



REQUEST FOR QUALIFICATIONS RFQ # 2025-001

PROFESSIONAL SERVICES FOR HYDROSTRATIGRAPHIC INVESTIGATION WITHIN FORT BEND COUNTY

GENERAL INFORMATION

The Fort Bend Subsidence District (FBSD) is seeking Statement of Qualifications from qualified professionals to engage in professional services agreements for the investigation of the hydrostratigraphy in Fort Bend County, as described in subsequent sections of this Request for Qualifications (RFQ). The FBSD will contract directly with the Consultant for professional technical services using the FBSD's standard Professional Services Agreement and associated work orders. State agencies and political subdivisions may partner with FBSD on this study, and they may participate in key project meetings and review all interim and final project deliverables.

The proposed schedule for this Request for Qualifications is as follows:

Release RFQ:	October 3, 2025
Pre-submittal conference*:	October 23, 2025 at 10:00 am CDT
Deadline for questions and inquiries:	November 7, 2025 at 5:00 pm CST
SOQ submissions due:	December 2, 2025 at 5:00 pm CST

* This meeting is not required and will be held online only. Please see the link on FBSD's website or select the following URL: <https://events.teams.microsoft.com/event/fe0a7248-0c37-4e47-b18c-dec266d522c6@2425f7f5-33c6-46a7-8797-bdfb01e303a1>

INTRODUCTION

The Fort Bend Subsidence District (FBSD) was created in 1989 with the purpose to cease and prevent further subsidence within Fort Bend County by regulating the use of groundwater. Although Fort Bend County experienced minor amounts of subsidence prior to the 1980's, several characteristics of the area raised concern about the potential for increasing subsidence in the future such as rapid growth and dependency on groundwater for primary water supplies. Subsidence can contribute to flooding, infrastructure damage, and faulting.

FBSD's Plan sets the requirements and timelines for the reduction of groundwater use as a percentage of the total water demand in three regulatory areas. Currently, groundwater users operating within an approved groundwater reduction plan (GRP) in Regulatory Area A are required to utilize groundwater for no more than 70% of their total water demand. This percentage reduces to 40% groundwater of the total water demand in 2027. The timely development of alternative water supplies (i.e., water supplies that do not contribute to subsidence within FBSD) is required to maintain compliance with the FBSD's Plan.

SCOPE OF WORK

The purpose of this effort is to conduct an investigation of the hydrostratigraphy within Fort Bend County. The approach to this study will involve the following tasks:

1. Review all available inventories for historical well logs and other appropriate geophysical information to effectively characterize the lithology in Fort Bend County and identify any data gaps.
2. Perform field investigations to enhance understanding of the hydrostratigraphy.
3. Prepare a comprehensive final report that describes the methods, approach, and conclusions of the study.
4. Develop a non-technical executive summary and accompanying ArcGIS application that provides an overview of all study tasks.
5. Assess and document potential geological controls (e.g., faults, stratigraphic units, or salt-related structures) that may influence the bend in the Brazos River around the Richmond/Rosenberg area.
6. Include recommendations for future studies to characterize the hydrostratigraphy within Fort Bend County.

Data Management Requirements

All data developed as part of the project shall be delivered to the FBSD in an appropriate database. Geographic information systems (GIS) data should be provided in an ArcGIS File Geodatabase and ArcPro project based on a standard schema developed in coordination with the FBSD. Additionally, a SharePoint site shall be created by the Consulting Team and utilized as the document repository for all documentation associated with the project. This SharePoint site must be accessible for appropriate FBSD staff and be used as the primary data exchange between the Consulting Team and FBSD staff.

The files delivered to the FBSD should include, at a minimum, the following, as appropriate:

- All original spatial and tabular data referenced and/or source data;
- All spatial and tabular datasets created and/or manipulated for the purpose of analyses;
- Relevant metadata documenting the authoritative source and date of the original data; and
- ArcGIS Online applications, such as Storymaps, Dashboards, or other services, as appropriate.

CONSULTANT EVALUATION AND SELECTION PROCESS

It shall be each prospective consulting team's responsibility to identify qualified professionals as needed to provide resource and discipline/area services within the FBSD's required schedule and budget.

The FBSD has attempted to provide a comprehensive statement of requirements through this solicitation for the work contemplated. Written proposals must present the Consulting Team's qualifications and understanding of the work to be performed. Consulting Teams are asked to address each evaluation criteria and to be specific in presenting their qualifications. Proposals must be as thorough and detailed as possible so that the FBSD may properly evaluate capabilities to provide the requested services.

By submission of a proposal, the prospective Consulting Team acknowledges acceptance of the evaluation process, the evaluation criteria, scope of work, approach and methodology, and all other terms and conditions set forth in this RFQ. Further, the prospective Consulting Team acknowledges that subjective judgements must be made by the FBSD during this process.

- A. This RFQ does not commit FBSD to enter into a contract, nor does it obligate it to pay any costs incurred in the preparation and submission of qualifications and subsequent discussions, interviews and/or presentations in anticipation of a contract.
- B. FBSD reserves the right to:
- a) Reject any and all Statement of Qualifications received.
 - b) Cancel or terminate the entire RFQ process.
 - c) Remedy technical errors in the RFQ process.
 - d) Negotiate with any, all, or none of the respondents to the RFQ.
 - e) Waive or decline to waive any informalities and irregularities in any statement of qualifications or responses received.
 - f) Modify the selection process.
 - g) Negotiate or modify the project scope or services to be provided.
- C. **Qualifications Based Selection Criteria:** SOQs will be evaluated and ranked based upon the responses provided relative to the content requirements of this RFQ as provided in this section and as further detailed in the following section titled INSTRUCTIONS TO RESPONDING FIRMS.

The evaluation criteria and the corresponding maximum point score associated with each evaluation criteria are shown in the table below.

Criteria	Points
<i>Consulting team introduction.</i> Considerations for this evaluation criterion include the consulting team's overall suitability for this project and the effectiveness and efficiency of the proposed organizational structure.	5
<i>Experience of consulting team based on previous work.</i> Considerations for this evaluation criterion include the consulting team's experience and history of success with projects having similar scope of services.	20
<i>Project manager competence and qualifications.</i> Considerations for this evaluation criterion include project manager's individual experience and demonstrated capability to lead projects having similar scope of services.	20
<i>Lead technical professional(s) competence and qualifications.</i> Considerations for this evaluation criterion include lead technical professionals' experience and demonstrated technical expertise to lead development of technical work products for with projects having similar scope of services.	10
<i>Technical support staff competence and qualifications.</i> Considerations for this evaluation criterion include support personnel and sub-consultant experience and demonstrated expertise to perform projects having similar scope of services.	5
<i>Demonstration of project understanding and approach.</i> Considerations for this evaluation criterion include the project team's overall understanding of the project scope and issues as well as the clarity, thoroughness and creativity of the project approach, identification of key issues associated with the scope of services and the consulting team's approach to addressing those issues, as well as the project team's approach to quality management.	30
<i>Project schedule and staff availability.</i> Considerations for this evaluation criterion include the availability of key staff during project duration, the proposed project schedule, and approach to managing deadlines.	5
Interview (optional)	5
<i>Total</i>	<i>100</i>

D. Interview

The FBSD reserves the right to select directly from received SOQs and not perform interviews. In the event interviews are not performed, Interview point score will be added in full to each consulting team's point score.

