate the potential flood hazard exposure including, but not limited to:
    - i. number of residential properties and associated population
    - ii. number of non-residential properties
    - iii. other public infrastructure
    - iv. major industrial and power generation facilities
    - v. number and types of critical facilities
    - vi. number of roadway crossings
    - vii. length of roadway segments; and
    - viii. agricultural area and value of crops exposed

- d. must include a qualitative description of expected loss of function, which is the effect that a flood event could have on the function of inundated structures (residential, commercial, industrial, public, or others) and infrastructure, such as transportation, health and human services, water supply, wastewater treatment, utilities, energy generation, and emergency services.
3. Perform existing condition vulnerability analyses as follows:
    - a. use relevant data and tools to identify resilience of communities located in flood-prone areas.
    - b. consider and identify factors such as proximity to a floodplain to identify vulnerability of critical facilities, in accordance with EA guidance.
  4. All data produced as part of the existing condition flood exposure analysis and the existing condition vulnerability analysis must include:
    - a. underlying flood event return frequency
    - b. type of flood risk
    - c. county
    - d. existing flood authority boundaries
    - e. social vulnerability indices for counties and census tracts; and
    - f. other categories as determined by RFPGs or in TWDB Flood Planning guidance documents

The information gathered and developed in preparation of this chapter must be subject to the following review process prior to submission of any deliverables:

1. Review of the chapter documents and related information by RFPG members.
2. Modifications to the chapter document based on RFPG, public, and/or agency comments.
3. Submittal of chapter document to TWDB for review and approval.
4. All effort required to obtain final approval of the Regional Flood Plan chapter by TWDB.

**Deliverables:**

- Prepare a stand-alone Chapter 2 (including work from both Tasks 2A & 2B) to be included in the 2028 Regional Flood Plan.
- Prepare maps according to 1(g) and 1(h).
- A tabulated list and GIS map of all pertinent information. All maps should be submitted with underlying GIS data utilized to prepare them.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

**Task 2B – Future Condition Flood Risk Analyses**

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must include all work necessary to meet all the requirements of 31 TAC § 361.34.

The objective of this task is to prepare a chapter to be combined with Task 2A and included in the 2028 Regional Flood Plan that describes the existing and future condition flood risk in the FPR.

RFPGs must perform future condition flood risk analyses for the region comprising: (1) flood hazard analyses that determine the location, magnitude, and frequency of flooding; (2) flood exposure analyses to identify who and what might be harmed within the region; and (3) vulnerability analyses to identify vulnerabilities of communities and critical facilities.



The information developed must be used to assist the RFPG to establish priorities in subsequent planning tasks, to identify areas that need FMEs, and to efficiently deploy its resources.

**This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to:**

1. Perform future condition flood hazard analyses to determine the location and magnitude of 10% annual chance, 1% annual chance, and 0.2% annual chance flood events as follows:
  - a. collect data and conduct analyses sufficient to characterize the future conditions for the planning area based on a "no-action" scenario of approximately 30 years of continued development and population growth under current development trends and patterns, and existing flood regulations and policies. RFPGs shall consider the following as available and pertinent in the FPR:
    - i. current land use and development trends and practices and associated projected population based on the most recently adopted State Water Plan decade and population nearest the next regional flood plan adoption date plus approximately 30 years or as provided for in TWDB Flood Planning guidance documents.
    - ii. reasonable assumptions regarding locations of residential development and associated population growth.
    - iii. anticipated relative sea level change and subsidence based on existing information.
    - iv. anticipated changes to the functionality of the existing floodplain.
    - v. anticipated sedimentation in flood control structures and major geomorphic changes in riverine, playa, or coastal systems based on existing information.
    - vi. assumed completion of flood mitigation projects currently under construction or that already have dedicated construction funding; and
    - vii. other factors deemed relevant by the RFPG.
  - b. identify areas within each FPR where future condition hydrologic and hydraulic model results are already available and summarize the information.
  - c. utilize best available data, including hydrologic and hydraulic models for each area.
  - d. where future condition results are not available, but existing condition hydrologic and hydraulic model results are already available, the RFPGs may modify hydraulic models or existing condition flood hazard boundary to identify future conditions flood risk for 1% and 0.2% annual chance storms based on simplified assumptions in accordance with EA guidance.
  - e. prepare a map showing areas of 10%, 1% and 0.2% annual chance of inundation for future conditions, the areal extent of this inundation, and the types of flooding for each area.
  - f. prepare a map showing gaps in inundation boundary mapping and identify known flood-prone areas based on location of hydrologic features, historic flooding, and/or local knowledge.

2. Perform future condition flood exposure analyses using the information identified in the potential future condition flood hazard analysis to identify who and what might be harmed within the region for the potential future condition 10% annual chance, future condition 1% annual chance and future condition 0.2% annual chance flood events. At the RFPGs' discretion, the future condition flood exposure analysis may include an analysis of existing and future developments within the future condition floodplain and the associated flood hazard exposure.
3. Perform future condition vulnerability analyses as follows:
  - a. identify resilience of communities located in flood-prone areas identified as part of the future condition flood exposure analyses, utilizing relevant data and tools.
  - b. identify vulnerabilities of critical facilities to flooding by looking at factors such as proximity to a floodplain and other factors as included in the EA guidance.
4. All data produced as part of the future condition flood exposure analysis and the future condition flood hazard analysis must include:
  - a. underlying flood event return frequency
  - b. type of flood risk
  - c. county
  - d. existing flood authority boundaries
  - e. social vulnerability indices for counties and census tracts; and
  - f. other categories as determined in TWDB Flood Planning guidance document.

The information gathered and developed in preparation of this chapter must be subject to the following review process prior to submission of any deliverables:

1. Review of the chapter documents and related information by RFPG members.
2. Modifications to the chapter document based on RFPG, public, and/or agency comments.
3. Submittal of chapter document to TWDB for review and approval.
4. All effort required to obtain final approval of the Regional Flood Plan chapter by TWDB.

**Deliverables:**

- Prepare a stand-alone Chapter 2 (including work from both Tasks 2A & 2B) to be included in the 2028 Regional Flood Plan.
- Prepare maps according to 1(e) and 1(f). A tabulated list and GIS map of all pertinent information. All maps should be submitted with underlying GIS data utilized to prepare them.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

**Task 3A–Evaluation and Recommendations on Floodplain Management Practices**

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31TAC Chapters 361 and 362, this portion of work must include all work necessary to meet all the requirements of 31TAC §361.35.

Recognizing the extent that previous and current practices may have increased flood risks, including residual risks, and considering broad floodplain management and land use approaches that will avoid increasing flood risks, and avoid negatively affecting neighboring areas, the RFPG must accomplish the following tasks.

**This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to:**

1. Consider the extent to which a lack of, insufficient, or ineffective current floodplain management and land use practices, regulations, policies, and trends related to land use, economic development, and population growth, allow, cause, or otherwise encourage increases to flood risks to both:
  - a. existing population and property, and
  - b. future population and property.
2. Take into consideration the future flood hazard exposure analyses performed under Task 2B, consider the extent to which the 1% annual chance floodplain, along with associated flood risks, may change over time in response to anticipated development and associated population growth and other relevant man-made causes, and assess how to best address these potential changes.
3. Based on the analyses in (1) and (2), make recommendations regarding forward-looking floodplain management and land use recommendations, and economic development practices and strategies, that should be implemented by entities within the FPR. These region-specific recommendations may include floodplain management and land use standards and should focus on how to best address the changes in (2) for entities within the region. These recommendations will inform recommended strategies for inclusion in the Regional Flood Plan.
4. RFPGs may also choose to adopt region-specific, floodplain management or land use or other standards that impact flood-risk, that may vary geographically across the region, that each entity in the FPR must adopt prior to the RFPG including in the Regional Flood Plan any Flood Management Evaluations, Flood Mitigation Projects, or Flood Management Strategies that are sponsored by or that will otherwise be implemented by that entity.
5. Consider example floodplain management and infrastructure protection standards provided by TWDB.

The information gathered and developed in preparation of this chapter must be subject to the following review process prior to submission of any deliverables:

1. Review of the chapter documents and related information by RFPG members.
2. Modifications to the chapter document based on RFPG, public, and/or agency comments.
3. Submittal of chapter document to TWDB for review and approval.
4. All effort required to obtain final approval of the Regional Flood Plan chapter by TWDB.

**Deliverables:**

- Prepare a stand-alone Chapter 3 (including work from Tasks 3A,3B, & 3C) to be included in the 2028 Regional Flood Plan.
- List region-specific recommendations regarding forward-looking floodplain management and land use, which may include minimum floodplain management and land use standards.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

**Task 3B – Flood Mitigation Needs Analysis**

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must include all work necessary to meet all the requirements of 31 TAC § 361.36.

The RFPG must conduct the analysis in a manner that will ensure the most effective and efficient use of the resources available to the RFPG.

**This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to:**

1. Based on the analyses developed by the RFPG under Tasks 2A through 3B and any additional analyses or information developed using available screening-level models or methods, the RFPG must identify locations within the FPR that the RFPG considers having the greatest flood mitigation and flood risk study needs by considering:
  - a. the areas in the FPR that the RFPG identified as the most prone to flooding that threatens life and property.
  - b. the relative locations, extent, and performance of current floodplain management and land use policies and infrastructure located within the FPR, particularly within the locations described in (a).
  - c. areas identified by the RFPG as prone to flooding that don't have adequate inundation maps.
  - d. areas identified by the RFPG as prone to flooding that don't have hydrologic and hydraulic models.
  - e. areas with an emergency need.
  - f. existing modeling analyses and flood risk mitigation plans within the FPR.
  - g. flood mitigation projects already identified and evaluated by other flood mitigation plans and studies.
  - h. documentation of historic flooding events.
  - i. flood mitigation projects already being implemented; and
  - j. any other factors that the RFPG deems relevant to identifying the geographic locations where potential FMEs and potentially feasible FMPs and FMSs must be identified and evaluated under § 361.38.

The information gathered and developed in preparation of this chapter must be subject to the following review process prior to submission of any deliverables:

1. Review of the chapter documents and related information by RFPG members.
2. Modifications to the chapter document based on RFPG, public, and/or agency comments.
3. Submittal of chapter document to TWDB for review and approval.
4. All effort required to obtain final approval of the Regional Flood Plan chapter by TWDB.

**Deliverables:**

- Prepare a stand-alone Chapter 3 (including work from Tasks 3A, & 3B and 3C) to be included in the 2028 Regional Flood Plan.
- A map identifying the geographic locations within the FPR considered to have the greatest flood mitigation and flood risk study needs where potential FMEs and potentially feasible FMPs and FMSs must be evaluated.
- A tabulated list and GIS map of all pertinent information. All maps should be submitted with underlying GIS data utilized to prepare them.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

**Task 3C – Flood Mitigation and Floodplain Management Goals**

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must include all work necessary to meet all the requirements of 31 TAC § 361.37.

In this task, the RFPG must consider the Guidance Principles under 31 TAC § 362.3, Tasks 1-3B, input from the public, and other relevant information and considerations.

The RFPG must use these goals to guide the RFPG in carrying out the following Tasks 4A – 5.

**This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to:**

1. Identify specific and achievable flood mitigation and floodplain management goals along with target years by which to meet those goals for the FPR to include, at a minimum, goals specifically addressing risks to life and property.
2. Recognize and clearly state the levels of residual risk that will remain in the FPR even after the stated flood mitigation goals are fully met.
3. Structure and present the goals and the residual risks in an easily understandable format for the public including in conformance with TWDB Flood Planning guidance documents.
4. When appropriate, choose goals that apply to full single HUC8 watershed boundaries or coterminous groups of HUC8 boundaries within the FPR.
5. Identify both short-term goals (10 years) and long-term goals (30 years).

The information gathered and developed in preparation of this chapter must be subject to the following review process prior to submission of any deliverables:

1. Review of the chapter documents and related information by RFPG members.
2. Modifications to the chapter document based on RFPG, public, and/or agency comments.
3. Submittal of chapter document to TWDB for review and approval.
4. All effort required to obtain final approval of the Regional Flood Plan chapter by TWDB.

**Deliverables:**

- Prepare a stand-alone Chapter 3 (including work from Tasks 3A, 3B and 3C) to be included in the 2028 Regional Flood Plan.
- Identify flood mitigation and floodplain management goals considering minimum recommended flood protection goal provided by TWDB.
- Identify specific and achievable flood mitigation and floodplain management goals (10 year and 30 year) in an easily understandable format for the public.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

**Task 4A – Identification and Evaluation of Potential Flood Management Evaluations and Potentially Feasible Flood Mitigation Projects and Flood Management Strategies**

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must include all work necessary to meet all the requirements of 31 TAC § 361.38.

