

DRAFT
Boilerplate for 2016 Regional Water Planning
contracts

(To be distributed to RWPG s for preview)

DRAFT FOR RWPG PREVIEW

STATE OF TEXAS

TWDB Contract No. **CONTRACT NUMBER**

COUNTY OF TRAVIS

Research and Planning Fund
Regional Water Planning

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

**SECTION I. SPECIFIC CONDITIONS AND EXCEPTIONS
TO STANDARD AGREEMENT**

ARTICLE I. DEFINITIONS: For the purposes of this CONTRACT, the following terms or phrases shall have the meaning ascribed herein:

- A. TWDB - the Texas Water Development Board, or its designated representative.
- B. TWDB APPROVAL DATE – **June 22, 2011**
- C. **COMMITTED FUNDS – \$_(share of appropriated funds FOR THIS FUNDING PERIOD)** currently available to the CONTRACTOR pursuant to the terms of this

- CONTRACT for the development of the TECHNICAL MEMORANDUM and the REGIONAL WATER PLAN. The COMMITTED FUNDS include necessary and direct costs incurred on or after June 22, 2011, and certain eligible costs related to Task 10 incurred on or after February 4, 2011, and prior to June 22, 2011.
- D. CONTRACT INITIATION DATE – June 22, 2011
 - E. CONTRACTOR - designated political subdivision for the regional water planning group that will execute the contract on behalf of the region.
 - F. DEADLINE FOR CONTRACT EXECUTION – August 31, 2011 .
 - G. EXECUTIVE ADMINISTRATOR - the Executive Administrator of the TWDB or their designated representative.
 - H. TECHNICAL MEMORANDUM – the technical memorandum to be prepared by the CONTRACTOR and submitted to the EXECUTIVE ADMINISTRATOR will summarize the findings and all work performed under the initial Scope of Work (i.e., through the identification of the region’s water needs and identification of potentially feasible water management strategies.)
 - I. TECHNICAL MEMORANDUM DEADLINE – February 28, 2013
 - J. INITIALLY PREPARED REGIONAL WATER PLAN - the Regional Water Plan to be initially prepared by the CONTRACTOR and submitted to the EXECUTIVE ADMINISTRATOR for comments pursuant to the CONTRACT.
 - K. INITIALLY PREPARED REGIONAL WATER PLAN DEADLINE – March 1, 2015.
 - L. REGIONAL WATER PLAN - a plan including amendments thereto that has been adopted by the REGIONAL WATER PLANNING GROUP that meets the requirements contained in the Texas Water Code §16.053 and 31 Texas Administrative Code Chapters 357 and 358 and submitted to the TWDB for approval.
 - M. REGIONAL WATER PLAN DEADLINE – September 1, 2015.
 - N. FIRST REIMBURSEABLE EXPENSE DATE – The first day that work performed under this CONTRACT is eligible for reimbursement will be February 5, 2011 for limited administrative costs associated with public notices. TWDB will reimburse for additional administrative and non-administrative costs incurred subsequent to June 22, 2011 and the date that the required public meeting to receive preplanning input from the public is held by the Regional Water Planning Group.

- O. FINAL REIMBURSEABLE EXPENSE DATE - The last day that work performed under this CONTRACT is eligible for reimbursement will be January 31, 2016.
- P. FINAL PAYMENT REQUEST DEADLINE – The latest day that the final payment request may be submitted for reimbursement will be February 28, 2016.
- Q. CONTRACT EXPIRATION DATE - Contract expires on March 31, 2016. The last day that any budget amendment requests may be submitted under the CONTRACT will be March 31, 2016.
- R. REGIONAL WATER PLANNING AREA – Region X---, name, if different, designated under Texas Water Code §16.053 and 31 Texas Administrative Code §357.3.
- S. REGIONAL WATER PLANNING GROUP – Region X Regional Water Planning Group, designated under and in compliance with Texas Water Code §16.053 and 31 Texas Administrative Code §357.4 to develop regional water plans.
- T. PAYMENT REQUEST SUBMISSION SCHEDULE – A MINIMUM OF QUARTERLY

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

- A. At the time of the execution of this CONTRACT, the TWDB was not appropriated sufficient funds for the CONTRACTOR to complete the REGIONAL WATER PLAN. The TWDB hereby makes available to the CONTRACTOR pursuant to the terms of this CONTRACT an amount sufficient to complete the initial Scope of Work and complete and submit the TECHNICAL MEMORANDUM. If additional funds are appropriated to the TWDB for the purpose of making grants for preparation of regional water plans, the TWDB will solicit proposals from eligible applicants to complete the REGIONAL WATER PLAN. If CONTRACTOR is selected, the EXECUTIVE ADMINISTRATOR and the CONTRACTOR may amend this CONTRACT to provide additional COMMITTED FUNDS and an additional scope of work to complete preparation of the REGIONAL WATER PLAN.

The TWDB shall not be liable for any expenses incurred in excess of COMMITTED FUNDS.

If at any time the EXECUTIVE ADMINISTRATOR determines that there will not be sufficient additional appropriated funds to complete the REGIONAL WATER PLAN, the EXECUTIVE ADMINISTRATOR shall either issue an order to terminate this CONTRACT pursuant to the terms of Section II, Article VII or negotiate amendments to the scope of work. The CONTRACTOR agrees to use all best efforts to timely negotiate any required amendments.

This CONTRACT does not require the CONTRACTOR to incur costs beyond those that can be paid with COMMITTED FUNDS. However, this provision does not impact the duties of the REGIONAL WATER PLANNING GROUP under Texas Water Code §16.053 to prepare a regional water plan.

