

## **AGREEMENT FOR ALL-HAZARD MITIGATION ACTION PLAN UPDATE SERVICES**

This Agreement is entered into between the **Guadalupe-Blanco River Authority** (the “Owner”) and \_\_\_\_\_ (the “Firm”) acting by and through their duly authorized representatives, to be effective as of the \_\_\_\_ day of June, 2022.

WHEREAS, the Owner desires to employ the Firm to provide certain professional contractor to assist in the update of its 2018 All-Hazard Mitigation Action Plan (the “Project”).

NOW, THEREFORE, for and in consideration of the mutual agreements, promises and undertakings herein set forth, the parties hereby agree as follows:

### **1. Contractual Relationship**

- 1.1 The Owner agrees to employ the Firm, and the Firm agrees to perform, as an independent contractor, certain professional contractor services as specified herein in connection with the Project (the “Services”), and for having rendered such Services, the Owner shall pay the Firm compensation as stated in the sections to follow.
- 1.2 The relationship of the Owner and the Firm under this Agreement and otherwise shall be that of independent contractors. The Firm is not, by the terms of this Agreement or otherwise, an agent, employee, or representative of the Owner. Any direction or instruction by the Owner or any of its authorized representatives in respect to the Services provided by the Firm shall relate to the results the Owner desires to obtain from the Services, and the Firm shall be solely responsible for determining how the work shall be performed.
- 1.3 The Firm agrees to satisfy all claims for labor, material, and equipment employed or used in anyway in connection with the Services, and not to permit any liens to be fixed upon or against the property of the Owner by its laborers, mechanics, materialmen, suppliers, or subcontractors and agrees to indemnify, protect, and save the Owner harmless from and against all such claims and liens.

### **2. The Firm’s Obligations**

- 2.1 The Firm shall provide to the Owner the Services specified in Exhibit A, Scope of Work, attached hereto and made a part of hereto.
- 2.2 By its execution of this Agreement below, the Owner hereby authorizes the Firm to proceed with the performance of the Services pursuant to the terms of this Agreement.
- 2.3 The Firm agrees they are experienced and fully qualified to perform the Services contemplated by this Agreement. The standard of care for all professional firms and

related Services performed or furnished by the Firm under this Agreement will be the professional care and skill ordinarily used by prudent, registered professional firm practicing under similar conditions at the same time and in the same locality. The Firm shall be responsible, in accordance with that professional standard, for the completeness and accuracy of the Firm's specifications, subject to the terms of this Agreement.

- 2.4 The Firm shall comply with current interpretations of all applicable laws, rules and regulations. Further, the Firm will see to it that its documents and specifications comply with all legal requirements (including applicable codes and regulations and interpretations thereof) in effect at the time of their submittal to the Owner.
- 2.5 The Firm shall perform the Services in a timely fashion so as to comply with the Owner's requirements and in accordance with the schedule as defined herein.
- 2.6 The Owner shall at all times have reasonable access to the files and personnel of the Firm relating to the Project in order to answer any questions the Owner may have relating to the Firm's performance on the Project.

### **3. Opinions of Probable Project Cost**

Any opinions or estimates of probable costs to be provided under this Agreement are to be made or reviewed on the basis of the Firm's experience and qualifications and represent the Firm's judgment as an experienced and qualified professional, familiar generally with the industry. However, since the Firm has no control over the cost of labor, materials, equipment or services furnished by others or over the Firm's methods of determining prices, or over competitive bidding or market conditions, Firm cannot and does not guarantee that proposals, bids or actual final costs will not vary from the opinions or estimates prepared or reviewed by the Firm. If the Owner wishes greater assurance as to probable cost, the Owner may choose to employ an independent cost estimator for that purpose.

### **4. The Owner's Responsibilities**

- 4.1 The Owner shall provide to the Firm all of its available criteria and requirements for the Project and all available information pertinent to the Project including previous reports. The Firm may reasonably rely upon such information; keeping in mind, however, that the Owner does not represent, guarantee or warrant to the Firm the accuracy or completeness of such information.
- 4.2 The Owner, with the assistance of the Firm, shall arrange for access to and make all provisions for the Firm to enter upon public and private property as required for the Firm to perform Services under this Agreement.

The Owner will examine the Firm's studies, reports, sketches, drawings, specifications,

proposals and other information submitted by the Firm; consult with others as the Owner deems appropriate; and render timely written approvals and decisions to the Firm.

- 4.3 The Owner shall give prompt written notice to the Firm whenever the Owner becomes aware of any development that affects the scope or timing of the Firm's Services, or of any defect or nonconformance in the Services of the Firm.