Based on analyses and decisions under Tasks 2A through 4A the RFPG must identify and evaluate potential FMEs, and identify and evaluate potentially feasible FMPs and FMSs, including nature-based solutions, some of which may have already been identified by previous evaluations and analyses by others.

**This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to:**

1. Receive public comments on a proposed process to be used by the RFPG to identify and select FMEs, FMPs, and FMSs for the 2028 Regional Flood Plan.
2. Summarize the RFPG process for identifying potential FMEs and potentially feasible FMPs and FMSs and include a description of the process in the draft and in the final adopted Regional Flood Plan.
3. Identify potentially feasible FMPs and FMSs in accordance with the RFPG established process.

4. When evaluating FMPs and FMSs the RFPG must, at a minimum, identify one solution that provides flood mitigation associated with a 1% annual chance flood event. In instances where mitigating for 1% annual chance events is not feasible, the RFPG must document the reasons for its infeasibility, and at the discretion of the RFPG, other FMPs and FMSs to mitigate more frequent events may also be identified and evaluated based on TWDB Flood Planning guidance documents.
5. For areas within the FPR that the RFPG does not yet have sufficient information or resources to identify potentially feasible FMPs and FMSs, the RFPG must identify areas for potential FMEs that may eventually result in FMPs and/or FMSs.
6. The RFPG must evaluate potentially feasible FMPs and FMSs understanding that, upon evaluation and further inspection, some FMPs or FMSs initially identified as potentially feasible may be reclassified as infeasible.
7. FMPs will be ranked in the state flood plan and
  - a. must represent discrete projects.
  - b. must not entail an entire capital program or drainage masterplan; and
  - c. may rely on other flood-related projects.
8. Evaluations of potentially feasible FMPs and FMSs, as applicable, will require associated, detailed hydrologic and hydraulic modeling results that quantify the reduced impacts from flood events and the associated benefits and costs. Information may be based on previously performed evaluations of projects and related information. Evaluations of potentially feasible FMPs and FMSs must include the following information and be based on the following analyses:
  - a. A reference to the specific flood mitigation or floodplain management goal addressed by the feasible FMP or FMS.
  - b. A determination of whether FMP or FMS meets an emergency need.
  - c. An indication regarding the potential use of federal funds, or other sources of funding, as a component of the total funding mechanism.
  - d. An indication of any water supply benefits.
  - e. An equitable comparison, as appropriate, and assessment among all FMSs and an equitable comparison and assessment among all FMPs that the RFPG determines to be potentially feasible.
  - f. A demonstration that the FMS or FMP will not negatively affect a neighboring area.
  - g. A quantitative report of the estimated benefits of the FMP or FMS, as applicable. This includes reductions of flood impacts of the 1% annual chance flood event and other storm events identified and evaluated if the project mitigates to a more frequent event to include, but not limited to:
    - (1) associated flood events that must, at a minimum, include the 1% annual chance flood event and other storm events identified and evaluated.
    - (2) reduction in habitable, equivalent living units flood risk.
    - (3) reduction in residential population flood risk.
    - (4) reduction in critical facilities flood risk.
    - (5) reduction in road closure occurrences.
    - (6) reduction in acres of active farmland and rangeland flood risk.
    - (7) estimated reduction in fatalities, when available.
    - (8) estimated reduction in injuries, when available.
    - (9) reduction in expected annual damages from residential, commercial, and public property; and
    - (10) other benefits as deemed relevant by the RFPG including environmental benefits and other public benefits.
    - (11) avoidance of future flood risk; and
    - (12) prevention of creation of future flood risk.
  - h. A quantitative reporting of the estimated capital cost of FMPs in accordance with TWDB Flood Planning guidance documents.

- i. For projects that will contribute to water supply, all relevant evaluations required under § 357.34(e) (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects), as determined by the EA based on the type of contribution, and a description of its consistency with the currently adopted State Water Plan.
  - j. A description of potential impacts and benefits from the FMS or FMP to the environment, agriculture, recreational resources, navigation, water quality, erosion, sedimentation, and impacts to any other resources deemed relevant by the RFPG.
  - k. A description of residual, post-project, flood risk and future risks associated with FMPs including the risk of potential catastrophic failure and the potential for future increases to these risks due to lack of maintenance.
  - l. Implementation issues including those related to rights-of-way, permitting, acquisitions, relocations, utilities, and transportation; and
  - m. Funding sources and options that exist or will be developed to pay for development, operation, and maintenance of the FMS or FMP.
9. Flood Management Evaluation (FME) is a proposed study to identify, assess, and quantify flood risk or identify, evaluate, and recommend flood risk reduction solutions. Evaluations of potential FMEs may be at a reconnaissance or screening-level, unsupported by associated detailed hydrologic and hydraulic analyses. These must be identified for areas that the RFPG considers a priority for flood risk evaluation but that do not yet have the required detailed hydrologic and hydraulic modeling or associated project evaluations available to evaluate specific FMPs or FMSs for recommendation in the Regional Flood Plan. Evaluations of potential FMEs must include the following analyses:
- a. A reference to the specific flood mitigation or floodplain management goal to be addressed by the potential FME.
  - b. An indication of whether FME may meet an emergency need.
  - c. An indication regarding the potential use of federal funds, or other sources of funding as a component of the total funding mechanism.
  - d. An equitable comparison and assessment among all FMEs.
  - e. An indication of whether hydrologic and or hydraulic models are already being developed or are anticipated in the near future and that could be used in the FME.
  - f. A quantitative reporting of the estimated flood risk within the FME area, to include, as applicable:
    - (1) Estimated habitable, living unit equivalent and associated population in FME area.
    - (2) Estimated critical facilities in FME area.
    - (3) Estimated number of roads closures occurrences in FME area.
    - (4) Estimated acres of active farmland and rangeland in FME area; and
    - (5) A quantitative reporting of the estimated study cost of the FME and whether the cost includes use of existing or development of new hydrologic or hydraulic models.
  - g. For FMEs, RFPGs do not need to demonstrate that an FME will not negatively affect a neighboring area.
10. RFPGs must evaluate and present potential FMEs and potentially feasible FMPs and FMSs with sufficient specificity to allow state agencies to make financial or regulatory decisions to determine consistency of the proposed action before the state agency with an approved Regional Flood Plan.
11. Analyses must clearly designate a representative location of the FME and beneficiaries including a map and designation of HUC12 and county location.

12. The RFPG may also use funding under this Task to perform a portion of the identified Flood Management Evaluations and, in doing so, identify and evaluate additional Flood Mitigation Projects that could be recommended under Task 5A. This task includes performing work to carry out FMEs that may include work to perform hydrologic and hydraulic modeling, for example, evaluating flood risks in areas with currently limited flood risk data, and evaluating potential flood risk reduction solutions, including performing feasibility studies and preliminary engineering needed to identify, evaluate, and recommend additional potentially feasible FMPs. Note that RFPGs must approve the list of FMEs to be performed under this Task prior to expending grant funds for this purpose. Additional FMPs that are identified and evaluated under this Task may be recommended under Task 5A. FMEs that are performed under this Task would not also be recommended as FMEs under Task 5B.
13. Analyses must be performed in accordance with TWDB Flood Planning guidance documents.
14. All data produced as part of the analyses under this task must be organized and summarized in the Regional Flood Plan in accordance with TWDB Flood Planning guidance documents.
15. Rules to be considered in developing this chapter include relevant rules referenced under 31 TAC § 361.22.  
The information gathered and developed in preparation of this chapter must be subject to the following review process prior to submission of any deliverables:
  1. RFPG approval of the list of identified FMEs to also be performed under this Task.
  2. Review of the chapter documents and related information by RFPG members.
  3. Modifications to the chapter document based on RFPG, public, and/or agency comments.
  4. Submittal of chapter document to TWDB for review and approval.
  5. All effort required to obtain final approval of the Regional Flood Plan chapter by TWDB.

**Deliverables:**

- Prepare a stand-alone Chapter 4 (including work from Tasks 4A, and 4C) to include analyses and assessments used to identify potential FMEs, FMSs, and FMPs and all technical analyses of all evaluated FMPs and FMSs to be included in the 2028 Regional Flood Plan.
- A list of the potentially feasible FMSs and associated FMPs that were identified by the RFPG.
- The TWDB Flood Planning guidance documents will include minimum data submittal requirements and deliverable format.
- A map identifying the geographic locations within the FPR considered to have the greatest flood mitigation and flood risk study needs where potential FMEs and potentially feasible FMPs and FMSs must be evaluated. TWDB Flood Planning guidance documents will include minimum data submittal requirements and deliverable format.
- Data must be organized and summarized in the Regional Flood Plan in accordance with TWDB Flood Planning guidance documents.
- A tabulated list and GIS map of all pertinent information. All maps should be submitted with underlying GIS data utilized to prepare them.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

**Task 4B – Preparation and Submission Technical Memorandum**

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must include all work necessary to meet all the requirements of 31 TAC § 361.13(e).

**This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to:**

1. Prepare a concise Technical Memorandum to include:
  - a. A list of existing political subdivisions within the FPR that have flood-related authorities or responsibilities.
  - b. A list of previous and ongoing flood studies considered by the RFPG to be relevant to development of the Regional Flood Plan.



- c. A geodatabase and associated maps in accordance with TWDB Flood Planning guidance documents that the RFPG considers to be best representation of the region-wide 1% annual chance flood event and 0.2% annual chance flood event inundation boundaries, and the type of flooding for each area, for use in its risk analysis, including indications of locations where such boundaries remain undefined.
  - d. A geodatabase and associated maps in accordance with TWDB Flood Planning guidance documents that identifies additional flood-prone areas not described in (c) based on location of hydrologic features, historic flooding, and/or local knowledge.
  - e. A list of available flood-related models that the RFPG considers of most value in developing its plan.
  - f. A summary and associated maps of locations within the FPR that the RFPG considers having the greatest flood risk and flood risk reduction needs.
  - g. The flood mitigation and floodplain management goals adopted by the RFPG per § 361.37.
  - h. The documented process used by the RFPG to identify potentially feasible FMPs and FMSs.
  - i. A list of potential FMEs and potentially feasible FMPs and FMSs identified by the RFPG, if any; and
  - j. A list of FMSs and FMPs that were identified but determined by the RFPG to be infeasible, including the primary reason for it being infeasible.
2. Approve submittal of the Technical Memorandum to TWDB at a RFPG meeting subject notice requirements in accordance with 31 TAC § 361.21(h). The Technical Memorandum must be submitted to TWDB in accordance with Section I, Article I of the contract.

#### **Task 4C – Performance of Flood Management Evaluations**

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must include all work necessary to meet all the requirements of 31 TAC § 361.38.

The RFPG shall utilize this task to perform a portion of the identified Flood Management Evaluations identified in Task 4A and, in doing so, identify and evaluate additional Flood Mitigation Projects that could be recommended under Task 5A. This list of FMEs that are to be performed under this subtask must be approved by the RFPG.

The objective of this task is to perform identified potential FMEs to, for example, evaluate flood risks in areas with currently limited flood risk data, and evaluate potential flood risk reduction solutions, including performing hydrologic and hydraulic modeling, feasibility studies and preliminary engineering needed to identify, evaluate, and recommend additional potentially feasible FMPs. Additional FMPs that are identified and evaluated under this Task may be recommended under Task 5A. FMEs that are performed under this Task would not also be recommended as FMEs under Task 5B.

RFPGs must adhere to the requirements for identification, evaluation, and recommendation of FMEs and FMPs in Tasks 4A and 5, as well as applicable requirements in the TWDB Flood Planning guidance documents.

RFPGs must submit all data deliverables, including required GIS files, maps, and project details worksheet, to reflect work performed under this task in accordance with the requirements in Tasks 4A and 5 and the TWDB Flood Planning guidance documents.

**Deliverables:**

- Prepare a stand-alone Chapter 4 (including work from Tasks 4A and 4C) to be included in the 2028 Regional Flood Plan.
- A list of the FMEs, as approved by the RFPG, that were performed to identify potential FMPs and/or FMSs under Task 4C.
- Outcomes of FMEs that were performed to identify potential FMPs and/or FMSs under Task 4C.
- List of FMPs and FMSs that are identified as a result of performing FMEs under Task 4C.
- All data produced as part of the analyses under this task must be organized and summarized in the Regional Flood Plan in accordance with TWDB Flood Planning guidance documents.
- The TWDB Flood Planning guidance documents will include minimum data submittal requirements and deliverable format.