INSTRUCTIONS TO RESPONDING FIRMS

A. Points of Contact

1. Direct all questions regarding this Request for Qualifications (RFQ) to:

Fort Bend Subsidence District
contracts@subsidence.org

Questions received and answers provided will be posted to the RFQ site at
<http://www.fbsubsidence.org>

Any other contact by the offeror/firm with FBSD staff, consultants, or advisors regarding this contract may eliminate that firm from contract award consideration.

2. Unless otherwise stated in the proposal, answers to all questions, inquiries, and requests for additional information will be issued in the form of Addendum on the FBSD website. If addenda are issued, receipt of each Addendum shall be acknowledged and included in the SOQ.
3. The Statement of Qualifications (SOQs) will be reviewed and selected respondents may be identified for further discussions, interviews, and/or formal presentations to be conducted at a later date.

B. Statement of Qualifications (SOQ) Requirements

1. SOQs shall not exceed ten (10) pages including attachments; and excluding transmittal letter, covers, addenda pages and section dividers.
2. SOQs shall be prepared with single side 8 ½" by 11" pages with not less than 1-inch margins, not less than 1.25 line spacing and not less than 11-point font.
3. SOQs shall be submitted electronically via email to contracts@subsidence.org with subject line labeled "Attn: SOQ Submission FBSD RFQ 2025-001." **Reponses received after the SOQ deadline will not be considered.**
4. **Transmittal letter** – Provide a transmittal letter signed by an officer of the respondent firm who has the authority to commit the firm to the Project.
5. **Consulting team introduction. (up to 5 points)**
Briefly introduce your team, providing a summary of the administration, organization and staffing of your team, including multiple offices, if applicable. Provide an organizational chart indicating the positions and names of the core team which will undertake this engagement. Include location(s) of project manager and lead technical professional(s). Provide the type and limits of insurance coverage. **Note: FBSD standard insurance requirements are stated in Exhibit A of this document. Firms who cannot meet these minimum standards will not be considered.**
6. **Experience of consulting team based on previous work (up to 20 points)**
Provide information relevant to the consulting team's history of success based on projects or studies that are similar to the described scope of services. List no more

than five (5) recent projects or studies that have been completed within the last five years. Include the following:

- a. Assignment name, location, client, firm who completed the work
- b. Names of project manager and lead technical professional who worked on the project(s)
- c. Brief description of the Firm's role and services performed
- d. Completion date of project and/or key deliverables
- e. Project Budget
- f. Client contact name, title/position, current phone number and email address

7. **Project manager competence and qualifications (up to 20 points)**

Provide information relevant to the Project Manager's experience in delivering similar projects or studies as described in the scope of services. Include the following to demonstrate project management experience and technical competency:

- a. Proposed role/responsibility for this Project
- b. Firm, current location and location during execution of the possible project(s) resulting from this RFQ.
- c. Educational background
- d. Years of experience related to the solicitation scope of services
- e. Applicable license and/or registration
- f. Availability and time commitments to the project over the next 12 to 24 months.
- g. Describe no more than three (3) recent projects or studies that have been completed within the last five years that are similar to work described in the solicitation. Include the following:
 - 1) Assignment name, location, client
 - 2) Brief description of project including approach, results, and unique similarities of prior work related to this project.
 - 3) Role on the project
 - 4) Completion date of project and/or key deliverables
 - 5) Project Budget
 - 6) Client contact name, title/position, current phone number and email address

8. **Lead technical professional(s) competence and qualifications (up to 10 points)**

The lead technical professional is responsible for delivery of technical work products and may be the same as the project manager, or separate individual(s). Include the following to demonstrate experience and technical competency of each lead technical professional:

- a. Proposed role/responsibility for this Project
- b. Firm, current location and location during execution of the possible project(s) resulting from this RFQ.
- c. Educational background
- d. Years of experience related to the solicitation scope of services
- e. Applicable license and/or registration
- f. Availability and time commitments to the project over the next 12 to 24 months.
- g. Describe no more than three (3) recent projects or studies that have been completed within the last five years that are relevant and similar to work described in the solicitation. Include the following:
 - 1) Assignment name, location, client

- 2) Brief description of project including approach, results, and unique similarities of prior work related to this project.
 - 3) Role on the project
 - 4) Completion date of project and/or key deliverables
 - 5) Project Budget
 - 6) Client contact name, title/position, current phone number and email address
9. **Technical support staff competence and qualifications (up to 5 points)**
Provide the following information to clearly demonstrate the experience and capabilities of any additional project staff proposed for this Project:
- a. Proposed role/responsibility for this Project
 - b. Years of Experience
 - c. Firm, current location and location during execution of the possible project(s) resulting from this RFQ.
 - d. Educational background
 - e. Applicable license and/or registration
 - f. Years of experience related to the solicitation scope of services
 - g. Summary of relevant experience
10. **Demonstration of project understanding and approach (up to 30 points)**
Provide a thorough discussion on the respondent consulting team's understanding and approach for the project, including the proposed work plan for the project, approach to project management and approach to quality management. Provide relevant discussion on any potential challenges that the consulting team has identified with regard to the scope of work and proposed solutions.
11. **Project schedule and staff availability (up to 5 points)**
Provide a proposed schedule and the consulting team's approach to managing schedule and meeting project deadlines.
12. **Other Information**
If desired, consulting teams can provide other information pertinent to the Project regarding respondent firm and support resources **within the 10-page limit.**
13. **Addenda**
Unless otherwise stated in the proposal, answers to all questions, inquiries, and requests for additional information will be issued in the form of Addenda. If Addenda are issued, receipt of each Addendum shall be acknowledged by the Respondent. **These pages are NOT included in the 10-page limit.**
14. **Potential Conflicts of Interest**
Firms seeking to do business with FBSD are responsible for maintaining compliance with the applicable provisions of Chapter 176, Local Government Code, related to disclosure of conflicts of interest. The Conflict of Interest Questionnaire is available for downloading on the Texas Ethics Commission's website at <http://www.ethics.state.tx.us/forms/CIQ.pdf> and should be submitted to the FBSD with the submittal. The completed Conflict of Interest Questionnaire will be posted on FBSD's website as required by Chapter 176. Additionally, the selected firm will be required to complete Texas Ethics Form 1295 online prior to execution of any contract. **This page is NOT included in the 10-page limit.**
15. **Interviews (optional; up to 5 points)**

The FBSD reserves the right to select directly from received SOQs and not perform interviews. In the event interviews are not performed, Interview point score will be added in full to each consulting team's point score.