## **5. Firm's Compensation**

- 5.1 As compensation for all of the Services, the Owner shall pay to the Firm an amount not to exceed \$XX,XXX.XX
- 5.2 Invoices for Services performed and expenses incurred will be submitted to the Owner by the Firm (monthly if the project exceeds one month). The Firm shall submit invoices in sufficient detail for the Owner to verify the Services performed and expenses incurred. Each invoice shall constitute a representation of the Firm to the Owner made under this Agreement that the proportion of the Services has been fully performed in accordance with this Agreement, that the expenses have been properly incurred and that payment of the indicated amount has been earned by, and is properly due and payable to, the Firm in accordance with this Agreement. Notwithstanding the presentation of any invoice to the Owner, the amount reflected thereon shall be due and payable to the Firm only to the extent earned by the Firm in accordance with the terms of this Agreement.
- 5.3 Payment conditions, conditions for the dispute of payment and remedies in the event of late payment shall be governed by Texas Government Code § 2251.001, et seq., relating to Payment for Goods and Services by state and local governmental entities.
- 5.4 The Owner will exercise reasonableness in contesting any billing or portion thereof. Notwithstanding anything contained in this Agreement to the contrary, the Owner shall not be obligated to make any payment to the Firm if any one or more of the following conditions exist: (a) the Firm is in default of any one or more of its obligations in this agreement or otherwise in default under this Agreement; (b) any part of such payment is attributable to services which are not performed in accordance with this Agreement; provided, however, that payment shall be made as part thereof attributable to services which were performed in accordance with this Agreement; or (c) the Firm has failed to make payments promptly to contractors or other third parties used in connection with the Services for which the Owner has made payment to the Firm where the Firm has no good faith reason to withhold such funds. No partial or final payment by the Owner to the Firm is to be treated as a waiver of any of the Owner's rights, nor is the acceptance of any partial payment or final payment by the Firm from the Owner a waiver of any of the Firm's rights.
- 5.5 The Owner may make changes to the Scope of Services to be provided by Firm pursuant

to the terms of this Agreement.

## **6. Indemnification**

- 6.1 With respect to claims brought by third parties against either the Firm or the Owner relating to the property or facilities with respect to which this Agreement pertains, the Firm and the Owner agree the Firm will indemnify and hold harmless the Owner, its directors, officers, agents and employees against all claims, demands or causes of action; and all costs, administrative costs, judgments and settlements, losses, liabilities, expenses, settlements, interest and judgments incurred in connection therewith, including attorneys' fees and court costs, brought by any of the Firm's employees or representatives, by any governmental entity or by any other third party, except to the extent of the limitations expressed in Texas Local Government Code Section 271.904, as amended.
- 6.2 It is a condition precedent to the Firm's contractual obligation of indemnification under this Agreement that the Owner, when seeking indemnity, shall provide written notice of a third party claim, demand or cause of action within 30 days after such third party claim, demand or cause of action is received by the party seeking indemnity. It is a further condition precedent to the Firm's contractual obligation of indemnification under this Agreement that the Firm shall thereafter have the right to participate in the investigation, defense and resolution of such third party claim. In addition, the terms and provisions of Section 6.1 and this Section 6.2 shall survive the expiration or earlier termination of this Agreement.

## **7. Insurance**

- 7.1 The Firm shall obtain and maintain, throughout the term of the Agreement, insurance of the types and in the minimum amounts set forth below.
- 7.2 The Firm shall, upon its execution of this Agreement, furnish certificates of insurance to the Owner evidencing compliance with the insurance requirements hereof. Certificates shall indicate name of the Firm, name of insurance company, policy number, terms of coverage and limits of coverage. When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Firm will supply the Owner with certificates of insurance and, if applicable, amendatory riders or endorsements that clearly evidence the continuation of all coverage in substantially the same manner, limits of protection and scope of coverage as was provided by the previous policy. The Firm shall cause its insurance companies to provide the Owner with at least 30 days' prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement. The Firm shall obtain such insurance from such companies having a Best's rating of A-/VI or better, licensed or approved to transact business in the state in which the Services shall be performed, and shall obtain such insurance of the following types and minimum limits:

- a. Workers' Compensation insurance in accordance with the laws of the State of Texas, or state of hire/location of Services, and Employer's Liability coverage with a limit of not less than \$1,000,000 each employee for Occupational Disease;  
\$1,000,000 policy limit for Occupational Disease; and Employer's Liability of \$1,000,000 each accident.
- b. Commercial General Liability insurance including coverage for Products/Completed Operations, Blanket Contractual, Firms' Protective Liability, Broad Form Property Damage, Personal Injury/Advertising Liability, and Bodily Injury and Property Damage with limits of not less than:
  - \$2,000,000 General Aggregate Limit
  - \$1,000,000 Each Occurrence, combined single limit
  - \$1,000,000 Aggregate Products, combined single limit
  - \$1,000,000 Aggregate Personal Injury/Advertising Liability
- c. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- d. Umbrella Excess Liability insurance written as excess of Employer's Liability, with limits not less than \$1,000,000 each occurrence combined single limit.
- e. Professional Liability insurance with limits not less than \$1,000,000 each claim/annual aggregate, which insurance shall be maintained for a period that will cover claims made within three (3) years after the substantial completion of the Project.