**Task 5A – Recommendation of Flood Management Evaluations, Flood Mitigation Projects, and Flood Management Strategies****Performing any work associated with any Task 5 subtasks is contingent upon a written notice-to-proceed.**

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must include all work necessary to meet associated requirements of 31 TAC § 361.39.

The objective of this task is to consider and recommend Flood Management Evaluations (FMEs), Flood Management Strategies (FMSs), and their associated Flood Mitigation Projects (FMPs) to be included in the 2028 Regional Flood Plan that describes the work completed, presents the potential FMEs, potentially feasible FMPs and FMSs, recommended and alternative FMPs and FMSs, including all the technical evaluations, and presents which entities will benefit from the recommended FMPs and FMSs.

**This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to:**

1. Recommend FMEs that the RFPG determines are most likely to result in identification of potentially feasible FMPs and FMSs that would, at a minimum, identify and investigate one solution to mitigate for flood events associated with a 1% annual chance flood event and that support specific RFPG flood mitigation and/or floodplain management goals.
2. Recommend FMPs and FMSs to reduce the potential impacts of flood based on the evaluations under § 361.38 and RFPG goals and that must, at a minimum, mitigate for flood events associated with at 1% annual chance (100-yr flood) where feasible. In instances where mitigating for 100-year events is not feasible, FMS and FMPs to mitigate more frequent events may be recommended based on TWDB Flood Planning guidance documents. Recommendations must be based upon the identification, analysis, and comparison of alternatives that the RFPG determines will provide measurable reductions in flood impacts in support of the RFPG's specific flood mitigation and/or floodplain management goals.
3. Provide additional information in conformance with TWDB Flood Planning guidance documents which may be used to rank recommended FMEs, FMPs, and FMSs with non-recurring, non-capital costs in the state flood plan.
4. RFPGs shall provide the benefit-cost ratio for recommended FMPs in accordance with guidance provided by the EA.
5. Recommended FMSs or FMPs may not negatively affect a neighboring area or an entity's water supply.
6. Recommended FMSs or FMPs that will contribute to water supply may not result in an overallocation of a water source based on the water availability allocations in the most recently adopted State Water Plan.

7. Specific types of FMEs, FMSs, or FMPs that should be included and that should not be included in Regional Flood Plans must be in accordance with TWDB Flood Planning guidance documents.
8. FMS and FMP documentation must include a strategy or project description, discussion of associated facilities, project map, and technical evaluations addressing all considerations and factors required under 31 TAC § 361.38(h).
9. Coordinate and communicate with the sponsors of FME, FMS, and FMP including individual local governments, regional authorities, and other political subdivisions.
10. Production of process documentation used in selecting all recommended FMSs and associated FMPs including development of FMS evaluations matrices and other tools required to assist the RFPG in comparing and selecting recommended FMPs and FMSs.
11. Document the evaluation and selection of all recommended FMS and FMPs, including an explanation for why certain types of strategies may not have been recommended.

The information gathered and developed in preparation of this chapter must be subject to the following review process prior to submission of any deliverables:

1. Review of the chapter documents and related information by RFPG members.
2. Modifications to the chapter document based on RFPG, public, and/or agency comments.
3. Submittal of chapter document to TWDB for review and approval.
4. All effort required to obtain final approval of the Regional Flood Plan chapter by TWDB.

**Deliverables:**

- Prepare a stand-alone Chapter 5 (including work from Tasks 5A and 5B) to be included in the 2028 Regional Flood Plan
- A list of the recommended FMEs, FMSs, and associated FMPs that were approved by the RFPG. TWDB Flood Planning guidance documents will include minimum data submittal requirements and deliverable format.
- Data must be organized and summarized in the Regional Flood Plan in accordance with TWDB Flood Planning guidance documents.
- A tabulated list and GIS map of all pertinent information. All maps should be submitted with underlying GIS data utilized to prepare them.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

**Task 5B – Recommend a List of Flood Management Evaluations to be Performed by TWDB**

Must generally meet all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362.

The objective of this task is for the RFPG to submit a list to TWDB that is a subset of the FMEs that were identified by the RFPG under Task 4A, and not performed under Task 4C, along with a request to TWDB to perform those FMEs on behalf of the RFPG, subject to TWDB’s available resources. This Task relies on completed work under Tasks 2A through 4A. To the extent possible, TWDB will complete performance of these FMSs with the intention of generating additional FMPs that will be in consideration for RFPGs for recommendation during the current or the following planning cycle.

**This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to:**

1. Consider the identified FMEs from Task 4A that the RFPG determines are most likely to result in identification of potentially feasible FMPs and FMSs that would, at a minimum, identify and investigate one solution to mitigate for flood events associated with a 1% annual chance flood event and that support specific RFPG flood mitigation and/or floodplain management goals.

2. Once Tasks 2A through 4A are completed, develop, and obtain RFPG approval of a list of identified FMEs that comprises a subset of all the FMEs the RFPG had identified under Task 4A, and not performed under 4C to submit to TWDB to be performed by TWDB on behalf of the RFPG. The FME list developed and submitted by the RFPG to TWDB shall be developed in accordance with guidance be provided by the EA and, at a minimum, shall take into consideration:
  - a. The FMEs that the RFPG is already intending to perform, itself, via its Technical Consultant, under Task 4C using a portion of the RFPG's existing grant funding.
  - b. The nature of the sponsor/beneficiary of the identified FME study including whether, for example, the community is a smaller community without appropriate staff and resource, located in a rural area, and/or whether that entity might otherwise have difficulty in funding and overseeing the FME study itself.
  - c. The amount of estimated capacity that TWDB allocates to each planning region for performing FMEs on behalf of the region
  - d. The potential length of time that might be required for TWDB to perform the FME and the likelihood that it will result in potential FMPs being identified in time to incorporate into the regional flood plan currently under development or if the results may become available during the next flood planning cycle.
  - e. The extent of existing flood risk information available in the area of the recommended FME, and
  - f. And any other guidance or criteria provided by the EA prior to submission of the RFPG FME list to TWDB.
3. The FME list should provide a relative order of timing in which the RFPGs prefer the FMEs to be performed and resourced by TWDB, based on the TWDB FME program funding and other resources allocated towards supporting each region. Note that as TWDB resources allow, more than a single FME may be performed simultaneously on behalf of each RFPG.
4. Obtain RFPG authorization to submit, in writing, a request to TWDB to perform the FMEs on the list above, subject to available TWDB resources. This will include TWDB performing recommended FMEs to, for example, evaluate flood risks in areas with currently limited flood risk data, and to evaluate flood risk reduction solutions, including feasibility studies and preliminary engineering needed to identify, evaluate, and recommend additional potentially feasible FMPs.
5. Work, as necessary, to coordinate with TWDB on refining or modifying the submitted FME list, if required by TWDB, for example, due to limited resources or other factors determined by the EA.
6. Develop an initial scope of work for each FME to be submitted along with or soon after submitting the FME list to TWDB and coordinate with TWDB staff in refining the scopes of the FMEs on the list, as necessary, including sharing information, communicating and being responsive to the benefiting communities and potential sponsors of the FMEs, TWDB staff, and any TWDB Contractors.
7. Receive and consider the results of the FME work performed by TWDB on behalf of the RFPG including information regarding additional, potentially feasible FMPs and incorporate that information into the regional plan, as appropriate.
8. Consider the FMPs identified through the FMEs performed by TWDB on behalf of the RFPG, as appropriate.
9. Coordinate and communicate with the potential sponsors of FMPs identified through the performance of the FMEs by TWDB, including individual local governments, regional authorities, and other political subdivisions regarding their potential inclusion in the regional flood plan, as appropriate.

10. As appropriate, incorporate in accordance with Task 5A, by recommendation, additional FMPs resulting from the FME studies performed by TWDB on behalf of the RFPGs.
11. Summarize all work associated with this Task and incorporate it into the regional flood plan.
12. This effort will require a highly coordinated chain of events that will involve RFPGs, communities, TWDB, and TWDB contractors.

The information gathered and developed in preparation of this chapter must be subject to the following review process prior to submission of any deliverables:

1. RFPG approval of the FME list to be submitted to TWDB for TWDB to perform.
2. Facilitate development of, and reviews by impacted/benefitting communities, as appropriate, of initial FME scopes of work to support TWDB performance of FMEs and any resulting FMPs from the FMEs performed by TWDB.
3. Review of the chapter documents and related information by RFPG members.
4. Modifications to the chapter document based on RFPG, public, and/or agency comments.
5. Submittal of chapter document to TWDB for review and approval.
6. All effort required to obtain final approval of the Regional Flood Plan chapter by TWDB.

**Deliverables:**

- Prepare a stand-alone Chapter 5 (including work from Tasks 5A and 5B) to be included in the 2028 Regional Flood Plan
- A list of FMEs recommended and approved by the RFPGs to be performed by TWDB to identify FMPs to be included in the current or the following cycle of the regional flood plans.

**Task 6A – Impacts of Regional Flood Plan**

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must include all work necessary to meet all the requirements of 31 TAC § 361.40.

**This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to include:**

1. a region-wide summary of the relative reduction in flood risk that implementation of the RFP would achieve with regard to life, injuries, property, and other factors such as environment and agriculture.
2. a statement that the FMPs in the plan, when implemented, will not negatively affect neighboring areas located within or outside of the FPR.
3. a statement that the plan adequately provides for the preservation of life and property and the development of water supply sources, where applicable.
4. a general description of the types of potential positive and negative socioeconomic or recreational impacts of the recommended FMPs and FMSs within the FPR.
5. a general description of the overall impacts of the recommended FMPs and FMSs in the Regional Flood Plan on the environment, agriculture, recreational resources, water quality, erosion, sedimentation, and navigation; and
6. a summary describing how RFPG recommendations in the RFP meet the needs identified during the needs analysis task as well as adopted goals.

The information gathered and developed in preparation of this chapter must be subject to the following review process prior to submission of any deliverables:

1. Review of the chapter documents and related information by RFPG members.
2. Modifications to the chapter document based on RFPG, public, and/or agency comments.
3. Submittal of chapter document to TWDB for review and approval.
4. All effort required to obtain final approval of the Regional Flood Plan chapter by TWDB.

**Deliverables:**

- Prepare a stand-alone Chapter 6 (including work from both Tasks 6A & 6B) to be included in the 2028 Regional Flood Plan.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

**Task 6B – Contributions to and Impacts on Water Supply Development and the State Water Plan**

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must include all work necessary to meet all the requirements of 31 TAC § 361.41.

**This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to:**

1. Include a region-wide summary and description of the contribution that the regional flood plan would have to water supply development including a list of the specific FMPs and FMSs that would contribute to water supply.
2. Include a description of any anticipated impacts, including to water supply or water availability or projects in the State Water Plan, that the regional flood plan FMPs and FMSs may have.

The information gathered and developed in preparation of this chapter must be subject to the following review process prior to submission of any deliverables:

1. Review of the chapter documents and related information by RFPG members.
2. Modifications to the chapter document based on RFPG, public, and/or agency comments.
3. Submittal of chapter document to TWDB for review and approval.
4. All effort required to obtain final approval of the Regional Flood Plan chapter by TWDB.

**Deliverables:**

- Prepare a stand-alone Chapter 6 (including work from both Tasks 6A & 6B) to be included in the 2028 Regional Flood Plan.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

**Task 7 – Flood Response Information and Activities**

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must include all work necessary to meet all the requirements of 31 TAC § 361.42.

**This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to:**

1. Summarize the nature and types of flood response preparations within the FPR including providing where more detailed information is available regarding recovery.
2. Coordinate and communicate, as necessary, with entities in the region to gather information.
3. RFPGs may not perform analyses or other activities related to planning for disaster response or recovery activities.
4. Plans to be considered in developing this chapter include relevant plans referenced under 31 TAC § 361.22.

The information gathered and developed in preparation of this chapter must be subject to the following review process prior to submission of any deliverables:

1. Review of the chapter documents and related information by RFPG members.
2. Modifications to the chapter document based on RFPG, public, and/or agency comments.
3. Submittal of chapter document to TWDB for review and approval.
4. All effort required to obtain final approval of the Regional Flood Plan chapter by TWDB.

