

HARRIS COUNTY

OFFICE OF THE COUNTY ENGINEER

1001 Preston, Suite 500
Houston, Texas 77002
(713) 755-5370

April 19, 2021

Honorable County Judge
& Commissioners

SUBJECT: Consultant Agreement – Freese and Nichols, Inc.

Recommendation that the County Judge execute an agreement with Freese and Nichols, Inc., in the amount of \$2,373,000 for Professional Engineering Services to develop a technical memorandum and the regional flood plan for the San Jacinto Regional Flood Planning Group Region 6, Countywide.

Sincerely,



John R. Blount, P.E.
County Engineer

Attachment

Distribution:

| | |
|----------------------------------|------------------|
| Commissioner Rodney Ellis | Juan Hernandez |
| Commissioner Adrian Garcia | Jose Jimenez |
| Commissioner Tom S. Ramsey, P.E. | Chris Saddler |
| Commissioner R. Jack Cagle | Tiffany Harding |
| Brandon Dudley | Lynn Blue |
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| Tiko Reynolds-Hausman | |
| Faustino Benavidez, P.E. | |
| Misty Rios | |
| Rosalie Brockman | |

PROFESSIONAL SERVICES AGREEMENT

(Professional Engineering Services)

1. PARTIES

- 1.1 Parties. The Parties to this Professional Services Agreement ("Agreement") are **Freese and Nichols, Inc.** ("Engineer"), and **Harris County** ("County"), on behalf of its Harris County Engineering Department ("HCED"). County and Engineer each may also be referred to individually herein as a "Party," or collectively as the "Parties."

2. PURPOSE

- 2.1 Project Description. County intends Engineer to develop a technical memorandum and the regional flood plan for the San Jacinto Regional Flood Planning Group-Region 6 in Harris County ("Project").
- 2.2 Summary of Scope of Work. In addition to any applicable attachments to this Agreement describing the Scope of Work, County desires that Engineer provide professional engineering services for the San Jacinto Regional Flood Planning Group-Region 6.
- 2.3 Agreement Documents. The Agreement documents include this Agreement and the attached exhibits incorporated herein by reference. In the case of a conflict between the foregoing, the terms and requirements of the TWDB Contract No. 2101792491 shall control.
- 2.4 Professional Engineering Services. The professional services to be performed under this Agreement are within the scope of professional engineering, as defined by state law, and will be provided in connection with the professional employment or practice of a person who is licensed or registered as a professional engineer. The professional engineering services shall be performed in accordance with Tex. Occ. Code Ann. §§ 1001.001, et. seq, as amended.
- 2.5 Professional Services Procurement Act. The work to be performed under this Agreement cannot be purchased on the basis of competitive bids since it is encompassed within Texas Government Code §2254.002(2).

3. ENGINEER'S REPRESENTATIONS

- 3.1 Applicable Expertise. Engineer and the person executing this Agreement on behalf of Engineer certify and represent that Engineer (including Engineer's agents, employees, volunteers, and subcontractors, as applicable) possesses the skills, qualifications, expertise, experience, education, knowledge, ability, and financial resources to perform all services and/or deliverables contemplated in this Agreement without significant disruption of those deliverables.
- 3.2 Permits and Licensing. Engineer represents that Engineer (including Engineer's agents, employees, volunteers, and subcontractors, as applicable) possesses all special certifications, licenses, inspections and permits required by law to carry out the Scope of Work contemplated in this Agreement. Engineer's agents, employees, volunteers, and subcontractors, as applicable, shall maintain appropriate accreditation and licensing, as required, through the State of Texas or other applicable licensing entities. Prior to the performance of any services under this Agreement, Engineer shall, upon written (including electronic) request, provide proof of valid licensure to HCED (including a listing of all licenses and expiration dates).
- 3.3 Authorized to Conduct Business. Engineer represents that Engineer is authorized to conduct the business and carry out the Scope of Work contemplated in this Agreement. Prior to starting performance under this Agreement, Engineer shall, upon written (including electronic) request, provide proof to HCED of the authority to do business in this state or at the location specified in this Agreement.

- 3.4 Ability to Perform. HCED will award contracts only to the most highly qualified available responsible provider/contractor possessing the ability to perform successfully under the terms, conditions, and budget of a proposed procurement. Consideration will be given to such matters as provider integrity, compliance with public policy, record of past performance, and financial and technical resources. Engineer represents that Engineer has the administrative, managerial, and financial capability to ensure proper planning, management and completion of the Scope of Work described in this Agreement and further has the administrative capacity and capabilities to carry out all duties and responsibilities under this Agreement.
- 3.5 Conflict of Interest Certification. Pursuant to Chapter 176 of the Texas Local Government Code, Engineer certifies that Engineer has completed any required conflict of interest disclosures or questionnaires (see www.ethics.state.tx.us). If this certification is materially incomplete or inaccurate, Engineer acknowledges that County shall have the right to terminate this Agreement without prior notice.
- 3.6 Certificate of Interested Parties Form 1295. Engineer certifies that it has accurately completed and submitted a notarized Certificate of Interested Parties Form 1295 ("Form 1295") in accordance with Texas Government Code §2252.908 and the rules adopted thereunder. Engineer acknowledges that it is responsible for making any and all necessary updates and/or corrections to the applicable Form 1295 during the term of this Agreement. Engineer must either (1) mail the completed Form 1295 to the Harris County Engineering Department at 1001 Preston, 7th Floor, Houston, TX 77002, Attn: Administrative Services or (2) submit the form by email to HCEDAdminSvc@hcpid.org.
- 3.7 Disbursements to Persons with Outstanding Debt Prohibited. Engineer certifies, by execution of this Agreement, that neither Engineer nor any of Engineer's principals owe any debts as defined in Local Government Code Section 154.045 (including delinquent property taxes). Engineer understands that certain disbursements are prohibited and that County may apply any funds due to Engineer under this Agreement to any outstanding balance of certain debts pursuant to Section 154.045. If this certification is inaccurate, County may also terminate this Agreement. In addition, Engineer hereby assigns any payments under this Agreement to the Harris County Tax Assessor-Collector for the payment of any current or future delinquent taxes.
- 3.8 Internet Access. Engineer shall maintain appropriate internet access, which will enable Engineer to access any secure online invoicing, reporting, or other web-based system designed for more efficient communication with HCED. As requested, Engineer shall submit required reports, invoices and related documents through an applicable secure internet site in a manner required to protect any confidential information submitted. Engineer shall review all instruction materials and/or attend all HCED provided training that is necessary for Engineer to properly utilize applicable web-based information systems.

4. SPECIFIC SCOPE OF WORK/SERVICES AND/OR DELIVERABLES

- 4.1 Specific work, products, services, licenses and/or deliverables. Engineer shall provide the work, products, services, licenses and/or deliverables required to be provided by Engineer and as set out in this Agreement and in Attachment A and all other referenced attachments incorporated in this Agreement (altogether referred to as the Scope of Work). The provisions in this Agreement labeled 'Scope of Services' or 'Scope of Work' shall take precedence over anything conflicting in any attached Engineer proposal or correspondence. Engineer shall submit any and all project-related documents and invoices through the cloud-based project management software utilized by HCED for planning and management of all projects using real-time project data.
- 4.2 Written Authorization. From time to time during the course of this Agreement, HCED may deliver to Engineer written (including electronic) authorization (sometimes referred to as a notice-to-proceed, task-order, work-order or job-order) for providing certain work, products, services, licenses and/or deliverables contemplated in this Agreement, which Engineer shall then perform in accordance with this Agreement. Engineer shall not begin or proceed to the next design phase of the Scope of Work until Engineer receives from HCED a written (including electronic) authorization to proceed. County shall have no obligation to pay for and Engineer shall have no obligation to provide any work, services, products, or deliverables not

rendered in accordance with a prior written authorization as described by this Section. Engineer shall complete the services called for by the calendar days and by the deadlines specified in this Agreement, including exhibits and written authorizations.

5. ADDITIONAL AND SPECIAL REQUIREMENTS

- 5.1 Cooperation with Other Service Providers. County may engage the services of other service providers for work related to the work, products, services, licenses and/or deliverables in this Agreement. Engineer shall reasonably cooperate with such other service providers and will not commit or permit any act that may interfere with the performance of work by any other service provider.
- 5.2 Non-Assignability. Unless otherwise authorized in this Agreement, neither party shall assign, in whole or in part, any duty or obligation of performance under this Agreement without the express written permission of the other party, except that the express written permission of HCED shall be considered the permission of County. Such written permission will not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed. However, with notice to HCED, Engineer may assign this Agreement to any affiliate of Engineer that controls, is controlled by, has resulted from a merger with, or is under common control with, Engineer if the assignee is at least as capable and qualified to provide the deliverables contemplated in this Agreement. This provision is not intended to restrict any assignment that is required by Section 9.406 of the Texas Business and Commerce Code.
- 5.3 Independent Contractor/Parties. County expects Engineer to meet the high standards set forth in this Agreement and looks to Engineer for results only. Unless otherwise required by law or regulation, County shall not direct the methods used to obtain those results, and Engineer shall perform the services as an independent contractor under the sole supervision, management, direction, and control of Engineer. As an independent contractor, Engineer will accept directions pertaining to the goals to be attained and the results to be achieved, as applicable, pursuant to this Agreement, but Engineer shall be solely responsible for the manner in which Engineer will perform the services under this Agreement. Any methods that might be discussed in any training sessions given by HCED are not mandatory unless specifically required in writing in this Agreement or by law. Engineer is not obligated to maintain any set, regular hours, nor to perform any set number of hours of service in fulfilling the obligations under this Agreement, unless otherwise specifically set out in this Agreement. This Agreement is not intended to create a joint enterprise, joint venture, business partnership, agency, franchise, or employment relationship, under Texas law. The personnel and staff of Engineer are independent contractors or employees of Engineer and shall not for any purposes be considered employees or agents of County. Engineer assumes full responsibility for the actions of any employees and agents while performing any services incident to this Agreement, and Engineer shall remain solely responsible for the supervision, daily direction, control and payment, if any, of salaries (including withholding of income and social security taxes), workers' compensation or disability benefits and like requirements and obligations.
- 5.4 Employee Retention. Engineer agrees to maintain the organizational and administrative capacity and capabilities to carry out all duties and responsibilities under this Agreement. The personnel Engineer assigns to perform the duties and responsibilities under this Agreement will be properly trained and qualified for the functions they are to perform. If specific qualifications are set forth in job descriptions required by the funding entity and/or in this Agreement, unless a written waiver is granted, Engineer shall only assign personnel with the required qualifications to fulfill those functions. Notwithstanding transfer or turnover of personnel, Engineer remains obligated to perform all duties and responsibilities under this Agreement without degradation and in accordance with the terms of this Agreement.
- 5.5 Significant Organizational Change Notification. Engineer shall notify County immediately and in advance of any significant organizational change that could affect Engineer's ability to carry out all duties and responsibilities under this Agreement, including any change of Engineer's name or identity, ownership or control, or payee identification number. Engineer shall also provide written notice to County within 10 working days of the change. Engineer shall provide ownership information to County immediately upon any such change.

- 5.6 Adverse Actions Reporting. Engineer shall inform HCED, in writing, of any concluded investigation of Engineer (including Engineer's agents, employees, volunteers, and subcontractors, as applicable, providing work, products, services, licenses and/or deliverables under this Agreement) that is conducted by or on behalf of a government entity or other licensing or accreditation entity (including any state board of examiners) and whose outcome included public censure or other public sanction (or any pending investigations, administrative actions, or lawsuits, that relate to the work under this Agreement or that could adversely affect any performance or obligation in this Agreement). If at any time a license of Engineer's agents, employees, volunteers, and subcontractors, as applicable, providing work, products, services, licenses and/or deliverables under this Agreement required to be maintained to fulfill the Commitments in this Agreement is suspended, revoked or is determined to be out of compliance in Texas or any other state, this Agreement may be terminated immediately without prior notice, at the option of HCED, effective the date of the suspension, revocation or non-compliance. Engineer is not entitled to receive payment for services that were performed by Engineer while the required license was suspended or revoked. Engineer agrees to immediately inform HCED, in writing, of any adverse professional review action that is taken by a professional association or society and that is based on the professional competence or professional conduct of Engineer's agents, employees, volunteers, and subcontractors, as applicable, providing work, products, services, licenses and/or deliverables under this Agreement. County may, at its sole option, terminate this Agreement, upon notice of such adverse professional review action.
- 5.7 Subcontracts. Unless otherwise explicitly set out in this Agreement, Engineer shall not enter into any subcontract for the work, products, services, licenses and/or deliverables under this Agreement unless, prior to any written authorization to proceed with work done in part by the subcontractor, Engineer has provided to HCED the qualifications of the subcontractor to perform and meet the standards of this Agreement. Engineer shall comply with all Texas Administrative Code and Texas professional licensing agency requirements for choosing any professionally-licensed subcontractor.
- 5.8 Professional Standards. Where specifically-applicable standards are not explicitly set forth in this Agreement, as someone with expertise in the field, Engineer must provide the work, products, services, licenses and/or deliverables in accordance with generally-accepted standards applicable to Engineer's profession or industry. Engineer and County agree and acknowledge that County is entering into this Agreement in reliance on the Engineer's competence and qualifications, as those were presented to County by Engineer with respect to professional services. Engineer shall at all times utilize the skill and attention to fully, timely, and properly render professional services for the development of The Project to final completion as set out in, or reasonably inferred from, the Scope of Work/Services. This shall be done in a manner utilizing the degree of care ordinarily used by licensed professionals performing similar services on projects of a similar nature and scope within the State of Texas. A professional engineer assigned by Engineer to manage the Scope of Work who is licensed to practice in the State of Texas shall be present and represent Engineer at meetings of any official nature concerning The Project, including, but not limited to, scope meetings, status meetings, pre-bid meetings, any pre-construction meetings and any construction meetings (for construction-related projects) with County staff and/or contractors, unless otherwise set forth in the Scope of Work or approved in writing by HCED.
- 5.9 County Procedures. To effectively perform the services stated above, Engineer must become familiar with various procedures, policies, data collection systems, and other information of County. Engineer shall adhere to all applicable County engineering guidelines, standards, and design criteria (see <http://www.eng.hctx.net>). HCED will assist Engineer in obtaining the information. Unless otherwise required by law, Engineer agrees to keep any sensitive information confidential and not disclose it to outside parties without first obtaining County's written authorization.
- 5.10 Ownership of Work Product. For the purposes of assigning ownership of Engineer work product, the work performed will be deemed, to the extent authorized by law, to have been done on a works-made-for-hire basis, as that term is understood in copyright law. In the event and to the extent that such works are determined not to constitute works-made-for-hire, Engineer hereby irrevocably assigns and transfers to County all right, title, and interest in such works, including, but not limited to, copyrights. County shall be the absolute and unqualified owner of all completed or partially-completed Engineer work product prepared pursuant to this Professional Services Agreement and shall have the same force and effect as if prepared by

County, including mylar reproductions, drawings, preliminary layouts, electronic documents and drawings, record drawings, sketches, plans, cost estimates, inventions, designs, computer input/output information, computer applications, software, firmware, computations, and other documents (including the original electronic file format). Engineer may retain one set of reproducible copies for Engineer's sole use in preparation of studies or reports for County only. Engineer is expressly prohibited from selling, licensing or donating such documents, or using such documents in the preparation of other work for any other client, without the prior express written permission of HCED. Engineer warrants that Engineer's work product will not in any way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information, non-disclosure, or any other right of any third party, and Engineer will defend any claim, suit, or proceeding brought against County on the issue of infringement of any copyright by virtue of anything supplied by Engineer to HCED under this Agreement.

