Request for Proposals

February 12, 2021

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, March 1, 2021 for Region 8 – 2023 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.

Proposals 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:

| RFP TITLE: Region 8 – 2023 Lower Brazos Regional Flood Plan |
|-------------|---------------------|
| RFP NO: 21-02-1206 |
| RFP DUE DATE: 10:00 AM, March 1, 2021 |

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 COVID-19, 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,

Anastasia V. Vance
Stasi Vance
Purchasing Agent

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 eligible, a Respondent shall have complied with all legal requirements to permit them to operate in the State of Texas.
   B. Proposals must be 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 Proposal 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 Stasi Vance, Purchasing Agent no later than five (5) days prior to the opening of the Proposal. Ms. Vance’s email address is stasi.vance@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, Doing Business, Purchasing and Professional Services, Request for Proposals.

Respondent is responsible for checking the BRA web site (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 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 consideration 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 for any cause 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 may only be changed by change order or by a written amendment.

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 submital 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. 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 requestor. If it is determined that the information may be withheld, BRA will withhold the information from the requestor.

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.
SUBMITTAL SCHEDULE

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

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>Friday, February 12, 2021</td>
<td>RFP is available to download from the BRA website at <a href="http://www.brazos.org/Doing-Business/Purchasing-Professional-Services/Request-for-Proposals">http://www.brazos.org/Doing-Business/Purchasing-Professional-Services/Request-for-Proposals</a>, and click on “View this RFP”.</td>
</tr>
<tr>
<td>4:00 PM, Friday, February 19, 2021</td>
<td>Last date and time to ask questions or request additional information. Email questions to <a href="mailto:stasi.vance@brazos.org">stasi.vance@brazos.org</a></td>
</tr>
<tr>
<td>4:00 PM, Monday, February 22, 2021</td>
<td>Post response to questions received as of the deadline or as soon thereafter, as an Addendum on the BRA website – <a href="http://www.brazos.org/">www.brazos.org/</a> Doing Business/Purchasing and Professional Services/Request for Proposals.</td>
</tr>
<tr>
<td>10:00 AM, Monday, March 1, 2021</td>
<td>Proposals are due.</td>
</tr>
<tr>
<td>1:00 PM, Tuesday, March 2, 2021</td>
<td>Proposals will be opened and read out loud virtually at the link below <a href="https://youtu.be/X0vSGsWrPMw">https://youtu.be/X0vSGsWrPMw</a></td>
</tr>
</tbody>
</table>
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.

The RFPGs are beginning the first cycle (2020-2023) of the regional flood planning process that was created in 2019 by Senate Bill 8 (SB8), 86th Texas Legislature. The 2023 Regional Flood Plans that are due to TWDB on January 10, 2023 will be the basis for 2024 State Flood Plan. This request for qualifications is for conducting the task of developing the 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 statement of qualifications 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 a grant to TWDB, entering into a contract with TWDB for the administration of the 1st cycle of flood planning, coordinating the procurement of a Technical Consultant, and delivering the 2023 Lower Brazos Regional Flood Plan.

BRA will evaluate all relevant COVID-19, 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.

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 shall, in particular, 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 2023 Regional Flood Plan (RFP) 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. A brief, general description of the following:
   a. social and economic character of the region such as information on development, population, economic activity, and economic sectors most at risk of flood impacts;
   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;
   d. political subdivisions with flood-related authority and whether they are currently actively engaged in flood planning, floodplain management, and 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.

3. Include a tabulated list and GIS map of existing infrastructure.

4. Include an assessment of existing infrastructure.

5. Explain, in general, the reasons for non-functional or deficient natural flood mitigation features or major flood infrastructure being non-functional or deficient, provide a description of the condition and functionality of the feature or infrastructure and whether and when the natural flood feature or major flood infrastructure may become fully functional, and provide the name of the owner and operator of the major flood infrastructure.

6. 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.

7. A review and summary of relevant existing planning documents in the region.

Documents to be summarized include those referenced under 31 TAC §361.22.

The information gathered and developed in preparation of this chapter shall 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 RFP chapter by TWDB.

Deliverables:
1. A completed Chapter 1 describing the FPR, existing natural flood mitigation features, constructed major flood infrastructure, and major infrastructure and flood mitigation projects currently under development.
2. A tabulated list and GIS map of existing infrastructure and their conditions. 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 shall, in particular, 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 2023 Regional Flood Plan (RFP) that describes the existing and future condition flood risk in the FPR.

The RFPGs shall 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 shall 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 both 1.0% 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. prepare a map showing areas identified by the RFPG as having an annual likelihood of inundation of more than 1.0% and 0.2%, the areal extent of this inundation, and the sources of flooding for each area; and
   e. 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 high-level, region-wide, and largely GIS-based existing condition flood exposure analyses using the information identified in the flood hazard analysis to identify who and what might be harmed within the region for, at a minimum, both 1.0% 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. for the floodplain as defined by FEMA or as defined by an alternative analysis if the FEMA-defined floodplain is not considered best available;
   c. may include only those flood mitigation projects with dedicated construction funding and scheduled for completion prior to adoption of the next state flood plan.
   d. shall consider the population and property located in areas where existing levees or dams do not meet FEMA accreditation as inundated by flooding without those structures in place. Provisionally accredited structures may be allowed to provide flood protection, unless best available information demonstrates otherwise.
   e. shall consider available datasets to estimate the potential flood hazard exposure including, but not limited to:
      1. number of residential properties and associated population;
      2. number of non-residential properties;
      3. other public infrastructure;
      4. major industrial and power generation facilities;
      5. number and types of critical facilities;
      6. number of roadway crossings;
      7. length of roadway segments; and
      8. agricultural area and value of crops exposed.
   f. shall 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. identify resilience of communities located in flood-prone areas identified as part of the
existing 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 or other bodies of water, past flooding issues, emergency
     management plans, and location of critical systems like primary and back-up
     power.