**Deliverables:**

- Prepare a stand-alone Chapter 7 to be included in the 2028 Regional Flood Plan.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

**Task 8 – Administrative, Regulatory, and Legislative Recommendations**

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must include all work necessary to meet all the requirements of 31 TAC § 361.43.

The objective of this task is to prepare a separate chapter to be included in the 2028 Regional Flood Plan that presents the RFPG’s administrative, legislative, and regulatory recommendations.

**This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to develop:**

1. Legislative recommendations that they consider necessary to facilitate floodplain management and flood mitigation planning and implementation.
2. Other regulatory or administrative recommendations that they consider necessary to facilitate floodplain management and flood mitigation planning and implementation.
3. Any other recommendations that the RFPG believes are needed and desirable to achieve its regional flood mitigation and floodplain management goals.
4. Recommendations regarding potential new revenue-raising opportunities including potential new municipal drainage utilities or regional flood authorities that could fund the development, operation, and maintenance of floodplain management or flood mitigation activities in the region.

The information gathered and developed in preparation of this chapter must be subject to the following review process prior to submission of any deliverables:

1. Review of the chapter documents and related information by RFPG members.
2. Modifications to the chapter document based on RFPG, public, and/or agency comments.
3. Submittal of chapter document to TWDB for review and approval.
4. All effort required to obtain final approval of the Regional Flood Plan chapter by TWDB.

**Deliverables:**

- Prepare a stand-alone Chapter 8 to be included in the 2028 Regional Flood Plan.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

## Task 9 – Flood Infrastructure Financing Analysis

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must include all work necessary to meet all the requirements of 31 TAC §361.44.

The objective of this task is to report on how sponsors of recommended FMPs propose to finance projects.

**This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to:**

1. Coordinate and communicate with individual local governments, regional authorities, and other political subdivisions.
2. Perform a survey, including the following work:
  - a. Contacting FME, FMP and FMS with NRNC cost sponsors.
  - b. Collection and collation of data.
  - c. Documentation of the effectiveness of survey methodology, providing percent survey completions, and whether an acceptable minimum percent survey completion was achieved.
  - d. Submission of data.
3. Coordinate with FME and FMP sponsors as necessary to ensure detailed needs and costs associated with their anticipated evaluations and projects are sufficiently represented in the Regional Flood Plan for future funding determinations.
4. Indicate how individual local governments, regional authorities, and other political subdivisions in their region propose to finance the region's recommended FMPs and FMEs included in their flood plan. The assessment must also describe what role the RFPG proposes for the state in financing recommended FMPs and FMEs. As projects are implemented, those improvements and associated benefits must be incorporated into and reflected in the subsequent Regional Flood Plans.
5. Summarize the survey results.

The information gathered and developed in preparation of this chapter must be subject to the following review process prior to submission of any deliverables:

1. Review of the chapter documents and related information by RFPG members.
2. Modifications to the chapter document based on RFPG, public, and/or agency comments.
3. Submittal of chapter document to TWDB for review and approval.
4. All effort required to obtain final approval of the Regional Flood Plan chapter by TWDB.

### **Deliverables:**

- A completed Chapter 9 must be delivered in the 2028 Regional Flood Plan to include a summary of reported financing approaches for all recommended FMPs and FMEs. Data must be submitted in accordance with TWDB guidance documents.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

## Task 10 – Public Participation and Plan Adoption

The objective of this task is to address public participation, public meetings, eligible administrative and technical support activities, and other requirements and activities eligible for reimbursement. Objectives also include activities necessary to complete and submit a draft and final Regional Flood Plan and obtain TWDB approval of the Regional Flood Plan.



In this task, the RFPG must evaluate and ensure that the draft and final Regional Flood Plan satisfies the requirements for regional flood plans in the guidance principles adopted in Title 31 TAC § 362.3 and must include a statement in the draft and final Regional Flood Plan explaining how the Regional Flood Plan satisfies the requirements of each of the guidance principles in accordance with Title 31 TAC § 361.20.

**This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to:**

1. In addition to generally meeting all applicable statute requirements governing regional and state flood planning this portion of work must, in particular, include all technical and administrative support activities necessary to meet all the requirements of 31 TAC Chapters 361 and 362 that are not already addressed under the scope of work associated with other contract Tasks but that are necessary and or required to complete and deliver a draft Regional Flood Plan and final, adopted Regional Flood Plan to TWDB and obtain approval of the adopted Regional Flood Plan by TWDB.
2. Organization, support, facilitation, and documentation of all meetings associated with preplanning meeting; consideration of a substitution of alternative flood management strategies; public meeting after adoption of the draft Regional Flood Plan and prior to adoption of the final Regional Flood Plan; and consideration of Regional Flood Plan amendments, alternative FMS substitutions, or Board-directed revisions.

#### **Technical Support and Administrative Activities**

1. RFPGs must support and accommodate periodic presentations by the TWDB for the purpose of orientation, training, and retraining as determined and provided by the TWDB during regular RFPG meetings.
2. Attendance and participation of technical consultants at RFPG, subgroup, subcommittees, special and or other meetings including preparation and follow-up activities.
3. Developing technical and other presentations and handout materials for regular and special meetings to provide technical and explanatory data to the RFPG and its subcommittees, including follow-up activities.
4. Administrative and technical support and participation in RFPG activities, and documentation of any RFPG workshops, work groups, subgroup, and/or subcommittee activities.
5. Technical support and administrative activities associated with periodic and special meetings of the RFPG including developing agendas and coordinating activities for the RFPG.
6. Provision of progress reports to TWDB for work performed under this Contract.
7. Development of draft and final responses for RFPG approval to public questions or comments as well as approval of the final responses to comments on Regional Flood Plan documents.
8. Intraregional and interregional coordination, communication, and/or facilitation required within the FPR and with other RFPGs to develop a Regional Flood Plan.
9. Incorporation of all required data and reports into Regional Flood Plan document.
10. Modifications to the Regional Flood Plan documents based on RFPG, public, and/or agency comments.
11. Preparation of a Regional Flood Plan chapter summarizing Task 10 activities including review by RFPG and modification of document as necessary.
12. Development and inclusion of Executive Summaries in both draft Regional Flood Plan and final Regional Flood Plan.
13. Production, distribution, and submittal of all draft and final Regional Flood Plan-related planning documents for RFPG, public and agency review, including in hard-copy format when required.

14. Assembling, compiling, and production of the completed draft Regional Flood Plan and Final Regional Flood Plan document(s) that meet all requirements of statute, 31 TAC Chapters 361 and 362, Contract and associated guidance documents.
15. Submittal of the Regional Flood Plan documents in both hard copy and electronic formats to TWDB for review and approval; and all effort required to obtain final approval of the Regional Flood Plan by TWDB.

**Other Activities**

1. Review of all Regional Flood Plan-related documents by RFPG members.
2. Development and maintenance of a RFPG website or RFPG-dedicated webpage on the RFPG administrator’s website for posting planning group meeting notices, agendas, materials, and plan information.
3. Limited non-labor, direct costs associated with maintenance of the RFPG website.
4. Development of agendas, presentations, and handout materials for the public meetings to provide to the public.
5. Documentation of meetings to include recorded minutes and/or audio recordings as required by the RFPG bylaws and archiving and provision of minutes to public.
6. Preparation and transmission of correspondence, for example, directly related to public comments on Regional Flood Plan documents.
7. Promoting consensus decisions through conflict resolution efforts including monitoring and facilitation required to resolve issues between and among RFPG members and stakeholders in the event that issues arise during the process of developing the Regional Flood Plan, including mediation between RFPG members, if necessary.
8. RFPG membership solicitation activities.
9. Meeting all posting, meeting, and other public notice requirements in accordance with the open meetings act, statute, and 31 TAC § 361.21 and any other applicable public notice requirements.
10. Solicitation, review, and dissemination of public input, as necessary.
11. Any efforts required, but not otherwise addressed in other SOW tasks that may be required to complete a Regional Flood Plan in accordance with all statute and rule requirements.

**Deliverables:**

- A completed Chapter 10 summarizing public participation activities and appendices with public comments and RFPG responses to comments.
- Complete draft Regional Flood Plan and final, adopted Regional Flood Plan documents.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

**Task 11 – Implementation and Comparison to Previous Regional Flood Plan**

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must specifically include all work necessary to meet all the requirements of 31 TAC § 361.45.

The objective of this task is to.

**This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to:**

1. Collect information from local sponsors of FMEs, FMSs, and FMPs regarding implementation of previously recommended FMEs, FMSs, and FMPs and provide to the EA; and
2. Include a general description of how the new RFP differs from the previous plan including with regards to the status of existing flood infrastructure, flood mitigation achieved, goals, and changes to the recommended FMEs, FMSs, and FMPs.

The information gathered and developed in preparation of this chapter must be subject to the following review process prior to submission of any deliverables:

1. Review of the chapter documents and related information by RFPG members.
2. Modifications to the chapter document based on RFPG, public, and/or agency comments.
3. Submittal of chapter document to TWDB for review and approval.
4. All effort required to obtain final approval of the Regional Flood Plan chapter by TWDB.

**Deliverables:**

A completed Chapter 11 must be delivered in the 2028 Regional Flood Plan to include information regarding differences between the plans. Data must be submitted in accordance with TWDB guidance documents. Any additional deliverables identified in the TWDB Flood Planning guidance documents.

RFPGs must submit all data deliverables, related regional flood plan chapters, and related documents, as applicable, in the FINAL REGIONAL FLOOD PLAN, including required GIS files, maps, etc., to reflect work performed. Data must be organized and summarized in the Regional Flood Plan in accordance with TWDB Flood Planning guidance documents.

**3. Information Required in the RFP Submittal - Tab Format**

The BRA specifically requests succinct submittals tailored to the general and discipline-specific scopes of services summarized above. Each response should describe in sufficient detail the relevance of the individual team member's expertise and experience to the specific requirements of the project. All submittals become the property of the BRA. Each submittal shall include the information requested below. Please limit each submittal to no more than 20pages (not including resumes and required forms)

Tab A: Include the following:

- (1) Date your company was established and a brief history; number of employees; provide number and location of offices.
- (2) Provide name, title and office location of person who will be the principal contact for the BRA and the billing location if different.
- (3) Describe the types of organizations that your company typically serves and general nature of the work.
- (4) A list and description of similar services completed within the last five years under your current company name or any other company name similar in nature to this solicitation. This should include the name, the location, a brief description of Scope of Services, and a contact name and telephone number of a reference for each client. List litigation that your company has been a party to in the last five (5) years, under your current company name or any other company name. Include only litigation that involves business units in your company that are proposed for performing services under this RFP.
- (5) List all such litigation involving owners and/or general contractors. To be fully responsive, provide the level of detail in the attached example, as well as a name and phone number to contact an authorized representative of your company in the event that the BRA needs to clarify your response. Failure to be fully responsive will be sufficient grounds for the BRA to disqualify your company.
- (6) Have you ever defaulted, failed to complete a contract or had a contract terminated by the other party? If so, where and why? Provide name and telephone number of the other party.

Tab B: Include the following:

- (1) Discuss Firm's experience conducting hydrologic and hydraulic analysis and model development.
- (2) Discuss the Firm's experience with watershed planning.
- (3) A summary of Firm's experience of conducting project management including conducting public meetings for information purposes and to obtain input to the plan formulation and decision-making process.
- (4) Provide a description of the Firm's quality control methodology for tasks in the Scope of Work in section 2 of this RFP.
- (5) Provide the Firm's approach for this project to meet the required timelines as set forth by the TWDB. [Link to TWDB's work schedule](#)
- (6) Provide a description of the Firm's ability to complete projects without significant cost escalations or overruns.
- (7) Provide a summary of the Firm's team and the functional structure of the proposed team. At a minimum, include the following information:
  - a. Identification of the person proposed to serve as the Project Principal/point of contact for scope of services development and negotiations.
  - b. Identification of the individual who will serve as Project Manager, if different from Project Principal.
  - c. Professional registrations/certifications of team members in their respective fields, where applicable or available.
  - d. A two-page (maximum) resume for each team member proposed including a brief overview of career backgrounds including years of experience, areas of practice, specialized training or knowledge relevant to services listed in section 2. Scope of Services (include after all materials in Tab B).
- (8) Please include the Firm Name and Project Manager contact for any sub-contractors to be utilized for this Project.**

Tab C: Include the following:

- (1) Complete and submit the attached W-9 form, or if foreign entity submit the appropriate tax document information.
- (2) Complete and submit the attached "Conflicts of Interest Questionnaire [CIQ]" form.
- (3) Complete and submit the "Acknowledgment of Request for Proposals and Receipt of Addenda" form. Respondent is required to complete, sign and submit this form with Respondent's Proposal. Failure to complete, sign and submit this form with Respondent's Proposal will disqualify the entire Proposal as non-responsive.
- (4) HUB Subcontracting Plan.

