



Brazos River Authority

April 28, 2021

Addendum No. 1

Regional Water Plan Preparation for the Brazos G Regional Water Planning Group RFP No. 21-05-1211

It is the responsibility of the Respondent to assure and guarantee by acknowledging the receipt of this Addendum in the Proposal that the Respondent has received the Addendum in its entirety, and that the Respondent accepts all conditions contained herein.

Attached to this Addendum is the W9, Conflict of Interest, and Sample Contract.

Sincerely,

Anastasia V. Vance

Anastasia Vance, CTCD
Purchasing Agent

4600 Cobbs Drive • Waco, Texas 76710
254 761 3123

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

FORM CIQ

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

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

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

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

OFFICE USE ONLY

Date Received

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

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

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

Name of Officer

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

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

Yes No

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

Yes No

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

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

7

Signature of vendor doing business with the governmental entity

Date

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

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

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

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

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

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

(2) the vendor:

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

(i) a contract between the local governmental entity and vendor has been executed;
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

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

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

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

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

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

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

(3) has a family relationship with a local government officer of that local governmental entity.

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

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

EXAMPLE RESPONSE TO LITIGATION HISTORY QUESTION

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

By signing the filled-out form, you:

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

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

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

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

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

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

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

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

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

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

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

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

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

Backup Withholding

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

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

Payments you receive will be subject to backup withholding if:

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

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

Also see *Special rules for partnerships*, earlier.

What is FATCA Reporting?

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

Updating Your Information

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

Penalties

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

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

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

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

Specific Instructions

Line 1

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

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

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

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

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

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

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

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

Line 2

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

Line 3

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

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

Line 4, Exemptions

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

Exempt payee code.

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

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

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

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

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

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

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

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

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

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

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

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

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

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

G—A real estate investment trust

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

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

J—A bank as defined in section 581

K—A broker

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

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

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

Line 5

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

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

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

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

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

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

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

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

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

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

Part II. Certification

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

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

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

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

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

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

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

3. Real estate transactions.

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

4. Other payments.

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

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

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

What Name and Number To Give the Requester

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

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

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

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

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

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

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

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

Secure Your Tax Records From Identity Theft

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

To reduce your risk:

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

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

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

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

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

Protect yourself from suspicious emails or phishing schemes.

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

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

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

Visit www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

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

STATE OF TEXAS §
 §
 COUNTY OF MCLENNAN §

PROFESSIONAL SERVICES AGREEMENT

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

SECTION I. EMPLOYMENT OF THE ENGINEER AND PERFORMANCE OF SERVICES

1.1 GENERAL: The BRA has determined the need for professional engineering and associated services (“Services”) in connection with [REDACTED] (“Project”), as such Services and Project are more specifically set forth in “Exhibit A”, attached hereto and incorporated by reference herein for all purposes. The BRA hereby agrees to employ the ENGINEER and the ENGINEER agrees to perform such Services, and, in rendering such Services, the BRA agrees to compensate the ENGINEER for performance of the Services as stated in “Exhibit B”, attached hereto and incorporated by reference herein for all purposes.

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

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

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

SECTION II. BASIC PROJECT SERVICES OF THE ENGINEER

2.1 The ENGINEER shall provide, perform, and complete to the satisfaction of the BRA all of the Services necessary for completion of the Project contemplated herein. A detailed description of the Project and the Services to be performed shall be attached hereto and incorporated by reference herein as “Exhibit A”. In performing the Services, the ENGINEER shall provide all necessary labor, services, transportation, equipment, information, data, and other means and items necessary to perform the Services.

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

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

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

2.5 It is understood and agreed by the ENGINEER that the BRA may, from time to time, make suggested revisions or recommendations regarding the Services to be performed under this Agreement. The ENGINEER may accept or reject any such suggestions or recommendations. Acceptance of any such suggestions or recommendations shall not relieve the ENGINEER of any of the ENGINEER's responsibilities or obligations under this Agreement.