4. All data produced as part of the existing condition flood exposure analysis and the existing
condition vulnerability analysis shall include:
   a. underlying flood event return frequency;
   b. type of flood risk;
   c. county;
   d. HUC8;
   e. existing flood authority boundaries;
   f. Social Vulnerability Indices for counties and census tracts; and
   g. other categories as determined by RFPGs or in TWDB Flood Planning
      guidance documents.

The information gathered and developed in preparation of this chapter shall 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 RFP chapter by TWDB.

Deliverables:
1. Prepare a stand-alone chapter (including work from both Tasks 2A & 2B) to be included
   in the 2023 RFP.
2. Prepare maps according to 1(d) and 1(e).
3. A tabulated list and GIS map of all pertinent information. All maps should be
   submitted with underlying GIS data utilized to prepare them.
4. 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 shall, in particular,
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
2023 Regional Flood Plan (RFP) that describes the existing and future condition flood risk in the
FPR.

RFPGs shall 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 shall 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 both 1.0% 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 based on:
      1. 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 RFP adoption date plus approximately 30 years or as provided for in TWDB Flood Planning guidance documents;
      2. reasonable assumptions regarding locations of residential development and associated population growth;
      3. anticipated relative sea level change and subsidence based on existing information;
      4. anticipated changes to the functionality of the existing floodplain;
      5. anticipated sedimentation in flood control structures and major geomorphic changes in riverine, playa, or coastal systems based on existing information;
      6. assumed completion of flood mitigation projects currently under construction or that already have dedicated construction funding; and
      7. 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 shall modify hydraulic models to identify future conditions flood risk for 1.0% and 0.2% annual chance storms based on simplified assumptions utilizing the information identified in this task.
   e. prepare a map showing areas of 1.0% and 0.2% annual chance of inundation for future conditions, the areal extent of this inundation, and the sources 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 flood hazard analysis to identify who and what might be harmed within the region for, at a minimum, both 1.0% 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. analyses of existing and future developments within the future condition floodplain and the associated flood hazard exposure; and
   c. to include only those flood mitigation projects with dedicated construction funding scheduled for completion prior to the next RFP adoption date plus 30 years or as provided for in TWDB Flood Planning guidance documents.
   d. Identification of flood prone areas associated with the hazard exposure analyses shall be based on analyses that rely primarily on the use and incorporation of existing and available:
1. FIRMs or other flood inundation maps and GIS related data and analyses;
2. available hydraulic flood modeling results;
3. model-based or other types of geographic screening tools for identifying flood prone areas; and
4. other best available data or relevant technical analyses that the RFPG determines to be the most updated or reliable.

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 or other bodies of water, past flooding issues, emergency management plans, and location of critical systems like primary and back-up power.

4. All data produced as part of the future condition flood exposure analysis and the future condition vulnerability analysis shall include:
   a. underlying flood event return frequency;
   b. type of flood risk;
   c. county;
   d. HUC8;
   e. existing flood authority boundaries;
   f. Social Vulnerability Indices for counties and census tracts; and
   g. other categories as determined in TWDB Flood Planning guidance documents.

The information gathered and developed in preparation of this chapter shall 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 RFP chapter by TWDB.

Deliverables:
1. Prepare a stand-alone chapter (including work from both Tasks 2A & 2B) to be included in the 2023 RFP.
2. 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.
3. 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 31 TAC Chapters 361 and 362, this portion of work shall, in particular, include all work necessary to meet all the requirements of 31 TAC §361.35.

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 1.0% 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 minimum 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 shall inform recommended strategies for inclusion in the RFP.
4. RFPGs may also choose to adopt region-specific, minimum 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 RFP any Flood Management Evaluations, Flood Management Strategies, or Flood Mitigation Projects that are sponsored by or that will otherwise be implemented by that entity.

The information gathered and developed in preparation of this chapter shall 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 RFP chapter by TWDB.

Deliverables:
1. Prepare a stand-alone chapter (including work from both Tasks 3A & 3B) to be included in the 2023 RFP.
2. List region-specific recommendations regarding forward-looking floodplain management and land use, which may include minimum floodplain management and land use standards.
3. Any additional deliverables identified in the TWDB Flood Planning guidance documents.

**Task 3B – 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 shall, in particular, include all work necessary to meet all the requirements of 31 TAC §361.36.

Consider the Guidance Principles under 31 TAC §362.3, Tasks 1-3A, input from the public, and other relevant information and considerations.

**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. Consider minimum recommended flood protection goal provided by TWDB.

3. 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.

4. 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.

5. When appropriate, choose goals that apply to full single HUC8 watershed boundaries or coterminous groups of HUC8 boundaries within the FPR.

6. Identify both short-term goals (10 years) and long-term goals (30 years).

The information gathered and developed in preparation of this chapter shall 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 RFP chapter by TWDB.

Deliverables:

1. Prepare a stand-alone chapter (including work from both Tasks 3A & 3B) to be included in the 2023 RFP.
2. Identify flood mitigation and floodplain management goals considering minimum recommended flood protection goal provided by TWDB.
3. Identify specific and achievable flood mitigation and floodplain management goals (10 year and 30 year) in an easily understandable format for the public.
4. Any additional deliverables identified in the TWDB Flood Planning guidance documents.

Task 4A – 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 shall, in particular, include all work necessary to meet all the requirements of 31 TAC §361.37.

The RFPG shall 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 and goals 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 shall identify locations within the FPR that the RFPG considers to have 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;
   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 FMSs and FMPs shall be identified and evaluated under §361.38.

The information gathered and developed in preparation of this chapter shall 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 RFP chapter by TWDB.