#### **4. RFP Inquiries**

All inquiries, including clarifying questions, related to this RFP shall **only** be directed to the Purchasing Agent via e-mail to [submissions@brazos.org](mailto:submissions@brazos.org) . The Purchasing Agent will direct any inquiries to the appropriate BRA staff, a response will be issued and if warranted, an Addendum will be posted on the BRA's website at [www.brazos.org](http://www.brazos.org). **Failure to adhere to this restriction during the advertising, evaluation, and selection phases will result in the rejection of a Respondent's Proposal.**

#### **5. Hub Subcontracting Plan**

This solicitation requires a HUB Subcontracting Plan to be completed and submitted. The HUB Subcontracting Plan is attached to this solicitation. If you have any questions regarding the HUB Subcontracting Plan please contact David Thompson, HUB Coordinator at [David.Thompson@Brazos.org](mailto:David.Thompson@Brazos.org).

## **6. Hub Subcontracting Plan Instructions (If Self Performing HUB and no Subcontractors)**

If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), follow the instructions on the HUB Subcontracting Plan Checklist, first page of the HUB Plan included in this solicitation.

Section 1 - Respondent and Requisition Information

Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.

Section 3 - Self Performing Justification

Section 4 – Affirmation (**Remember to sign Section 4**)

If you are subcontracting any work please follow the instructions on the HUB Subcontracting Plan Checklist, first page of the HUB Plan included in this solicitation.

## **7. Respondent's Past Performance**

BRA will consider Respondent's past performance and may conduct reference checks with other entities regarding past performance. BRA may examine Respondent's performance including, but not limited to: the Comptroller of Public Accounts Statewide Procurement Division Vendor Performance Tracking System, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, repeated negative performance, records of repeated non-responsiveness to performance issues, and non-renewals of contracts. Such sources of Respondent performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the Federal government. Further, BRA may initiate such examinations of Respondent performance based upon media reports. Any such investigations shall be at the sole discretion of BRA, and any negative findings, as determined by BRA, may result in non-award to Respondent.

## **8. Conflict of Interest**

Pursuant to Chapter 176 of the Local Government Code, any person or agent of a person who contracts or seeks to contract for the sale or purchase of property, goods, or services with a local government entity (i.e., Brazos River Authority) must disclose in the Conflicts of Interest Questionnaire Form ("CIQ") the person's affiliation or business relationship that might cause a conflict of interest with the local government entity. By law, the CIQ must be filed with the BRA Records Management Officer no later than seven (7) days after the date the person begins contract discussions or negotiations with the BRA, or submits an application or response to a Request for Proposals, correspondence, or another writing related to a potential agreement with the BRA. Updated Questionnaires must be filed in conformance with Chapter 176.

A copy of the CIQ is attached. If you have any questions about compliance, please consult your own legal counsel. Compliance is the individual responsibility of each person or agent of a person who is subject to the filing requirement. An offense under Chapter 176 carries a penalty up to a Class A misdemeanor.

## **9. Disclosure of Interested Parties**

Pursuant to Section 2252.908 of the Government Code, the selected Firm in contracts for the sale or purchase of property, goods, or services with a local government entity (i.e., BRA) anticipated to have a value of at least \$250,000/\$500,000 must submit a Disclosure of Interested Parties Form to the local government entity that discloses all persons at the Selected Firm who have a controlling interest in the selected Firm or who actively participated in facilitating the contract or negotiating the terms of the contract.

The requirements of Section 2252.908 of the Government Code are subject to change, and if you have any questions about compliance, please consult your own legal counsel.

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

## **10. Term of Agreement**

The services of the PROVIDER shall commence on the Effective Date of this Contract and shall continue until the Work is completed.

## **11. Selection Process**

Responses to this proposal will be evaluated and scored based on the factors listed below. The Lower Brazos Regional Flood Planning Group (“Lower Brazos RFPG”) will review responses to this proposal. The “Lower Brazos RFPG” is utilizing a subcommittee to perform the initial screening in the consultant selection process. This subcommittee is responsible for reviewing written proposals and recommending to the “Lower Brazos RFPG” a short list of finalists for presentations and/or interviews with the entire group at a date yet to be determined regular meeting. The final consultant selection will be made by the “Lower Brazos RFPG” after presentations are completed.

1. Respondent Qualification - Specified professional license or certification - Copy of current license or certificate applicable to specified profession or trade;
2. Respondent Experience - Specified number of projects of similar size and scope - Detailed information regarding project size, dollar amount and scope of project for each individual project and any additional information necessary to evaluate vendor experience;
3. Ability to perform the contract or provide the service promptly, or in the time required, without delay or interference;
4. Respondent’s Proposed Plan for Providing Services.

## **12. Contract**

The executed contract between BRA and the selected Respondent shall be a BRA standard form contract for Professional Services. Contract terms are not subject to modification and Respondent will be expected to execute the contract in substantially the form provided. Respondent should not base a proposal on an expectation that BRA will modify its contract terms.

Compensation for services provided under the professional services contract to be entered into with the selected Firm will be based on time and materials up to a total mutually agreeable not-to-exceed amount. Individual tasks under the contract will also be billed on a time and material basis up to a not-to-exceed amount for such task.

The BRA reserves the right to award contract(s) without any negotiations and reserves the right to not make awards. The BRA reserves the right to conduct studies and other investigations as necessary to evaluate any submittal. Submission of a proposal confers no legal right upon any Respondent.

The decision of BRA, or its designee with regard to the above, shall be administratively final. BRA, in its sole discretion, may waive administrative deficiencies and/or minor technicalities in submittals received.

### 13. Insurance Requirements

The Respondent shall, at Respondent's sole expense, maintain insurance coverage as determined acceptable to the BRA. The Respondent must obtain the following minimum insurance requirements and provide proof to the BRA prior to entering into a contract:

General Liability Insurance:	
Bodily Injury	\$ 1,000,000 per occurrence
Property Damage	\$ 1,000,000 per occurrence
Aggregate	\$ 2,000,000
Professional Liability:	\$ 1,000,000 per occurrence
Workers' Compensation:	Statutory
Automobile Liability:	\$ 1,000,000 per claim / aggregate
Employers' Liability	\$ 1,000,000 policy limit

Prior to commencement of work under this agreement, Respondent shall register with myCOLtracking.com and subsequently provide documentation that satisfies the insurance requirements of this agreement. Respondent shall add registration@myCOLtracking.com and certificatererequest@myCOLsolution.com to it's safe sender's list for necessary communication from myCOL. For any registration difficulties, call myCOLtracking support team at (317) 759-9426.

### 14. Recycled and Recyclable Products

The BRA encourages the use of recycled products and products that may be recycled or reused.

### 15. Delivery of Proposal Submittals

Proposals may be submitted in one of the following manners:

**Electronic Transmission.** Email transmission to [submissions@brazos.org](mailto:submissions@brazos.org). Emailed proposal submissions shall be an attachment, in a Portable Document Format (PDF). Proposals shall be clearly identified in the Subject Line as follows: RFP Title, RFP Number and RFP Due Date. The BRA shall not be responsible for submissions that are not properly identified. Proper identification of Respondent's proposal is the sole responsibility of the Respondent and failure to do so may result in the submission not being included in the proposal opening.

**Drop Box Submission Prior to Proposal Submission Deadline:** Hand delivery of one sealed, clearly identified original signed paper copy submission may be received up to the proposal submission deadline contained in the solicitation at the Brazos River Authority, 4600 Cobbs Drive, Waco, TX. 76710, utilizing the secure drop box located near of the office building. The BRA shall not be responsible for submissions that are not properly identified. Proper identification of Respondent's proposal is the sole responsibility of the Respondent and failure to do so may result in the submission not being included in the proposal opening.

**Mail-In Delivery:** Mailed by commercial carrier, overnight or express mail, one sealed clearly identified original signed paper copy submission may be accepted by the Purchasing Agent or other designee up to the proposal submission deadline contained in the solicitation at the Brazos River Authority 4600 Cobbs Drive, Waco, TX. 76710. The BRA shall not be responsible for submissions that are not properly identified. Proper identification of Respondent's proposal is the sole responsibility of the Respondent and failure to do so may result in the submission not being included in the proposal opening.

**REQUEST FOR PROPOSALS  
DEVELOPMENT OF THE 2028 REGION 8 – LOWER BRAZOS REGIONAL FLOOD PLAN  
RFP NO. 24-1343**

**ACKNOWLEDGMENT OF REQUEST FOR PROPOSALS AND  
RECEIPT OF ADDENDA**

**RESPONDENT MUST ACKNOWLEDGE RECEIPT OF THIS REQUEST FOR PROPOSALS AND ADDENDA BY SIGNING BELOW AND SUBMITTING THIS ACKNOWLEDGEMENT WITH YOUR PROPOSAL. FAILURE TO SIGN THIS ACKNOWLEDGEMENT WILL DISQUALIFY THE PROPOSAL AS NON-RESPONSIVE. SIGNATURE MAY BE DIGITAL, ELECTRONIC OR HAND WRITTEN.**

This acknowledgement shall become part of your response and the subsequent contract documents if applicable.

**ACKNOWLEDGMENT OF REQUEST FOR PROPOSALS:**

Respondent hereby acknowledges that it has received and read the Request for Proposals and all Addenda, and that this Proposal is made in accordance with the provisions thereof. Respondent acknowledges that this Proposal meets or exceeds all terms, requirements, conditions, and/or specifications set forth in the Request for Proposals and Addenda, and exceptions or deviations from such terms, requirements, conditions, and/or specifications, if any, have been clearly and conspicuously identified as such in the Proposal.

**Does your company have ten (10) or more full time employees? Check one box only.**

**YES**

**NO**

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Name of Firm (Respondent)

---

Signature – Authorized Representative

---

Printed Name

---

Date

---

E-mail Address

---

Telephone Number



**EXAMPLE RESPONSE TO LITIGATION HISTORY QUESTION**

<u>Date</u>	<u>Parties</u>	<u>Nature/Description of Litigation</u>	<u>Outcome</u>
2010	XYZ, Inc. v. Owner	Owner brought suit against XYZ, Inc. claiming flawed design of a concrete pad.	XYZ, Inc. Nonsuited
2011	XYZ, Inc. v. Owner	XYZ, Inc. retained to design bike path, the path collapsed in construction and owner sued XYZ, Inc. and contractor	Settled
2012	XYZ, Inc. v. Contractor	Contractor claimed XYZ, Inc. negligent on a project where Contractor was constructing a tower and the tower allegedly incorporated incorrect materials. XYZ, Inc. disputes the allegations.	Ongoing

# Request for Taxpayer Identification Number and Certification

**Give Form to the  
 requester. Do not  
 send to the IRS.**

▶ Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

<b>Print or type.</b>	<b>See Specific Instructions on page 3.</b>	<p><b>1</b> Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.</p> <hr/> <p><b>2</b> Business name/disregarded entity name, if different from above</p> <hr/> <p><b>3</b> Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.</p> <p><input type="checkbox"/> Individual/sole proprietor or single-member LLC</p> <p><input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____</p> <p><b>Note:</b> Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is <b>not</b> disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</p> <p><input type="checkbox"/> Other (see instructions) ▶ _____</p>	<p><b>4</b> Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from FATCA reporting code (if any) _____</p> <p><small>(Applies to accounts maintained outside the U.S.)</small></p>
		<p><b>5</b> Address (number, street, and apt. or suite no.) See instructions.</p> <hr/> <p><b>6</b> City, state, and ZIP code</p> <hr/> <p><b>7</b> List account number(s) here (optional)</p> <hr/>	<p>Requester's name and address (optional)</p> <hr/>

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

<b>Social security number</b>											
				-			-				
<b>or</b>											
<b>Employer identification number</b>											
				-							

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

### Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

**Note:** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

## What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note: ITIN applicant:** Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or “doing business as” (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity’s name as shown on the entity’s tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a “disregarded entity.” See Regulations section 301.7701-2(c)(2)(iii). Enter the owner’s name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner’s name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity’s name on line 2, “Business name/disregarded entity name.” If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

### Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

### Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

### Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

#### Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys’ fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

**Note:** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

**Line 5**

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

**Line 6**

Enter your city, state, and ZIP code.