C. Equal Employment Opportunity Requirements

The FBSD highly encourages applicants to maintain non-discriminatory practices in their employment programs. This means applicants should not discriminate against any employee or applicant for employment because of race, color, national origin, religion, sex, age, or disability.

CONTRACT AND INSURANCE REQUIREMENTS

- A. **A copy of the FBSD Standard Professional Services Agreement (Contract) to be executed for the** Work of this RFQ is provided for review/reference in Exhibit A of this document. **Note: The FBSD will not entertain requests of firms to modify, change, or in any way alter the above referenced standard work order contract, including Article 9 – INDEMNIFICATION language (See also attached Exhibit A). Firms that cannot or are unwilling to meet the terms and conditions of Article 9, should not submit a SOQ. No exception shall be made.**
- B. Type and limits of insurance coverage. Note: FBSD standard insurance requirements are stated in Article 11 – INSURANCE of FBSD's Standard Work Order Professional Services Agreement, a copy of which is provided in Exhibit A of this document. **Firms that cannot meet these minimum standards prior to executing an agreement will not be considered. No exception shall be made.**

EXHIBIT A

**PROFESSIONAL SERVICES AGREEMENT
CONTRACT NO. _____**

This Professional Services Agreement (the "Agreement") is made and entered into effective as of the ____ day of ____, 202_, by and between the Fort Bend Subsidence District, a conservation and reclamation district of the State of Texas, ("FBSD") with general and administration offices located at 301 Jackson Street, Suite 639, Richmond, TX, 77469

and

_____, a [corporation, LP, LLC, partnership] organized under the laws of the State of _____, ("FIRM") with principal offices located at _____.

FBSD and FIRM are sometimes referred to herein collectively as the "Parties" or individually as a "Party."

The Parties hereby agree as follows:

ARTICLE 1 – SCOPE OF SERVICES

1.1 FIRM agrees to perform professional services (the "Services") related to _____ as are requested from time to time by FBSD, which Services shall be set forth more particularly in Work Orders, the form of which is attached hereto as Attachment B, issued from time to time by FBSD and accepted by FIRM. Each Work Order shall constitute a separate and independent agreement between FIRM and FBSD.

1.2 Work Orders shall contain the schedule, price, and payment terms applicable to the Services within the scope of such orders. Time is of the essence to this Professional Services Agreement and all Work Orders will incorporate and be governed by and subject to the terms, conditions, and other provisions of this Agreement. Work Orders shall become effective when an acknowledged copy thereof is signed by a duly authorized officer of FIRM, returned to FBSD and countersigned by FBSD. The specific terms of a Work Order may not be modified unless such modifications are agreed to in writing by FBSD and FIRM.

1.3 Unless the Work Order specifically states the term, condition, or other provision of this Agreement that is being modified, terms, conditions, or other provisions contained in any Work Order or any proposal attached to or incorporated in to a Work Order that conflict with any terms, conditions, or other provisions of this Agreement shall have no effect and shall be deemed stricken and severed from such Work Orders, and the balance of the terms, conditions, and other provisions contained in such Work Orders shall remain in full force and effect. Modifications of the terms, conditions, or other provisions of this Agreement with respect to a particular Work Order shall not modify the terms, conditions or other provisions of this Agreement with respect to any other Work Order.

1.4 Nothing herein shall obligate FBSD to issue, or FIRM to accept, any Work Orders. Further, the Parties agree that nothing in this Agreement shall prohibit the Parties, or either of them, from entering into agreements other than this Agreement for professional services or other work.

ARTICLE 2 – TERM OF AGREEMENT

2.1 This Agreement shall be effective for a term of one (1) year from the date first set forth above and shall be automatically renewed without action by either Party for subsequent terms of one year unless terminated earlier in writing in accordance with Article 12.

2.2 Notwithstanding the foregoing, this Agreement shall apply to and remain in effect for Work Orders issued and accepted during the term of this Agreement until such time as the Services under such Work Orders have been completed; provided however, that, pursuant to Article 12, either Party shall have the right to terminate any Work Order for cause and FBSD shall have the right to terminate any Work Order for convenience.

2.3 Firm's obligations under Articles 5, 6, 8, 9, 10, 11, 18, 19 and 20 shall survive the expiration of termination of this Agreement or any Work Order.

ARTICLE 3 – COMPENSATION AND PAYMENT

3.1 FBSD agrees to pay FIRM, and FIRM agrees to accept, as full and complete compensation for Services properly performed by FIRM in accordance with this Agreement and applicable Work Order, the rates and charges agreed upon for a specific Work Order. Paragraphs A.1 or A.2 of Attachment A, which is attached hereto and incorporated herein by reference, shall be used to negotiate the compensation payable for each Work Order issued hereunder.

3.2 On or before the tenth day of each calendar month, FIRM shall submit an invoice to FBSD, together with backup documentation required by FBSD and releases and waivers in forms acceptable to FBSD, covering all Services performed under any Work Order by FIRM and its subconsultants, subcontractors and suppliers during the preceding calendar month. FIRM shall separately itemize on each invoice: (i) each Work Order for which payment is sought, (ii) the amount budgeted for each such Work Order, (iii) the amount of payment requested for each such Work Order, (iv) the amount previously paid for each such Work Order, (v) descriptions of Services performed during the prior month for each such Work Order, and (vi) the total payment requested by such invoice. FBSD shall pay the amount it agrees to be due within thirty (30) days after receipt of such complete invoice and backup documentation.