7.3 The Owner and the Owner's agents, directors, officers and employees shall be added as additional insureds to all coverages required above, except for those requirements in paragraph "a". All policies written on behalf of the Firm shall contain a waiver of subrogation in favor of the Owner and the Owner's agents and employees.

7.4 If the Firm fails to furnish and maintain the insurance required by this Agreement, the Owner may purchase such insurance on behalf of the Firm, and the Firm shall pay the cost thereof to the Owner upon demand and shall furnish to the Owner any information needed to obtain such insurance. Firm shall within ten (10) days notify Owner of any change in the insurance coverage amounts or the insurance companies used by Firm in conjunction with this Agreement.

## **8. Termination**

8.1 This Agreement may be terminated by Owner for convenience upon notice to Firm.

Firm may terminate the Agreement for breach of the Agreement after giving Owner thirty (30) days' notice to cure any breach.

- 8.2 Upon delivery of such notice the Firm shall, unless the notice states otherwise, immediately discontinue all Services, proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to the Services, and deliver to the Owner all instruments of service produced under this Agreement. Upon termination, the Owner will owe the Firm only for all compensation earned under this Agreement to date of termination.
- 8.3 In the event of any termination under this Article 8, the Firm consents to the Owner's selection of another contractor of the Owner's choice to assist the Owner in completing the Project. The Firm further agrees to cooperate and provide any information and documentation requested by the Owner in connection with the completion of the Project and consents to and authorizes the making of any reasonable changes to the design of the Project by the Owner and such other contractor as the Owner may desire; provided however, that the Firm shall have no liability to the Owner or any third party for any changes or services made or performed by another firm. Any services provided by the Firm which are requested by the Owner after termination and are outside the scope of the services and schedule set forth herein shall be fairly compensated to the Firm by the Owner. Notwithstanding the foregoing, Firm shall not be entitled to such compensation if the Agreement was terminated by Owner due to a breach by Firm.

## **9. Waiver**

No consent or waiver, express or implied, by either party to this Agreement, to or of any breach or default by the other in the performance of any obligations under this Agreement shall be deemed or construed to be a consent or waiver to or of any other or future breach or default by such party. Failure on the part of any party to this Agreement to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.

## **10. Limitations and Rights and Remedies**

- 10.1 The Firm and the Owner agree that neither of them shall be responsible or liable to the other for the consequences of events that are beyond the reasonable control of the other party such as the interference by third parties, changed conditions that are not reasonably foreseeable, labor strikes, fires, thefts or other losses, or acts of God.
- 10.2 The Firm and the Owner agree that neither of them shall be entitled to recover from the other for any indirect, special or consequential damages, injuries or losses sustained as a result of the others' negligent actions, inactions or omissions under this Agreement or otherwise including, but not limited to, lost profits, lost opportunities, and/or delay damages.



**11. No Third Party Rights**

The Services to be performed by the Firm under this Agreement are solely for the benefit of the Owner. This Agreement shall not be construed as creating any contractual relationship of any kind between the Firm and any third party. It is the intent of the Firm that there are no third party beneficiaries of this Agreement. The fact that the Owner may enter into other agreements with third parties which provide the Firm the authority to observe the work being performed by the third party shall not give rise to any duty or responsibility on the part of the Firm in favor of such third party.