**Part I. Taxpayer Identification Number (TIN)**

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note:** See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.SSA.gov](http://www.SSA.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/Businesses](http://www.irs.gov/Businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. Go to [www.irs.gov/Forms](http://www.irs.gov/Forms) to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to [www.irs.gov/OrderForms](http://www.irs.gov/OrderForms) to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note:** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

**Part II. Certification**

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.**

You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.**

You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.**

You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.**

You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.**

You must give your correct TIN, but you do not have to sign the certification.

**What Name and Number To Give the Requester**

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
6. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

\*Note: The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

**Secure Your Tax Records From Identity Theft**

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.**

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at [spam@uce.gov](mailto:spam@uce.gov) or report them at [www.ftc.gov/complaint](http://www.ftc.gov/complaint). You can contact the FTC at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see [www.IdentityTheft.gov](http://www.IdentityTheft.gov) and Pub. 5027.

Visit [www.irs.gov/IdentityTheft](http://www.irs.gov/IdentityTheft) to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

# CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

## FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

### OFFICE USE ONLY

Date Received

**1 Name of vendor who has a business relationship with local governmental entity.**

**2**  **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information is being disclosed.**

\_\_\_\_\_  
Name of Officer

**4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes       No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes       No

**5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

**6**  Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date



## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.



# HUB Subcontracting Plan (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- ▶ **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
  - Section 2 c. - Yes
  - Section 4 - Affirmation
  - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- ▶ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract\* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
  - Section 2 c. - No
  - Section 2 d. - Yes
  - Section 4 - Affirmation
  - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- ▶ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract\* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
  - Section 2 c. - No
  - Section 2 d. - No
  - Section 4 - Affirmation
  - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- ▶ **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
  - Section 3 - Self Performing Justification
  - Section 4 - Affirmation

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



# HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

**NOTE:** Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

**- - Agency Special Instructions/Additional Requirements - -**

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract\*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

**SECTION 1: RESPONDENT AND REQUISITION INFORMATION**

- a. Respondent (Company) Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_  
 Point of Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_ Fax #: \_\_\_\_\_
- b. Is your company a State of Texas certified HUB?  - Yes  - No
- c. Requisition #: \_\_\_\_\_ Bid Open Date: \_\_\_\_\_

(mm/dd/yyyy)

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b of this SECTION and continue to Item c of this SECTION.)
- No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If No, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- No (If No, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract\*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**SECTION 3: SELF PERFORMING JUSTIFICATION** (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

**SECTION 4: AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature	Printed Name	Title	Date <small>(mm/dd/yyyy)</small>
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**Reminder:**

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.



STATE OF TEXAS                   §  
   §  
COUNTY OF MCLENNAN       §

**PROFESSIONAL SERVICES AGREEMENT**

In consideration of the mutual promises as set forth below, this Professional Services Agreement (“Agreement”) is entered into as of the date last executed below (“Effective Date”), by and between [REDACTED] (“CONSULTANT”), with a mailing address of [REDACTED], and the Brazos River Authority, (“BRA”), with a mailing address of 4600 Cobbs Drive, Waco, Texas 76710.

**SECTION I.                   EMPLOYMENT OF THE CONSULTANT AND PERFORMANCE OF SERVICES**

**1.1 GENERAL:** The BRA has determined the need for professional engineering and associated services (“Services”) in connection with development of the Region 8 Regional Flood Group (“Region 8”) Flood Plan (“Project”), as such Services and Project are more specifically set forth in “Exhibit A” and “Exhibit A-1”, attached hereto and incorporated by reference herein for all purposes. The BRA hereby agrees to employ the CONSULTANT and the CONSULTANT agrees to perform such Services, and, in rendering such Services, the BRA agrees to compensate the CONSULTANT for performance of the Services as stated in “Exhibit B”, attached hereto and incorporated by reference herein for all purposes.

**1.2 PERFORMANCE OF SERVICES:** The CONSULTANT's employees and associates to be utilized in the performance of the Services for the Project are identified in “Exhibit A”. The person identified as Project Manager shown in “Exhibit A” shall not be changed without the BRA’s prior written acknowledgment and concurrence, which shall not be unreasonably withheld. CONSULTANT shall report to BRA's designated Project Representative.

**SECTION II.               BASIC PROJECT SERVICES OF THE CONSULTANT**

**2.1** The CONSULTANT shall provide, perform, and complete to the satisfaction of the BRA all of the Services necessary for completion of the Project contemplated herein. A detailed description of the Project and the Services to be performed shall be attached hereto and incorporated by reference herein as “Exhibit A”. All Services shall be performed in accordance with the grant contract between the Texas Water Development Board (“TWDB”) and the BRA for development of the Project, as may be amended from time to time, attached hereto as “Exhibit A-1” (“TWDB Contract”). In performing the Services, the CONSULTANT shall provide all necessary labor, services, transportation, equipment, information, data, and other means and items necessary to perform the Services.



**2.2** CONSULTANT shall assign only qualified professional and technical employees versed in fields of endeavor appropriate for the Services including employees duly licensed and registered to practice engineering in the State of Texas, which employees shall have the professional abilities and expertise to undertake studies, evaluations, determinations, and analyses to counsel Region 8 and the BRA in the selection and analysis of Project alternatives; to provide cost estimates, technical opinions and recommendations; and to provide professional engineering and associated Services to the BRA for the Project

**2.3** The CONSULTANT hereby covenants and agrees, as an independent contractor, to perform the Services herein contemplated in a manner consistent with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

**2.4** The CONSULTANT shall serve as the BRA's professional CONSULTANT in those phases of the Project to which this Agreement applies; and will give consultation and advice to the BRA during the performance of the Services.

**2.5** It is understood and agreed by the CONSULTANT that the BRA may, from time to time, make suggested revisions or recommendations regarding the Services to be performed under this Agreement. 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 the CONSULTANT's responsibilities or obligations under this Agreement.

**2.6** BRA and CONSULTANT agree that the Scope of Services attached hereto as "Exhibit A" and "Exhibit A-1" accurately reflects and contemplates all of the Services that CONSULTANT has reasonably anticipated that CONSULTANT will need to perform in order to accomplish the tasks set forth therein.

### **SECTION III. PAYMENTS TO THE CONSULTANT**

**3.1** Payments for performance of the Services contemplated by this Agreement shall be in the not-to-exceed amounts and in accordance with the provisions set forth in "Exhibit B".

**3.2** Nothing contained in the Agreement 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 Agreement.

**3.3** BRA will not be required to make any payments to the CONSULTANT, when the CONSULTANT is in default under this Agreement, nor shall this paragraph constitute a waiver of any right, at law or in equity, which BRA may have if the CONSULTANT is in default, including the right to bring legal action for damages or for specific performance of this Agreement. Waiver of any default under this Agreement shall not be deemed a

waiver of any subsequent default.

**3.4** Nothing contained herein shall be construed as authorizing additional fees for work to complete actions not specifically listed for successful completion of the Services. The total amount of compensation set forth in “Exhibit B” shall not be exceeded without the prior written consent of the BRA.

#### **SECTION IV. TERM**

**4.1** The services of the CONSULTANT shall commence on the Effective Date of this Agreement and shall continue until the Services are completed.

**4.2** The CONSULTANT additionally agrees to abide by any and all schedules or timing representations set forth in “Exhibit A”, “Exhibit A-1”, and/or “Exhibit B”.

#### **SECTION V. CONSULTANT'S RESPONSIBILITY**

**5.1** The CONSULTANT shall be solely and completely responsible for performing the Services with diligence and in a manner consistent with the level of care and skill ordinarily exercised for professional engineering service in the State of Texas. In the event the CONSULTANT fails to perform in such a manner, then CONSULTANT SHALL BE RESPONSIBLE FOR ALL DAMAGES AND COSTS ASSOCIATED WITH DEFECTS, FAILURES, ERRORS, OMISSIONS, OR OTHER INSUFFICIENCIES IN THE PROJECT, OR ANY PORTION THEREOF, ATTRIBUTABLE TO SERVICES PROVIDED BY OR THAT SHOULD HAVE BEEN PROVIDED BY THE CONSULTANT PURSUANT TO THIS AGREEMENT, INCLUDING ANY AND ALL AMENDMENTS THERETO. SUCH COSTS SHALL INCLUDE, BUT NOT BE LIMITED TO: ALL EXPENSES REQUIRED TO SATISFACTORILY COMPLETE NECESSARY ANALYSES TO DETERMINE THE CAUSE OF THE FAILURE; AND ANY AND ALL PROFESSIONAL SERVICES COSTS CAUSED BY, ARISING OUT OF, OR RELATED TO THE CORRECTION OF THE ERROR.

**5.2** Acceptance of the Services by BRA shall not constitute nor be deemed a release of the responsibility and liability of the CONSULTANT, its employees, agents, or sub-consultants for the accuracy and competency of the CONSULTANT's Services, including but not limited to: work products, computer programs, or other documents, and Services prepared/performed under this Agreement.

**5.3** The CONSULTANT further agrees to correct programs or documents or re-execute Services as may be required due to the CONSULTANT's development of programs or documents which are found to be in error or contain defects or omissions at no additional costs to the BRA.

**5.4** It is distinctly understood and agreed that no claim for additional services, extra work completed or materials furnished by the CONSULTANT will be allowed by the BRA except as provided herein, nor shall the CONSULTANT perform any work, provide

services or furnish any materials unless such work is first requested and authorized in writing by the BRA. Any such work or materials furnished by the CONSULTANT without BRA's prior written request and authorization shall be at the CONSULTANT's own risk, cost, and expense and the CONSULTANT hereby agrees and covenants that without such written order, CONSULTANT will make no claim for compensation for such work or materials furnished.

## **SECTION VI. INDEMNIFICATION**

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

**6.2** IN ADDITION, THE CONSULTANT AGREES TO INDEMNIFY, KEEP, SAVE, AND HOLD BRA HARMLESS FROM ANY AND ALL ACTIONS, LIABILITIES, DAMAGES, JUDGMENTS, COSTS, AND EXPENSES INCLUDING THE ATTORNEY'S FEES IT INCURS, UP TO A REASONABLE AMOUNT, PLUS ITS COSTS, INCLUDING WITNESS EXPENSES AND EXPERT WITNESS' FEES, IN CASE AN ACTION IS FILED OR DOES IN ANY WAY ACCRUE AGAINST BRA, ITS OFFICIALS, OFFICERS, AND EMPLOYEES IN CONSEQUENCE OF THIS AGREEMENT FOR ANY NEGLIGENT ACT OR OMISSION OF THE CONSULTANT IN THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF THE CONSULTANT OR THE CONSULTANT'S AGENTS, ASSOCIATES, EMPLOYEES, SUCCESSORS, ASSIGNS, OR SUBCONSULTANTS. IN THE EVENT A JUDGMENT IS RECOVERED AGAINST THE BRA FOR ANY LIABILITY IN CONSEQUENCE OF THIS AGREEMENT FOR CONSULTANT'S NEGLIGENT ACT(S) OR OMISSION(S) IN THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF THE CONSULTANT OR THE CONSULTANT'S AGENTS, ASSOCIATES, EMPLOYEES, SUCCESSORS, ASSIGNS, OR SUBCONSULTANTS, SUCH JUDGMENT SHALL BE CONCLUSIVE AGAINST THE CONSULTANT.

**6.3** IT IS SPECIFICALLY UNDERSTOOD AND AGREED BY THE CONSULTANT THAT SUCH INDEMNITY IS INDEMNITY BY THE CONSULTANT 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 SUBCONSULTANT OR SUPPLIER COMMITTED BY THE CONSULTANT, CONSULTANT'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL BRA 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 VII. INSURANCE REQUIREMENTS

**7.1** The CONSULTANT agrees to carry and maintain insurance in the following types and amounts for the duration of this Agreement, and furnish certificates of insurance and make available copies of policy declaration pages and policy endorsements as evidence thereof:

i. Workers' Compensation and Employers' Liability coverage with limits consistent with statutory requirements.

ii. Commercial General Liability with a combined single limit of \$ [REDACTED] per occurrence including products/completed operations, where appropriate, with a separate aggregate of \$ [REDACTED]. The policy shall contain the following provisions:

- a. Blanket contractual liability coverage for liability assumed under the Agreement and all agreements relative to the Services.
- b. Independent Contractors coverage.
- c. Thirty (30)-day Notice of Cancellation in favor of the BRA, endorsement.
- d. Waiver of Transfer of Rights of Recovery Against Others in favor of the BRA's endorsement.
- e. Additional Insured, endorsement

iii. Business Automobile Liability Insurance for all owned, non-owned, and hired vehicles with a minimum combined single limit of \$ [REDACTED] per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of the BRA:

- a. Waiver of Subrogation
- b. Thirty (30)-day Notice of Cancellation
- c. Additional Insured, endorsement

iv. Professional Liability Insurance with a minimum limit of \$ [REDACTED] per claim and \$ [REDACTED] in the aggregate to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs, or specifications prepared or alleged to have been prepared by the insured. The policy shall provide for thirty (30) day notice of cancellation in favor of the BRA.