- 5.11 Trade Secrets. In connection with the work, products, services, licenses, Scope of Work, and/or deliverables provided under this Agreement, HCED may disclose to Engineer certain documents, data, and/or other information that is proprietary, confidential, or a trade secret (Trade Secrets). Engineer must not divulge or otherwise make unauthorized use of Trade Secrets or other protected information, procedures, or policies of HCED, any former employee, contractor, client, customer, or consultant, in the exercise of duties under this Agreement. Except to the extent authorized by a third party, neither Party shall copy, recreate, or use any proprietary information of a third party in the performance of services under this Agreement.
- 5.12 Nondisclosure and Confidentiality of Information. To the extent permitted by law, Engineer must keep confidential the contents of all discussions with local, state, and federal officials, as well as the contents of all local, state, and federal records and all other information obtained during performance under this Agreement. To fulfill Engineer's obligations under this Agreement, Engineer may be provided access to information, systems, operations, or procedures that are security sensitive or have been identified as confidential. This confidential information may include information from one of the government entity funding sources, such as a Texas or federal agency. Engineer and the person executing this Agreement on behalf of Engineer acknowledge that (a) access to this information (whether electronic, written or oral, formal or informal) is provided solely to Engineer for the purpose of discharging the duties in this Agreement, (b) premature or unauthorized disclosure of this information can irreparably harm the interests of County and may constitute a violation of state and/or federal law, and (c) the information may represent confidential or proprietary information, the release of which may be restricted or prohibited by law. Therefore, Engineer must (1) not access any information without express written authorization of HCED; (2) not copy, recreate, or use any information or document obtained in connection with this Agreement other than for the performance of this Agreement; (3) to the extent permitted by law, keep confidential the contents of all discussions with county, state, and federal officials, as well as the contents of all county, state, and federal records and all other information obtained during performance under this Agreement, unless authorized in writing by appropriate HCED officials; (4) not, except to the extent required by law, or necessary for the performance of this Agreement, release, disclose, reveal, communicate, impart or divulge any information or any summary or synopsis of the information in any manner or any form whatsoever to outside parties without the express written consent of HCED; (5) take all steps necessary to protect confidential information from disclosure to third parties and have a system in effect that must include a method to ensure the confidentiality of records and other information relating to any person according to applicable federal and state law, rules and regulations; (6) not reproduce, copy, or disseminate such confidential information, except to those who need to know such information and are obligated to maintain its confidentiality, including Engineer's partners, principals, representatives or employees as necessary to fulfill obligations under this Agreement; (7) notify HCED immediately of all requests for confidential information; and (8) immediately report to HCED all unauthorized disclosures or uses of confidential information.
- 5.13 Public Comment and Public Information Act. To the extent permitted by law, all contact with the news media, citizens of County, the State of Texas or other governmental agencies concerning The Project will be the responsibility of HCED. In the event Engineer is subject to the Texas Public Information Act, upon receipt of a written request for any information by Engineer developed in the performance of services under this Agreement, Engineer shall provide written notice to HCED of the request along with a copy of the

request, and give HCED the opportunity to respond to the request prior to any release by Engineer. Unless required by law, under no circumstances shall Engineer release any material or information developed in the performance of services under this Agreement without the express prior written permission of HCED.

- 5.14 Applicable Laws. Engineer shall comply (and assure compliance by Engineer's agents, employees, volunteers, and subcontractors, as applicable, providing work, products, services, licenses and/or deliverables under this Agreement) with all applicable state, federal, and local laws, ordinances, regulations, executive orders, rules, directives, standards, guidelines, and instructions relating to the work to be performed. Engineer shall immediately bring to County's attention any conflicts between any applicable state, federal, and local laws, ordinances, regulations, executive orders, rules, directives, standards, guidelines, and instructions relating to the work to be performed. If laws or regulations change and affect any provision of this Agreement, this Agreement shall be deemed amended to conform to those changes in the laws or regulations on the date such laws or regulations become effective. If any such changes (that occur after the effective date of this Agreement and that Engineer should not reasonably have anticipated) require significant changes or additions to the Scope of Work that were not contemplated by the Parties, the Parties shall negotiate in good faith for the purpose of creating reasonable and equitable written modifications to this Agreement.
- 5.15 Records Retention and Management. Engineer shall maintain complete, accurate, and readily accessible records that are necessary to document and support the fulfillment of the obligations in this Agreement, including performance, design, underlying calculations, and financial records, as well as a copy of this Agreement. Engineer shall maintain and make available for inspection the Records for a minimum of four (4) years following either the end of the federal fiscal year in which any obligations were performed under this Agreement or the termination date of this Agreement, whichever is longer (or longer if necessary to resolve any litigation, claims, financial management review, or audit findings).
- 5.16 Authority of Harris County Engineer. The Harris County Engineer ("County Engineer") shall decide any and all questions that may arise as to the interpretation of this Agreement and all questions as to the acceptable fulfillment of this Agreement by Engineer. It is mutually agreed by both Parties that the County Engineer shall act as referee between the Parties in all questions arising under the terms of this Agreement and that the decisions of the County Engineer shall be final and binding alike on all Parties. If agreed to in writing by Engineer and the County Engineer (or designee), Engineer and the County Engineer may make adjustments to the Scope of Work that do not destroy the purposes of this Agreement. In making the aforementioned adjustments to the Scope of Work, Engineer and the County Engineer may adjust any corresponding firm fixed or maximum prices that neither increase the maximum amount of funds that Commissioners Court has authorized to be encumbered nor destroy the purposes of this Agreement. Any of the aforementioned adjustments to the Scope of Work and/or corresponding adjustments to any firm fixed or maximum prices (collectively, "Adjustments") may be reflected by a written Special Amendment to the Scope of Work in this Agreement ("Special Amendment"). Nothing contained in this section shall be construed to authorize the County Engineer to alter, vary, or amend any of the terms or provisions of this Agreement, other than the aforementioned Adjustments. The County Engineer is authorized on behalf of the County to make Adjustments (as defined herein) and execute a corresponding Special Amendment without further action by Commissioners Court. The Harris County Auditor ("County Auditor") is authorized, without further action by Commissioners Court, to certify additional funding for any Adjustments upon execution of a Special Amendment by the County Engineer.
- 5.17. Foreign Terrorists Organizations. In accordance with Tex. Gov't Code Ann. Chapter 2252 Subchapter F, Engineer warrants and represents that, at the time of execution of this Agreement and for the duration of the Term of this Agreement and any Renewal Terms, Engineer does not appear on the Texas State Comptroller's list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.
- 5.18 Anti-Boycott. In accordance with Tex. Gov't Code Ann. § 2270.002, Engineer warrants and represents that it does not boycott Israel and agrees that it will not boycott Israel during the term of this contract.

6. INSURANCE

6.1 Coverage and Limits. During the Term of this Agreement and any extensions thereto, Engineer at its sole cost and expense shall provide insurance of such type and with such terms and limits as may be reasonably associated with this Agreement. As a minimum, Engineer shall provide and maintain the following coverage and limits:

- (a) Workers Compensation, as required by the laws of Texas, and Employers' Liability, as well as All States, United States Longshore & Harbor Workers Compensation Act and other endorsements, if applicable to the Project, and in accordance with state law.

Employers' Liability

| | | |
|-------|-------------------------|-------------|
| (i) | Each Accident | \$1,000,000 |
| (ii) | Disease – Each Employee | \$1,000,000 |
| (iii) | Policy Limit | \$1,000,000 |

- (b) Commercial General Liability, including but not limited to, the coverage indicated below. This policy will provide coverage for personal and bodily injury, including death, and for property damage, and include an endorsement for contractual liability. Coverage shall not exclude or limit the Products/Completed Operations, Contractual Liability, or Cross Liability. Where exposure exists, County may require coverage for watercraft, blasting, collapse, explosions, blowout, cratering, underground damage, pollution, and other coverage. *County shall be named Additional Insured on primary/non-contributory basis.*

| | | |
|-------|---------------------------------|-------------|
| (i) | Each Occurrence | \$1,000,000 |
| (ii) | Personal and Advertising Injury | \$1,000,000 |
| (iii) | Products/Completed Operations | \$1,000,000 |
| (iv) | General Aggregate (per project) | \$1,000,000 |

- (c) Professional Liability/Errors and Omissions, in an amount not less than One Million Dollars (\$1,000,000) per claim and in the aggregate.
- (d) Umbrella/Excess Liability in an amount not less than One Million Dollars (\$1,000,000) per occurrence and in the aggregate. *County shall be named Additional Insured on primary/non-contributory basis.*
- (e) Automobile Liability insurance to include Engineer's liability for death, bodily injury, and property damage resulting from Engineer's activities covering use of owned, hired, and non-owned vehicles, with combined single limit of not less than One Million Dollars (\$1,000,000) for each accident. *County shall be named Additional Insured on primary/non-contributory basis.*
- (f) Any other coverage required of Engineer pursuant to statute.

6.2 Delivery of Policies. Immediately upon execution of this Agreement and before any Services are commenced by Engineer, Engineer shall provide County evidence of all of the above coverage on forms and with insurers acceptable to County. Engineer must maintain a valid Certificate of Insurance as described herein on file with County at all times during the term of this Agreement. Engineer must either (1) mail the Certificate of Insurance to the Harris County Engineering Department at 1001 Preston, 7th Floor, Houston, TX 77002, Attn: Administrative Services or (2) submit it by email to HCEdAdminSvc@hcpid.org.

6.2.1 Issuers of Policies. Coverage shall be issued by company(s) licensed by the Texas Department of Insurance to do business in Texas, unless said coverage is not available or economically feasible except through an excess or surplus lines company, in which case the company(s) should be registered to do business in Texas. Companies shall have an A.M. Best rating of at least A-VII.

6.2.2 Certificates of Insurance. Engineer shall provide unaltered Certificates of Insurance which evidence the required coverage and endorsements and satisfy the following requirements:

- (a) Be less than 12 months old;
- (b) Include all pertinent identification information for the Insurer, including the company name and address, policy number, NAIC number or AMB number, and an authorized signature;

- (c) Include the Project name and reference numbers and indicates the name and address of the Project Manager in the Certificate Holder Box; and
 - (d) Be appropriately marked to accurately identify:
 - (i) All coverage and limits of the policy;
 - (ii) Effective and expiration dates;
 - (iii) Waivers of subrogation, endorsement of primary insurance and additional insured language, as described herein.
- 6.2.3 Certified Copies of Policies and Endorsements. Upon request, Engineer shall furnish certified copies of insurance policies and endorsements to County.
- 6.2.4 Renewal Certificates. Renewal certificates are due to County at least thirty (30) days prior to the expiration of the current policies.
- 6.2.5 Subcontractors. If any part of the Agreement is sublet, insurance shall be provided by or on behalf of any subcontractor, and shall be sufficient to cover their portion of the Agreement. Engineer shall furnish evidence of such insurance to County as well.
- 6.3 Additional Insured. Engineer shall include County and its respective officers, directors, agents, and employees as an Additional Insured on the Commercial General Liability, Automobile Liability, and Umbrella/Excess Liability insurance certificates. Engineer's coverage shall be primary insurance to any similar insurance maintained by County and must contain an endorsement stating such. Coverage to County as an Additional Insured on any of Engineer's insurance coverage shall not be subject to any deductible.
- 6.4 Deductibles. Engineer shall be responsible for and pay any claims or losses to the extent of any deductible amounts applicable under all such policies and waives any claim it may have for the same against County, its officers, directors, agents, or employees.
- 6.5 Claims-made Policies. All insurance policies written on a claims-made basis, including Professional Liability/Errors and Omissions, shall be maintained for a minimum of two (2) years following completion of all services under this Agreement ("Extended Reporting Period"). Engineer shall obtain or maintain full prior acts coverage at least to the effective date of this Agreement in the event of a carrier or policy change.
- 6.6 Waiver of Subrogation. Engineer waives any claim or right of subrogation to recover against County, its officers, directors, agents, and employees ("Waiver of Subrogation"). Each policy required under this Agreement must contain a Waiver of Subrogation endorsement.
- 6.7 Notice of Cancellation, Non-Renewal, or Material Change. Engineer shall provide County with thirty (30) days' minimum written notification in the event of cancellation, non-renewal, or material change to any or all of the required coverage.
- 6.8 Remedies for Noncompliance. Failure to comply with any part of this Section is a material breach of this Agreement. Engineer could immediately, and without notice, have all compensation withheld or suspended, be suspended from providing further Services, or be terminated from this Agreement for any lapse in coverage or material change in coverage which causes Engineer to be in noncompliance with the requirements of this Section.

7. FUNDING, COMPENSATION AND/OR BASIS FOR PAYMENT, METHOD, AND LIMITATIONS

- 7.1. Payments/Compensation. For and in consideration of the work, products, services, licenses or deliverables provided under this Agreement and during the term of this Agreement, subject to the limitations in this Agreement, County shall pay Engineer in accordance with the fee schedule and rates specified in this Agreement, including in the Attachments up to the total maximum amount specifically appropriated, encumbered, and then certified as available by the County Auditor.
- 7.2. Funding and Appropriations Limit. Contractor understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to for the Services performed under this Agreement, and the total maximum sum that the County shall become liable to pay to Contractor under this Agreement, shall not under any conditions, circumstances, or interpretations thereof exceed the sum of Two Million Three Hundred Seventy Three Thousand Dollars (\$2,373,000). Notwithstanding anything to the contrary, or that may be construed to the contrary, the County's liability under the terms and provisions of this Agreement is limited to this sum.
- 7.2.1.1. Contractor understands and agrees that this Agreement is contingent upon the availability of third-party funds, including but not limited to federal funds awarded to the State or County ("Grant Funds") for the term of the Agreement. It is expressly understood and agreed that the County has no County funds available with which to pay its obligations hereunder except funds allocated and received by the County under the Grant awarded to the County. The County shall not be liable under any circumstances or any interpretations hereof for any costs under this Agreement until the Grant Funds are actually received by the County and then only to the extent that such monies are actually received and certified available for this Agreement by the County Auditor as evidenced by the issuance of a purchase order by the Harris County Purchasing Agent. It shall be the obligation of Contractor to assure itself that sufficient funds have been allocated to pay for the Services to be provided. Should Contractor receive any Grant Funds from the County that are determined not subject to payment with Grant Funds, Contractor shall refund to the County any and all such amounts that have been paid by the County.
- 7.2.1.2. Contractor understands and agrees that the payment obligations created by this Agreement are conditioned upon the availability of third-party funds and appropriated for the payment of such obligations under the Grant. In the event these Grant Funds are discontinued or reduced during the Agreement term, the County shall not be liable for payment of any funds above the actual Grant Funds the County receives. It is expressly understood and agreed that the County has available the total maximum sum of funds certified available by the County Auditor through the issuance of the purchase order for the purpose of satisfying the County's obligations under the terms and provisions of this Agreement. In the event the Grant Funds are discontinued or reduced and the Parties are unable to renegotiate the Agreement upon mutually acceptable terms, the Contractor's sole and exclusive remedy shall be to terminate this Agreement. The County's obligation to make any payments under the Agreement using Grant Funds is limited to the amount of Grant Funds received. Contractor agrees that it will not be entitled to any damages or remedies of any kind including, but not limited to, liquidated or incidental damages, late fees, penalties, and finance charges. Failure to certify funds or to certify sufficient funding for any reason shall not be considered a breach of this Agreement. Contractor shall provide the products, services and deliverables during the applicable grant period only.
- 7.2.1.3. Contractor understands and agrees that the Grant Funds awarded to the County are the exclusive funding of the Agreement. In order to be eligible for payments under the Grant, Contractor agrees to comply with all of the applicable terms and requirements of the Grant as supplied by the County. Contractor further agrees to reimburse the County, within thirty (30) days after written notice, for any Grant Funds received from the County under the Agreement for which the County is denied reimbursement under the Grant or which are otherwise determined to be ineligible for reimbursement under the Grant. Federal Grant Regulations require that Contractor pay all suppliers

and subcontractors performing services under this Agreement within thirty (30) days of receipt of payment from the County.

7.2.1.4. Contractor understands and agrees that it shall not proceed with any Services until it receives written authorization from the County to begin. If at any time during the course of the Agreement, Contractor knows that the funds available will not cover the cost of the Services, Contractor shall notify the County immediately.

7.2.1.5. Subject at all times to the availability of Grant Funds and the County's right to withhold payment of any questionable charges, the County shall pay each undisputed invoice in accordance with Texas state law.

7.3. Auditor's Certification of Funds. The issuance of a purchase order pursuant to this Agreement represents certification by the Harris County Auditor that funds, in the amount of the purchase order total, are available to satisfy all financial obligations of Harris County hereunder.