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

SECTION III. PAYMENTS TO THE ENGINEER

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

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

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

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

SECTION IV. ENGINEER'S RESPONSIBILITY

4.1 The ENGINEER shall be solely and completely responsible for performing the Services with diligence and in a manner consistent with the level of care and skill ordinarily exercised for professional engineering service in the State of Texas. In the event the ENGINEER fails to perform in such a manner, then ENGINEER SHALL BE RESPONSIBLE FOR ALL DAMAGES AND COSTS ASSOCIATED WITH DEFECTS, FAILURES, ERRORS, OMISSIONS, OR OTHER INSUFFICIENCIES IN THE PROJECT, OR ANY PORTION THEREOF, ATTRIBUTABLE TO SERVICES PROVIDED BY OR THAT SHOULD HAVE BEEN PROVIDED BY THE ENGINEER PURSUANT TO THIS AGREEMENT, INCLUDING ANY AND ALL AMENDMENTS THERETO. SUCH COSTS SHALL INCLUDE, BUT NOT BE LIMITED TO: ALL EXPENSES REQUIRED TO SATISFACTORILY COMPLETE NECESSARY ANALYSES TO DETERMINE THE CAUSE OF THE FAILURE; COSTS TO DESIGN CORRECTIVE IMPROVEMENTS; COSTS TO PROVIDE ADDITIONAL CONSTRUCTION PHASE ENGINEERING AND RESIDENT PROJECT REPRESENTATIVE SERVICES ASSOCIATED WITH THE CORRECTIVE IMPROVEMENTS; AND ANY AND ALL CONSTRUCTION AND PROFESSIONAL SERVICES COSTS CAUSED BY, ARISING OUT OF, OR RELATED TO THE REMEDIATION OF THE ERROR, INCLUDING, BUT NOT LIMITED TO: THE COST TO CONSTRUCT ELEMENTS THAT MUST BE REMOVED; THE COST OF DEMOLITION AND DISPOSAL OF MATERIALS; AND THE COST TO MODIFY ELEMENTS OF THE INITIALLY COMPLETED WORK THAT CAN REMAIN.

4.2 Acceptance of the Services by BRA shall not constitute nor be deemed a release

of the responsibility and liability of the ENGINEER, its employees, agents, or sub-consultants for the accuracy and competency of the ENGINEER's Services, including but not limited to: work products, computer programs, or other documents, and Services prepared/performed under this Agreement.

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

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

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

SECTION V. INDEMNIFICATION

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

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

AGENTS, ASSOCIATES, EMPLOYEES, SUCCESSORS, ASSIGNS, OR SUBCONTRACTORS, SUCH JUDGMENT SHALL BE CONCLUSIVE AGAINST THE ENGINEER.

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

SECTION VI. INSURANCE REQUIREMENTS

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

- i. Workers' Compensation and Employers' Liability coverage with limits consistent with statutory requirements.
- ii. Commercial General Liability with a combined single limit of \$ [REDACTED] per occurrence including products/completed operations, where appropriate, with a separate aggregate of \$ [REDACTED]. The policy shall contain the following provisions:
 - a. Blanket contractual liability coverage for liability assumed under the Agreement and all agreements relative to the Project.
 - b. Independent Contractors coverage.
 - c. Thirty (30)-day Notice of Cancellation in favor of the BRA, endorsement.
 - d. Waiver of Transfer of Rights of Recovery Against Others in favor of the BRA's endorsement.
 - e. Additional Insured, endorsement
- iii. Business Automobile Liability Insurance for all owned, non-owned, and hired vehicles with a minimum combined single limit of \$ [REDACTED] per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of the BRA:
 - a. Waiver of Subrogation

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

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

6.2 General Requirements: The ENGINEER shall be responsible for insurance premiums, deductibles, and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificates of insurance required above. Applicable to all insurance policies: If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The ENGINEER shall maintain continuous coverage for the duration of this Agreement and for not less than twenty-four (24) months following final completion of the Project. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. The ENGINEER shall, on at least an annual basis, provide the BRA with a certificate of insurance, including any required endorsements, as evidence of such insurance.

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

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

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

6.5 The ENGINEER shall not commence providing Services under this Agreement until such required insurance is in full force and effect, and until such insurance has been reviewed and deemed adequate by the BRA. The ENGINEER shall not allow any subcontractor to commence providing services on ENGINEER's subcontract until such time as ENGINEER's subcontractor(s) has obtained all requisite insurance. The

ENGINEER shall not commence any work until the aforementioned requirements have been met. Approval of insurance by the BRA shall not relieve or decrease the liability of the ENGINEER hereunder.