3.3 FBSD shall have the right but not the obligation to withhold all or any part of payment requested in any invoice to protect FBSD from loss or expected loss because of:

(a) Services that are not in compliance with this Agreement or the applicable Work Order or any failure of FIRM to perform Services in accordance with the provisions of this Agreement or the applicable Work Order;

(b) third party suits, stop notices, claims or liens arising out of Services performed for which FIRM is responsible pursuant to this Agreement and asserted or filed against FBSD or any of their respective property or portion thereof or improvements thereon provided that FIRM fails to provide FBSD with sufficient evidence that FIRM's insurance is adequate or shall cover the claim(s);

(c) uninsured damage to any Indemnified Party which results from FIRM's failure to obtain or maintain the insurance required by this Agreement or from any action or inaction by FIRM or any of its subcontractors, subconsultants, or suppliers which excuses any insurer from liability for any loss or claim which would, but for such action or inaction, be covered by insurance; or

(d) any failure of FIRM to pay any subcontractor, subconsultant, or supplier of FIRM the correct, undisputed, and contractually obligated amount for acceptable services received and for acceptable supplies received. FIRM will not include in its billings to FBSD any amount in a subcontractor or supplier invoice which it has not paid or does not intend to pay within the terms and conditions of the applicable subcontract agreement or supplier purchase order.

3.4 FIRM agrees to pay in full (less any applicable retainage) as soon as reasonably practicable, but in no event later than thirty (30) days following payment from FBSD, all subcontractors, subconsultants, and any other persons or entities supplying labor, supplies, materials, or equipment in connection with Services that are owed payment by FIRM out of such payment made to FIRM by FBSD. Further, provided that FBSD paid FIRM in accordance with the terms of this Agreement and any particular Work Order, FIRM shall defend and indemnify FBSD against any claims for payment asserted or filed by any such person or entity against FBSD, its project or property or FIRM.

ARTICLE 4 - STANDARD OF CARE; COORDINATION OF SERVICES; SAFETY; COST ESTIMATES; EQUAL EMPLOYMENT OPPORTUNITY; THIRD PARTY REVIEW

4.1 FIRM shall perform, supervise and direct the Services, and otherwise discharge its obligations under this Agreement and any Work Order: (a) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and (b) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer (collectively, the FIRM's "Standard of Care").

4.2 Consistent with its Standard of Care, FIRM shall (a) perform its Services in accordance with all applicable laws, codes, ordinances and regulations; (b) perform its Services in an efficient manner; and (c) keep FBSD apprised of the status of Services, coordinate its activities with FBSD, and accommodate other activities of FBSD at sites that Services impact. FIRM shall designate an authorized representative to be available for consultation, assistance, and coordination of activities.

4.3 FIRM shall be responsible for its own activities at sites including the safety of its employees, and that of its subconsultants, subcontractors and suppliers but shall not assume control of or responsibility for the site. Construction contractors of FBSD shall have sole responsibility for providing materials, means, and methods of construction, for controlling their individual work areas and safety of said areas for all parties, and for taking all appropriate steps to ensure the quality of their work and the safety of their employees and of the public in connection with their performance of work or services provided under contracts with FBSD. However, FIRM shall notify FBSD if it observes violations of safety regulations or ordinances or quality of work deficiencies by FBSD's construction contractors. FIRM shall comply with the site safety program and rules established by the construction contractors.

4.4 To the extent that FIRM provides to FBSD any estimate of costs associated with construction, it is recognized by the Parties that neither FIRM nor FBSD has control over the cost of the labor, materials, or equipment, over a construction contractor's methods of determining bid prices, or over competitive bidding, market, or negotiating conditions. Accordingly, FIRM cannot and does not warrant or represent that bids or negotiated prices will not vary from FBSD's budget for the project or from any estimate of the cost of work or evaluation prepared or agreed to by FIRM.

4.5 With respect to providing Services hereunder, FIRM agrees to meet at the time applicable (i) Equal Employment Opportunity ordinances, rules and regulations, and (ii) Affirmative Action ordinances, rules and regulations.

4.6 FIRM acknowledges and agrees that projects of FBSD may be subject to review and approval by other third parties. Accordingly, as and when requested by FBSD, FIRM shall submit such information and cooperate with the other third parties to the extent necessary to undergo any such review or obtain any such approval.

4.7 FIRM does not represent Work Product to be suitable for reuse on any other project or for any other purpose(s). If FBSD reuses any Work Product without FIRM's specific written verification or adaptation, such reuse will be at the risk of FBSD, without liability to FIRM.

ARTICLE 5 – COST RECORDS

5.1 FIRM shall maintain records and books in accordance with generally accepted accounting principles and practices. For Services provided by FIRM under cost reimbursable, time and material or unit price Work Orders, during the period of this Agreement and for five (5) years thereafter, FIRM shall maintain records of direct costs for which FBSD is charged. FBSD shall at all reasonable times have access to such records for the purpose of inspecting, auditing, verifying, or copying the same, or making extracts therefrom. FBSD's audit rights for fixed unit rate or time and materials Work Orders shall extend to review of records for the purpose of substantiating man-hours worked, units employed, and third party charges only. Except to the extent audit rights are granted to FBSD by applicable law, FBSD shall have no audit rights with respect to the portion of Work Orders compensated on a lump sum basis.

ARTICLE 6 – OWNERSHIP OF WORK PRODUCT AND TECHNOLOGY

6.1 All studies, plans, reports, drawings, specifications, cost estimates, software, computations, and other information and documents prepared by FIRM, its subconsultants, subcontractors, and/or suppliers, in connection with Services or any project of FBSD are and shall remain FBSD's property upon creation (collectively, "Work Product") provided, however, that Work Product shall not include pre-existing proprietary information of FIRM, its subconsultants, subcontractors, and/or suppliers ("FIRM Proprietary Information"). To this end, FIRM agrees and does hereby assign, grant, transfer, and convey to FBSD, its successors and assigns, FIRM's entire right, title, interest and ownership in and to such Work Product, including, without limitation, the right to secure copyright registration. FIRM confirms that FBSD and its successors and assigns shall own FIRM's right, title, interest in and to, including without limitation the right to use, reproduce, distribute (whether by sale, rental, lease or lending, or by other transfer of ownership), to perform publicly, and to display, all such Work Product, whether or not such Work Product constitutes a "work made for hire" as defined in 17 U.S.C. Section 201(b). In addition, FIRM hereby grants FBSD a fully paid-up, royalty free, perpetual, assignable, non-exclusive license to use, copy, modify, create derivative works from and distribute to third parties FIRM Proprietary Information in connection with FBSD's exercise of its rights in the Work Product, operation, maintenance, repair, renovation, expansion, replacement, and modification of projects of FBSD or otherwise in connection with property or projects in which FBSD has an interest (whether by FBSD or a third party). FIRM shall obtain other assignments, confirmations, and licenses substantially similar to the provisions of this paragraph from all of its subconsultants, subcontractors, and suppliers. Work Product is to be used by FIRM only with respect to the project in connection with which such Work Product was created and is not to be used on any other project. FIRM and its subconsultants, subcontractors, and suppliers are granted a limited, nonexclusive, non-transferable, revocable license during the term of their respective agreements under which each is obligated to

perform Services to use and reproduce applicable portions of the Work Product appropriate to and for use in the execution of Services. Submission or distribution to comply with official regulatory requirements for other purposes in connection with Services is not to be construed as publication in derogation of FBSD's copyright or other reserved rights. FIRM shall deliver all copies of the Work Product to FBSD upon the earliest to occur of FBSD's request, completion of Services in connection with which Work Product was created, or termination of this Agreement. FIRM is entitled to retain copies of its Work Product for its permanent project records.