**7.2** General Requirements: The CONSULTANT shall be responsible for insurance premiums, deductibles, and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificates of insurance required above. Applicable to all insurance policies: If coverage is underwritten on a

claims-made basis, the retroactive date shall be coincident with or prior to the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The CONSULTANT shall maintain continuous coverage for the duration of this Agreement and for not less than twenty-four (24) months following completion of the Project. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Services. The CONSULTANT shall, on at least an annual basis, provide the BRA with a certificate of insurance identifying the BRA as the certificate holder, including any required endorsements, as evidence of such insurance.

**7.3** If insurance policies are not written for amounts specified above, the CONSULTANT shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

**7.4** The CONSULTANT's subcontractors shall carry and maintain insurance in the types and amounts as deemed adequate by the BRA for the duration of this Agreement, unless otherwise authorized in writing by the BRA. CONSULTANT shall be responsible for ensuring that subcontractors carry and maintain the requisite insurance policies. The subcontractor's policies, except for Professional Services and Workers Compensation, shall contain the following endorsements in favor of the BRA:

- a. Waiver of Subrogation
- b. Thirty (30)-day Notice of Cancellation
- c. Additional Insured, endorsement

**7.5** The CONSULTANT shall not commence providing Services under this Agreement until such required insurance is in full force and effect, and until such insurance has been reviewed and deemed adequate by the BRA. The CONSULTANT shall not allow any subcontractor to commence providing services on CONSULTANT's subcontract until such time as CONSULTANT's subcontractor(s) has obtained all requisite insurance. The CONSULTANT shall not commence any work until the aforementioned requirements have been met. Approval of insurance by the BRA shall not relieve or decrease the liability of the CONSULTANT hereunder.

**7.6** Insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued and shall be written by a company with an A. M. Best rating of A or better.

**7.7** Certificate of Insurance and all endorsements shall read:

Brazos River Authority  
4600 Cobbs Drive  
Waco, Texas 76710

**7.8** The "other" insurance clause shall not apply to the BRA where the BRA is an

additional insured shown on the policy. It is intended that policies required in this Agreement, covering both the BRA and the CONSULTANT, shall be considered primary coverage as applicable.

**7.9** The BRA shall be entitled, upon request and without expense, to receive copies of all CONSULTANT, or CONSULTANT's subcontractor(s), policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies and if such request for deletions, revisions, or modifications are commercially available.

**7.10** The CONSULTANT shall not cause any insurance required under this Agreement to be canceled nor permit any insurance to lapse during the term of this Agreement, nor shall the CONSULTANT allow any subcontractor to cancel nor permit any requisite insurance to lapse during the term of the CONSULTANT's subcontract.

**7.11** The BRA reserves the right to review the insurance requirements of this section during the effective period of the Agreement and to make reasonable adjustments to insurance coverages and their limits when deemed necessary and prudent by the BRA based upon changes in statutory law, court decisions, or the claims history of the industry as well as the CONSULTANT (such adjustments shall be commercially available to the CONSULTANT).

**7.12** Actual losses for which the CONSULTANT is found liable under this Agreement shall be paid by the CONSULTANT if they are not covered by insurance as required by this Agreement.

**7.13** BRA reserves the right to utilize the services of a third-party contractor in relation to management of insurance requirements ("Insurance Manager"). CONSULTANT agrees to cooperate with BRA and the Insurance Manager, including without limitations: registering with the Insurance Manager through the Insurance Manager's website, software, or other registration process prior to commencement of Services; providing valid certificates of insurance of the types and limits required herein, including appropriate endorsements and conditions, to the Insurance Manager, whether electronically or otherwise; communicating to and receiving communications from the Insurance Manager, whether electronically or otherwise; providing updated insurance information to the Insurance Manager in accordance with the terms of this Agreement, including, but not limited to, annual renewals; and cooperating with the BRA and the Insurance Manager in any other way as necessary in relation to provision of insurance documentation required by this Agreement. No action or inaction on the part of the Insurance Manager in relation to the acceptance, rejection, or processing of CONSULTANT's insurance documents, including any communications or lack thereof, shall waive or otherwise invalidate CONSULTANT's responsibility to maintain insurance coverage in the types and amounts set forth herein, including any other insurance-related conditions required by the terms of this Agreement.

## **SECTION VIII.      DEFAULT**

**8.1**   BRA may terminate this Agreement 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 Services in accordance with the provisions of this Agreement.

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

## **SECTION IX.      TERMINATION**

**9.1**   This Agreement may be terminated at any time by BRA , in BRA’s sole discretion, for any cause or for convenience without penalty or liability. Upon receipt of such notice by BRA, the CONSULTANT shall immediately discontinue all Services and actions on behalf of BRA.

**9.2**   As soon as practicable after receipt of notice of termination, the CONSULTANT, shall submit a statement, showing in detail the Services performed but not paid for under this Agreement to the date of termination. The CONSULTANT will forward to BRA all portions of the Services performed and instruments of service created on the Project to the date of termination. BRA shall then pay the CONSULTANT promptly the accrued and unpaid Services to the date of termination, to the extent the Services are approved by BRA.

## **SECTION X.      OWNERSHIP AND USE OF DOCUMENTS; INTELLECTUAL PROPERTY; PUBLICATION; AND ACKNOWLEDGEMENT**

**10.1**   Region 8, BRA, and TWDB shall have unlimited, world-wide, unrestricted, non-exclusive, perpetual, irrevocable, royalty-free rights to access and receive, and to use, any and all technical or other data or information developed in whole or in part, or resulting from the performance of Services under this Agreement, including the right to sublicense use to third parties, with no compensation obligation. It is agreed that all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this Agreement and developed by CONSULTANT or its contracted parties pursuant to this Agreement shall become the joint property of Region 8, BRA, CONSULTANT, and the TWDB. These materials shall not be copyrighted or patented by CONSULTANT.

**10.2**   Any work products subject to a TWDB copyright or joint copyright and produced or developed by CONSULTANT or their subcontractor(s) pursuant to this Agreement or using any funding provided by TWDB may be reproduced in any media, forms or formats by Region 8, BRA, TWDB or CONSULTANT at their own cost, and be disseminated in

any medium, format or form by any party at its sole cost and in its sole discretion. CONSULTANT may utilize such work products as they may deem appropriate, including dissemination of such work products or parts thereof under their own name, provided that any TWDB copyright is noted on the materials.

**10.3** CONSULTANT agrees to acknowledge TWDB in any news releases or other publications relating to the work performed under this Agreement.

**10.4** The CONSULTANT shall retain in its files all original notes, letters, correspondence, drawings, specifications, documents or instruments of professional Services as well as all other pertinent information for the work.

## **SECTION XI. SUCCESSOR AND ASSIGNS**

**11.1** BRA and CONSULTANT each bind themselves, their partners, successors, executors, administrators, and assigns to the other party of the Agreement in respect to all covenants of this Agreement. The CONSULTANT shall not assign, sublet, or transfer its interest in this Agreement without the written consent of the BRA.

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

## **SECTION XII. CONSULTANT'S COORDINATION WITH BRA**

**12.1** The CONSULTANT shall be available for conferences with BRA so that Services can be provided and completed with the full benefit of BRA experience and knowledge of existing needs and facilities and be consistent with current policies and construction standards of the BRA.

## **SECTION XIII. INDEPENDENT CONTRACTOR**

**13.1** For the purpose of this Agreement, the CONSULTANT shall be considered an independent contractor and therefore solely responsible for liability resulting from negligent acts or omissions. The CONSULTANT shall obtain all necessary insurance, in the judgment of the CONSULTANT, to protect itself, the BRA, the TWDB, and employees and officials of the TWDB from liability arising out of this Agreement. THE CONSULTANT SHALL INDEMNIFY AND HOLD THE TWDB AND THE STATE OF TEXAS HARMLESS, TO THE EXTENT THE CONSULTANT MAY DO SO IN ACCORDANCE WITH STATE LAW, FROM ANY AND ALL LOSSES, DAMAGES, LIABILITY, OR CLAIMS THEREFORE, ON ACCOUNT OF PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE OF ANY NATURE WHATSOEVER CAUSED BY THE CONSULTANT, ARISING OUT OF THE ACTIVITIES UNDER THIS AGREEMENT.

**13.2** The CONSULTANT shall be solely and entirely responsible for procuring all necessary licenses and permits which may be required for the CONSULTANT to perform the subject work.



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

#### **SECTION XIV. DISCLOSURE**

**14.1** By signature of this Agreement, the CONSULTANT acknowledges to BRA 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, in relation to providing the proposed Services.

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

#### **SECTION XV. COMPLIANCE WITH LAWS AND LICENSES**

**15.1** The CONSULTANT shall at all times observe and comply with all provisions of local, state, and federal laws, rules, and regulations which in any manner limit, control, or apply to the actions or operations of the CONSULTANT, or its agents, associates, employees, successors, assigns, or subcontractors, engaged in performance of the Services or provision of the Services contemplated by this Agreement.

**15.2** CONSULTANT shall comply with TWDB rules and adhere to all requirements in state law pertaining to the procurement of professional services.

**15.3** 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 Services.

**15.4** CONSULTANT must adhere to all requirements in state law and TWDB rules pertaining to the procurement of professional services, including 31 TAC § 361.72(c). Prior to associated reimbursements, CONSULTANT must submit a Certification of Procurement of Professional Services in accordance with Exhibit F in the TWDB Contract attached hereto as Exhibit "A-1", evidencing that CONSULTANT's subcontractors were properly and competitively procured for this planning cycle. Expenses incurred under subcontracts or agreements that have not been approved by the TWDB or do not otherwise comply with the terms of the TWDB Contract and/or this Agreement are not eligible for reimbursement.

#### **SECTION XVI. SEVERABILITY**

**16.1** If any word, phrase, clause, sentence, or provision of the Agreement, or the application of same to any person or set of circumstances is for any reason held to be

unconstitutional, invalid, or unenforceable, such finding shall only affect such word, phrase, clause, sentence, or provision, and such finding shall not affect the remaining portions of the Agreement, this being the intent of the parties in entering into this Agreement; and all provisions of this instrument are declared to be severable for this purpose.

## **SECTION XVII. CONSTRUCTION OF AGREEMENT**

**17.1** Although the Agreement is substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other.

## **SECTION XVIII. NO THIRD-PARTY BENEFICIARY**

**18.1** No claim as a third-party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the BRA and/or CONSULTANT, and the BRA and CONSULTANT shall not be liable for or be held to pay any money to any such person. Notwithstanding the foregoing, CONSULTANT agrees that neither Region 8 nor TWDB are parties to this Agreement and agrees that these entities have no liability under the terms of this Agreement. Region 8 and TWDB are solely third-party beneficiaries under this Agreement.

## **SECTION XIX. ENTIRE AGREEMENT**

**19.1** This Agreement sets forth the entire agreement of the BRA and the CONSULTANT with respect to the accomplishment of the Services and the payment therefor, and there are no other understandings or agreements, oral or written, between the BRA and the CONSULTANT with respect to performance of the Services and the compensation therefor, nor was the making and execution of this Agreement induced by any representation, statement, warranty, agreement, or action other than those expressed or explicitly referenced herein.

## **SECTION XX. AMENDMENTS**

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

## **SECTION XXI. HEADINGS**

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

## **SECTION XXII. REMEDIES**

**22.1** 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 Agreement may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition not be performed pursuant to this Agreement.

### **SECTION XXIII. VENUE AND CHOICE OF LAW**

**23.1** VENUE AND JURISDICTION OF ANY SUIT, RIGHT, OR CAUSE OF ACTION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL LIE EXCLUSIVELY IN MCLENNAN COUNTY, TEXAS.