7.4. Funding Out/Non-Appropriation. It is further understood that pursuant to Local Government Code Chapter 111, when and if the work, products, services, licenses and/or deliverables and charges provided for herein are equal to or exceed the amounts certified available, Engineer is authorized to terminate some or all of Engineer's work, products, services, licenses and/or deliverables under this Agreement unless the County Auditor certifies that additional funds are available, in which event Engineer agrees to continue to provide the products, services and/or deliverables to the extent funds are available. When all the funds certified by the County Auditor, together with any additional funds thereafter certified, are expended, County will have no further liability, and the sole and exclusive remedy of Engineer will be to immediately terminate this Agreement unless the County Auditor certifies additional funds.

7.5. Billing Statements/Invoices. Unless otherwise indicated in this Agreement, no later than the 10th day after the end of each calendar month within the term of this Agreement, Engineer shall submit to HCED a billing statement or invoice for all unpaid products, services and/or deliverables, along with any applicable rates, including the applicable firm fixed price and any applicable percentage completed for specific tasks/deliverables as specified in this Agreement. The data in the billing statement or invoice must be in a format designated by HCED and the County Auditor, and must include any purchase order number. An authorized agent of Engineer must certify and swear under penalty of perjury that the work was performed, the work was properly authorized in writing by HCED, and all information contained in the statement or invoice is true and correct. All products, services and/or deliverables billed must be rendered during this Agreement term. Engineer shall submit to HCED billing statements or invoices limited to work done and products, services and/or deliverables provided pursuant to this Agreement, and Engineer shall not include in such billing statements or invoices any work, products, services, licenses and/or deliverables provided, required to be performed, or billed under or pursuant to any other agreements with County. HCED will review each statement or invoice and approve it with any modifications HCED deems appropriate after mutual consultation and agreement with Engineer. HCED will then forward the approved statement or invoice to the County Auditor for payment. County will pay Engineer the proper amounts due and owing under this Agreement within thirty (30) calendar days of receipt of the approved statement or invoice to extent allowed by law. Each statement or invoice must include a monthly inventory of work, products, services, licenses and/or deliverables provided during the billing period and any other details HCED reasonably requests for verification purposes, which might include:

- (a) The date(s) work, products, services, licenses and/or deliverables were provided;
- (b) Meetings and lists of attendees, if applicable;
- (c) Detailed description of the work, products, services, licenses and/or deliverables provided;
- (d) The total amount billed, and any other details of the work, hours, or services as may be requested by the County Auditor;
- (e) If applicable, the case number for which services were performed;

- 7.6. Overpayments. Within 10 calendar days after request by HCED, Engineer must reimburse to County all funds paid by County to Engineer that any funding entity or auditor determines have been improperly paid to, or expended by, Engineer. County may withhold, suspend, or reduce any and all payments due to Engineer until any overpayments are reimbursed.
- 7.7. Costs of Substitute Services. If Engineer fails to perform any of its obligations under the Agreement and County procures substitute services upon such terms as are appropriate, County shall deduct the reasonable costs for such services from any payments owed to Engineer under this or other agreements. Engineer must reimburse to County, within thirty (30) calendar days after request by County, any additional costs of such substitute services beyond what has already been deducted by County. County may also withhold, suspend, or reduce payments due to Engineer until the costs of such substitute services are reimbursed to County by Engineer. This provision is not intended to waive or preclude any other remedies the parties may otherwise have in law, equity, or elsewhere in this Agreement and is in addition to and not in lieu of any other remedies.
- 7.8. Billing Audits. County and its designee shall have the right to examine and audit all of Engineer's billings/invoices and all of Engineer's backup and support data for billings/invoices for this Agreement. Upon HCED's request, Engineer agrees to make such data and supporting documentation available to the County Auditor or designee in Harris County, Texas. Engineer shall maintain complete and accurate records necessary to fulfill any obligations in this Agreement, including a copy of this Agreement, including detailed time records identifying each person performing services that were billed on an hourly basis, the corresponding dates of the services, the applicable firm fixed price and the percentage completed for specific tasks as specified in this Agreement, any applicable hourly or cost-plus rates, the total amount billed for each person as applicable, and the total amount billed for all persons as applicable. Engineer shall maintain and make available for inspection (electronically or in Harris County during regular business hours) the Records for a minimum of four (4) years days following either the end of the federal fiscal year in which any obligations were performed under this Agreement or the termination date of this Agreement (or longer if necessary to resolve any litigation, claims, financial management review, or audit findings). All payments made by County are subject to re-evaluation and refund or withholding of future payments conditioned on the results of the audit.
- 7.9. County Auditor to Make Final Decision. The decision of the County Auditor as to the amount owed shall be final if there is any dispute between County and Engineer as to the amount owed to Engineer for any monthly statement or invoice submitted by Engineer. County agrees to notify Engineer of any questionable item and is authorized to withhold payment until all questions are resolved either by final audit or by agreement of the Parties.

8. TERM OF THE AGREEMENT

- 8.1 Time Period. The time period for performance ("Term") of this Agreement shall begin April 27, 2021, and end on the later date of (a) Project completion or (b) June 30, 2023.

9. TERMINATION PROVISIONS

- 9.1 Determination of Material and Non-Material Breaches. The County Engineer shall determine whether a breach of this Agreement by either Party is material or non-material. The County Engineer's determination shall be final and binding alike on all Parties.
- 9.2 Non-Material Breaches. If either Party refuses or fails to perform any of its non-material obligations in this Agreement, the other Party may give written notice of the failure. If the breaching Party fails or refuses to cure the failure of any non-material obligation in the notice within ten (10) calendar days after notice is given, the other Party may terminate this Agreement immediately. HCED is authorized to give notice for County.
- 9.3 Material Breaches.

- 9.3.1 Suspension. HCED may suspend this Agreement immediately for any material breach by giving a notice of suspension. As soon as the notice of suspension is received, Engineer shall discontinue all services in connection with the performance of this Agreement. HCED is authorized to suspend on behalf of County.
- 9.3.2 Termination. The County may terminate this Agreement for a material breach at any time by notice in writing to the Engineer.
- 9.4 No Waiver of Remedies. The provisions in this Section are not intended to waive or preclude any other remedies the parties may otherwise have in law, equity, or elsewhere in this Agreement. The right to terminate for a material and non-material breach is in addition to and not in lieu of any other remedies.
- 9.5 Termination Statement. As soon as practicable after receiving notice of termination, Engineer must submit a statement or invoice to HCED that complies with the requirements in this Agreement. This statement or invoice must show in detail the unbilled/uninvoiced services performed for County under this Agreement to the date of termination. If the payments were to be made in lump sums and services were rendered after the last lump sum payment, the statement or invoice shall reflect the prorated amount due.
- 9.6 Return of Documents after Termination. If permitted by law and any established ethical requirements applicable to specific professionals, Engineer shall promptly deliver to HCED all completed or partially completed work product, designs, data, information, and documents prepared under this Agreement on behalf of County. Within 2 business days after the effective date of termination, Engineer shall return to HCED all records, files, documents, notes and other items in Engineer's possession, if any, relating to any assignments or work that Engineer has undertaken or been given under this Agreement, if permitted by law and any established ethical requirements applicable to specific professionals. Engineer shall deliver to HCED all completed or partially-completed designs, drawings and specifications prepared under this Agreement, including the original electronic file format. Nothing in this section is intended to require Engineer to surrender Engineer's own records to HCED after termination.
- 9.7 Agreement Transition. In the event the Agreement ends by either expiration or termination, Engineer shall, at the request of the County, assist in the transition until such time that a replacement engineer can be named. Engineer acknowledges its responsibility to cooperate fully with the replacement engineer and the County to ensure a smooth and timely transition to the replacement engineer. Such transitional period shall not extend more than ninety (90) days beyond the expiration/termination date of the Agreement, or any extension thereof. During any transition period, all other terms and conditions of the Agreement shall remain in full force and effect as originally written.

10. INDEMNIFICATION

- 10.1 No Waiver of Governmental Immunity. County does not waive any immunity or defense on behalf of itself, its employees or agents as a result of the execution of this Agreement.
- 10.2 General Indemnity. To the extent allowed by law, Engineer agrees to indemnify and hold harmless County, HCED, their officers, employees, and agents from liability, losses, expenses, demands, reasonable attorneys' fees, and claims for bodily injury (including death) and property damage to the extent caused by the negligence, intentional tort, intellectual property infringement of Engineer (including Engineer's agents, employees, volunteers, and subcontractors/consultants under contract, or any other entity over which Engineer exercises control, in the performance of the services defined in this Agreement). Engineer shall also save County harmless from and against any and all expenses, including reasonable attorneys' fees that might be incurred by the County, in litigation or otherwise resisting such claims or liabilities.

11. MISCELLANEOUS

- 11.1 Notices. Any notice required to be given under this Agreement ("Notice") may be given by hand delivery or certified United States Mail, postage prepaid, return receipt requested, addressed to the Parties at the following:

ENGINEER: Cory J. Stull, P.E., CFM
Principal and Vice President
Freese and Nichols, Inc.
10497 Town and Country Way, Suite 500
Houston, TX 77024
Email: Cory.Stull@freese.com

COUNTY: John R. Blount, P.E.
County Engineer
Harris County Engineering Department
1001 Preston Street, Floor 7
Houston, TX 77002-1816
Email: AgreementInfo@hcpid.org

All other communications may be sent by electronic means or in the same manner as Notices described herein.

- 11.2 Receipt of Notice. Notice shall be considered given and complete upon successful electronic transmission or upon deposit in the United States Mail.
- 11.3 Change of Address. Each Party shall have the right to change its respective address by giving at least ten (10) days' written notice of such change to the other Party.
- 11.4 Force Majeure. Neither Party will be liable for any failure or delay in performing its obligations under this Agreement if such failure or delay is due to any cause beyond the reasonable control of such Party if such cause is generally recognized under Texas law as constituting impossible conditions. The existence of such causes of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Each Party must inform the other in writing with proof of receipt within 10 business days of the existence of such Force Majeure event or otherwise waive this right as a defense.
- 11.5 E-Mail Addresses. Engineer affirmatively consents to the disclosure of e-mail addresses that are provided to County or HCED. This consent is intended to comply with the requirements of the Texas Public Information Act, Texas Government Code § 552.137, and shall survive termination of this Agreement. This consent shall apply to e-mail addresses provided by Engineer and any agents acting on Engineer's behalf and shall apply to any e-mail address provided in any form for any reason, whether related to this Agreement or otherwise.
- 11.6 Entire Agreement (Merger). This Agreement contains the entire agreement and understanding between the parties relating to the rights granted to and the obligations of the parties. All prior negotiations, discussions, correspondence and previous understandings are superseded by this Agreement. Any oral representation or modification concerning this Agreement shall be of no force or effect.
- 11.7 No Oral Modifications. Unless otherwise explicitly stated in this Agreement, this Agreement cannot be changed except by a written subsequent modification authorized by all parties.
- 11.8 Inducements. In making the award of this contract, County relied on Engineer's assurances and representations made in this Agreement. Any false assurances and representations by Engineer shall be immediate grounds for termination of this Agreement without prior notice at the option of County.
- 11.9 Contract Construction. The titles assigned to the various Articles of this Agreement are for convenience. Titles shall not be considered restrictive of the subject matter of any Article or other part of this Agreement. Likewise, the provisions of purpose in this Agreement are intended to be a general introduction and are not

intended to expand the scope of the Parties' obligations or alter the plain meaning of the terms and conditions in this Agreement.

- 11.10 Ambiguities. Ambiguities, if any, shall not be interpreted against the drafter of this Agreement.
- 11.11 No Waiver of Default. Any waiver by either Party of one or more defaults on the part of the other Party in the performance of obligations under this Agreement is not a waiver of any subsequent defaults.
- 11.12 Remedies Cumulative. Unless otherwise specified elsewhere in this Agreement, the rights and remedies of County are not exclusive, but are cumulative of all rights and remedies that exist now or in the future.
- 11.13 No Third Party Beneficiaries. Unless explicitly provided in this Agreement, there is no intent by either Party to create or establish third party beneficiary status or rights in any third party, and no such third party shall have any right to enforce any right or enjoy any benefit created or established under this Agreement.
- 11.14 Non-Exclusivity. Unless explicitly provided in this Agreement, nothing shall prevent either Party from contracting with other parties for the provision of the same or similar services or deliverables that are contemplated by this Agreement.
- 11.15 Limited Personal Liability. Nothing in this Agreement shall be construed as creating any personal liability on the part of any officer, director, employee, or agent of County.
- 11.16 Dispute Resolution Process. The Parties will meet and confer in good faith to work together to resolve problems or disputes that may arise. In the event a dispute arises between the parties involving the provisions or interpretation of any term or condition of the Agreement, and if both parties desire to attempt to resolve the dispute prior to termination or expiration of the Agreement, or withholding payments, then the parties may refer the issue to a mutually-agreeable dispute resolution process.
- 11.17 Survivability Clause. Any provision, section, subsection, paragraph, sentence, clause or phrase of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement, including indemnification provisions, shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.
- 11.18 Savings/Severability Clause. If any provision, section, subsection, paragraph, sentence, clause or phrase of this Agreement, or the application of same to any person or set of circumstances, is held to be invalid, void, or unenforceable by a court of competent jurisdiction, that part of this Agreement shall be reformed, if reasonably possible, to comply with the applicable provisions of law. In any event, the remaining provisions the same shall continue in full force and effect, provided that the unenforceable or invalid provision is not material to the overall purpose and operation of this Agreement. If necessary in order to make this Agreement valid and enforceable, the Parties shall meet to confer upon an amendment or modification.
- 11.19 Time is of the Essence. Time is of the essence with respect to Engineer's performance under this Agreement, and Engineer shall perform all services diligently until completed.
- 11.20 Choice of Law. This Agreement shall be construed according to the laws of the State of Texas without giving effect to its conflict of laws provisions. Venue lies only in Harris County as per Texas Civil Practice and Remedies Code Sec. 15.015, and any alternative dispute resolution, suit, action, claim, or proceeding with respect to or arising out of this Agreement must be brought solely in the courts or locations that are situated in the State of Texas, County of Harris. Both parties irrevocably waive any claim that any proceeding brought in Harris County has been brought in an inconvenient forum.
- 11.21 Exhibit List. The following attachments are a part of this Agreement:

Exhibit A: TWDB Contract No. 210179249 1

Exhibit B: Project Budget Allocation by Task

- 11.22 Tax Exemption. Pursuant to Texas Tax Code §151.309, as a political subdivision, County claims exemption from sales and use taxes and will provide exemption certificates upon written request. County shall not be liable to reimburse or pay any personal property taxes, charges, or fees assessed against Engineer.
- 11.23 Electronic or Facsimile Signatures and Duplicate Originals. Pursuant to the requirements of the Uniform Electronic Transactions Act in Chapter 322 of the Texas Business and Commerce Code and the Federal Electronic Signatures in Global and National Commerce Act (beginning at 15 U.S.C. Section 7001), the Parties have agreed that the transactions under this Agreement may be conducted by electronic means. Pursuant to these statutes, this Agreement may not be denied legal effect or enforceability solely because it is in electronic form or because it contains an electronic signature. This Agreement may be executed in duplicate counterparts and with electronic or facsimile signatures with the same effect as if the signatures were on the same document. Each multiple original of this document shall be deemed an original, but all multiple copies together shall constitute one and the same instrument.
- 11.24 Signatory Authorized to Execute Agreement. The person executing this Agreement on behalf of each Party represents that he or she is duly authorized by the policy of the Party's governing body to legally obligate and execute this Agreement on behalf of the Party.

HARRIS COUNTY

By: _____
Lina Hidalgo
Harris County Judge

FREESE AND NICHOLS, INC.

By:  _____
Cory L. Stull
Principal and Vice President

APPROVED AS TO FORM:

CHRISTIAN D. MENELEE
Harris County Attorney

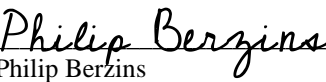
By:  _____
Philip Berzins
Assistant County Attorney
CAO File Number 21GEI

Exhibit A

TWDB Contract No. 2101792491



STATE OF TEXAS

TWDB Contract No. 2101792491

COUNTY OF TRAVIS

Floodplain Management Account

REGIONAL FLOOD PLANNING

THIS Contract, (hereinafter "CONTRACT"), between the Texas Water Development Board (hereinafter "TWDB") and Harris County, the political subdivision designated by the REGIONAL FLOOD PLANNING GROUP as its representative (hereinafter "CONTRACTOR"), is composed of two parts: Section I - Specific Conditions and Exceptions to the Standard Agreement; and Section II - Standard Agreement. In the event of any conflict, the terms and conditions set forth in Section I will prevail over terms and conditions in Section II.