6.2 FIRM agrees that all information provided by FBSD in connection with Services shall be considered and kept confidential ("Confidential Information"), and shall not be reproduced, transmitted, used, or disclosed by FIRM without the prior written consent of FBSD, except as may be necessary for FIRM to fulfill its obligations hereunder; provided, however, that such obligation to keep confidential such Confidential Information shall not apply to any information, or portion thereof, that:

- (a) was at the time of receipt by FIRM otherwise known by FIRM by proper means;
- (b) has been published or is otherwise within the public domain, or is generally known to the public at the time of its disclosure to FIRM;
- (c) subsequently is developed independently by FIRM, by a person having nothing to do with the performance of this Agreement and who did not learn about any such information as a result of FIRM's being a party to this Agreement;
- (d) becomes known or available to FIRM from a source other than FBSD and without breach of this Agreement by FIRM or any other impropriety of FIRM;
- (e) enters the public domain without breach of the Agreement by or other impropriety of FIRM;
- (f) becomes available to FIRM by inspection or analysis of products available in the market;
- (g) is disclosed with the prior written approval of FBSD;
- (h) was exchanged between FBSD and FIRM and ten (10) years have subsequently elapsed since such exchange; or
- (i) is disclosed to comply with the Texas Open Records Act or in response to a court order to comply with the requirement of a government agency.

6.3 FIRM shall not be liable for the inadvertent or accidental disclosure of Confidential Information, if such disclosure occurs despite the exercise of at least the same degree of care as FIRM normally takes to preserve and safeguard its own proprietary or confidential information.

6.4 FIRM will advise FBSD of any patents or proprietary rights and any royalties, licenses, or other charges which FIRM knows or should know in the exercise of its Standard of Care impacts any design provided by FIRM in connection with any Services, and obtain FBSD's prior written approval before proceeding with such Services. FIRM shall not perform patent searches or evaluation of claims, but will assist FBSD in this regard if requested, on the basis set forth herein. There will be no charge for FIRM's existing patents.

ARTICLE 7 – INDEPENDENT CONTRACTOR RELATIONSHIP

7.1 In the performance of Services hereunder, FIRM shall be an independent contractor with the authority to control and direct the performance of the details of Services and its own means and methods. FIRM shall not be considered a partner, affiliate, agent, or employee of FBSD and shall in no way have any authority to bind FBSD to any obligation.

ARTICLE 8 – WARRANTY PERIOD; GUARANTEES

8.1 If within a period of one (1) year following completion of Services under a Work Order, it is discovered that such Services were not performed in accordance with FIRM's Standard of Care, FIRM shall be obligated to re-perform such Services at its own expense. If FIRM is unable to re-perform such Services as expediently or in the manner required for FBSD's needs, FIRM agrees to pay FBSD's reasonable costs associated with having another firm perform such corrective services. The obligations of FIRM under this Paragraph 8.1 are in addition to other rights and remedies of FBSD available to it pursuant to this Agreement or applicable law.

8.2 FIRM agrees to assign FBSD the warranty or guarantee of any subconsultant, subcontractor, supplier or manufacturer of items of services, supplies, machinery, equipment, materials, or products provided by FIRM hereunder and cooperate and assist FBSD in FBSD's enforcement thereof. FIRM's responsibility with respect thereto is limited to such assignment, cooperation, and alliance. The representations and warranties of FIRM under this Agreement and Work Orders are made in lieu of any other warranties or guarantees and FIRM makes no other warranties whether expressed or implied, including any warranty of merchantability or fitness for a particular purpose, and FIRM shall have no liability to FBSD based upon any theory of liability that any such other warranty was made or breached.

ARTICLE 9 – INDEMNIFICATION

9.1 TO THE FULLEST EXTENT PERMITTED BY LAW, FIRM SHALL INDEMNIFY AND HOLD HARMLESS FBSD AND ITS BOARD, DIRECTORS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, (COLLECTIVELY, THE "INDEMNITEES"), FROM AND AGAINST CLAIMS, LOSSES, DAMAGES, DEMANDS, SUITS, CAUSES OF ACTION, SETTLEMENTS, LIABILITIES, COSTS, FINES, JUDGMENTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE AND NECESSARY COURT COSTS, EXPERTS' FEES AND ATTORNEY'S FEES) (COLLECTIVELY, "LOSSES"), ARISING IN FAVOR OF OR BROUGHT BY ANY THIRD PARTY, TO THE EXTENT CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER, COMMITTED BY FIRM, ITS AGENT, ITS FIRM UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH FIRM EXERCISES CONTROL, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY WORK ORDER, EVEN IF SUCH LOSSES ARE CAUSED IN PART BY THE NEGLIGENCE OR FAULT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD OR RULE OR BREACH OF CONTRACT OF AN INDEMNITEE OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF AN INDEMNITEE; PROVIDED, HOWEVER, THAT FIRM'S OBLIGATION TO INDEMNIFY AND HOLD HARMLESS SHALL NOT EXTEND TO THE PORTION (IF ANY) OF SUCH LOSSES THAT ARE CAUSED BY THE NEGLIGENCE OR FAULT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD OR RULE OR BREACH OF CONTRACT OF AN INDEMNITEE OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF AN INDEMNITEE OTHER THAN FIRM OR ITS AGENT OR EMPLOYEE OR SUBCONTRACTORS OF ANY TIER.

9.2 TO THE FULLEST EXTENT PERMITTED BY LAW, AND TO THE EXTENT A DEFENSE IS NOT PROVIDED FOR THE INDEMNITEES UNDER AN INSURANCE POLICY AS REQUIRED UNDER SECTION 11.1(f) HEREOF OR THE INDEMNITEES' ATTORNEYS' FEES ARE NOT OTHERWISE RECOVERED UNDER THE INDEMNITY PROVISION SET FORTH IN SECTION 9.1 HEREOF, FIRM SHALL, UPON FINAL ADJUDICATION OF THE LOSSES AS DEFINED IN SECTION 9.1 HEREOF AND WITHIN THIRTY (30) DAYS FOLLOWING THE DATE OF A WRITTEN DEMAND, REIMBURSE THE INDEMNITEES FOR ALL REASONABLE ATTORNEY'S FEES INCURRED TO DEFEND AGAINST THE LOSSES IN PROPORTION TO FIRM'S LIABILITY TO ANY THIRD PARTY FOR SUCH LOSSES.