Deliverables:
1. Prepare a stand-alone chapter (including work from both Tasks 4A & 4B) to be included in the 2023 RFP.
2. 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 FMSs and FMPs shall be evaluated
3. A tabulated list and GIS map of all pertinent information. All maps should be submitted with underlying GIS data utilized to prepare them.
4. Any additional deliverables identified in the TWDB Flood Planning guidance documents.

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

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 shall, in particular, 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 shall identify and evaluate potential FMEs and potentially feasible FMSs and FMPs, 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 comment on a proposed process to be used by the RFPG to identify and select FMEs, FMSs, and FMPs for the 2023 RFP. Revise and update documentation of the process by which FMS that were identified as potentially feasible and selected for evaluation in the 2023 RFP. Include a description of the process selected by the RFPG in the Technical Memorandum and the draft Regional Flood Plan and adopted RFPs.
2. Plans to be considered in developing this chapter include relevant plans referenced under 31 TAC §361.22.
3. When evaluating FMSs and FMPs the RFPG will, at a minimum, identify one solution that provides flood mitigation associated with a 1.0% annual chance flood event. In instances where mitigating for 1.0% annual chance events is not feasible, the RFPG shall document the reasons for its infeasibility, and at the discretion of the RFPG, other FMSs and FMPs to
mitigate more frequent events may also be identified and evaluated based on TWDB Flood Planning guidance documents.

4. A summary of the RFPG process for identifying potential FMEs and potentially feasible FMSs and FMPs shall be established and included in the draft and final adopted RFP.

5. The RFPG shall then identify potentially feasible FMSs and FMPs in accordance with the RFPG established process.

6. For areas within the FPR that the RFPG does not yet have sufficient information or resources to identify potentially feasible FMSs and FMPs, the RFPG shall identify areas for potential FMEs that may eventually result in FMSs and/or FMPs.

7. The RFPG shall evaluate potentially feasible FMSs and FMPs understanding that, upon evaluation and further inspection, some FMSs or FMPs initially identified as potentially feasible may, after further inspection, be reclassified as infeasible.

8. Evaluations of potentially feasible FMSs and FMPs 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 FMS and FMPs shall 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 FMS or FMP;
   b. A determination of whether FMS or FMP 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 equitable comparison between and consistent assessment of all FMSs and FMPs that the RFPG determines to be potentially feasible;
   e. A demonstration that the FMS or FMP will not negatively affect a neighboring area;
   f. A quantitative reporting of the estimated benefits of the FMS or FMP, including reductions of flood impacts of the 1.0% 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 1.0% 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 ranchland 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.
   g. A quantitative reporting of the estimated capital cost of FMPs in accordance with TWDB Flood Planning guidance documents;
   h. Calculated benefit-cost ratio for FMPs in accordance with Exhibit C: General Guidelines and based on current, observed conditions;
   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, 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. Evaluations of potential FMEs will be at a reconnaissance or screening-level, unsupported by associated detailed hydrologic and hydraulic analyses. These will 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 FMSs or FMPs for recommendation in the RFP. These FMEs shall be based on recognition of the need to develop detailed hydrologic models or to perform associated hydraulic analyses and associated project evaluations in certain areas identified by the RFPG. Evaluations of potential FMEs shall include the following analyses:

a. A reference to the specific flood mitigation or floodplain management goal to be addressed by the potential FME.

b. A determination 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 between and consistent assessment of 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 benefits, including reductions of flood risks, to include:

   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 ranchland 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 shall evaluate and present potential FMEs and potentially feasible FMSs and FMPs 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 RFP.

11. Analyses shall be performed in accordance with TWDB Flood Planning guidance documents.

12. All data produced as part of the analyses under this task shall be organized and summarized in the RFP in accordance with TWDB Flood Planning guidance documents.

13. Analyses shall clearly designate a representative location of the FME and
beneficiaries including a map and designation of HUC8 and county location.
The information gathered and developed in preparation of this chapter shall 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 RFP chapter by TWDB.

Deliverables:

1. Prepare a stand-alone chapter (including work from both Tasks 4B & 5) to be included in the 2023 RFP.
2. 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.
3. 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 FMSs and FMPs shall be evaluated. TWDB Flood Planning guidance documents will include minimum data submittal requirements and deliverable format.
4. Data shall be organized and summarized in the RFP in accordance with TWDB Flood Planning guidance documents.
5. A tabulated list and GIS map of all pertinent information. All maps should be submitted with underlying GIS data utilized to prepare them.
6. Any additional deliverables identified in the TWDB Flood Planning guidance documents.

Task 4C – Prepare and Submit 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 shall, in particular, 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 flood studies considered by the RFPG to be relevant to development of the RFP;
   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 1.0% annual chance flood event and 0.2% annual chance flood event inundation boundaries, and the source 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 geodatabase and associated maps in accordance with TWDB Flood Planning guidance documents that identifies areas where existing hydrologic and hydraulic models needed to evaluate FMSs and FMPs are available;
   f. A list of available flood-related models that the RFPG considers of most value in developing its plan;
g. The flood mitigation and floodplain management goals adopted by the RFPG per §361.36;

h. The documented process used by the RFPG to identify potentially feasible FMSs and FMPs;

i. A list of potential FMEs and potentially feasible FMSs and FMPs 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 5 – Recommendation of Flood Management Evaluations and Flood Management Strategies and Associated Flood Mitigation Projects

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 shall, in particular, include all work necessary to meet all the requirements of 31 TAC §361.39.

The objective of this task is to evaluate and recommend Flood Management Evaluations (FMEs), Flood Management Strategies (FMSs) and their associated Flood Mitigation Projects (FMPs) to be included in the 2023 RFP that describes the work completed, presents the potential FMEs, potentially feasible FMSs and FMPs, recommended and alternative FMSs and FMPs, including all the technical evaluations, and presents which entities will benefit from the recommended FMSs and FMPs.

