

## SERVICE PROVIDER CONTRACT

In consideration of the mutual promises as set forth below, this Service Provider Contract (“Contract”) is entered into this \_\_\_ day of \_\_\_\_\_, 2015 (“Effective Date”), by and between \_\_\_\_\_ (“PROVIDER”), with a mailing address of \_\_\_\_\_ and the Brazos River Authority, (“BRA”), with a mailing address of P. O. Box 7555, 4600 Cobbs Drive, Waco, TX 76714.

### Section I. Performance of Work

**1.1** The PROVIDER hereby agrees to provide, perform, and complete to the satisfaction of the BRA all of the “Work” specified in Exhibit “A”, attached hereto and incorporated by reference herein. The term “Work” as used herein shall mean the detailed description of tasks to be performed by the PROVIDER, as established in Exhibit “A”.

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

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

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

### Section II. Contract Price and Payment

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

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

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

Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default. Nothing contained herein shall be construed as authorizing additional fees for services to complete actions not specifically listed for successful completion of the Work.

### **Section III. Term**

**3.1** The term of this Contract shall be for a period of one (1) year, commencing on the Effective Date, and may be renewed by subsequent agreement of the parties for up to four (4) additional one (1) year periods, for a total potential term of five (5) years. **OR** The services of the PROVIDER shall commence on the Effective Date of this Contract and shall continue until the Work is completed.

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

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

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

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

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

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

### **Section V. The Provider's Coordination with BRA**

**5.1** The PROVIDER shall be available for conferences with BRA so that Work can be completed with the full benefit of BRA experience and knowledge of existing needs and facilities and be consistent with current policies and standards of the BRA. BRA shall make available to the PROVIDER all existing plans, maps, field notes, and other data in its possession relative to the Work.

## Section VI. Termination

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

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

## Section VII. Default

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

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

## Section VIII. Insurance

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

**General Liability Insurance:**

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

Workers' Compensation: Statutory

Automobile Liability: \$ 1,000,000 per claim / aggregate

Employers' Liability \$ 1,000,000 policy limit

**8.2** The PROVIDER shall not commence Work under the Contract until the PROVIDER has obtained all the insurance required under this Contract and such insurance has been approved by BRA, nor shall the PROVIDER allow any sub-PROVIDER to commence Work on the PROVIDER's subcontract until all similar insurance of the sub-PROVIDER has been obtained and approved by BRA. All required policies shall name BRA as an additional insured, except Workers' Compensation and Employers' Liability Insurance and Professional Liability Insurance (as applicable). As proof of the insurance coverage, the PROVIDER shall furnish to BRA valid certificates of insurance of the types and limits required herein, prior to commencing Work on the project. In addition, the required insurance coverage shall contain a provision that coverage afforded under the policies will not be materially changed or canceled without provision of thirty (30) days written notice to BRA. The insurance requirements shall remain in effect throughout the term of the Contract.

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

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

**8.4** The PROVIDER agrees to the following:

- i. The PROVIDER hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall not have the right to recovery or subrogation against BRA, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies;
- ii. Companies issuing the insurance policies and the PROVIDER shall have no recourse against BRA for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of the PROVIDER.
- iii. Approval, disapproval or failure to act by BRA regarding any insurance supplied by the PROVIDER (or any subcontractors) shall not relieve PROVIDER of full responsibility or liability, if any, for damages and accidents as set forth in the Contract. Neither shall the insolvency or denial of liability by the insurance company exonerate the PROVIDER from liability.
- iv. No special payments shall be made for any insurance that the PROVIDER and subcontractors, if any, are required to carry; all are included in the Contract price and the Contract unit prices; and

v. Any of the insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

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

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

### **Section X. Successors and Assigns**

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

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

### **Section XI. Liability**

**11.1** Acceptance of the Work by BRA shall not constitute nor be deemed a release of the responsibility and liability of the PROVIDER, its employees, agents, assigns or subcontractors for the accuracy and competency of the Work contemplated by this Contract.

**11.2** The PROVIDER shall be solely and completely responsible for performing the Work with diligence and in a manner consistent with the level of care and skill ordinarily exercised for such similar services in the State of Texas.