SECTION I. SPECIFIC CONDITIONS AND EXCEPTIONS TO STANDARD AGREEMENT

ARTICLE I. DEFINITIONS:

For the purposes of this CONTRACT, the following terms or phrases are defined as follows:

- A. TWDB – the Texas Water Development Board, or its designated representative.
- B. TWDB APPROVAL DATE – November 19, 2020
- C. COMMITTED FUNDS – \$ 2,446,000.00 is currently available to CONTRACTOR pursuant to the terms of this CONTRACT for the development of the TECHNICAL MEMORANDUM and the REGIONAL FLOOD PLAN. The COMMITTED FUNDS include necessary and direct costs incurred on or after CONTRACT EXECUTION DATE, and certain eligible costs related to Task 10 incurred on or after the CONTRACT INITIATION DATE.
- D. CONTRACT INITIATION DATE – October 26, 2020
- E. CONTRACTOR – Harris County
- F. DEADLINE FOR CONTRACT EXECUTION – April 30, 2021
- G. EXECUTIVE ADMINISTRATOR – the Executive Administrator of TWDB or a designated representative.
- H. TECHNICAL MEMORANDUM – a memorandum to be prepared by CONTRACTOR and submitted to the EXECUTIVE ADMINISTRATOR summarizing the findings and all work performed under the Scope of Work and any future amended Scope of Work

(i.e., through the identification of the region's flood risks and identification of potential flood management evaluations and potentially feasible flood management strategies and flood mitigation projects).

- I. TECHNICAL MEMORANDUM DEADLINE – January 7, 2022
- J. DRAFT REGIONAL FLOOD PLAN – the Regional Flood Plan to be initially prepared by CONTRACTOR and submitted to the EXECUTIVE ADMINISTRATOR for comments pursuant to the CONTRACT.
- K. DRAFT REGIONAL FLOOD PLAN DEADLINE – August 1, 2022
- L. REGIONAL FLOOD PLAN – a plan including any amendments that have been adopted by the REGIONAL FLOOD PLANNING GROUP and that meets the requirements contained in Texas Water Code § 16.062 and 31 Texas Administrative Code Chapters 361 and 362 and is submitted to TWDB for approval.
- M. FINAL REGIONAL FLOOD PLAN DEADLINE – January 10, 2023
- N. FIRST REIMBURSEABLE EXPENSE DATE – The first day that work performed under this CONTRACT is eligible for reimbursement will be the CONTRACT INITIATION DATE for limited administrative costs associated with public notices. TWDB will not reimburse expenses associated with Exhibit A, Scope of Work, until after CONTRACT EXECUTION DATE.
- O. FINAL REIMBURSEABLE EXPENSE DATE – The last day that work performed under this CONTRACT is eligible for reimbursement will be June 30, 2023.
- P. CONTRACT EXPIRATION DATE – This CONTRACT expires on June 30, 2023. The last day that any budget amendment requests may be submitted under the CONTRACT will be May 1, 2023.
- Q. FINAL PAYMENT REQUEST DEADLINE – The latest day that the final payment request may be submitted for reimbursement will be September 30, 2023.
- R. FLOOD PLANNING REGION – Region 6 San Jacinto designated under Texas Water Code § 16.062(a)(1) and 31 Texas Administrative Code § 361.11.
- S. REGIONAL FLOOD PLANNING GROUP – Region 6 San Jacinto Regional Flood Planning Group, designated under and in compliance with Texas Water Code §16.062(c) and 31 Texas Administrative Code § 361.11 to develop regional flood plans.
- T. STATE FLOOD PLANNING DATASET – A data platform to be developed and maintained by TWDB that stores data related to flood planning. It is used to collect, analyze, and disseminate regional and statewide flood planning data.
- U. PAYMENT REQUEST SUBMISSION SCHEDULE – A minimum of quarterly.

- V. CONTRACT EXECUTION DATE– The date CONTRACT is signed by the EXECUTIVE ADMINISTRATOR as shown on the last page of this CONTRACT document.

ARTICLE II. OTHER SPECIAL CONDITIONS AND EXCEPTIONS TO STANDARD AGREEMENT OF THIS CONTRACT.

- A. TWDB will not be liable for any expenses incurred in excess of COMMITTED FUNDS.

This CONTRACT does not require CONTRACTOR to incur costs beyond those that can be paid with COMMITTED FUNDS. However, this provision does not relieve the REGIONAL FLOOD PLANNING GROUP from its duty under Texas Water Code § 16.062 to prepare a regional flood plan.

- B. Other provisions specific to each region: None.

SECTION II. STANDARD AGREEMENT

ARTICLE I. RECITALS

Whereas, CONTRACTOR has been designated by the REGIONAL FLOOD PLANNING GROUP as its representative to enter into Contracts with TWDB for financial assistance to develop a REGIONAL FLOOD PLAN for the FLOOD PLANNING REGION;

Whereas, CONTRACTOR applied to TWDB for a planning grant to develop a REGIONAL FLOOD PLAN;

Whereas, CONTRACTOR is the entity acting as administrator of TWDB's planning grant and responsible for the execution of this CONTRACT; and

Whereas, on TWDB APPROVAL DATE, TWDB approved CONTRACTOR's application for financial assistance.

Now, therefore, TWDB and CONTRACTOR, agree as follows:

ARTICLE II. PROJECT DESCRIPTION AND SERVICES TO BE PERFORMED

- A. CONTRACTOR must develop a TECHNICAL MEMORANDUM and REGIONAL FLOOD PLAN for the FLOOD PLANNING REGION according to:
1. Exhibit A – Scope of Work
 2. Exhibit B – Task and Expense Budgets

3. Exhibit C – Technical Guidelines for Regional Flood Planning¹
 4. Exhibit D – Data Submittal Guidelines for Regional Flood Planning¹
 5. Exhibit E – Original Application (cover pages as a reference to the full, original grant application)
 6. Exhibit F – Certification of Procurement of Professional Services and in accordance with the requirements of Texas Water Code Chapter 16 and with 31 Texas Administrative Code Chapters 361 and 362.
- B. The EXECUTIVE ADMINISTRATOR will provide technical assistance within available resources to CONTRACTOR if such assistance is requested for performing regional flood planning activities; and, as necessary, will facilitate resolution of conflicts within the FLOOD PLANNING REGION or between regions.
- C. CONTRACTOR must provide for public participation in the planning process as specified in Texas Water Code § 16.062 and 31 Texas Administrative Code § 361.21.
- D. CONTRACTOR must provide its best efforts as determined by the EXECUTIVE ADMINISTRATOR to produce a REGIONAL FLOOD PLAN that has been adopted by the REGIONAL FLOOD PLANNING GROUP and that was developed in accordance with the statutory and rule requirements identified in this CONTRACT.
- E. CONTRACTOR must obtain prior approval of the REGIONAL FLOOD PLANNING GROUP for all potential flood management evaluations and potentially feasible flood management strategies and flood mitigation projects to be evaluated as part of the REGIONAL FLOOD PLAN development.

ARTICLE III. SCHEDULE, REPORTS, AND OTHER PRODUCTS

- A. CONTRACTOR must execute this CONTRACT on or before the DEADLINE FOR CONTRACT EXECUTION or TWDB's commitment to pay COMMITTED FUNDS will be rescinded.
- B. This CONTRACT begins on the CONTRACT INITIATION DATE and expires on the CONTRACT EXPIRATION DATE.
- C. CONTRACTOR must provide written progress reports according to the PAYMENT REQUEST SUBMISSION SCHEDULE with each payment reimbursement request or release of advance funds. The progress reports must include:
1. a brief statement of the overall progress made since the last progress report for each task budget item;
 2. a brief description of any problems that have been encountered during the previous reporting period that may affect the study, delay the timely

¹ Exhibit C , Technical Guidelines for Regional Flood Planning, and Exhibit D, Data Submittal Guidelines for Regional Flood Planning, will be posted on the TWDB website at:
<https://www.twdb.texas.gov/flood/planning/planningdocu/2023/index.asp>.
The RFPs must utilize the latest version posted on the website until July 31, 2021.

- completion of any portion of this CONTRACT, or inhibit the completion of or cause a change in any of the study's products or objects; and
3. a description of any action CONTRACTOR plans to take to correct any problems that have been encountered or identified.
- D. CONTRACTOR must complete the TECHNICAL MEMORANDUM according to Article II, Paragraph A of this Section. CONTRACTOR must submit the TECHNICAL MEMORANDUM to the REGIONAL FLOOD PLANNING GROUP for approval at a regular REGIONAL FLOOD PLANNING GROUP meeting. After approval, CONTRACTOR must submit the TECHNICAL MEMORANDUM to the EXECUTIVE ADMINISTRATOR, if the REGIONAL FLOOD PLANNING GROUP authorizes such submittal. CONTRACTOR must deliver two electronic copies of the TECHNICAL MEMORANDUM, one (1) in searchable Portable Document Format (PDF) and one (1) in Microsoft Word (MSWord) Format, to the EXECUTIVE ADMINISTRATOR no later than the TECHNICAL MEMORANDUM DEADLINE.

CONTRACTOR must populate TWDB's state flood planning database with associated data, prior to submission of the TECHNICAL MEMORANDUM in accordance with this CONTRACT.

The TECHNICAL MEMORANDUM DEADLINE may be extended at the discretion of the EXECUTIVE ADMINISTRATOR either on the EXECUTIVE ADMINISTRATOR's initiative or upon a written request received from CONTRACTOR, at least thirty (30) days prior to the deadline, stating good cause for the extension.

TWDB will not accept a TECHNICAL MEMORANDUM or consider it administratively complete until the associated data in TWDB's state flood planning data submittal is complete and accurate, and the required summary tables are included in the TECHNICAL MEMORANDUM in accordance with this CONTRACT.

After a 30-day review period, the EXECUTIVE ADMINISTRATOR will either accept or reject the TECHNICAL MEMORANDUM based on administrative completeness. If the TECHNICAL MEMORANDUM is rejected, the rejection letter sent to CONTRACTOR will state the reasons for rejection and the steps CONTRACTOR needs to take to have the TECHNICAL MEMORANDUM accepted.

In the event CONTRACTOR has produced a TECHNICAL MEMORANDUM that, despite CONTRACTOR'S best efforts, has not been authorized for submittal by the REGIONAL FLOOD PLANNING GROUP, CONTRACTOR must provide all data, material, reports, and work accomplished under the CONTRACT to TWDB.

- E. CONTRACTOR or CONTRACTOR's representative (e.g., Subcontractor) must attend at least one state flood planning data submittal training session provided by TWDB staff at times and locations to be determined by TWDB.
- F. CONTRACTOR must complete the DRAFT REGIONAL FLOOD PLAN according to Article II, Paragraph A of this Section. CONTRACTOR must submit the DRAFT

REGIONAL FLOOD PLAN to the REGIONAL FLOOD PLANNING GROUP and allow the REGIONAL FLOOD PLANNING GROUP to conduct a public meeting to receive and consider comments on the DRAFT REGIONAL FLOOD PLAN. CONTRACTOR must submit the DRAFT REGIONAL FLOOD PLAN to the EXECUTIVE ADMINISTRATOR after the REGIONAL FLOOD PLANNING GROUP authorizes such submittal. The REGIONAL FLOOD PLANNING GROUP may submit the DRAFT REGIONAL FLOOD PLAN prior to the required public meeting but must assure the EXECUTIVE ADMINISTRATOR that the meeting will be completed in time to meet the FINAL REGIONAL FLOOD PLAN DEADLINE for submission of an APPROVED REGIONAL FLOOD PLAN. CONTRACTOR must deliver two electronic copies of a DRAFT REGIONAL FLOOD PLAN, one (1) in searchable Portable Document Format (PDF) and one (1) in Microsoft Word (MSWord) Format, to the EXECUTIVE ADMINISTRATOR no later than the DRAFT REGIONAL FLOOD PLAN DEADLINE. The EXECUTIVE ADMINISTRATOR will provide any written comments to CONTRACTOR within 120 calendar days.

CONTRACTOR must provide the pertinent TWDB state flood planning dataset, including appropriate documentation and quality check, by DRAFT REGIONAL FLOOD PLAN DEADLINE, in accordance with this CONTRACT. CONTRACTOR must incorporate the required online planning database reports from the state flood planning database within the submitted DRAFT REGIONAL FLOOD PLAN in accordance with this CONTRACT.

The DRAFT REGIONAL FLOOD PLAN DEADLINE may be extended at the discretion of the EXECUTIVE ADMINISTRATOR either on their own initiative or upon a written request received from CONTRACTOR at least thirty (30) days prior to the deadline, stating good cause for the extension.

- G. CONTRACTOR must include a copy of the EXECUTIVE ADMINISTRATOR'S comments on the DRAFT REGIONAL FLOOD PLAN in the adopted REGIONAL FLOOD PLAN, with a summary of all other comments received on the DRAFT REGIONAL FLOOD PLAN, including written explanations of how the REGIONAL FLOOD PLAN was revised in response to comments or why changes recommended in a comment were not warranted.

CONTRACTOR must submit:

- one (1) electronic copy of all files on which the plan is based (e.g. spreadsheets, maps);
- two (2) electronic copies of the entire REGIONAL FLOOD PLAN, one (1) in searchable Portable Document Format (PDF) and one (1) in Microsoft Word (MSWord) Format. In compliance with 1 Texas Administrative Code Chapters 206 and 213 (related to Accessibility and Usability of State Web Sites, Web Content Accessibility Guidelines (WCAG) 2.1 Level AA Standard – WCAG 2.1 Quick Reference, which can be found at: <https://www.w3.org/WAI/WCAG21/quickref/>), the electronic copy of the REGIONAL FLOOD PLAN will comply with the requirements and standards specified in statute; and,

- five (5) bound, double-sided copies of the REGIONAL FLOOD PLAN to the EXECUTIVE ADMINISTRATOR no later than the FINAL REGIONAL FLOOD PLAN DEADLINE.
- H. CONTRACTOR must make corrections, updates, or modifications, to the TWDB state flood planning dataset, as necessary, prior to the FINAL REGIONAL FLOOD PLAN DEADLINE in accordance with this CONTRACT. TWDB will not accept a REGIONAL FLOOD PLAN or consider it administratively complete until the associated data in TWDB's state flood planning dataset is complete and accurate and the relevant flood planning data and maps are included in the REGIONAL FLOOD PLAN. CONTRACTOR also must transfer copies of all data and reports generated by the planning process and used in developing the REGIONAL FLOOD PLAN to the EXECUTIVE ADMINISTRATOR no later than the FINAL REGIONAL FLOOD PLAN DEADLINE. The REGIONAL FLOOD PLAN and the data collected and transmitted for the REGIONAL FLOOD PLAN must be prepared in the format and according to specifications prescribed in Flood Planning Guidance Documents to this CONTRACT. In the event CONTRACTOR has produced a REGIONAL FLOOD PLAN, that despite CONTRACTOR'S best efforts has not been adopted by the REGIONAL FLOOD PLANNING GROUP, CONTRACTOR must provide all data, material, reports, and work accomplished under the CONTRACT to TWDB.
- I. Delivery of a REGIONAL FLOOD PLAN that meets statutory and rule requirements as determined by the EXECUTIVE ADMINISTRATOR on or before the FINAL REGIONAL FLOOD PLAN DEADLINE constitutes completion of the terms of this CONTRACT by CONTRACTOR.
- J. After a 90-day review period, the EXECUTIVE ADMINISTRATOR will either accept or reject the REGIONAL FLOOD PLAN. If the final plan is rejected, the rejection letter sent to CONTRACTOR will state the reasons for rejection and the steps CONTRACTOR must take to have the REGIONAL FLOOD PLAN accepted and the retainage released.
- K. ANNUAL AUDIT. During the term of this CONTRACT, TWDB will reserve the right to request the CONTRACTOR to submit an annual audit of the general purpose financial statements prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant. Audits must be submitted to TWDB no later than 120 days following the close of CONTRACTOR's fiscal year.