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

### **SECTION XXIV. REVIEW OF AGREEMENT**

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

**24.2** In the event that the provisions of this Agreement conflict with the provisions of the TWDB Contract, then the terms of the TWDB Contract shall prevail and have precedence. Further, CONSULTANT shall comply with any and all requirements of the SUBCONTRACTOR, as such term is defined in the TWDB Contract, set forth in the TWDB Contract.

### **SECTION XXV. RIGHT TO AUDIT**

**25.1** CONSULTANT and its subcontractors must 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 years after completion of this Agreement and must, at the CONSULTANT's own expense, make them available for examination and audit by BRA and TWDB at any time upon 24 hours' notice from the BRA and/or the TWDB. Accounting by CONSULTANT and its subcontractors must be in a manner consistent with generally accepted accounting principles.

**25.2** The CONSULTANT shall ensure BRA and TWDB have these rights with the CONSULTANT's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the CONSULTANT and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the CONSULTANT's obligations to BRA and/or the TWDB.

**25.3** The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this Agreement. The acceptance of funds under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

### **SECTION XXVI. No Debt Against the State**

**26.1** This Agreement is subject to termination or cancellation without penalty to TWDB or BRA, either in whole or in part, subject to the availability of state funds.

### **SECTION XXVII. E-Verify**

**27.1** The parties understand and agree that the CONSULTANT shall be required to utilize the United States Department of Homeland Security's E-Verify system to determine the eligibility of all persons employed during the Agreement term to perform duties within the State of Texas, as well as all persons (including any subcontractors) assigned by the CONSULTANT to perform work pursuant to this Agreement.

### **SECTION XXVIII. Antitrust**

The CONSULTANT represents and warrants that neither the CONSULTANT nor any firm, corporation, partnership, or institution represented by, or affiliated with the CONSULTANT, or anyone acting for such firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business & Commerce Code, or the federal antitrust laws; or (2) communicated directly or indirectly the CONSULTANT's proposal which has resulted in this Agreement to any competitor or other person engaged in such line of business during the procurement process for this Agreement.

### **SECTION XXIX. Conflict of Interest**

**29.1** CONSULTANT represents and warrants that the provision of goods and services or other performance under this Agreement will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. CONSULTANT also represents and warrants that, during the term of this Agreement, Consultant will immediately notify BRA, in writing, of any existing or potential conflict of interest relative to the performance of the Agreement.

### **SECTION XXX. Proprietary and Confidential Information**

**30.1** The CONSULTANT warrants and represents that any information that is proprietary or confidential, and is received by the CONSULTANT from the BRA, TWDB

or any governmental entity, shall not be disclosed to third parties without the written consent of the BRA, TWDB or applicable governmental entity, whose consent shall not be unreasonably withheld.

### **SECTION XXXI. Public Information Act**

**31.1** The CONSULTANT acknowledges and agrees that all documents, in any media, generated in the performance of work conducted under this CONTRACT are subject to public disclosure under the Public Information Act, Government Code, Chapter 552. The CONSULTANT shall produce all documents upon request of the BRA and/or the TWDB within two (2) business days when the documents are required to comply with a request for information under the Public Information Act.

### **SECTION XXXII. Accurate and Timely Record Keeping**

**32.1** The CONSULTANT warrants and represents that it will keep timely, accurate and honest books and records relating to the work performed and the payments received under this Agreement according to generally accepted accounting standards. Further, the CONSULTANT agrees that it will create such books and records at or about the time the transaction reflected in the books and records occurs.

**32.2**

### **SECTION XXXIII. BOYCOTTING AND PROHIBITION PROVISIONS**

**33.1** CONSULTANT hereby verifies that CONSULTANT:

- i.** Does not currently, and will not for the term of this Agreement, boycott Israel;
- ii.** Does not currently, and will not for the term of this Agreement, boycott any company that engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law;
- iii.** 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 this Agreement against a firearm entity or firearm trade association;
- iv.** Is not owned by, or the majority of stock or other ownership interest of CONSULTANT is not held or controlled by:
  - a.** Individuals who are citizens of China, Iran, North Korea, Russia, or any other country designated as a threat to critical infrastructure.
  - b.** A company or other entity, including governmental entities, that is owned or controlled by citizens of, or is directly controlled by the government of, China, Iran, North Korea, Russia, or any other country designated as a

threat to critical infrastructure;

- v. Is not headquartered in China, Iran, North Korea, or Russia; and
- vi. Agrees not to access BRA networks or enter BRA facilities with any device that contains software or hardware that is prohibited by the BRA.

#### **SECTION XXXIV. NOTICES**

**34.1** All notices, communications, and reports required under the Agreement shall be personally delivered or mailed to the respective parties by certified mail, return receipt requested or by standard overnight service at the addresses shown below or designated from time to time by the parties in writing.

If intended for BRA, to:

Brazos River Authority  
4600 Cobbs Drive  
Waco, Texas 76710

If intended for CONSULTANT, to:

[Redacted]

#### **SECTION XXXV. FORCE MAJEURE**

**35.1** Notwithstanding any provision herein to the contrary, neither party hereto shall be under any liability or be deemed in default with respect to its obligations under this Agreement for any delay in performing such party's obligations where such delay is due to force majeure, so long as and to the extent that such performance is prevented by such cause. The term force majeure shall only mean acts of God, natural disasters, or other natural catastrophes, war, terrorism, riots, strikes, lockouts, regulatory acts of any other governmental agencies, court orders, or other similar or dissimilar causes not within the reasonable control of such party and not due to the intentional, grossly negligent, and/or negligent act or omission of such party. Each party must give written notice to the other party within five (5) business days of their knowledge of a force majeure event that will affect their performance under this Agreement. The existence of a force majeure event shall serve to suspend the affected party's obligations under this Agreement, including any associated time periods to perform such obligations, for so long as and to the extent the force majeure event affects such obligations. Upon cessation of the force majeure event, such suspended obligations and any associated time periods to perform such obligations shall resume.

#### **SECTION XXXVI. NONDISCLOSURE AND CONFIDENTIALITY**

**36.1 Confidentiality.** During the performance of this Agreement, the CONSULTANT has or will have access to confidential or proprietary information belonging to BRA. The CONSULTANT herein agrees to maintain the confidentiality of the information received from BRA and information derived from performance of the Services as further set forth in this Section.

**36.2 Confidential Information.** For the purposes of this Agreement, the term Confidential Information shall mean:

- i. Any information disclosed by BRA relating to this Agreement;
- ii. Any information disclosed by BRA marked or otherwise identified by BRA as “Confidential Information”;
- iii. Any information acquired by CONSULTANT relating to BRA or any property owned or controlled by BRA as a result of any on-site inspection, testing, appraisal, or other review or analysis of the property or any portion or component thereof performed by CONSULTANT or any of its representatives; or
- iv. Any notes, analyses, proposed terms and conditions, proposed agreements, and other documents prepared by CONSULTANT which use, summarize, identify, reference, analyze, evaluate, reflect, contain, are based on, or respond to any Confidential Information disclosed to CONSULTANT by BRA or acquired by CONSULTANT pursuant to Section 28.2iii, above.

**36.3 Disclosure.** BRA agrees to disclose, and CONSULTANT agrees to receive the Confidential Information.

**36.4 Confidentiality.**

- i. **No Use.** CONSULTANT agrees not to use the Confidential Information in any way, or to manufacture or test any product embodying Confidential Information, except for the performance of Services in accordance with the terms of this Agreement (“Permitted Purpose”).
- ii. **No Disclosure.** CONSULTANT agrees to prevent and protect the Confidential Information, or any part thereof, from disclosure to any person other than those having a need for disclosure in connection with the Permitted Purpose. Accordingly, CONSULTANT shall not at any time disclose or allow access by any person any of the Confidential Information other than to:
  - a. Those employees and/or subcontractors of CONSULTANT who require knowledge of the Confidential Information to achieve the Permitted Purpose;
  - b. Those legal and/or other professional advisers who require knowledge of the Confidential Information to achieve the Permitted Purpose, and solely for the purpose of soliciting their professional advice on the Permitted Purpose;
  - c. Any other person BRA approves in writing in advance.

CONSULTANT shall require all persons obtaining the Confidential Information, pursuant to the authority provided in this section, to be bound by the requirements of this Agreement.

**iii. Protection of Secrecy.** CONSULTANT agrees to take all steps reasonably necessary to protect the secrecy of the Confidential Information, and to prevent the Confidential Information from falling into the public domain or into the possession of unauthorized persons.

**iv. Records.** CONSULTANT shall maintain a record of entities or persons to whom any Confidential Information is disclosed pursuant to this Agreement, together with the actual information disclosed to them, and shall make this record available to BRA upon request;

**v. Reproduction and Return of Confidential Information.** CONSULTANT shall not reproduce the Confidential Information or any part thereof in any format or media except with BRA's prior written consent. Upon termination of this Agreement or written request of BRA, CONSULTANT shall immediately return to BRA all the Confidential Information. Additionally, CONSULTANT shall destroy all copies of the Confidential Information, whether made by CONSULTANT or a third party, and shall ensure that the destruction is performed in a manner that prevents disclosure. Such destructions shall be certified to BRA in writing. CONSULTANT shall ensure that any third persons who are provided Confidential Information, in accordance with the provisions of this Agreement, shall return to BRA all copies of that information and/or certify in writing to BRA that the copies of the Confidential Information have been destroyed.

**vi. Notification of Disclosure.** CONSULTANT shall immediately notify the BRA, upon becoming aware of any unauthorized disclosure, copying, use or loss of any part or all of the Confidential Information. CONSULTANT agrees that CONSULTANT shall be responsible for any breach of any term of this Agreement by CONSULTANT or those to whom CONSULTANT provides the Confidential Information.

**36.5 Limits on Confidential Information.** Confidential Information shall not be deemed proprietary and the CONSULTANT shall have no obligation with respect to such information where the information:

- i.** Was known to CONSULTANT prior to receiving any of the Confidential Information from BRA and was not received in confidentiality;
- ii.** Has become publicly known through no wrongful act of CONSULTANT;
- iii.** Was received by CONSULTANT without breach of this Agreement from a third party without restriction as to the use and disclosure of the information;



iv. Was independently developed by CONSULTANT without use of the Confidential Information; or

v. Was ordered to be publicly released by the requirement of any governmental agency.

**36.6 Disclosures Required by Law.** Notwithstanding the obligations of confidentiality set forth herein, if CONSULTANT believes it is required by law, whether by statute, regulation, court order, subpoena, or otherwise, to disclose any Confidential Information, it will provide prompt written notice to BRA so that BRA may seek legal protection of the Confidential Information. CONSULTANT will cooperate with BRA and will use its best efforts to assist in obtaining such protection. If BRA is unable to obtain such protection, CONSULTANT may disclose the Confidential Information, but only to the extent required by law.

**36.7 Ownership of Confidential Information.** CONSULTANT agrees that all Confidential Information, including, without limitation, any and all intellectual property rights and derivatives thereof, shall remain the sole property of BRA, and that BRA may use such Confidential Information for any purpose without obligation to CONSULTANT. Nothing contained herein shall be construed as granting or implying any transfer of rights or licenses, express or implied, to CONSULTANT in the Confidential Information.

**36.8 No Required Disclosure or Relationship.** CONSULTANT understands that nothing herein requires BRA to disclose any Confidential Information to CONSULTANT or enter into any agreement, relationship, or other transaction with CONSULTANT in connection with the disclosure of Confidential Information.

**36.9 Disclaimer.** THE CONFIDENTIAL INFORMATION IS PROVIDED "AS-IS", "WHERE IS", "WITH ALL FAULTS", AND BRA MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE CONFIDENTIAL INFORMATION'S: FITNESS FOR ANY PARTICULAR PURPOSE, ACCURACY, AND/OR COMPLETENESS.

**36.10 Term and Termination of Confidential Information.** The obligations in this Agreement related to the confidentiality of the Confidential Information shall be binding upon CONSULTANT until the Confidential Information is no longer confidential, as determined by the BRA.

**36.11 Survival of Rights and Obligations.** The obligation of confidentiality set forth herein shall be binding upon, inure to the benefit of, and be enforceable by the parties to this Agreement.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed, in multiple counterparts, intending to be bound thereby as of the Effective Date.

**BRAZOS RIVER AUTHORITY**

**CONSULTANT**

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

**DAVID COLLINSWORTH**

Title: **GENERAL MANAGER/CEO**

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

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

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

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

SAMPLE