ARTICLE 10 – LIMITATION OF LIABILITY

10.1 Neither Party hereto shall be liable to the other Party or its affiliates for any loss of profit, loss of revenue, loss of use or any other indirect, consequential or special damages excluding fines and penalties levied by a regulatory agency, even if caused by the sole or concurrent negligence of a party, whether active or passive, and even if advised of the possibility thereof.

10.2 Nothing herein shall be construed as creating any personal liability on the part of any board member, any officer, employee, or agent of FBSD.

ARTICLE 11 – INSURANCE

11.1 **General Requirements.** FIRM shall, at all times during the performance of Services pursuant to Work Orders issued under this Agreement and for not less than two years after the completion of any Services, provide and require all subconsultants and subcontractors to provide insurance coverage with companies lawfully authorized to do business in Texas and acceptable to FBSD and with forms acceptable to FBSD, which coverage will protect FIRM from claims set forth below which may arise out of or result from FIRM's Services and operations under this Agreement and any Work Order for which FIRM may be legally liable, whether such Services or operations are by FIRM or a subconsultant or subcontractor of FIRM or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and meeting not less than the minimum requirements set forth in this Article 11. Such insurance is to be provided at the sole cost of FIRM and all subconsultants and subcontractors. The terms "subconsultant" and "subcontractor" for the purposes of this Article 11 shall include subconsultants and subcontractors of any tier.

(a) **Kinds of Claims**

- (1) claims under workers' and workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to FIRM's Services to be performed;
- (2) claims for damages because of bodily injury, occupational sickness or disease, or death of FIRM's employees;
- (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than FIRM's employees;
- (4) claims for damages insured by usual personal injury liability coverage which are sustained (i) by a person as a result of an offense directly or indirectly related to employment of such person by FIRM, or (ii) by another person;

- (5) claims for damages other than to FIRM's work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- (6) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- (7) claims involving contractual liability insurance applicable to FIRM's indemnification obligations under this Agreement; and
- (8) claims for errors and omissions in the provision of professional consulting services of the kind rendered by FIRM pursuant to this Agreement.

(b) **Policies and Minimum Limits of Liability**

<u>Kinds of Insurance:</u>		<u>Limits of Liability*:</u>
A.	Workers' Compensation Texas Operations Employer's Liability	Statutory Bodily Injury by Accident \$1,000,000 Each Accident Bodily Injury by Disease \$1,000,000 Each Employee Bodily Injury by Disease \$1,000,000 Policy Limit
B.	Commercial General Liability Including but not limited to: 1. premises/operations 2. independent contractor 3. products and completed operations 4. personal injury liability with employment exclusion deleted 5. contractual	\$2,000,000 General Aggregate \$2,000,000 Products/Completed Operations Aggregate \$1,000,000 Each Occurrence \$2,000,000 Personal and Advertising Injury \$300,000 Fire Damage Liability
C.	Professional Liability	\$1,000,000 per claim \$3,000,000 Aggregate
D.	Business Automobile Liability Including all Owned, Hired, and Non-owned Automobiles	\$1,000,000 Combined Single Limit Per Occurrence
E.	Umbrella Liability	\$1,000,000 Per Occurrence \$1,000,000 Aggregate Bodily Injury and Property Damage

* Aggregate limits are per 12-month policy period unless otherwise indicated; defense costs shall be excluded from limits of liability of each policy other than Professional Liability Insurance; Commercial General Liability Insurance coverage limits shall be on a per-project basis.

(c) All required insurance shall be maintained with responsible insurance carriers acceptable to FBSD and lawfully authorized to issue insurance of the types and amounts set forth in this Article 11. Carriers should have a Best's Financial Strength Rating of at least "A-" and a Best's Financial Size Category of Class VIII or better, according to the most current edition of *Best's Key Rating Guide, Property-Casualty*

United States or be of sufficient size and financial strength as adjudged by FBSD to meet the financial obligations evidenced in the certificate of insurance.

(d) All certificates shall be in a form reasonably acceptable to FBSD and each certificate must state to the extent permitted by Texas Insurance Code Chapter 1811 that the policy may not expire or be cancelled, materially modified, or nonrenewed unless the carrier and/or FIRM gives FBSD thirty (30) days advance written notice. When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, FIRM shall, prior to such expiration, supply FBSD with certificates of insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as is required by this Agreement. Any renewal or replacement policies shall be in form and substance satisfactory to FBSD and written by carriers acceptable to FBSD and meeting the requirements of this Article 11. FIRM shall or shall cause the applicable carrier or carriers to give written notice to FBSD within thirty (30) days of the date on which total claims by any party against insurance provided pursuant to this Article 11 reduce the aggregate amount of coverage below the amounts required by this Article 11. In addition, FIRM shall or shall cause the applicable carrier or carriers to provide FBSD with amendatory riders or endorsements to the Commercial General Liability Insurance policy that specify that the coverage limits apply on a per-project basis.

(e) With respect to all policies required in this Article 11, as soon as practicable prior to execution of this Agreement, FIRM shall deposit with FBSD true and correct original certificates thereof, bearing notations or accompanied by other evidence satisfactory to FBSD that the requirements of this Article 11 are being met. If requested to do so by FBSD, FIRM shall also furnish the originals or certified copies of the insurance policies for inspection including but not limited to copies of endorsements.

(f) All policies of insurance and certificates, with the exception of Professional Liability and Workers' Compensation Insurance, shall name the INDEMNITEES as additional insureds. Without limiting the foregoing, FIRM's Commercial General Liability Insurance policy shall name the INDEMNITEES as additional insureds pursuant to ISO Additional Insured Endorsements CG 20-10-10-01 and CG 20-33-10-01 or their combined equivalents. Further, the FIRM shall provide the INDEMNITEES any defense provided by its Commercial General Liability Insurance policy to the fullest extent allowed by law.

(g) FIRM hereby waives all rights of recovery and damages against the INDEMNITEES to the extent such damages are covered or should have been covered by the insurance obtained or required to be obtained by FIRM under this Agreement. All of FIRM's policies of insurance, with the exception of Professional Liability Insurance, shall include a waiver of subrogation in favor of the INDEMNITEES.

(h) The Parties intend that the FIRM'S insurance shall be primary and non-contributing with respect to any other insurance maintained by FBSD and all policies of insurance obtained by FIRM shall be endorsed to be primary and non-contributing with respect to any other insurance maintained by FBSD.