ARTICLE IV. COMPENSATION AND REIMBURSEMENT

- A. TWDB agrees to compensate and reimburse CONTRACTOR in a total amount not to exceed the COMMITTED FUNDS for costs incurred and paid by CONTRACTOR pursuant to performance of this CONTRACT, as specified in Section I, Article I.
- B. Eligible expenses incurred by CONTRACTOR from the FIRST REIMBURSEABLE EXPENSE DATE through FINAL REIMBURSEABLE EXPENSE DATE will be reimbursed by TWDB. CONTRACTOR will be eligible for reimbursement only for the categories set forth in the budget for this CONTRACT. All requests for reimbursement must be

accompanied by copies of invoices and receipts. TWDB will reimburse the actual expenses allowed herein during the term of the CONTRACT.

- C. Requests for Advance or Reimbursement for Subcontractor Expenses. Requests for advance or reimbursement for subcontractor expenses will only be considered where such subcontracts or agreements have been determined by the EXECUTIVE ADMINISTRATOR to be consistent with the terms of this CONTRACT. The purpose of this review is Solely to ensure that the subcontracts and agreements are consistent with this CONTRACT and that the rights of TWDB, particularly in regard to ownership of data, are protected. CONTRACTOR understands that CONTRACTOR should obtain its own legal review of subcontracts and agreements that CONTRACTOR enters into. CONTRACTOR agrees that TWDB assumes no legal obligations under its subcontracts or agreements and is merely a third-party beneficiary of the same. CONTRACTOR is fully responsible for paying all eligible charges by subcontractors prior to reimbursement by TWDB.

Each subcontract or agreement must include a task and expense budget estimate in a format similar to Exhibit B to this CONTRACT, with specific cost details for each task or specific item of work to be performed by the subcontractor and for each category of reimbursable expenses. The subcontracts and agreements must conform to the terms of the CONTRACT and include provisions which require subcontractor compliance with TWDB rules. The subcontracts and agreements must provide that in the event of any conflict with the provisions of this CONTRACT the provisions of the CONTRACT will prevail. In addition, each subcontract or agreement that in any manner involves the collection or manipulation of data must include the provisions in Paragraph D of this Article below.

- D. CONTRACTOR must adhere to all requirements in state law and TWDB rules pertaining to the procurement of professional services, including 31 TAC § 361.72(c). Prior to associated reimbursements, CONTRACTOR must submit a Certification of Procurement of Professional Services in accordance with Exhibit F to this CONTRACT, evidencing that the Region's subcontractors were properly and competitively procured for this planning cycle. Expenses incurred under subcontracts or agreements that have not been approved by the EXECUTIVE ADMINISTRATOR or do not otherwise comply with the terms of this CONTRACT are not eligible for reimbursement.
- E. At the sole discretion of the EXECUTIVE ADMINISTRATOR, CONTRACTOR may modify task and expense budget categories to the extent that the resulting change in amount in any one task or expense category does not exceed 35% of the total authorized amount by this CONTRACT for that task or category. Larger deviations require submission of a written request that is approved by the Regional Flood Planning Group and approved by the EXECUTIVE ADMINISTRATOR or designee which will be documented through an Approved Budget Memorandum to the TWDB CONTRACT file. CONTRACTOR will be required to provide written explanation for the overage and reallocation of the task and expense amount. Associated shifts in

amounts between budget task and expense categories authorized under this paragraph will not change the COMMITTED FUNDS amount.

- F. CONTRACTOR and its subcontractors must maintain satisfactory financial accounting documents and records, including copies of invoices, receipts, time and attendance records, supporting salaries and wages, in accordance with generally accepted accounting principles for a term of three years after completion of this CONTRACT and must make them available for examination and audit by TWDB at any time upon 24 hours' notice from the EXECUTIVE ADMINISTRATOR or the EXECUTIVE ADMINISTRATOR's designee. Accounting by CONTRACTOR and its subcontractors must be in a manner consistent with generally accepted accounting principles.
- G. CONTRACTOR must provide information to an entity or person who is independent of CONTRACTOR and who is selected by the REGIONAL FLOOD PLANNING GROUP sufficient to allow that person or entity to routinely provide reports of expenses and use of planning funds to the REGIONAL FLOOD PLANNING GROUP. The person to whom the information is provided may be a member of the REGIONAL FLOOD PLANNING GROUP. CONTRACTOR must allow such person or entity full access to all records relating to this CONTRACT, including all financial records.

Method of Payment: Initial Advance followed by Reimbursement of Invoice

- H. Within thirty (30) days after the execution of this CONTRACT, the EXECUTIVE ADMINISTRATOR will advance to CONTRACTOR twenty percent of the COMMITTED FUNDS, unless CONTRACTOR requests and the EXECUTIVE ADMINISTRATOR approves advances of less than twenty percent.
- I. All advanced funds received must be deposited into an interest-bearing account by CONTRACTOR and proportionate share of the interest earned must be allocated to the grant to be used to reimburse the SUBCONTRACTOR(S).
- J. After CONTRACTOR has received the initial advance, TWDB will begin reimbursing CONTRACTOR based on reimbursement request amounts, in addition to and aside from the initial twenty percent advance, so that after the first TWDB reimbursement is received by CONTRACTOR, CONTRACTOR will have retained the full amount of the initial advance funds to be available to pay its SUBCONTRACTOR prior to CONTRACTOR's second reimbursement request to TWDB.
- K. TWDB will reimburse CONTRACTOR up to 95 percent of the COMMITTED FUNDS available for costs incurred and paid by CONTRACTOR pursuant to performance of this CONTRACT. Once seventy-five percent of the contract amount has been reimbursed, aside from the initial twenty percent advance amount, CONTRACTOR may submit reimbursement requests that will apply to the twenty percent advance amount remaining. The five percent retainage will be withheld until CONTRACTOR submits a REGIONAL FLOOD PLAN, as described in Article III, Paragraphs G and H of this section. If the EXECUTIVE ADMINISTRATOR determines that CONTRACTOR has utilized its best efforts to have a DRAFT REGIONAL FLOOD PLAN adopted by the

REGIONAL FLOOD PLANNING GROUP for submittal to TWDB, but has been unable, despite those best efforts, to do so, the EXECUTIVE ADMINISTRATOR may release the five percent retainage solely within the EXECUTIVE ADMINISTRATOR's discretion.

- L. CONTRACTOR must submit payment requests and documentation for reimbursement in accordance with the approved task and expense budgets contained in Exhibit B to this CONTRACT. For all reimbursement billings, including any subcontractor's expenses, the EXECUTIVE ADMINISTRATOR must have provided written approval of all CONTRACTS or agreements between CONTRACTOR and the subcontractor. CONTRACTOR is fully responsible for paying all eligible charges by subcontractors prior to reimbursement by TWDB.

- M. The written progress report required by Article III, Paragraph C of this Section, and the following documentation which documents the COMMITTED FUNDS, must be submitted by CONTRACTOR to the EXECUTIVE ADMINISTRATOR in support of its requests for reimbursement. CONTRACTOR must submit a progress report and the following documentation which documents the COMMITTED FUNDS for the reporting period even if the COMMITTED FUNDS for the period is ZERO:
 - 1. Completed and Signed Payment Request Checklist which includes the following:
 - (a) TWDB CONTRACT Number;
 - (b) Total expenses for the billing period; beginning (date) to ending (date);
 - (c) Total Services for this billing period;
 - (d) Total In-kind services;
 - (e) Less Local Share of the COMMITTED FUNDS for the billing period;
 - (f) Total of TWDB's share of the COMMITTED FUNDS for the billing period;
 - (g) Amount of retainage to be withheld for the billing period;
 - (h) Total costs to be reimbursed by TWDB for the billing period; and
 - (i) Certification, signed by CONTRACTOR's authorized representative, that the expenses submitted for the billing period are a true and correct representation of amounts paid for work performed directly related to this CONTRACT.

 - 2. For direct expenses incurred by CONTRACTOR other than subcontracted work:
 - (a) A spreadsheet showing the tasks that were performed; the percent and cost of each task completed; a total cost figure for each direct expense category including labor, fringe, overhead, travel, and other expenses such as communication and postage, technical and computer services, expendable supplies, printing and reproduction; and
 - (b) Copies of invoices for other expenses.

 - 3. For direct expenses incurred by CONTRACTOR for subcontracted work:
 - (a) Copies of invoices from the SUBCONTRACTOR(S) to CONTRACTOR
 - (b) A spreadsheet showing the tasks that were performed; the percent and cost of each task completed; a total cost figure for each direct expense

- category including labor, fringe, overhead, travel, and other expenses such as communication and postage, technical and computer services, expendable supplies, printing and reproduction; and the total dollar amount due to the SUBCONTRACTOR(S); and
 - (c) Copies of invoices for other expenses.
4. For travel expenses for CONTRACTOR and/or subcontractor(s):
 - (a) Names, dates, work locations, time periods at work locations, itemization of subsistence expenses of each employee, which will be reimbursed at rates authorized for state employees by the General Appropriations Act, Tex. Leg. Regular Session, 2019, Article IX, Part 5, as amended or superseded. Receipts required for lodging. Any eligible travel expenses related to a subcontract may be reimbursed at the current rate for State of Texas employees which can be found at: <https://fm.xcpa.state.tx.us/fmx/travel/texttravel/trans/personal.php>
 - (b) Copies of invoices or tickets for transportation costs or, if not available, names, dates, and points of travel of individuals; and
 - (c) All other reimbursable travel expenses -- invoices or purchase vouchers showing reason for expense with receipts to evidence the amount incurred.
 5. Incomplete requests will be returned to CONTRACTOR if deficiencies are not resolved within ten (10) business days.
 6. If for some reason the reimbursement request cannot be processed due to the need for an amendment to the CONTRACT, CONTRACTOR must resubmit the Payment Request Checklist dated after the execution of the amendment.
- N. In accordance with Section I, Article I, CONTRACTOR must provide a final reconciliation of expended amounts under the CONTRACT. Within thirty (30) days of the EXECUTIVE ADMINISTRATOR'S final accounting of the amounts expended by CONTRACTOR and the amounts reimbursed by TWDB to CONTRACTOR, the EXECUTIVE ADMINISTRATOR will reimburse the difference provided the reimbursement does not exceed the COMMITTED FUNDS.

ARTICLE V. INTELLECTUAL PROPERTY: OWNERSHIP, PUBLICATION, AND ACKNOWLEDGEMENT

- A. "Use" of a work product, whether a Contractor Work, a Subcontractor Work or otherwise, means and includes, without limitation, any lawful use, copying or dissemination of the work product, or any lawful development, use, copying or dissemination of derivative works of the work product, in any media or forms, whether now known or later existing.
- B. "No Compensation Obligation" means there is no obligation on the part of one co-owner or licensee of a work, whether a Contractor Work, a Subcontractor Work or otherwise, to compensate other co-owners, licensees or licensors of the work for any

use of the work by the using co-owner or licensee, including but not limited to compensation for or in the form of: royalties; co-owner or licensee accounting; sharing of revenues or profits among co-owners, licensees or licensors; or any other form of compensation to the other co-owners, licensees or licensors on account of any use of the work.

- C. "Dissemination" includes, without limitation, any and all manner of: physical distribution; publication; broadcast; electronic transmission; Internet streaming; posting on the Internet or world wide web; or any other form of communication, transmission, distribution, sending or providing, in any forms or formats, and in or using any media, whether now known or later existing.
- D. TWDB has an unlimited, unrestricted, perpetual, irrevocable, non-exclusive royalty-free right to access and receive in usable form and format, and to use all technical or other data or information developed by CONTRACTOR and SUBCONTRACTOR in, or otherwise resulting from, the performance of services under this CONTRACT.
- E. For purposes of this Article, "Contractor Works" are work products developed by CONTRACTOR and Subcontractor(s) using funds provided under this CONTRACT or otherwise rendered in or related to the performance in whole or in part of this CONTRACT, including but not limited to reports, drafts of reports, or other material, data, drawings, studies, analyses, notes, plans, computer programs and codes, or other work products, whether final or intermediate.
 - 1. It is agreed that all Contractor Works will be the joint property of TWDB and CONTRACTOR.
 - 2. The parties hereby agree that, if recognized as such by applicable law, the Contractor Works are intended to and will be works-made-for-hire with joint ownership between TWDB and CONTRACTOR as such works are created in whole or in part.
 - 3. If the Contractor Works do not qualify as works-made-for-hire under applicable law, CONTRACTOR hereby conveys co-ownership interest in such works to TWDB as they are created in whole or in part. If present conveyance is ineffective under applicable law, CONTRACTOR agrees to convey a co-ownership interest in the Contractor Works to TWDB after creation in whole or in part of such works, and to provide written documentation of such conveyance upon request by TWDB.
 - 4. TWDB and CONTRACTOR acknowledge that the copyright in and to a copyrightable Contractor Work exists upon creation of the Contractor Work and its fixing in any tangible medium. CONTRACTOR or TWDB may register the copyrights to such Works jointly in the names of CONTRACTOR and TWDB.
 - 5. TWDB and CONTRACTOR each have full and unrestricted rights to use a Contractor Work with No Compensation Obligation.
- F. For purposes of this Article, "Subcontractor Works" include all work product developed in whole or in part by or on behalf of SUBCONTRACTOR(S) engaged by CONTRACTOR to perform work for or on behalf of CONTRACTOR under this

CONTRACT (or by the SUBCONTRACTOR'S SUBCONTRACTOR(S) hereunder, and so on). CONTRACTOR must secure in writing from any SUBCONTRACTOR(S) so engaged:

1. unlimited, unrestricted, perpetual, irrevocable, royalty-free rights of TWDB (and, if desired, of CONTRACTOR) to access and receive, and to use, any and all technical or other data or information developed in or resulting from the performance of services under such engagement, with No Compensation Obligation; and either:
 2. assignment by the Subcontractor to TWDB (and, if desired by them, jointly to CONTRACTOR) of ownership (or joint ownership with CONTRACTOR) of all Subcontractor Works, with No Compensation Obligation; or
 3. grant by Subcontractor of a non-exclusive, unrestricted, unlimited, perpetual, irrevocable, world-wide, royalty-free license to TWDB (and, if desired by them, CONTRACTOR) to use any and all Subcontractor Works, including the right to sublicense use to third parties, with No Compensation Obligation.
- G. No unauthorized patents. Contractor Works and Subcontractor Works or other work product developed or created in the performance of this CONTRACT or otherwise using funds provided hereunder must not be patented by CONTRACTOR or their SUBCONTRACTOR(S) unless the Executive Administrator consents in writing to submission of an application for patent on such works; and provided that, unless otherwise agreed in writing:
1. any application made for patent must include and name TWDB (and, as applicable and desired by them, both CONTRACTOR and the SUBCONTRACTOR(S)) as co-owners of the patented work;
 2. no patent granted will in any way limit, or be used by CONTRACTOR or Subcontractor to limit or bar TWDB's rights hereunder to access and receive in useable form and format, and right to use, any and all technical or other data or information developed in or resulting from performance pursuant to this CONTRACT or Subcontract or the use of funds provided hereunder; and
 3. TWDB (and, if applicable, CONTRACTOR) has No Compensation Obligation to any other co-owners or licensees of any such patented work.
- H. CONTRACTOR must include terms and conditions in all CONTRACTS or other engagement agreements with any SUBCONTRACTOR(S) as are necessary to secure these rights and protections for TWDB; and must require that their Subcontractors include similar such terms and conditions in any CONTRACTS or other engagements with their Subcontractors. For the purposes of this section, "SUBCONTRACTOR(S)" includes independent contractors (including consultants) and also employees working outside the course and scope of employment.
- I. Any work products subject to a TWDB copyright or joint copyright and produced or developed by CONTRACTOR or their SUBCONTRACTOR(S) pursuant to this CONTRACT or Subcontract or using any funding provided by TWDB may be reproduced in any media, forms or formats by TWDB or CONTRACTOR at their own cost, and be disseminated in any medium, format or form by any party at its sole cost

and in its sole discretion. CONTRACTOR may utilize such work products as they may deem appropriate, including Dissemination of such work products or parts thereof under their own name, provided that any TWDB copyright is noted on the materials.

- J. CONTRACTOR agrees to acknowledge TWDB in any news releases or other publications relating to the work performed under this CONTRACT.