### **Section XII. Indemnification**

**12.1** THE PROVIDER 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.

**12.2** IN ADDITION, THE PROVIDER AGREES TO KEEP, SAVE AND HOLD BRA HARMLESS FROM ANY AND ALL ACTIONS, LIABILITIES, DAMAGES, JUDGMENTS, COSTS AND EXPENSES INCLUDING REASONABLE ATTORNEY'S FEES, IN CASE AN ACTION IS FILED OR DOES IN ANY WAY ACCRUE AGAINST BRA, ITS OFFICIALS, OFFICERS, AND EMPLOYEES IN CONSEQUENCE OF THIS CONTRACT FOR ANY NEGLIGENT ACT OR OMISSION OF THE PROVIDER IN THE PERFORMANCE OF THE WORK UNDER THIS CONTRACT, OR THAT MAY RESULT

FROM THE CARELESSNESS OR LACK OF SKILL OF THE PROVIDER OR THE PROVIDER'S AGENTS, SUB-PROVIDER, ASSIGNS OR EMPLOYEES. IN THE EVENT A JUDGMENT IS RECOVERED AGAINST BRA FOR ANY SUCH LIABILITY, COSTS OR EXPENSES, SUCH JUDGMENT SHALL BE CONCLUSIVE AGAINST THE PROVIDER.

**12.3** IT IS SPECIFICALLY UNDERSTOOD AND AGREED BY THE PROVIDER THAT SUCH INDEMNITY IS INDEMNITY BY THE PROVIDER 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 PROVIDER, THE PROVIDER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE PROVIDER EXERCISES CONTROL. BRA AGREES TO GIVE PROVIDER PROMPT NOTICE OF ANY CLAIM, CONTROL OF THE DEFENSE OR SETTLEMENT OF THAT CLAIM AND REASONABLE ASSISTANCE AND INFORMATION RELATED TO THE CLAIM.

### **Section XIII. Confidentiality**

**13.1** During the performance of this Contract, the PROVIDER has or will have access to confidential or proprietary information belonging to BRA. The PROVIDER herein agrees to maintain the confidentiality of the information received from BRA and information derived from performance of the Work.

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

### **Section XIV. Severability**

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

### **Section XV. Independent Contractor**

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

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

#### **Section XVI. Disclosure**

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

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

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

**17.1** The PROVIDER shall at all times observe and comply with all the provisions of the laws of the State of Texas and Federal laws, rules and regulations which in any manner limit, control, or apply to the actions or operations of the PROVIDER, his subcontractor(s), or his or their employees, agents or servants, engaged in performance of the Work.

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

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

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

#### **Section XIX. Entire Agreement**

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

#### **Section XX. Amendments**

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

## **Section XXI. Headings**

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

## **Section 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 Contract may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition of this Contract.

## **Section XXIII. Review of Contract**

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

## **Section XXIV. Right to Audit**

**24.1** The PROVIDER shall establish and maintain a reasonable accounting system that enables BRA to readily identify the PROVIDER'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 Contract kept by or under the control of the PROVIDER, including, but not limited to those kept by the PROVIDER, 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; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; Contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

**24.2** The PROVIDER shall, at all times during the term of this Contract and for a period of ten years after the completion of this Contract, maintain such records, together with such supporting or underlying documents and materials. The PROVIDER shall at any time requested by BRA, whether during or after completion of this Contract, and at the PROVIDER'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 PROVIDER'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.

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

### **Section XXV. Notices**

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

If intended for BRA, to:

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

If intended for the PROVIDER, to:

Address Line 1  
City, State Zip Code

*[Signatures appear on the following page]*

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed, intending to be bound thereby.

**BRAZOS RIVER AUTHORITY**

**PROVIDER NAME**

By: \_\_\_\_\_  
**PHILLIP FORD**  
Title: **GENERAL MANAGER/CEO**  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ACKNOWLEDGEMENTS**

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

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_ day of \_\_\_\_\_, 2015.

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

THE STATE OF TEXAS §  
COUNTY OF McLENNAN §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_ day of \_\_\_\_\_, 2015.

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

**EXHIBIT A  
SCOPE OF WORK**

SAMPLE

**EXHIBIT B  
COMPENSATION**

SAMPLE