(i) If any policy required to be purchased pursuant to this Article 11 is subject to a deductible, self-insured retention or similar self-insurance mechanism which limits or otherwise reduces coverage, the deductible, self-insured retention, or similar self-

insurance mechanism shall be the sole responsibility of FIRM in the event of any loss and FIRM hereby waives any claim therefore against any INDEMNITEE.

(j) FIRM shall require and cause its subconsultants and subcontractors to purchase and maintain the insurance policies set forth in Paragraph 11.1(b) above with limits of liability commensurate with the amount of each subconsulting or subcontract agreement, but in no case less than \$500,000 per occurrence. FIRM shall provide copies of insurance certificates for all such insurance to FBSD prior to any subconsultant's or subcontractor's performance of any Services.

(k) If FIRM fails to procure or to maintain in force the insurance required by this Article 11, FBSD may secure such insurance and the costs thereof shall be borne by FIRM. FIRM shall reimburse FBSD the cost of such insurance plus ten percent (10%) administrative charge within ten (10) days after billing by FBSD. Any sum remaining unpaid fifteen (15) days after billing by FBSD shall bear interest at the rate of twelve percent (12%) per annum until paid by FIRM. Except to the extent prohibited by Subchapter C of Chapter 151 of the Texas Insurance Code, FIRM shall defend, indemnify, and hold harmless the INDEMNITEES from and against any and all losses, claims, damages, and expenses (including, without limitations, court costs, costs of defense, and attorney fees), that any INDEMNITEE may incur as a result of FIRM's failure to obtain or cause to be obtained the specific endorsements or insurance required pursuant to this Agreement. Failure of any INDEMNITEE to identify any deficiency in the insurance forms provided shall not be construed as a waiver of FIRM's obligation to maintain such insurance and to cause such insurance to be maintained.

(l) FIRM's compliance with the provisions of this Article 11 shall not be deemed to constitute a limitation of FIRM's liability with respect to claims covered by insurance provided or required pursuant to this Article 11 or in any way limit, modify, or otherwise affect FIRM's obligation under this Agreement or otherwise. The insolvency, bankruptcy, or failure of any insurance company carrying insurance for FIRM or any subcontractor, or the failure of any insurance company to pay claims accruing shall not be held to waive any of the provisions of this Agreement.

(m) If requested by FBSD, FIRM shall furnish or shall cause to be furnished any such other insurance or limits as FBSD may reasonably deem necessary for any Work Order or Orders and the cost thereof shall be charged to FBSD by appropriate modification of any such Order(s).

ARTICLE 12 – CHANGES; TERMINATION FOR CONVENIENCE; TERMINATION FOR CAUSE

12.1 FBSD may, at any time and from time to time, make written changes to Work Orders in the form of modifications, additions, or omissions. In the event that any such change, through no fault of FIRM, shall impact FIRM's compensation or schedule, then (a) such changes shall be authorized by written change order issued by FBSD and accepted by FIRM, and (b) an equitable adjustment shall be made to the Work Order in writing duly executed by both Parties, to reflect the change in compensation and schedule.

12.2 FBSD may for convenience terminate this Agreement, any Work Order issued under this Agreement, or FIRM's right to perform Services under this Agreement or any Work Order by at any time giving seven (7) days written notice of such termination. In such event, FBSD shall have the right but not the obligation to assume all obligations and commitments that FIRM may have in good faith undertaken or incurred in connection with the Services terminated, and FBSD shall pay FIRM, as its sole and exclusive remedy, for Services properly

performed to date of termination and for reasonable costs of closing out such Services provided FBSD has pre-approved such costs. FIRM shall not be entitled to lost profit on unperformed Services or any consequential damages of any kind. Upon termination, FIRM shall invoice FBSD for all services performed by FIRM prior to the time of termination which have not previously been compensated. Payment of undisputed amounts in the final invoice shall be due and payable within thirty (30) days after receipt by FBSD and FBSD's receipt of all Work Product.

12.3 This Agreement or any Work Order may be terminated by either Party in the event that the other Party fails to perform in accordance with its requirements and such Party does not cure such failure within ten (10) days after receipt of written notice describing such failure. In the event that FBSD terminates this Agreement or any Work Order for cause, FIRM shall not be entitled to any compensation until final completion of the then ongoing Services and any such entitlement shall be subject to FBSD's right to offset and/or recoup all damages and costs associated with finally completing such Services. If for any reason, FIRM is declared in default and/or terminated by FBSD under any Work Order with FBSD, FBSD shall have the right to offset and apply any amounts which might be owed to FBSD by FIRM against any earned but unpaid amounts owed to FIRM by FBSD under any Work Order. In the event any Work Order is terminated by FBSD, FIRM shall promptly deliver to FBSD all Work Product with respect to such terminated Work Order.

ARTICLE 13 – FORCE MAJEURE

13.1 Any delay in performance or non-performance of any obligation other than an obligation to make a payment as required under this Agreement or any Work Order, of FIRM contained herein shall be excused to the extent such failure of non-performance is caused by Force Majeure. "Force Majeure" shall mean fire, flood, act of God, earthquakes, extreme weather conditions, epidemic, war, riot, civil disturbance or unrest, imposition of martial law, restrictions imposed by civil authority, loss of control of civil authority, illegal activity, extreme unreliability or failure of the utility infrastructure, failure of the US banking system, loss of access to communication systems, sabotage, terrorism, or judicial restraint, but only to the extent that such event (i) is beyond the control of and cannot be reasonably anticipated by or the effects alleviated by FIRM and (ii) prevents the performance of Services.

13.2 If FIRM is affected by Force Majeure, FIRM shall promptly provide notice to FBSD, explaining in detail the full particulars and the expected duration thereof. Notice will be considered prompt if delivered within five days after FIRM first becomes aware that the event of Force Majeure will affect the performance of Services and the end of the restrictions, if any, on FIRM's ability to communicate with FBSD. FIRM shall use its commercially reasonable efforts to mitigate the interruption or delay if it is reasonably capable of being mitigated.

ARTICLE 14 – SUCCESSORS, ASSIGNMENT AND SUBCONTRACTING

14.1 FBSD and FIRM bind themselves and their successors, executors, administrators and permitted assigns to the other party of this Agreement and to the successors, executors, administrators and permitted assigns of such other party, in respect to all covenants of this Agreement.

14.2 No right or interest in this Agreement or any Work Order shall be assigned by FIRM or FBSD without the prior written consent of the other Party.

14.3 Prior to commencement of any part of the Services to be provided under any Work Order with respect to which FIRM has elected to subcontract, FIRM will notify FBSD in writing of the identity of the particular subcontractor, subconsultant or supplier FIRM intends to employ for the performance of such part of the Services and the scope of Services it will perform. FBSD shall have the right within twenty-one (21) calendar days of such written notice to disallow FIRM's employment of any particular subcontractor, subconsultant or supplier, provided that any reasonable additional costs incurred by FIRM as a result of such disallowance shall be borne by FBSD.