ARTICLE VI. SUBCONTRACTS

Each Subcontract entered into to perform required work under this CONTRACT must contain the following information and provisions:

- A. **Contract Dates** – There should be a starting date and ending date for work under the Subcontract.
- B. **Contract Amount** – The subcontract should list the total dollar value.
- C. **Terms of Reimbursement** – Subcontracts must be cost reimbursable. Lump sum agreements are not permitted for services. Please also note that TWDB does not reimburse “handling costs” (mark-ups) on any expenses. Any eligible travel expenses related to a subcontract may be reimbursed at the current rate for State of Texas employees which can be found at: <https://fmxcpa.texas.gov/fmx/travel/texttravel/>
- D. **Scope of Work** – The terms of the scope of work must be consistent with the scope of the CONTRACT.
- E. **Task Budget** – as appropriate. The task budget must be consistent with the task budget specified in the TWDB CONTRACT.
- F. **Expense Budget** – as appropriate. The expense budget must be consistent with the expense budget specified in the TWDB CONTRACT.
- G. **Signatures** – Each subcontract must be executed appropriately by signature, by each party to the agreement.
- H. **State Auditor’s Right to Audit** - The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the CONTRACT or indirectly through a Subcontract under the CONTRACT. The acceptance of funds directly under the CONTRACT or indirectly through a Subcontract under the CONTRACT acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

- I. **Financial Records:** SUBCONTRACTOR(s) and any contracted parties must maintain satisfactory financial accounting documents and records, including copies of invoices and receipts, and must make them available for examination and audit by the EXECUTIVE ADMINISTRATOR of TWDB. Accounting by the SUBCONTRACTOR(s) and any contracted parties must be in a manner consistent with generally accepted accounting principles.
- J. **Excess Obligations Prohibited/No Debt Against the State:** Any SUBCONTRACT is subject to termination or cancellation without penalty to TWDB, either in whole or in part, subject to the availability of state funds.
- K. **License, Permits, and Insurance:** For the purpose of this SUBCONTRACT, SUBCONTRACTOR is an independent contractor and therefore solely responsible for liability resulting from negligent acts or omissions. SUBCONTRACTOR must obtain all necessary insurance, in the judgment of the SUBCONTRACTOR, to protect itself, CONTRACTOR, TWDB, and employees and officials of TWDB from liability arising out of this SUBCONTRACT. SUBCONTRACTOR must indemnify and hold TWDB and the State of Texas harmless, to the extent the SUBCONTRACTOR may do so in accordance with state law, from any and all losses, damages, liability, or claims therefore, on account of personal injury, death, or property damage of any nature whatsoever caused by SUBCONTRACTOR, arising out of the activities under this SUBCONTRACT. SUBCONTRACTOR must be solely and entirely responsible for procuring all necessary licenses and permits which may be required for the SUBCONTRACTOR to perform the subject work.
- L. **Ownership:** It is agreed that all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this SUBCONTRACT and developed by SUBCONTRACTOR pursuant to this SUBCONTRACT will become the joint property of the REGIONAL FLOOD PLANNING GROUP, CONTRACTOR, SUBCONTRACTOR, and the Texas Water Development Board. These materials must not be copyrighted or patented by the SUBCONTRACTOR. SUBCONTRACTOR agrees that neither the Regional Flood Planning Group nor the Texas Water Development Board are parties to this SUBCONTRACT and agrees that that these entities have no liability under the terms of this SUBCONTRACT. The Texas Water Development Board is solely a third-party beneficiary under this SUBCONTRACT.
- M. **Compliance with TWDB rules and state law:** SUBCONTRACTOR must comply with TWDB rules and adhere to all requirements in state law pertaining to the procurement of professional services.

ARTICLE VII. AMENDMENT, TERMINATION, AND STOP ORDERS

- A. This CONTRACT may be altered or amended by mutual written consent or terminated by the EXECUTIVE ADMINISTRATOR at any time by written notice to CONTRACTOR. The EXECUTIVE ADMINISTRATOR may terminate this CONTRACT if the REGIONAL FLOOD PLANNING GROUP withdraws its designation of CONTRACTOR as the CONTRACT representative of the REGIONAL FLOOD PLANNING GROUP. Upon receipt of such termination notice, CONTRACTOR must, unless the notice directs otherwise, immediately discontinue all work in connection with the performance of this CONTRACT and cancel all existing orders insofar as such orders are chargeable to this CONTRACT. CONTRACTOR must submit a statement showing in detail the work performed under this CONTRACT up to the date of termination. TWDB, at its discretion, will pay CONTRACTOR for the work, actually performed under this CONTRACT, less all payments that have been previously made and any approved by the EXECUTIVE ADMINISTRATOR to conclude the CONTRACT. Thereupon, copies of all work accomplished under this CONTRACT must be delivered promptly to TWDB.
- B. Any request to amend the CONTRACT Scope of Work (Exhibit A) must be submitted in writing by CONTRACTOR to TWDB following approval by the REGIONAL FLOOD PLANNING GROUP [31 TAC § 361.12(a)(5)].
- C. The EXECUTIVE ADMINISTRATOR may issue a Stop Work Order to CONTRACTOR at any time. Upon receipt of such order, CONTRACTOR must discontinue all work and cancel all orders under to this CONTRACT, unless the Stop Work Order directs otherwise. If the EXECUTIVE ADMINISTRATOR does not issue a Restart Order within 60 days after receipt by CONTRACTOR of the Stop Work Order, this CONTRACT terminated in accordance with the foregoing provisions.

ARTICLE IX. LICENSES, PERMIT, AND INSURANCE

- A. For the purpose of this CONTRACT, CONTRACTOR is an independent contractor and therefore solely responsible for liability resulting from negligent acts or omissions.
- B. CONTRACTOR is solely and entirely responsible for procuring all necessary licenses and permits which may be required for CONTRACTOR to perform the subject work.

ARTICLE X. SEVERANCE PROVISION

Should any one or more provisions of this CONTRACT be held to be null, void, voidable, or for any reason whatsoever of no force and effect, such provision(s) will be construed as severable from the remainder of this CONTRACT and will not affect the validity of all other provisions of this CONTRACT, which will remain of full force and effect.

ARTICLE XI. GENERAL TERMS AND CONDITIONS

1. GENERAL TERMS

- A. **Disaster Recovery Plan.** Upon request of TWDB, CONTRACTOR must provide descriptions or copies of its business continuity and disaster recovery plans.
- B. **Dispute Resolution.** The dispute resolution process provided for in Texas Government Code Chapter 2260 must be used to attempt to resolve any dispute arising under this CONTRACT.
- C. **Excess Obligations Prohibited/No Debt Against the State.** This Contract is subject to termination or cancellation without penalty to TWDB, either in whole or in part, subject to the availability of state funds
- D. **False Statements.** If CONTRACTOR signs its application with a false statement or it is subsequently determined that CONTRACTOR has violated any of the representations, guarantees, warranties, certifications or affirmations included in its application, CONTRACTOR will be in default under the CONTRACT and TWDB may terminate or void the CONTRACT.
- E. **Force Majeure.** Neither CONTRACTOR nor TWDB will be liable to the other for any delay in or failure of performance of any requirement contained in this CONTRACT caused by force majeure. The existence of such causes of delay or failure will extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.
- F. **Governing Law and Venue.** This CONTRACT is governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under this CONTRACT is fixed in any court of competent jurisdiction in Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to TWDB.
- G. **Indemnification.** TO THE EXTENT PERMITTED BY LAW, CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TWDB, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS

AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE MUST BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT, AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND TWDB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- H. **Public Information Act.** CONTRACTOR understands that TWDB will comply with the Texas Public Information Act, Texas Government Code Chapter 552, as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation and other material in connection with this CONTRACT may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Texas Government Code § 2252.907, CONTRACTOR is required to make any information created or exchanged with the State pursuant to this CONTRACT, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- I. **State Auditor's Right to Audit.** The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- J. **Uniform Grant Management Standards.** CONTRACTOR is required to follow the Texas Comptroller of Public Account's Uniform Grant Management Standards in accordance with Chapter 783 of the Texas Government Code, as applicable.

2. STANDARDS OF PERFORMANCE

- A. **Personnel.** CONTRACTOR must assign only qualified personnel to perform the services required under this CONTRACT. CONTRACTOR is responsible for ensuring that any Subcontractor utilized also assigns only qualified personnel. Qualified personnel are persons who are properly licensed to perform the work and who have sufficient knowledge, skill and ability to perform the tasks

and services required herein according to the standards of performance and care for their trade or profession.

- B. **Professional Standards.** CONTRACTOR must provide the services and deliverables in accordance with applicable professional standards. CONTRACTOR represents and warrants that it is authorized to acquire Subcontractors with the requisite qualifications, experience, personnel and other resources to perform in the manner required by this CONTRACT.
- C. **Procurement Laws.** CONTRACTOR must comply with applicable State of Texas procurement laws, rules and policies, including but not limited to competitive bidding and the Professional Services Procurement Act, Texas Government Code, Chapter 2254, relating to contracting with persons whose services are within the scope of practice of: accountants, architects, landscape architects, land surveyors, medical doctors, optometrists, professional engineers, real estate appraisers, professional nurses, and certified public accountants.
- D. **Independent Contractor.** Both parties hereto, in the performance of this CONTRACT, act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party will not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
- E. **Proprietary and Confidential Information.** CONTRACTOR warrants and represents that any information that is proprietary or confidential and is received by CONTRACTOR from TWDB or any governmental entity will not be disclosed to third parties without the written consent of TWDB or applicable governmental entity, whose consent will not be unreasonably withheld.
- F. **Contract Administration.** TWDB will designate a project manager for this CONTRACT. The project manager will serve as the point of contact between TWDB and CONTRACTOR. TWDB's project manager will supervise TWDB's review of CONTRACTOR's technical work, deliverables, draft reports, the FINAL REPORT, payment requests, schedules, financial and budget administration, and similar matters. The project manager does not have any express or implied authority to vary the terms of the CONTRACT, amend the CONTRACT in any way or waive strict performance of the terms or conditions of the CONTRACT.
- G. **Nepotism.** CONTRACTOR must comply with Texas Government Code Chapter 573 by ensuring that no officer, employee or member of CONTRACTOR's governing body votes or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition does not prohibit the employment of a person who has been continuously employed for a period of

two years prior to the election or appointment of the officer, employee or governing body member related to such person in the prohibited degree.

- H. **Open Meetings.** CONTRACTOR must comply with Texas Government Code Chapter 551, which requires all regular, special or called meetings of governmental bodies to be open to the public, except as otherwise provided by law.

3. AFFIRMATIONS AND CERTIFICATIONS

- A. **Antitrust Affirmation.** CONTRACTOR represents and warrants that, in accordance with Texas Government Code § 2155.005, neither CONTRACTOR nor any firm, corporation, partnership, or institution represented by CONTRACTOR, or anyone acting for such a firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business & Commerce Code, or the federal antitrust laws; or (2) communicated directly or indirectly the contents of the proposal resulting in this CONTRACT to any competitor or any other person engaged in the same line of business as CONTRACTOR.
- B. **Child Support Obligation Affirmation.** Under Texas Family Code § 231.006, CONTRACTOR certifies that the individual or business entity named in this CONTRACT is not ineligible to receive the specified grant, loan or payment, and acknowledges that this CONTRACT may be terminated and payment may be withheld if this certification is inaccurate.
- C. **Dealings With Public Servants.** Pursuant to Texas Government Code § 2155.003, CONTRACTOR represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the goods or services being supplied.
- D. **Debts and Delinquencies Affirmation.** CONTRACTOR agrees that any payments due under the CONTRACT will be applied towards any debt or delinquency that is owed to the State of Texas.
- E. **E-Verify Program.** CONTRACTOR certifies that for contracts for services, CONTRACTOR will utilize the U.S. Department of Homeland Security's E-Verify system during the term of the CONTRACT to determine the eligibility of: 1) all persons employed by CONTRACTOR to perform duties within Texas; and 2) all persons, including Subcontractors, assigned by CONTRACTOR to perform work pursuant to the CONTRACT within the United States of America.
- F. **Entities that Boycott Israel.** Pursuant to Texas Government Code § 2270.002, CONTRACTOR certifies that either (i) it meets one of the exemption criteria under § 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation.

CONTRACTOR must state any facts that make it exempt from the boycott certification.

- G. **Excluded Parties.** CONTRACTOR certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
- H. **Executive Head of a State Agency Affirmation.** In accordance with Texas Government Code § 669.003, relating to contracting with the executive head of a state agency, CONTRACTOR certifies that it is not: 1) the executive head of TWDB; 2) a person who at any time during the four years before the date of this CONTRACT was the executive head of TWDB; or 3) a person who employs a current or former executive head of TWDB.

If Section 669.003 applies, CONTRACTOR must provide the following information:

Name of Former Executive:

Name of State Agency:

Date of Separation from State Agency:

Position with Contractor:

Date of Employment with Contractor:

- I. **Financial Participation Prohibited.** Pursuant to Texas Government Code § 2155.004(a), CONTRACTOR certifies that neither CONTRACTOR nor any person or entity represented by CONTRACTOR has received compensation from TWDB or any agency of the State of Texas for participation in the preparation of the specifications or solicitation on which this CONTRACT is based. Under Texas Government Code § 2155.004(b), CONTRACTOR certifies that the individual or business entity named in this CONTRACT is not ineligible to receive the specified contract and acknowledges that this CONTRACT may be terminated and payment withheld if this certification is inaccurate.
- J. **Foreign Terrorist Organizations.** CONTRACTOR represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Texas Government Code § 2252.152.
- K. **Human Trafficking Prohibition.** Under Texas Government Code § 2155.0061, CONTRACTOR certifies that the individual or business entity named in this CONTRACT is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- L. **Lobbying Prohibition.** CONTRACTOR represents and warrants that TWDB's payments to CONTRACTOR and CONTRACTOR's receipt of appropriated or

other funds under the contract are not prohibited by Texas Government Code §§ 556.005 or 556.0055, related to the prohibition on payment of state funds to a lobbyist or for lobbying activities.

- M. **No Conflict of Interest.** CONTRACTOR represents and warrants that the provision of goods and services or other performance under this CONTRACT will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. CONTRACTOR also represents and warrants that, during the term of this CONTRACT, CONTRACTOR will immediately notify TWDB, in writing, of any existing or potential conflict of interest relative to the performance of the CONTRACT.
- N. **Prior Disaster Relief Declaration.** Texas Government Code §§ 2155.006 and 2261.053 prohibit state agencies from accepting a response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Texas Government Code § 418.004, occurring after September 24, 2005. Under Texas Government Code §§ 2155.006 and 2261.053, CONTRACTOR certifies that the individual or business entity named in this CONTRACT is not ineligible to receive the specified contract and acknowledges that this CONTRACT may be terminated and payment withheld if this certification is inaccurate.
- O. **Suspension and Debarment.** Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

ARTICLE XII. CORRESPONDENCE

All correspondence between the parties must be made to the following addresses:

For TWDB:

Contract Issues:

Texas Water Development Board
Attention: Procurement & Contract
Services
P.O. Box 13231
Austin, Texas 78711-3231
Email: contracts@twdb.texas.gov

Payment Request Submission:

Texas Water Development Board
Attention: Accounts Payable
P.O. Box 13231
Austin, Texas 78711-3231
Email: invoice@twdb.texas.gov

Physical Address:

Stephen F. Austin Building
1700 N. Congress Avenue, 6th Floor
Austin, Texas 78701

For HARRIS COUNTY:

Contract Issues:

Alisa Max
Harris County
P.O. Box 1525
Houston, TX 77251-1525
Email: Alisa.Max@eng.hctx.net

Payment Request Submission:

Paul Wilden
Harris County Grants Accounting Manager
1001 Preston, Suite 800
Houston, Texas 77002
Email: paul.wilden@aud.hctx

Physical Address:

Harris County
1001 Preston St.
Houston, TX 7702

APPROVED AS TO FORM:

CHRISTIAN D. MENEFEE

County Attorney

By: Philip Berzins
Philip Berzins
Assistant County Attorney
CAO File No.: 21GEN0869

IN WITNESS WHEREOF, the parties have caused this CONTRACT to be duly executed.