Work associated with any Task 5 subtasks shall be contingent upon a written notice-to-proceed. This Task includes, but is not limited to, performing all work in accordance with TWDB rules and guidance required to:

1. Recommend FMSs and FMPs 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 1.0 percent 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 shall 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.

2. Provide additional information in conformance with TWDB Flood Planning guidance documents which will be used to rank recommended FMPs in the state flood plan.

3. Recommend FMEs that the RFPG determines are most likely to result in identification of potentially feasible FMSs and FMPs that would, at a minimum, identify and investigate one solution to mitigate for flood events associated with a 1.0% annual chance flood event and that support specific RFPG flood mitigation and/or floodplain management goals.

4. Recommended FMSs or FMPs may not negatively affect a neighboring area or an entity’s water supply.

5. 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.

6. Specific types of FMEs, FMSs, or FMPs that should be included and that should not be included in RFPs must be in accordance with TWDB Flood Planning guidance documents.

7. FMS and FMP documentation shall 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).
8. Coordinate and communicate with FME, FMS, and FMP sponsors, individual local governments, regional authorities, and other political subdivisions.
9. Process documentation of 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 FMSs and FMPs.
10. 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 shall 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 RFP chapter by TWDB.

Deliverables:
   1. Prepare a stand-alone chapter (including work from both Tasks 4B & 5) to be included in the 2023 RFP to include technical analyses of all evaluated FMSs and FMPs.
   2. A list of the recommended FMEs, FMSs, and associated FMPs that were identified by the RFPG. TWDB Flood Planning guidance documents will include minimum data submittal requirements and deliverable format.
   3. Data shall be organized and summarized in the RFP in accordance with TWDB Flood Planning guidance documents.
   4. A tabulated list and GIS map of all pertinent information. All maps should be submitted with underlying GIS data utilized to prepare them.
   5. Any additional deliverables identified in the TWDB Flood Planning guidance documents.

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 shall, in particular, 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 within the region including with regard to life, injuries, and property.
   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 general description of the types of potential positive and negative socioeconomic or recreational impacts of the recommended FMSs and FMPs within the FPR.
   4. a general description of the overall impacts of the recommended FMPs and FMSs in the RFP on the environment, agriculture, recreational resources, water quality, erosion, sedimentation, and navigation.

The information gathered and developed in preparation of this chapter shall 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 RFP chapter by TWDB.

Deliverables:
1. Prepare a stand-alone chapter (including work from both Tasks 6A & 6B) to be included in the 2023 RFP.
2. 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 shall, in particular, 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 FMSs and FMPs 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 FMSs and FMPs may have.

The information gathered and developed in preparation of this chapter shall 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 RFP chapter by TWDB.

Deliverables:
1. Prepare a stand-alone chapter (including work from both Tasks 6A & 6B) to be included in the 2023 RFP. 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 shall, in particular, 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 shall 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 shall 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 RFP chapter by TWDB.

Deliverables:
1. Prepare a stand-alone chapter to be included in the 2023 RFP. 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 shall, in particular, 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 2023 RFP 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 shall 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 RFP chapter by TWDB.

Deliverables:
1. Prepare a stand-alone chapter to be included in the 2023 RFP. 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 shall, in particular,
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 and FMP 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
   RFP for future funding determinations.
4. Assist the RFPG with the development of recommendations regarding the proposed role of
   the State in financing flood infrastructure projects identified in the RFP.
5. Summarize the survey results.

The information gathered and developed in preparation of this chapter shall 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 RFP chapter by TWDB.

Deliverables:
1. A completed Chapter 9 shall be delivered in the 2023 RFP to include summary of
   reported financing approaches for all recommended FMPs. Data shall 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 RFP
and final RFP, and obtain TWDB approval of the RFP.
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 shall, 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 an draft Regional Flood Plan and final, adopted RFP to TWDB and obtain approval of the adopted RFP by TWDB.

2. Organization, support, facilitation, and documentation of all meetings/hearings associated with: preplanning meeting; consideration of a substitution of alternative flood management strategies; public hearing after adoption of the draft Regional Flood Plan and prior to adoption of the final RFP; and consideration of RFP amendments, alternative FMS substitutions, or Board-directed revisions.

2. Technical Support and Administrative Activities

1. RFPGs shall 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 and hearings 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 status 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 RFP documents.

8. Intraregional and interregional coordination and communication, and or facilitation required within the FPR and with other RFPGs to develop a RFP.

9. Incorporation of all required data and reports into RFP document.

10. Modifications to the RFP documents based on RFPG, public, and or agency comments.

11. Preparation of a RFP 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 RFP.

13. Production, distribution, and submittal of all draft and final RFP-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 RFP documents in both hard copy and electronic formats to TWDB for review and approval; and all effort required to obtain final approval of the RFP by TWDB.

3. Other Activities:

Review of all RFP-related documents by RFPG members.

1. Development and maintenance of a RFPG website or RFPG-dedicated webpage on the RFPG administrator’s website for posting planning group meeting notices, agendas,
2. Limited non-labor, direct costs associated with maintenance of the RFPG website.
3. Development of agendas, presentations, and handout materials for the public meetings and hearings to provide to the general public.
4. Documentation of meetings and hearings to include recorded minutes and/or audio recordings as required by the RFPG bylaws and archiving and provision of minutes to public.
5. Preparation and transmission of correspondence, for example, directly related to public comments on RFP documents.
6. 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 RFP, including mediation between RFPG members, if necessary.
7. RFPG membership solicitation activities.
8. Meeting all posting, meeting, hearing 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.
9. Solicitation, review, and dissemination of public input, as necessary.
10. Any efforts required, but not otherwise addressed in other SOW tasks that may be required to complete an RFP in accordance with all statute and rule requirements.