ARTICLE 15 - SEVERABILITY

15.1 If any provision or portion thereof of this Agreement or any Work Order is deemed unenforceable or void, then such provision or portion thereof shall be deemed severed from the Agreement or such Work Order and the balance of the Agreement or Work Order shall remain in full force and effect.

ARTICLE 16 – LICENSE REQUIREMENTS

16.1 The FIRM and any subconsultant shall have and maintain any licenses, registrations and certifications required by the State of Texas or recognized professional organizations governing the Services performed under this Agreement and any Work Order.

ARTICLE 17 – ENTIRE AGREEMENT

17.1 This Agreement and all Work Orders issued under it contain the full and complete understanding of the Parties pertaining to their subject matter and supersede any and all prior and contemporaneous representations, negotiations, agreements or understandings between the Parties, whether written or oral. The Agreement and Work Orders may be modified only in writing, signed by both Parties. Venue shall lie in Fort Bend County, Texas.

ARTICLE 18 – GOVERNING LAW

18.1 This Agreement and Work Orders, and its and their construction and any disputes arising out of, connected with, or relating to this Agreement or Work Orders shall be governed by the laws of the State of Texas, without regard to its conflicts of law principles.

ARTICLE 19 – DISPUTE RESOLUTION

19.1 In the event of any dispute arising out of or relating to this Agreement, any Work Order or any Services which FBSD and FIRM have been unable to resolve within thirty (30) days after such dispute arises, a senior representative of FIRM shall meet with the General Manager of FBSD at a mutually agreed upon time a place not later than forty-five (45) days after such dispute arises to attempt to resolve such dispute. In the event such representatives are unable to resolve any such dispute within fifteen (15) days after such meeting, either Party may, by written notice to the other, submit such dispute to non-binding mediation before a mutually agreeable mediator. If the Parties are unable to agree upon a mediator within twenty (20) days after such written notice of submission to mediation, the American Arbitration Association shall be empowered to appoint a qualified mediator pursuant to the American Arbitration Association Construction Industry Mediation Rules. If the dispute is technical in nature, the mediator appointed by the American Arbitration Association shall be qualified by at least ten (10) years' experience in construction, engineering, and/or public works operations. The mediation shall be conducted within thirty (30) days of the selection or appointment of the

mediator, as applicable. The mediation shall be held at a mutually agreeable location in Fort Bend County, Texas. If the Parties are unable to agree on a location, the mediation shall be held at the offices of the American Arbitration Association closest to Richmond, Texas.

19.2 Any dispute arising out of or relating to this Agreement or any Work Order or any Services not resolved pursuant to Article 19.1, shall be resolved, by litigation or mutual agreement of the Parties, binding arbitration conducted pursuant to the Construction Industry Rules of the American Arbitration Association then in effect. Any arbitration shall be final and binding upon the parties and any award rendered therein shall be enforceable by any court of competent jurisdiction

ARTICLE 20 – CONFIDENTIALITY

20.1 Neither FIRM nor any of its subconsultants shall publish or release any publicity or public relations materials of any kind concerning or relating to this Agreement, the Services or the activities of FBSD, unless such materials have first been reviewed and approved in writing by FBSD. This provision shall not apply to mandatory reports which FIRM or its subconsultants are required by law to file with governmental authorities.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year herein above first written.

FIRM:

FBSD:

Fort Bend Subsidence District

By: _____

By: _____

Michael J. Turco
General Manager

Date

Date

ATTEST:

ATTEST:

Secretary

ATTACHMENT A

Compensation terms for cost reimbursable and lump sum Services:

A.1. COMPENSATION BASED ON COST WITH MULTIPLIER

For professional and non-professional staff, FBSD will compensate FIRM on the basis of a multiplier added to the Raw Salary Cost as shown in the table below for the Scope of Work specified in the Work Order. Professional is defined as a manager, supervisor, engineer, scientist or other recognized profession. Typically, professional employees are salaried exempt employees. Typically, non-professional employees are hourly non-exempt employees. The Raw Salary Cost for salaried employees is defined as the annual base salary excluding bonuses, burdens, and benefits divided by 2080. For hourly personnel, the Raw Salary Cost is defined as the hourly wage paid to the employee exclusive of burdens and benefits. Any shift premiums or premiums paid for hours worked in excess of 40 per week will be added to the base hourly wage and will be considered a part of the Raw Salary Cost.

(a) RAW SALARY MULTIPLIERS

X.XX for professional and non-professional staff working at FIRM or its subcontractor, subconsultant, or vendor offices

(b) EXPENSES

“Billable Expenses” include all costs and expenses directly attributable to performance of the services, which are in good accounting practice direct costs of the Services and not covered by the allowance for payroll burden and general office overhead and profit. Costs of outside services will be charged at actual invoice cost plus ten percent (10%). “Billable Expenses” include: subconsultants; travel expenses to and from locations outside Fort Bend County; and copies of all deliverables submitted to FBSD. All Local vehicle use outside Fort Bend County will be reimbursed at the current IRS allowable rate with no markup. All other expenses are considered to be covered by the allowance for payroll burden and general office overhead and profit and are non-billable expenses.

A.2. LUMP SUM COMPENSATION

FBSD will compensate FIRM on the basis of a mutually agreed upon lump sum price for the scope of work specified in the Work Order. FBSD may ask FIRM for a cost estimate for the scope of work prior to issuing the Work Order. The cost estimate will include a summary breakdown showing the labor hours and cost, subconsultant costs, and other direct costs

included in the estimate. Labor rates to be used in preparing the estimate will be the actual salary or wage of the employee times the appropriate multiplier specified in A.1 (a) above. FIRM will submit and FBSD will pay monthly invoices based on the mutually agreed upon percentage of the project completed.

**ATTACHMENT B
WORK ORDER PSA 202X-XXX**

This Work Order is issued subject to, is governed by and incorporates by reference that certain Professional Services Agreement, Contract No. _____, between the FBSD and FIRM effective _____, 202_.

Work Order Date: _____

FIRM: _____

Type of Compensation: Lump Sum, Time and Materials with Not-To-Exceed Maximum

Compensation: _____

Location of Services: (County) _____

Description of Services: _____

Deliverables: See Attached.

Schedule Requirements:

Commence Services: _____

Completion of Services: _____

Agreed to by:

FBSD

By: _____

Name: Michael J. Turco

Title: General Manager

and

[FIRM]

By: _____

Name: _____

Title: _____