TEXAS WATER DEVELOPMENT BOARD

HARRIS COUNTY

Jeff Walker
Jeff Walker
Executive Administrator

Lina Hidalgo
Lina Hidalgo
County Judge

Date: 4/14/2021

4/14/2021
Date: _____

Exhibit A

Scope of Work

March 2021

**First Cycle of Regional Flood Plan Development
(2020–2023)**

Scope of Work (Exhibit A)

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Table of Contents

| | |
|--|----|
| Task 1 – Planning Area Description | 4 |
| Task 2A – Existing Condition Flood Risk Analyses..... | 5 |
| Task 2B – Future Condition Flood Risk Analyses | 7 |
| Task 3A – Evaluation and Recommendations on Floodplain Management Practices..... | 10 |
| Task 3B – Flood Mitigation and Floodplain Management Goals | 11 |
| Task 4A – Flood Mitigation Needs Analysis | 12 |
| Task 4B – Identification and Evaluation of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects | 13 |
| Task 4C – Prepare and Submit Technical Memorandum..... | 16 |
| Task 5 – Recommendation of Flood Management Evaluations and Flood Management Strategies and Associated Flood Mitigation Projects | 17 |
| Task 6A – Impacts of Regional Flood Plan | 19 |
| Task 6B – Contributions to and Impacts on Water Supply Development and the State Water Plan | 19 |
| Task 7 – Flood Response Information and Activities | 20 |
| Task 8 – Administrative, Regulatory, and Legislative Recommendations..... | 20 |
| Task 9 – Flood Infrastructure Financing Analysis..... | 21 |
| Task 10 – Public Participation and Plan Adoption | 22 |

Task 1 – Planning Area Description

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 Texas Administrative Code (TAC) Chapters 361 and 362, this portion of work must, 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 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 descriptions 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, including but not limited to:
 - a. rivers, tributaries, and functioning floodplains;
 - b. wetlands;
 - c. playa lakes;
 - d. sinkholes;
 - e. alluvial fans;
 - f. vegetated dunes;
 - g. levees;
 - h. sea barriers, walls, and revetments;
 - i. tidal barriers and gates;
 - j. stormwater tunnels;
 - k. stormwater canals;
 - l. dams that provide flood protection;
 - m. detention and retention ponds;
 - n. weirs;
 - o. storm drain systems; and
 - p. any other flood-related 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, including:
 - a. new structural flood mitigation projects currently under construction;
 - b. non-structural flood mitigation projects currently being implemented; and
 - c. structural and non-structural flood mitigation projects with dedicated funding to construct and the expected year of completion.
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 must be subject to the following review process prior to submission of any deliverables:

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

Deliverables: A completed Chapter 1 describing the FPR, existing natural flood mitigation features, constructed major flood infrastructure, and major infrastructure and flood mitigation projects currently under development. A tabulated 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 must, 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 that describes the existing and future condition flood risk in the FPR.

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

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

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

1. Perform existing condition flood hazard analyses to determine the location and magnitude of both 1% annual chance and 0.2% annual chance flood events as follows:
 - a. collect data and conduct analyses sufficient to characterize the existing conditions for the planning area;
 - b. identify areas within each FPR where hydrologic and hydraulic model results are already available and summarize the information;
 - c. utilize best available data, including hydrologic and hydraulic models for each area;
 - d. prepare a map showing areas identified by the RFPG as having an annual likelihood of inundation of more than 1% 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% 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. must 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. must consider available datasets to estimate the potential flood hazard exposure including, but not limited to:
 - i. number of residential properties and associated population;
 - ii. number of non-residential properties;
 - iii. other public infrastructure;
 - iv. major industrial and power generation facilities;
 - v. number and types of critical facilities;
 - vi. number of roadway crossings;
 - vii. length of roadway segments; and
 - viii. agricultural area and value of crops exposed.
 - f. must include a qualitative description of expected loss of function, which is the effect that a flood event could have on the function of inundated structures (residential, commercial, industrial, public, or others) and infrastructure, such as transportation, health and human services, water supply, wastewater treatment, utilities, energy generation, and emergency services.

3. Perform existing condition vulnerability analyses as follows:
 - a. 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 must include:
 - a. underlying flood event return frequency;
 - b. type of flood risk;
 - c. county;
 - d. HUC12;
 - 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 must be subject to the following review process prior to submission of any deliverables:

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

Deliverables:

- Prepare a stand-alone chapter (including work from both Tasks 2A & 2B) to be included in the 2023 Regional Flood Plan.
- Prepare maps according to 1(d) and 1(e).
- A tabulated list and GIS map of all pertinent information. All maps should be submitted with underlying GIS data utilized to prepare them.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

Task 2B – Future Condition Flood Risk Analyses

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must, 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 that describes the existing and future condition flood risk in the FPR.

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

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

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

1. Perform future condition flood hazard analyses to determine the location and magnitude of both 1% annual chance and 0.2% annual chance flood events as follows:
 - a. collect data and conduct analyses sufficient to characterize the future conditions for the planning area based on a "no-action" scenario of approximately 30 years of continued development and population growth under current development trends and patterns, and existing flood regulations and policies based on:
 - i. current land use and development trends and practices and associated projected population based on the most recently adopted state water plan decade and population nearest the next regional flood plan adoption date plus approximately 30 years or as provided for in TWDB Flood Planning guidance documents;
 - ii. reasonable assumptions regarding locations of residential development and associated population growth;
 - iii. anticipated relative sea level change and subsidence based on existing information;
 - iv. anticipated changes to the functionality of the existing floodplain;
 - v. anticipated sedimentation in flood control structures and major geomorphic changes in riverine, playa, or coastal systems based on existing information;
 - vi. assumed completion of flood mitigation projects currently under construction or that already have dedicated construction funding; and
 - vii. other factors deemed relevant by the RFPG.
 - b. identify areas within each FPR where future condition hydrologic and hydraulic model results are already available and summarize the information;
 - c. utilize best available data, including hydrologic and hydraulic models for each area;
 - d. where future condition results are not available, but existing condition hydrologic and hydraulic model results are already available, the RFPGs must modify hydraulic models to identify future conditions flood risk for 1% 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% 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 future condition flood hazard analysis to identify who and what might be harmed within the region for, at a minimum, both future condition 1% annual chance and future condition 0.2% annual chance flood events as follows:
 - a. analyses of existing and future developments within the future condition floodplain and the associated flood hazard exposure; and

- b. to include only those flood mitigation projects with dedicated construction funding scheduled for completion prior to the next regional flood plan adoption date plus 30 years or as provided for in TWDB Flood Planning guidance documents.
 - c. Identification of flood prone areas associated with the hazard exposure analyses must be based on analyses that rely primarily on the use and incorporation of existing and available:
 - i. FIRMs or other flood inundation maps and GIS related data and analyses;
 - ii. available hydraulic flood modeling results;
 - iii. model-based or other types of geographic screening tools for identifying flood prone areas; and
 - iv. 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 must include:
 - a. underlying flood event return frequency;
 - b. type of flood risk;
 - c. county;
 - d. HUC12;
 - 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 must be subject to the following review process prior to submission of any deliverables:

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

Deliverables:

- Prepare a stand-alone chapter (including work from both Tasks 2A & 2B) to be included in the 2023 Regional Flood Plan.
- Prepare maps according to 1(e) and 1(f). A tabulated list and GIS map of all pertinent information. All maps should be submitted with underlying GIS data utilized to prepare them.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

Task 3A – Evaluation and Recommendations on Floodplain Management Practices

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

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

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

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

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

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

Deliverables:

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

Task 3B – Flood Mitigation and Floodplain Management Goals

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

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

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

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

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

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

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

Deliverables:

- Prepare a stand-alone chapter (including work from both Tasks 3A & 3B) to be included in the 2023 Regional Flood Plan.
- Identify flood mitigation and floodplain management goals considering minimum recommended flood protection goal provided by TWDB.
- Identify specific and achievable flood mitigation and floodplain management goals (10 year and 30 year) in an easily understandable format for the public.

- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

Task 4A – Flood Mitigation Needs Analysis

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

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

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

1. Based on the analyses 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 must 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, particularly within the locations described in (a);
 - c. areas identified by the RFPG as prone to flooding that don't have adequate inundation maps;
 - d. areas identified by the RFPG as prone to flooding that don't have hydrologic and hydraulic models;
 - e. areas with an emergency need;
 - f. existing modeling analyses and flood risk mitigation plans within the FPR;
 - g. flood mitigation projects already identified and evaluated by other flood mitigation plans and studies;
 - h. documentation of historic flooding events;
 - i. flood mitigation projects already being implemented; and
 - j. any other factors that the RFPG deems relevant to identifying the geographic locations where potential FMEs and potentially feasible FMSs and FMPs must be identified and evaluated under §361.38.

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

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

Deliverables:

- Prepare a stand-alone chapter (including work from both Tasks 4A & 4B) to be included in the 2023 Regional Flood Plan.
- A map identifying the geographic locations within the FPR considered to have the greatest flood mitigation and flood risk study needs where potential FMEs and potentially feasible FMSs and FMPs must be evaluated
- A tabulated list and GIS map of all pertinent information. All maps should be submitted with underlying GIS data utilized to prepare them.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

Task 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 must, 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 must 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 Regional Flood Plan.
2. Summarize the RFPG process for identifying potential FMEs and potentially feasible FMSs and FMPs and include a description of the process in the draft and final adopted Regional Flood Plan.
3. Identify potentially feasible FMSs and FMPs in accordance with the RFPG established process.
4. When evaluating FMSs and FMPs the RFPG must, at a minimum, identify one solution that provides flood mitigation associated with a 1% annual chance flood event. In instances where mitigating for 1% annual chance events is not feasible, the RFPG must document the reasons for its infeasibility, and at the discretion of the RFPG, other FMSs and FMPs to mitigate more frequent events may also be identified and evaluated based on TWDB Flood Planning guidance documents.
5. For areas within the FPR that the RFPG does not yet have sufficient information or resources to identify potentially feasible FMSs and FMPs, the RFPG must identify areas for potential FMEs that may eventually result in FMSs and/or FMPs.
6. The RFPG must 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.
7. FMPs will be ranked in the state flood plan and
 - a. must represent discrete, projects;
 - b. must not entail an entire capital program or drainage masterplan; and

- c. may rely on other flood-related projects.
- 8. Evaluations of potentially feasible FMSs and FMPs 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 must include the following information and be based on the following analyses:
 - a. A reference to the specific flood mitigation or floodplain management goal addressed by the feasible 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% annual chance flood event and other storm events identified and evaluated if the project mitigates to a more frequent event, to include, but not limited to:
 - (1) Associated flood events that must, at a minimum, include the 1% annual chance flood event and other storm events identified and evaluated;
 - (2) Reduction in habitable, equivalent living units flood risk;
 - (3) Reduction in residential population flood risk;
 - (4) Reduction in critical facilities flood risk;
 - (5) Reduction in road closure occurrences;
 - (6) Reduction in acres of active farmland and 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 must be at a reconnaissance or screening-level, unsupported by associated detailed hydrologic and hydraulic analyses. These must be identified for areas that the RFPG considers a priority for flood risk evaluation but that do not yet have the required detailed hydrologic and hydraulic modeling or associated project evaluations available to evaluate specific FMSs or FMPs for recommendation in the Regional Flood Plan. These FMEs must 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 must include the following analyses:
- a. A reference to the specific flood mitigation or floodplain management goal to be addressed by the potential FME.
 - b. 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 must 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 Regional Flood Plan.
11. Analyses must clearly designate a representative location of the FME and beneficiaries including a map and designation of HUC12 and county location.
12. Analyses must be performed in accordance with TWDB Flood Planning guidance documents.
13. All data produced as part of the analyses under this task must be organized and summarized in the Regional Flood Plan in accordance with TWDB Flood Planning guidance documents.

14. Plans to be considered in developing this chapter include relevant plans referenced under 31 TAC §361.22.

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

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

Deliverables:

- Prepare a stand-alone chapter (including work from both Tasks 4B & 5) to be included in the 2023 Regional Flood Plan.
- A list of the potentially feasible FMSs and associated FMPs that were identified by the RFPG. The TWDB Flood Planning guidance documents will include minimum data submittal requirements and deliverable format.
- A map identifying the geographic locations within the FPR considered to have the greatest flood mitigation and flood risk study needs where potential FMEs and potentially feasible FMSs and FMPs must be evaluated. TWDB Flood Planning guidance documents will include minimum data submittal requirements and deliverable format.
- Data must be organized and summarized in the Regional Flood Plan in accordance with TWDB Flood Planning guidance documents.
- A tabulated list and GIS map of all pertinent information. All maps should be submitted with underlying GIS data utilized to prepare them.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

Task 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 must, 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 Regional Flood Plan;
 - c. A geodatabase and associated maps in accordance with TWDB Flood Planning guidance documents that the RFPG considers to be best representation of the region-wide 1% annual chance flood event and 0.2% annual chance flood event inundation boundaries, and the 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 must, 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 Regional Flood Plan 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 is 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% annual chance (100-yr flood) where feasible. In instances where mitigating for 100-year events is not feasible, FMS and FMPs to mitigate more frequent events may be recommended based on TWDB Flood Planning guidance documents. Recommendations must be based upon the identification, analysis, and comparison of alternatives that the RFPG determines will provide measurable reductions in flood impacts in support of the RFPG's specific flood mitigation and/or floodplain management goals.

Scope of Work (Exhibit A)

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% 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 Regional Flood Plans must be in accordance with TWDB Flood Planning guidance documents.
7. FMS and FMP documentation must include a strategy or project description, discussion of associated facilities, project map, and technical evaluations addressing all considerations and factors required under 31 TAC §361.38(h).
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 must be subject to the following review process prior to submission of any deliverables:

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

Deliverables:

- Prepare a stand-alone chapter (including work from both Tasks 4B & 5) to be included in the 2023 Regional Flood Plan to include technical analyses of all evaluated FMSs and FMPs.
- 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.
- Data must be organized and summarized in the Regional Flood Plan in accordance with TWDB Flood Planning guidance documents.
- A tabulated list and GIS map of all pertinent information. All maps should be submitted with underlying GIS data utilized to prepare them.
- Any additional deliverables identified in the TWDB Flood Planning guidance documents.

Task 6A – Impacts of Regional Flood Plan

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must, 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 Regional Flood Plan 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 Regional Flood Plan on the environment, agriculture, recreational resources, water quality, erosion, sedimentation, and navigation.

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

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

Deliverables: Prepare a stand-alone chapter (including work from both Tasks 6A & 6B) to be included in the 2023 Regional Flood Plan. Any additional deliverables identified in the TWDB Flood Planning guidance documents.

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

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must, 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 must be subject to the following review process prior to submission of any deliverables:

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

Deliverables: Prepare a stand-alone chapter (including work from both Tasks 6A & 6B) to be included in the 2023 Regional Flood Plan. Any additional deliverables identified in the TWDB Flood Planning guidance documents.

Task 7 – Flood Response Information and Activities

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must, 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 must not perform analyses or other activities related to planning for disaster response or recovery activities.
4. Plans to be considered in developing this chapter include relevant plans referenced under 31 TAC §361.22.

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

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

Deliverables: Prepare a stand-alone chapter to be included in the 2023 Regional Flood Plan. Any additional deliverables identified in the TWDB Flood Planning guidance documents.

Task 8 – Administrative, Regulatory, and Legislative Recommendations

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must, 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 Regional Flood Plan that presents the RFPG's administrative, legislative, and regulatory recommendations.

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

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

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

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

Deliverables: Prepare a stand-alone chapter to be included in the 2023 Regional Flood Plan. Any additional deliverables identified in the TWDB Flood Planning guidance documents.

Task 9 – Flood Infrastructure Financing Analysis

In addition to generally meeting all applicable rules and statute requirements governing regional and state flood planning under 31 TAC Chapters 361 and 362, this portion of work must, 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 Regional Flood Plan for future funding determinations.
4. Indicate how individual local governments, regional authorities, and other political subdivisions in their region propose to finance the region's recommended FMPs, and FMEs included in their flood plan. The assessment must also describe what role the RFPG proposes for the state in financing recommended FMPs, and FMEs. As projects are implemented, those improvements and associated benefits must be incorporated into and reflected in the subsequent Regional Flood Plans.
5. Summarize the survey results.