Deliverables:
1. A completed Chapter 10 summarizing public participation activities and appendices with public comments and RFPG responses to comments.
2. Complete draft Regional Flood Plan and final, adopted RFP documents.
3. Any additional deliverables identified in the 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.

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 the professional services under this RFP. 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.

(5) 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.

(6) Confirm your company carries Professional Liability Insurance, Errors and Omissions coverage or Fidelity Bond.

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.
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. RFP Inquiries
All inquiries, including clarifying questions, related to this RFP shall only be directed to the Purchasing Agent via e-mail to stasi.vance@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. Failure to adhere to this restriction during the advertising, evaluation, and selection phases will result in the rejection of a Respondent’s Proposal.

5. 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.

6. 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.

7. 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

8. 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.

9. 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.
Firm’s Experience 50%
Team Organization 20%
Project Approach to meeting Project Timeline 20%
Capacity to Perform Services 10%

10. 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.

11. 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: $500,000 per person
  - 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

12. Recycled and Recyclable Products
The BRA encourages the use of recycled products and products that may be recycled or reused.

13. Delivery of Proposal Submittals
Proposals may be submitted in one of the following manners:

**Electronic Transmission.** Email transmission to stasi.vance@Brazos.org. Email proposals submissions shall be an attachment, in a Portable Document Format (PDF). Proposals shall be clearly identified in the Subject Line as follows: RFB Title, RFB Number and RFB 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 Office, 4600 Cobbs Drive, Waco, TX. 76710, utilizing the secure drop box located at the entrance 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 Office, 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
REGION 8 – 2023 LOWER BRAZOS REGIONAL FLOOD PLAN
RFP NO. 21-02-1206

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

________________________________________________________________________
Name of Firm (Respondent)

________________________________________________________________________
Signature – Authorized Representative

________________________________________________________________________
Printed Name

________________________________________________________________________
Date

________________________________________________________________________
E-mail Address

________________________________________________________________________
Telephone Number
CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

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.

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

Form provided by Texas Ethics Commission
www.ethics.state.tx.us
Revised 11/30/2015
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.
### EXAMPLE RESPONSE TO LITIGATION HISTORY QUESTION

<table>
<thead>
<tr>
<th>Date</th>
<th>Parties</th>
<th>Nature/Description of Litigation</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>XYZ, Inc. v. Owner</td>
<td>Owner brought suit against XYZ, Inc. claiming flawed design of a concrete pad.</td>
<td>Nonsuited</td>
</tr>
<tr>
<td>2011</td>
<td>XYZ, Inc. v. Owner</td>
<td>XYZ, Inc. retained to design bike path, the path collapsed in construction and owner sued XYZ, Inc. and contractor</td>
<td>Settled</td>
</tr>
<tr>
<td>2012</td>
<td>XYZ, Inc. v. Contractor</td>
<td>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.</td>
<td>Ongoing</td>
</tr>
</tbody>
</table>
**Form W-9**

(Rev. October 2018)

**Department of the Treasury**

**Internal Revenue Service**

---

# Request for Taxpayer Identification Number and Certification

> Go to www.irs.gov/FormW9 for instructions and the latest information.

---

<table>
<thead>
<tr>
<th>Part I</th>
<th>Taxpayer Identification Number (TIN)</th>
</tr>
</thead>
<tbody>
<tr>
<td>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 <strong>How to get a TIN</strong>, later.</td>
<td></td>
</tr>
<tr>
<td><strong>Note:</strong> If the account is in more than one name, see the instructions for line 1. Also see <strong>What Name and Number To Give the Requester</strong> for guidelines on whose number to enter.</td>
<td></td>
</tr>
</tbody>
</table>

---

<table>
<thead>
<tr>
<th>Part II</th>
<th>Certification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under penalties of perjury, I certify that:</td>
<td></td>
</tr>
<tr>
<td>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</td>
<td></td>
</tr>
<tr>
<td>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</td>
<td></td>
</tr>
<tr>
<td>3. I am a U.S. citizen or other U.S. person (defined below); and</td>
<td></td>
</tr>
<tr>
<td>4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.</td>
<td></td>
</tr>
</tbody>
</table>

**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.

---

**Sign Here**

<table>
<thead>
<tr>
<th>Signature of U.S. person</th>
<th>Date</th>
</tr>
</thead>
</table>

---

**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.

**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 he 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 you 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 a 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 (FFII)), 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 FFII 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.

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

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.

<table>
<thead>
<tr>
<th>IF the payment is for . . .</th>
<th>THEN the payment is exempt for . . .</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest and dividend payments</td>
<td>All exempt payees except for 7</td>
</tr>
<tr>
<td>Broker transactions</td>
<td>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.</td>
</tr>
<tr>
<td>Barter exchange transactions and patronage dividends</td>
<td>Exempt payees 1 through 4</td>
</tr>
<tr>
<td>Payments over $600 required to be reported and direct sales over $5,000</td>
<td>Generally, exempt payees 1 through 5</td>
</tr>
<tr>
<td>Payments made in settlement of payment card or third party network transactions</td>
<td>Exempt payees 1 through 4</td>
</tr>
</tbody>
</table>

1 See Form 1099-MISC, Miscellaneous Income, and its instructions.
2 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. 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 and clicking on Employer Identification Number (EIN) under Starting a Business. Go to 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 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
   The actual owner of the account or, if combined funds, the first individual on the account

2. Two or more individuals (joint account) other than an account maintained by an FFI
   Each holder of the account

3. Two or more U.S. persons (joint account maintained by an FFI)
   The minor

4. Custodial account of a minor (Uniform Gift to Minors Act)
   The grantor-trustee

5. a. The usual revocable savings trust (grantor is also trustee)
   The actual owner

b. So-called trust account that is not a legal or valid trust under state law
   The owner

6. Sole proprietorship or disregarded entity owned by an individual
   The grantor

7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))
   The owner

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

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

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)(ii)(B))
   The trust

1 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.