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

6.7 Certificate of Insurance and all endorsements shall read:

Brazos River Authority
4600 Cobbs Drive
Waco, Texas 76710

6.8 The “other” insurance clause shall not apply to the BRA where the BRA is an additional insured shown on the policy. It is intended that policies required in this Agreement, covering both the BRA and the ENGINEER, shall be considered primary coverage as applicable.

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

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

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

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

SECTION VII. DEFAULT

7.1 BRA may terminate this Agreement without prejudice to any other remedy it may

have, when the ENGINEER defaults in performance of any provision herein, or fails to carry out the Services in accordance with the provisions of this Agreement.

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

SECTION VIII. TERMINATION

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

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

SECTION IX. OWNERSHIP AND USE OF DOCUMENTS

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

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

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

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

disclose such items, in whole or in part, in any manner and for whatever purpose; and, to have others do so.

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

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

SECTION X. PERIOD OF SERVICE

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

SECTION XI. SUCCESSOR AND ASSIGNS

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

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

SECTION XII. ENGINEER'S COORDINATION WITH BRA

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

SECTION XIII. INDEPENDENT CONTRACTOR

13.1 The ENGINEER covenants and agrees that ENGINEER is an Independent Contractor and not an officer, agent, servant, or employee of BRA. The ENGINEER hereby acknowledges that it shall have exclusive control of and exclusive right to control

the details of the Services provided hereunder on the Project, and all persons performing same, and shall be liable for the acts and omissions of its officers, agents, and employees.

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

SECTION XIV. DISCLOSURE

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

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

SECTION XV. COMPLIANCE WITH LAWS

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

SECTION XVI. SEVERABILITY

16.1 If any word, phrase, clause, sentence, or provision of the Agreement, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid, or unenforceable, such finding shall only affect such word, phrase, clause, sentence, or provision, and such finding shall not affect the remaining portions of the Agreement, this being the intent of the parties in entering into this Agreement; and all provisions of this instrument are declared to be severable for this purpose.

SECTION XVII. CONSTRUCTION OF AGREEMENT

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

SECTION XVIII. NO THIRD PARTY BENEFICIARY

18.1 No claim as a third-party beneficiary under this Agreement by any person, firm, or

corporation shall be made or be valid against the BRA and/or ENGINEER, and the BRA and ENGINEER shall not be liable for or be held to pay any money to any such person.

SECTION XIX. ENTIRE AGREEMENT

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

SECTION XX. AMENDMENTS

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

SECTION XXI. HEADINGS

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

SECTION XXII. REMEDIES

22.1 No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but, each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Agreement may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition not be performed pursuant to this Agreement.

SECTION XXIII. VENUE AND CHOICE OF LAW

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

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

SECTION XXIV. REVIEW OF AGREEMENT

24.1 The ENGINEER has carefully examined, reviewed, and accepted this Agreement and there are no discrepancies, errors, omissions, ambiguities, or conflicts in this

Agreement that are material to the ENGINEER's provision, performance or completion of the Services, the Agreement price or Agreement time that have not been clarified in writing by the BRA to the satisfaction of the ENGINEER.

SECTION XXV. RIGHT TO AUDIT

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

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

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

SECTION XXVI. PROHIBITION ON BOYCOTTING ISRAEL

26.1 ENGINEER hereby verifies that ENGINEER:

- i. Does not boycott Israel; and

- ii. Will not boycott Israel during the term of this Agreement.

SECTION XXVII. NOTICES

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

If intended for BRA, to:

Brazos River Authority
4600 Cobbs Drive
Waco, Texas 76710
Bus: (254) 761-3100
Fax: (254) 761-3207

If intended for THE ENGINEER, to:



SECTION XXVIII. FORCE MAJEURE

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

SECTION XXIX. NONDISCLOSURE AND CONFIDENTIALITY

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

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

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

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

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

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

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

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

- iv. Was independently developed by ENGINEER without use of the Confidential Information; or
- v. Was ordered to be publicly released by the requirement of any governmental agency.

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

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

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

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

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

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

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

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)

BRAZOS RIVER AUTHORITY

ENGINEER

By: _____
DAVID COLLINSWORTH

By: _____

Title: **GENERAL MANAGER/CEO**

Title: _____

Date: _____

Date: _____

SAMPLE