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

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

Deliverables: A completed Chapter 9 must be delivered in the 2023 Regional Flood Plan to include summary of reported financing approaches for all recommended FMPs and FMEs. Data must be submitted in accordance with TWDB guidance documents. Any additional deliverables identified in the TWDB Flood Planning guidance documents.

Task 10 – Public Participation and Plan Adoption

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

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

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

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

strategies; public meeting after adoption of the draft Regional Flood Plan and prior to adoption of the final Regional Flood Plan; and consideration of Regional Flood Plan amendments, alternative FMS substitutions, or Board-directed revisions.

Technical Support and Administrative Activities

1. RFPGs must support and accommodate periodic presentations by the TWDB for the purpose of orientation, training, and retraining as determined and provided by the TWDB during regular RFPG meetings.
2. Attendance and participation of technical consultants at RFPG, subgroup, subcommittees, special and or other meetings including preparation and follow-up activities.
3. Developing technical and other presentations and handout materials for regular and special meetings to provide technical and explanatory data to the RFPG and its subcommittees, including follow-up activities.
4. Administrative and technical support and participation in RFPG activities, and documentation of any RFPG workshops, work groups, subgroup and/or subcommittee activities.
5. Technical support and administrative activities associated with periodic and special meetings of the RFPG including developing agendas and coordinating activities for the RFPG.
6. Provision of progress reports to TWDB for work performed under this Contract.
7. Development of draft and final responses for RFPG approval to public questions or comments as well as approval of the final responses to comments on Regional Flood Plan documents.
8. Intraregional and interregional coordination and communication, and or facilitation required within the FPR and with other RFPGs to develop a Regional Flood Plan.
9. Incorporation of all required data and reports into Regional Flood Plan document.
10. Modifications to the Regional Flood Plan documents based on RFPG, public, and or agency comments.
11. Preparation of a Regional Flood Plan chapter summarizing Task 10 activities including review by RFPG and modification of document as necessary.
12. Development and inclusion of Executive Summaries in both draft Regional Flood Plan and final Regional Flood Plan.
13. Production, distribution, and submittal of all draft and final Regional Flood Plan-related planning documents for RFPG, public and agency review, including in hard-copy format when required.
14. Assembling, compiling, and production of the completed draft Regional Flood Plan and Final Regional Flood Plan document(s) that meet all requirements of statute, 31 TAC Chapters 361 and 362, Contract and associated guidance documents.
15. Submittal of the Regional Flood Plan documents in both hard copy and electronic formats to TWDB for review and approval; and all effort required to obtain final approval of the Regional Flood Plan by TWDB.

Other Activities

1. Review of all Regional Flood Plan-related documents by RFPG members.
2. Development and maintenance of a RFPG website or RFPG-dedicated webpage on the RFPG administrator's website for posting planning group meeting notices, agendas, materials, and plan information.
3. Limited non-labor, direct costs associated with maintenance of the RFPG website.

Scope of Work (Exhibit A)

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

Deliverables:

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

Exhibit B

Region 6 San Jacinto Flood Planning Group Task and Expense Budgets

March 2021

First Cycle of Regional Flood Plan Development (2020–2023)

This document is subject to future revision based upon any future Legislative actions.

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Table of Contents

Table of Contents..... 3

1 Contractor Task Budget 4

2 Contractor Expense Budget 5

1 Contractor Task Budget

| | TASK | | AMOUNT |
|-------------------------|---|--|-----------------------|
| CAS Item No. | Regional Flood Planning Task No. | Description | |
| 1 | 1 | Planning Area Description | \$107,300.00 |
| 2 | 2A | Existing Condition Flood Risk Analysis | \$278,520.00 |
| 3 | 2B | Future Condition Flood Risk Analysis | \$254,060.00 |
| 4 | 3A | Evaluation and Recommendations on Floodplain Management Practices | \$48,920.00 |
| 5 | 3B | Flood Mitigation and Floodplain Management Goals | \$24,460.00 |
| 6 | 4A | Flood Mitigation Needs Analysis | \$73,380.00 |
| 7 | 4B | Identification and Evaluation of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigations Projects | \$430,280.00 |
| 8 | 4C | Prepare and Submit Technical Memorandum | \$48,920.00 |
| 9 | 5 | Recommendation of Flood Management Evaluations and Flood Management Strategies and Associated Flood Mitigation Projects | \$538,120.00 |
| 10 | 6A | Impacts of Regional Flood Plan | \$97,840.00 |
| 11 | 6B | Contributions to and Impacts on Water Supply Development and the State Water Plan | \$24,460.00 |
| 12 | 7 | Flood Response Information and Activities | \$24,460.00 |
| 13 | 8 | Administrative, Regulatory, and Legislative Recommendations | \$24,460.00 |
| 14 | 9 | Flood Infrastructure Financing Analysis | \$48,920.00 |
| 15 | 10 | Public Participation and Plan Adoption | \$421,900.00 |
| | | Total Committed Funds | \$2,446,000.00 |

2 Contractor Expense Budget

| CATEGORY | AMOUNT |
|--|------------------------|
| Other Expenses ¹ | \$ 71,000.00 |
| Subcontract Services #1 | \$ 2,373,000.00 |
| Subcontract Services #2 | \$0 |
| Subcontract Services #3 | \$0 |
| Voting Planning Member Travel ² | \$ 2,000.00 |
| Total Committed Funds ³ | \$ 2,446,000.00 |

¹Eligible Other Expenses as described in 31 TAC § 361.72(b) include the following administrative costs if the RFPG or its chairperson certifies, during a public meeting, that the expenses are eligible for reimbursement and are correct and necessary:

- a) Travel expenses as authorized by the General Appropriations Act are available only for attendance at a posted meeting of the RFPG, unless the travel is specifically authorized by the RFPG and EA;
- b) Costs associated with providing translators and accommodations for persons with disabilities for public meetings when required by law or deemed necessary by the RFPGs and certified by the chairperson;
- c) Direct costs, excluding personnel-related costs of the Planning Group Sponsor, for placing public notices for the legally required public meetings and of providing copies of information for the public and for members of the RFPGs as needed for the efficient performance of planning work such as:
 -
 - 1. expendable supplies actually consumed in direct support of the planning process;
 - 2. direct communication charges;
 - 3. limited direct costs/fees of maintaining RFPG website domain, website hosting, and/or website;
 - 4. reproduction of materials directly associated with notification or planning activities (the actual non-labor direct costs as documented by the Contractor);
 - 5. direct postage (e.g., postage for mailed notification of funding applications or meetings); and
 - 6. other direct costs of public meetings, all of which must be directly related to planning (e.g., newspaper and other public notice posting costs).
 -
- d) The cost of public notice postings including a website and for postage for mailing notices of public meetings; and
- e) The Planning Group Sponsor's personnel costs for the staff hours that are directly spent providing, preparing for, and posting public notice for RFPG meetings, including labor, fringe, overhead, and other expenses for their support of and attendance at such RFPG meetings, in accordance with, and as specifically limited by, the flood

planning grant contract with the Board. This may not exceed: \$5,000 per regular RFPG meeting nor a total of \$60,000 over the first planning cycle.

² Voting Planning Member Travel Expenses is defined as eligible mileage expenses incurred by regional flood planning members that cannot be reimbursed by any other entity, planning group sponsor, etc. as certified by the voting member. Travel expenses are available only for attendance at a posted meeting of the RFPG unless the travel is specifically authorized by the RFPG and EA. The reimbursed amount is limited to the maximum amounts authorized for state employees by the General Appropriations Act, Tex. Leg. Regular Session, 2019, Article IX, Part 5, as amended or superseded.

³ Ineligible Expenses as described in 31 TAC § 361.72(a) include, but are not limited to:

- a) Activities for which the Board determines existing information, data, or analyses are sufficient for the planning effort
- b) Activities directly related to the preparation of applications for state or federal permits or other approvals, activities associated with administrative or legal proceedings by regulatory agencies, and preparation of engineering plans and specifications;
- c) Compensation for the time or expenses of RFPGs members' service on or for the RFPG
- d) Costs of administering the RFPG, other than those explicitly allowed under 31 TAC § 361.72(b)
- e) Staff or overhead costs for time spent providing public notice and meetings, including time and expenses for attendance at such meetings;
- f) Costs for training;
- g) Costs of developing an application for funding or reviewing materials developed due to this grant;
- h) Costs of administering the regional flood planning grant and associated contracts;
- i) Analysis or other activities related to planning for disaster response or recovery activities; and
- j) Analyses of benefits and costs of FMSs beyond the scope of such analyses that is specifically allowed or required by regional flood planning guidance to be provided by the EA unless the RFPG demonstrates to the satisfaction of the EA that these analyses are needed to determine the selection of the FMS or FMP.
- k) Labor, reproduction, or distribution of newsletters;
- l) Food, drink, or lodging for Regional Flood Planning Group members (including tips and alcoholic beverages);
- m) Purchase, rental, or depreciation of equipment (e.g., computers, copiers, fax machines);
- n) General purchases of office supplies not documented as consumed directly for the planning process; and
- o) Costs associated with social events or tours.

Exhibit C

Technical Guidelines for Regional Flood Planning

When available, the document will be posted at
<https://www.twdb.texas.gov/flood/planning/planningdocu/2023/index.asp>

First Cycle of Regional Flood Plan Development (2020–2023)

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Exhibit D

Data Submittal Guidelines for Regional Flood Planning

When available, the document will be posted at
<https://www.twdb.texas.gov/flood/planning/planningdocu/2023/index.asp>

First Cycle of Regional Flood Plan Development (2020–2023)

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Exhibit E

Cover Page

(Original application in contract file)

First Cycle of Regional Flood Plan Development(2020–2023)

Exhibit F

Certification of Procurement of Professional Services

First Cycle of Regional Flood Plan Development (2020–2023)

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Certification of Procurement of Professional Services – 2023 Regional Flood Plan

Each of the following subcontractor(s) was procured through a Request for Qualifications in accordance with the procurement requirements applicable to Brazos River Authority, as required in 31 TAC 361.12 (a)(2) and 361.72 (c).

| | |
|-------------------------------|--------------------------|
| <div>Subcontractor Name</div> | <div>Date Procured</div> |
| <div>Subcontractor Name</div> | <div>Date Procured</div> |
| <div>Subcontractor Name</div> | <div>Date Procured</div> |
| <div>Subcontractor Name</div> | <div>Date Procured</div> |
| <div>Subcontractor Name</div> | <div>Date Procured</div> |
| <div>Subcontractor Name</div> | <div>Date Procured</div> |
| <div>Subcontractor Name</div> | <div>Date Procured</div> |
| <div>Subcontractor Name</div> | <div>Date Procured</div> |

Certification:

I, _____ the authorized representative for Region _____, do hereby certify that each of the subcontractor(s) listed above were procured through a Request for Qualifications which was either published or sent to more than one professional inviting their response, and that the subcontractor(s) listed above were selected from such responses based on their demonstrated competence and qualifications.

| | |
|---|-----------------|
| <div>Signature of Authorized Representative</div> | <div>Date</div> |
|---|-----------------|

31 TAC 361.12 (a)(2). General Regional Flood Planning Group Responsibilities and Procedures. The following activities are required of each RFPG every planning cycle: Select a technical consultant(s) to be procured by the Planning Group Sponsor in accordance with the procurement requirements that apply to that political subdivision and Texas Government Code Chapter 2254.

31 TAC 361.72(c). A RFPG through the Planning Group Sponsor’s contractor or subcontractor may obtain professional services, including the services of a planner, land surveyor, licensed engineer, or attorney, for development or revision of a regional flood plan only if such services are procured on the basis of demonstrated competence and qualifications through a request for qualifications process in accordance with Texas government Code Chapter 2254 including Qualifications Based Selection of an Architect, Engineer, or Land Surveyor.

Exhibit B

Project Budget Allocation by Task

| Task | | Budget |
|--------------|--|--------------------|
| 1 | Planning Area Description | \$107,300 |
| 2A | Existing Condition Flood Risk Analyses | \$278,520 |
| 2B | Future Condition Flood Risk Analyses | \$254,060 |
| 3A | Evaluation and Recommendations on Floodplain Management Practices | \$48,920 |
| 3B | Flood Mitigation and Floodplain Management Goals | \$24,460 |
| 4A | Flood Mitigation Needs Analysis | \$73,380 |
| 4B | Identification and Evaluation of Potential Flood Management Evaluations and Potentially Feasible Flood Mitigation Projects | \$430,280 |
| 4C | Prepare and Submit Technical Memorandum | \$48,920 |
| 5 | Recommendation of Flood Management Evaluations and Flood Management Strategies and Associated Flood Mitigation Projects | \$538,120 |
| 6A | Impacts of Regional Flood Plan | \$97,840 |
| 6B | Contribution to and Impact on Water Supply Development and the State Water Plan | \$24,460 |
| 7 | Flood Response Information and Actives | \$24,460 |
| 8 | Administrative, Regulatory, and Legislative Recommendations | \$24,460 |
| 9 | Flood Infrastructure Financing Analysis | \$48,920 |
| 10 | Adoption Plan and Public Participation | \$348,900 |
| Total | | \$2,373,000 |

Exhibit C

Project Schedule

[illegible]



EXHIBIT D: ENGINEER TEAM ACKNOWLEDGMENTS

1. The following is the group of providers selected to perform the obligations described in the Agreement.
2. If any firm listed below actively holds certification in any of the following categories, that information shall be identified in the table under "Special Designation" Box:
 - **MWBE** (Minority and Women Owned Business Enterprise)
 - **SBE** (Small Business Enterprise)
 - **HUB** (Historically Underutilized Business)
 - **DBE** (Disadvantaged Business Enterprise)
3. Also, all contract values must be identified in the table under "Contract Value".

| Responsibility | Firm | Special Designation | Contract Value |
|---|---|--|----------------------------|
| Prime | Freese and Nichols, Inc. | | \$1,127,958 (47.5%) |
| Data Collection, Flood Risk Analysis, Flood Mitigation | Halff Associates, Inc. | | \$721,516 (30.5%) |
| Public Outreach | Hollaway Environmental + Communications Services | HUB, WBE, DBE (as Crouch Environmental Services, Inc.) | \$202,362 (8.5%) |
| Coastal, Flood Risk Assessment, LID | J.M. Torres and Associates, LLC | MBE | \$177,256 (7.5%) |
| Policy, Land Use, Economic Development | Knudson, LP | WBE, SBE | \$95,712 (4.0%) |
| Project Funding | Stuart Consultant Group | | \$48,195 (2.0%) |

Percent of contract in dollars allocated to (MWBE, SBE, HUB or DBE) Consultants 20 %.

- The Engineer understands that it is solely responsible and liable to the County for the completion of all obligations under the Agreement.
- If the contract value of the subconsultant fee(s) are modified from the original amount, it must be approved by the Engineering Department's MWBE, SBE, HUB or DBE Compliance Officer.

ORDER OF COMMISSIONERS COURT

The Commissioners Court of Harris County, Texas, met in regular session at its regular term at the Harris County Administration Building in the City of Houston, Texas, on _____, with all members present except _____.

A quorum was present. Among other business, the following was transacted:

ORDER AUTHORIZING AGREEMENT BETWEEN HARRIS COUNTY AND FREESE AND NICHOLS, INC. FOR PROFESSIONAL ENGINEERING SERVICES

Commissioner _____ introduced an order and moved that Commissioners Court adopt the order. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

| | Yes | No | Abstain |
|---------------------------|--------------------------|--------------------------|--------------------------|
| Judge Lina Hidalgo | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comm. Rodney Ellis | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comm. Adrian Garcia | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comm. Tom S. Ramsey, P.E. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comm. R. Jack Cagle | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

The meeting chair announced that the motion had duly and lawfully carried, and this order was duly and lawfully adopted. The order adopted follows:

IT IS ORDERED that:

1. The Harris County Judge is authorized to execute the attached Agreement between **Harris County and Freese and Nichols, Inc.** for Professional Engineering Services. The attached Agreement, including any addendums, may be executed with an electronic or facsimile signature. The Harris County Engineering Department is authorized to request the Harris County Purchasing Agent to expend up to **\$2,373,000.00** in consideration of the work, products, services, licenses and/or deliverables provided under this Agreement.
2. The Harris County Engineering Department and all other Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this Order.