2 Circle the minor’s name and furnish the minor’s SSN.

3 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.

4 You may 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.

5 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. 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 or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit 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.
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 __________________ ("ENGINEER"), with a mailing address of ________________________, and the Brazos River Authority, ("BRA"), with a mailing address of 4600 Cobbs Drive, Waco, Texas 76710.

SECTION I. EMPLOYMENT OF THE ENGINEER AND PERFORMANCE OF SERVICES

1.1 GENERAL: The BRA has determined the need for professional engineering and associated services ("Services") in connection with ______________________________ ("Project"), as such Services and Project are more specifically set forth in “Exhibit A”, attached hereto and incorporated by reference herein for all purposes. The BRA hereby agrees to employ the ENGINEER and the ENGINEER agrees to perform such Services, and, in rendering such Services, the BRA agrees to compensate the ENGINEER 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 ENGINEER’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. ENGINEER shall report to BRA’s designated Project Representative.

1.3 GEOTECHNICAL LABORATORY SERVICES: If geotechnical laboratory Services are provided for the Project through this Agreement, either by the ENGINEER or its associates, these Services shall be performed by a laboratory accredited, in soils or geotechnical testing as appropriate, by the American Association of Laboratory Accreditation or by the American Association of State Highway and Transportation Officials. The ENGINEER agrees to provide evidence of such accreditation to the BRA on an annual basis for the duration of this Agreement.

1.4 OTHER LABORATORY SERVICES: If laboratory Services are provided for the Project through this Agreement, either by the ENGINEER or its associates, these Services shall be performed in a laboratory selected by the ENGINEER (and/or the BRA as may be otherwise provided in this Agreement) as qualified to perform the Services.
SECTION II. BASIC PROJECT SERVICES OF THE ENGINEER

2.1 The ENGINEER 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”. In performing the Services, the ENGINEER shall provide all necessary labor, services, transportation, equipment, information, data, and other means and items necessary to perform the Services.

2.2 ENGINEER shall provide professional and technical employees versed in fields of endeavor appropriate for the conduct of the Project 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 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 ENGINEER 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 ENGINEER shall serve as the BRA's professional ENGINEER 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 ENGINEER that the BRA may, from time to time, make suggested revisions or recommendations regarding the Services to be performed under this Agreement. The ENGINEER may accept or reject any such suggestions or recommendations. Acceptance of any such suggestions or recommendations shall not relieve the ENGINEER of any of the ENGINEER's responsibilities or obligations under this Agreement.

2.6 BRA and ENGINEER agree that the Scope of Services attached hereto as “Exhibit A” accurately reflects and contemplates all of the Services that ENGINEER has reasonably anticipated that ENGINEER will need to perform in order to accomplish the tasks set forth therein; however, in the event a circumstance arises through no fault of the ENGINEER that is beyond the scope of this Agreement and could not have been reasonably anticipated by the ENGINEER as being required to accomplish the tasks set forth herein, ENGINEER shall notify BRA of such circumstance in writing, and BRA and ENGINEER will negotiate regarding any required services of the ENGINEER in relation to such circumstance as further contemplated in Section ____, Additional Services in “Exhibit B” of this Agreement.
SECTION III. PAYMENTS TO THE ENGINEER

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 ENGINEER, when the ENGINEER 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 ENGINEER 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. ENGINEER’S RESPONSIBILITY

4.1 The ENGINEER 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 ENGINEER fails to perform in such a manner, then ENGINEER 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 ENGINEER 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; COSTS TO DESIGN CORRECTIVE IMPROVEMENTS; COSTS TO PROVIDE ADDITIONAL CONSTRUCTION PHASE ENGINEERING AND RESIDENT PROJECT REPRESENTATIVE SERVICES ASSOCIATED WITH THE CORRECTIVE IMPROVEMENTS; AND ANY AND ALL CONSTRUCTION AND PROFESSIONAL SERVICES COSTS CAUSED BY, ARISING OUT OF, OR RELATED TO THE REMEDIATION OF THE ERROR, INCLUDING, BUT NOT LIMITED TO: THE COST TO CONSTRUCT ELEMENTS THAT MUST BE REMOVED; THE COST OF DEMOLITION AND DISPOSAL OF MATERIALS; AND THE COST TO MODIFY ELEMENTS OF THE INITIALLY COMPLETED WORK THAT CAN REMAIN.

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

4.3 The ENGINEER further agrees to correct programs or documents or re-execute
SERVICES as may be required due to the ENGINEER'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.

4.4 The ENGINEER shall inform the BRA of the construction contractor's failure to
perform their work in accordance with the construction contract and shall recommend to
the BRA measures to correct such failures and shall approve suggested methods to
correct such failure. In addition, the ENGINEER shall recommend withholding payment
for such defective work until such failure is corrected.

4.5 It is distinctly understood and agreed that no claim for additional services, extra
work completed or materials furnished by the ENGINEER will be allowed by the BRA
except as provided herein, nor shall the ENGINEER 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 ENGINEER without BRA's prior
written request and authorization shall be at the ENGINEER’s own risk, cost, and expense
and the ENGINEER hereby agrees and covenants that without such written order,
ENGINEER will make no claim for compensation for such work or materials furnished.