**12. Miscellaneous**

- 12.1 This Agreement shall be effective upon its execution by the Firm and the Owner, and shall remain in force until all obligations under this Agreement have been fulfilled, unless sooner terminated as provided herein. Where this Agreement is entered into subsequent to the Firm's beginning performance of Services for the Project, the parties acknowledge and agree that this Agreement is intended to and shall govern all services provided by the Firm for the Project, whether initiated or performed prior or subsequent to the execution of this Agreement, that the effective date of this Agreement shall be deemed to be the first date when any such services were so provided by the Firm and that this Agreement is intended to and shall supersede and replace any and all prior agreements whether written or oral.
- 12.2 This Agreement shall be construed and enforced for all purposes pursuant to the laws of the State of Texas. All claims, counterclaims, disputes, and other matters in question between the Owner and the Firm arising out of or relating to this contract or the breach thereof shall be decided in a court of competent jurisdiction in Guadalupe County, Texas.
- 12.3 Neither the Firm nor the Owner shall assign, sublet or transfer the interest in this Agreement without the prior written consent of the other; provided, however, the Owner may assign or transfer its interest herein to any express third-party beneficiary of this Agreement and to an affiliate of the Owner or any entity which controls, is under common control with or is controlled by the Owner. The obligations of the Firm hereunder are joint and several.
- 12.4 This Agreement (including all documents incorporated by reference or attached as exhibit hereto) represents the entire agreement between the Firm and the Owner with respect to the subject matter hereof and supersedes and merges all prior negotiations, representations, discussions or agreements, either written or oral, with respect to the subject matter hereof.
- 12.5 This Agreement may be amended only by written instrument signed by duly authorized representatives of both the Firm and the Owner.
- 12.6 If a provision of this Agreement, or the application thereof to any person or

circumstances, is rendered or declared illegal for any reason or shall be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall be not affected thereby, but shall be enforced to the greatest extent permitted by applicable law. The parties agree to negotiate in good faith for a proper amendment to this Agreement in the event any provision hereof is declared illegal, invalid or unenforceable.

- 12.7 All notices required or permitted hereunder shall be in writing and shall be deemed delivered 3 days after deposit by e-mail, or physically with the United States Postal Service (certified mail, return receipt requested), addressed to the respective other party at the addresses shown below:

If to Firm: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
ATTN: \_\_\_\_\_

If to Owner: Guadalupe-Blanco River Authority  
933 E. Court St.  
Seguin, Texas 78155  
ATTN: Victor Castillo

- 12.8 Time is of the essence of the performance of the parties' obligations pursuant to this Agreement.
- 12.9 In the event there is a conflict between any of the provisions hereof and any proposals, general conditions, specifications or other agreements which may have been executed by the parties hereto in connection with the subject matter hereof, it is understood and agreed that the provisions hereof shall be controlling. The parties acknowledge and represent that this Agreement has been jointly drafted by the parties and that each of them has read, understood, and approved the language and terms set forth herein. This Agreement may be executed in multiple counterparts, each of which shall constitute but one agreement.
- 12.10 The Firm expressly waives any right to payment for any Services or Reimbursable Expenses incurred if not billed as Services or Reimbursable Expenses within ninety (90) calendar days following the date such services were rendered or such expenses were incurred.
- 12.11 Foreign Terrorist Organizations. Firm represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization as prohibited by Section 2252.152 of the Texas Government Code.
- 12.12 Anti-Boycott Israel Verification. In accordance with Chapter 2270, Texas Government



Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this contract on behalf of Firm verifies that the Firm does not boycott Israel and will not boycott Israel during the term of this contract.

- 12.13 Human Trafficking: In accordance with Chapter 2155.0061, Texas Government Code, GBRA may not award a contract that includes proposed financial participation by a person who, during the five-year period preceding the date of the award, has been convicted of any offense related to the direct support or promotion of human trafficking. The signatory executing this Agreement on behalf of Firm certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate. Furthermore, Firm acknowledges that should GBRA determine that Firm was ineligible to have the Agreement awarded under this section, GBRA may immediately terminate without further obligation to Firm.
- 12.14 Texas Gov't Code Chapter 2274: Bidder verifies that it does not have practice, policy, guidance, or directive against a firearm entity or firearm trade association and will not discriminate during the term of this contract against a firearm entity or trade association as defined and described in Texas Government Code Section(s) et.al. 2274.
- 12.15 No Agreements with Certain Foreign Owned Companies in Connection with Critical Infrastructure: Bidder asserts and verifies that its company is not owned by or the majority of its stock or other ownership interest is held by individuals who are citizens of China, Iran, North Korea, Russia, or a country designated under Section 113.002 of the Texas Business and Commerce Code; NOR is its company or entity owned or directly controlled by the government of China, Iran, North Korea, Russia, or is headquartered in any of the aforementioned four countries or a country designated under Section 113.002 above.
- 12.16 Each person who signs this Agreement states that he has the express authority to sign this Agreement and to bind the entity he represents to all of the terms and conditions stated herein.

IN WITNESS WHEREOF, this Agreement is hereby executed as of the date first above set forth.

**FIRM**

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

**OWNER**

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By: Kevin Patteson  
Title: General Manager/CEO

## Exhibit A

Scope of Work:

Final Scope to be negotiated