SECTION V. INDEMNIFICATION

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

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

5.3 IT IS SPECIFICALLY UNDERSTOOD AND AGREED BY THE ENGINEER THAT SUCH INDEMNITY IS INDEMNITY BY THE ENGINEER TO INDEMNIFY AND PROTECT BRA FROM LIABILITY, CLAIMS, SUITS, LOSSES, DAMAGES, OR CAUSES OF ACTION CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE ENGINEER, THE ENGINEER’S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL. BRA AGREES TO GIVE ENGINEER PROMPT NOTICE OF ANY CLAIM CONTROL OF THE DEFENSE OR SETTLEMENT OF THAT CLAIM AND REASONABLE ASSISTANCE AND INFORMATION RELATED TO THE CLAIM.

SECTION VI. INSURANCE REQUIREMENTS

6.1 The ENGINEER 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 $_________ per occurrence including products/completed operations, where appropriate, with a separate aggregate of $_________. The policy shall contain the following provisions:

a. Blanket contractual liability coverage for liability assumed under the Agreement and all agreements relative to the Project.

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 $_________ 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. Engineers’ Professional Liability Insurance with a minimum limit of $__________ per claim and $__________ in the aggregate to pay on behalf of the assured all sums which the assured 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 assured. The policy shall provide for 30-day notice of cancellation in favor of the BRA.

6.2 General Requirements: The ENGINEER 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 ENGINEER shall maintain continuous coverage for the duration of this Agreement and for not less than twenty-four (24) months following final completion of the Project. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. The ENGINEER shall, on at least an annual basis, provide the BRA with a certificate of insurance, including any required endorsements, as evidence of such insurance.

6.3 If insurance policies are not written for amounts specified above, the ENGINEER 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.

6.4 The ENGINEER's subcontractors shall carry and maintain insurance in the types and amounts as deemed adequate by the BRA for the duration of this Agreement. ENGINEER 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

6.5 The ENGINEER 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 ENGINEER shall not allow any subcontractor to commence providing services on ENGINEER’s subcontract until such time as ENGINEER’s subcontractor(s) has obtained all requisite insurance. The
ENGINEER 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 ENGINEER hereunder.

6.6 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.

6.7 Certificate of Insurance and all endorsements shall read:

Brazos River Authority
4600 Cobbs Drive
Waco, Texas 76710

6.8 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 ENGINEER, shall be considered primary coverage as applicable.

6.9 The BRA shall be entitled, upon request and without expense, to receive copies of all ENGINEER, or ENGINEER’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.

6.10 The ENGINEER 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 ENGINEER allow any subcontractor to cancel nor permit any requisite insurance to lapse during the term of the ENGINEER’s subcontract.

6.11 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 ENGINEER (such adjustments shall be commercially available to the ENGINEER).

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

SECTION VII.  DEFAULT

7.1 BRA may terminate this Agreement without prejudice to any other remedy it may
have, when the ENGINEER defaults in performance of any provision herein, or fails to carry out the Services in accordance with the provisions of this Agreement.

7.2 On such termination, BRA may take possession of all the intellectual property prepared or gathered to date in performance of the Project and finish the Project in whatever way BRA deems expedient. On such default by the ENGINEER, 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 ENGINEER.

SECTION VIII. TERMINATION

8.1 This Agreement may be terminated at any time by BRA for any cause without penalty or liability. Upon receipt of such notice by BRA, the ENGINEER shall immediately discontinue all Services and actions on behalf of BRA.

8.2 As soon as practicable after receipt of notice of termination, the ENGINEER, shall submit a statement, showing in detail the Services performed but not paid for under this Agreement to the date of termination. The ENGINEER 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 ENGINEER promptly the accrued and unpaid Services to the date of termination, to the extent the Services are approved by BRA.

SECTION IX. OWNERSHIP AND USE OF DOCUMENTS

9.1 Copies of all notes, letters, correspondence, drawings, specifications, and other documents or instruments of professional Services prepared or assembled by the ENGINEER under this Agreement shall become the sole property of BRA and shall be delivered to BRA.

9.2 The ENGINEER 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.

9.3 BRA shall require that all plans be sealed, dated, and signed by the ENGINEER, if designs and documents have been completed to the point where it is reasonably feasible to seal, under requirement of the State Law. If this Agreement is terminated before such plans, designs, and documents have been so sealed, such plans, designs and documents shall nevertheless become the sole property of BRA and shall be delivered to BRA.

9.4 The ENGINEER agrees that items such as plans, drawings, photos, designs, studies, specifications, data, computer programs, schedules, technical reports, or other work products which is/are specified to be delivered under this Agreement, and which is/are to be paid for by the BRA, is/are subject to the rights of the BRA in effect on the date of execution of this Agreement. These rights include the right to use, duplicate, and
disclose such items, in whole or in part, in any manner and for whatever purpose; and, to have others do so.

9.5 If an item produced by the ENGINEER is copyrightable, the ENGINEER may copyright it, subject to the rights of the BRA. The BRA reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, modify, and use such items and to authorize others to do so.

9.6 All such items furnished by the ENGINEER pursuant to this Agreement are considered instruments of its work and Services in respect to the Project. It is understood that the ENGINEER does not represent such items to be suitable for reuse on any other project or for any other purpose(s). If the BRA reuses such items without the ENGINEER's specific written verification or adaptation, such reuse will be at the risk of the BRA, without liability to the ENGINEER.

SECTION X. PERIOD OF SERVICE

10.1 Except as otherwise provided in Section 6.5 of this Agreement, the ENGINEER contracts and agrees to commence the Services contemplated herein upon execution of this Agreement. This Agreement shall remain in force for the period of time required to complete the Project, including required extensions thereto unless discontinued by any of the several provisions included elsewhere in this Agreement.

SECTION XI. SUCCESSOR AND ASSIGNS

11.1 BRA and ENGINEER 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 ENGINEER 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 ENGINEER without the BRA's approval shall be void and of no force and effect and shall constitute a default under this Contract.

SECTION XII. ENGINEER’S COORDINATION WITH BRA

12.1 The ENGINEER 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 The ENGINEER covenants and agrees that ENGINEER is an Independent Contractor and not an officer, agent, servant, or employee of BRA. The ENGINEER hereby acknowledges that it shall have exclusive control of and exclusive right to control
the details of the Services provided hereunder on the Project, and all persons performing same, and shall be liable for the acts and omissions of its officers, agents, and employees.

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

SECTION XIV. DISCLOSURE

14.1 By signature of this Agreement, the ENGINEER acknowledges to BRA that ENGINEER has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interests, direct or indirect, in property abutting the proposed Project and business relationships with abutting property owners.

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

SECTION XV. COMPLIANCE WITH LAWS

15.1 The ENGINEER 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 ENGINEER, or its agents, associates, employees, successors, assigns, or subcontractors, engaged in performance of the Services or provision of the Services contemplated by this Agreement.

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 ENGINEER, and the BRA and ENGINEER shall not be liable for or be held to pay any money to any such person.

SECTION XIX. ENTIRE AGREEMENT

19.1 This Agreement sets forth the entire agreement of the BRA and the ENGINEER with respect to the accomplishment of the Services for the Project and the payment therefor, and there are no other understandings or agreements, oral or written, between the BRA and the ENGINEER with respect to performance of the Services for the Project and the compensation therefor, nor was the making and execution of this Project 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 ENGINEER.

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 ENGINEER 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 ENGINEER'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 ENGINEER.

SECTION XXV. RIGHT TO AUDIT

25.1 The ENGINEER shall establish and maintain a reasonable accounting system that enables BRA to readily identify the ENGINEER's assets, expenses, costs of goods, and use of funds. BRA and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of the ENGINEER, including, but not limited to those kept by the ENGINEER, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; canceled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; Agreement amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

25.2 The ENGINEER shall, at all times during the term of this Agreement and for a period of ten (10) years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials. The ENGINEER shall at any time requested by BRA, whether during or after completion of this Agreement, and at the ENGINEER's own expense make such records available for inspection and audit (including copies and extracts of records as required) by BRA. Such records shall be made available to BRA during normal business hours at the ENGINEER's office or place of business and subject to a three-day written notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for BRA.

25.3 The ENGINEER shall ensure BRA has these rights with the ENGINEER'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 ENGINEER and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the ENGINEER's obligations to BRA.

SECTION XXVI. PROHIBITION ON BOYCOTTING ISRAEL

26.1 ENGINEER hereby verifies that ENGINEER:

i. Does not boycott Israel; and
ii. Will not boycott Israel during the term of this Agreement.

SECTION XXVII. NOTICES

27.1 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
Bus: (254) 761-3100
Fax: (254) 761-3207

If intended for THE ENGINEER, to:


SECTION XXVIII. FORCE MAJEURE

28.1 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 the 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 XXIX. NONDISCLOSURE AND CONFIDENTIALITY

29.1 Confidentiality. During the performance of this Agreement, the ENGINEER has or will have access to confidential or proprietary information belonging to BRA. The ENGINEER herein agrees to maintain the confidentiality of the information received from BRA and information derived from performance of the Project as further set forth in this Section.
29.2 **Confidential Information.** For the purposes of this Agreement, the term Confidential Information shall mean:

i. Any information disclosed by BRA relating to ____________;

ii. Any information disclosed by BRA marked or otherwise identified by BRA as “Confidential Information”;

iii. Any information acquired by ENGINEER 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 ENGINEER or any of its representatives; or

iv. Any notes, analyses, proposed terms and conditions, proposed agreements, and other documents prepared by ENGINEER which use, summarize, identify, reference, analyze, evaluate, reflect, contain, are based on, or respond to any Confidential Information disclosed to ENGINEER by BRA or acquired by ENGINEER pursuant to Section 28.2iii, above.

29.3 **Disclosure.** BRA agrees to disclose, and ENGINEER agrees to receive the Confidential Information.

29.4 **Confidentiality.**

i. **No Use.** ENGINEER 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.** ENGINEER 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, ENGINEER 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 ENGINEER 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.
ENGINEER 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. ENGINEER 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. ENGINEER 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. ENGINEER 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, ENGINEER shall immediately return to BRA all the Confidential Information. Additionally, ENGINEER shall destroy all copies of the Confidential Information, whether made by ENGINEER 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. ENGINEER 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. ENGINEER 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. ENGINEER agrees that ENGINEER shall be responsible for any breach of any term of this Agreement by ENGINEER or those to whom ENGINEER provides the Confidential Information.

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

i. Was known to ENGINEER 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 ENGINEER;

iii. Was received by ENGINEER 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 ENGINEER without use of the Confidential Information; or

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

29.6 Disclosures Required by Law. Notwithstanding the obligations of confidentiality set forth herein, if ENGINEER 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. ENGINEER will cooperate with BRA and will use its best efforts to assist in obtaining such protection. If BRA is unable to obtain such protection, ENGINEER may disclose the Confidential Information, but only to the extent required by law.

29.7 Ownership of Confidential Information. ENGINEER 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 ENGINEER. Nothing contained herein shall be construed as granting or implying any transfer of rights or licenses, express or implied, to ENGINEER in the Confidential Information.

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

29.9 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.

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

29.11 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.

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.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)
BRAZOS RIVER AUTHORITY

By: __________________________
Title: GENERAL MANAGER/CEO
Date: __________________________

ENGINEER

By: __________________________
Title: __________________________
Date: __________________________

H:\Purchasing Department\Stasi\2021 Folder\2021 Request for Proposals\RFP Reg. 8 2023 Lower Brazos Flood Plan\Documents for Posting\Professional Services Agreement - 11.30.2020.docx

RFP: [Redacted]; SSS: [Redacted]