- B. Other provisions specific to each region. None.
- C. Tasks identified as Task 4D are contingent budget items that require a written "Notice to Proceed" from the EXECUTIVE ADMINISTRATOR prior to commencement of work by the CONTRACTOR. Upon receipt of the written "Notice to Proceed" from the EXECUTIVE ADMINISTRATOR, the CONTRACTOR may commence work under the related Scope of Work item. Expenses for work performed related to these tasks prior to receipt of the written "Notice to Proceed" may be ineligible for reimbursement, at the EXECUTIVE ADMINISTRATOR'S discretion. The budget flexibility described under Section II, Article IV, Paragraph E does not apply to these task budgets unless reimbursement of the associated task budget is authorized by a written Notice to Proceed.

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

TEXAS WATER DEVELOPMENT TWDB

CONTRACTOR

Melanie Callahan
Interim Executive Administrator

Name
Title

Date: _____

Date: _____

SECTION II. STANDARD AGREEMENT

ARTICLE I. RECITALS

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

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

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

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

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

ARTICLE II. PROJECT DESCRIPTION AND SERVICES TO BE PERFORMED

- A. The CONTRACTOR will develop a TECHNICAL MEMORANDUM and REGIONAL WATER PLAN for the REGIONAL WATER PLANNING AREA according to:
- Exhibit A – Scope of Work
 - Exhibit B – Task and Expense Budgets
 - Exhibit C – General Guidelines for Regional Water Plan Development
 - Exhibit D – Guidelines for Regional Water Planning Data Deliverables
 - Exhibit E – Original Application (cover pages as a reference to the full, original grant application)
 - Exhibit F - Certification of Procurement of Professional Services
- and in accordance with the requirements of Texas Water Code Chapters 15 and 16, and with 31 Texas Administrative Code Chapter 355, Subchapter C, Chapter 357 and Chapter 358, including specifically §§357.5(a), 357.5(c)-(f), 357.5(h), (i), (k), and (l), 357.7(a), (b), (c) and (d), 357.10, 357.12(a)(3), 357.12(b), and 358.3(b)(10). These Exhibits, Texas Water Code chapters, and Texas Administrative Code rules are incorporated by reference into and made a part of this CONTRACT for all purposes.
- B. The EXECUTIVE ADMINISTRATOR shall provide technical assistance within available resources to the CONTRACTOR requesting such assistance in performing regional water planning activities and, as necessary, will facilitate resolution of conflicts within the REGIONAL WATER PLANNING AREA or between regions.

- C. The CONTRACTOR shall provide for public participation in the planning process as specified in Texas Water Code §16.053 and 31 Texas Administrative Code §357.12.
- D. The CONTRACTOR shall provide its best efforts as determined by the EXECUTIVE ADMINISTRATOR to produce a REGIONAL WATER PLAN that has been adopted by the REGIONAL WATER PLANNING GROUP and that was developed in accordance with the statutory and rule requirements identified in this CONTRACT.
- E. The CONTRACTOR shall obtain the prior approval of the REGIONAL WATER PLANNING GROUP for all potentially feasible water management strategies to be evaluated as part of the REGIONAL WATER PLAN development.

ARTICLE III. SCHEDULE, REPORTS, AND OTHER PRODUCTS

- A. The CONTRACTOR shall, on or before the DEADLINE FOR CONTRACT EXECUTION, execute this CONTRACT or the TWDB's commitment to pay COMMITTED FUNDS will be rescinded.
- B. The term of this CONTRACT shall commence on the CONTRACT INITIATION DATE and shall expire on the CONTRACT EXPIRATION DATE.
- C. The CONTRACTOR shall provide written progress reports according to the PAYMENT REQUEST SUBMISSION SCHEDULE with each payment reimbursement request or release of advance funds. The progress reports shall include:
 - (1) a brief statement of the overall progress made since the last progress report for each task budget item;
 - (2) a brief description of any problems that have been encountered during the previous reporting period that may affect the study, delay the timely completion of any portion of this CONTRACT, or inhibit the completion of or cause a change in any of the study's products or objects; and
 - (3) a description of any action the CONTRACTOR plans to take to correct any problems that have been encountered or identified.
- D. The CONTRACTOR will complete the TECHNICAL MEMORANDUM according to Article II, Paragraph A of this Section. The CONTRACTOR shall submit the TECHNICAL MEMORANDUM to the REGIONAL WATER PLANNING GROUP for approval at a regular REGIONAL WATER PLANNING GROUP meeting. After such approval, the CONTRACTOR shall submit the TECHNICAL MEMORANDUM to the EXECUTIVE ADMINISTRATOR, if the REGIONAL WATER PLANNING GROUP authorizes such submittal. CONTRACTOR will deliver ten (10) double-sided

copies and two electronic copies, one (1) in searchable Portable Document Format (PDF) and one (1) in Microsoft Word (MSWord) Format, of a TECHNICAL MEMORANDUM to the EXECUTIVE ADMINISTRATOR no later than the TECHNICAL MEMORANDUM DEADLINE.

The CONTRACTOR will populate the TWDB'S regional water planning database (DB17) with associated data, prior to submission of the TECHNICAL MEMORANDUM in accordance with Exhibit D to this CONTRACT.

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

The TWDB will not accept a TECHNICAL MEMORANDUM or consider it administratively complete until the associated data in the TWDB'S regional water planning database (DB17) is complete and accurate, and the required online planning database reports from DB17 are included in the TECHNICAL MEMORANDUM in accordance with Exhibit A

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

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

- E. The CONTRACTOR or CONTRACTOR'S representative (e.g., subcontractor) shall attend at least one DB17 training session provided by TWDB staff at times and locations to be determined by TWDB.
- F. The CONTRACTOR will complete the INITIALLY PREPARED REGIONAL WATER PLAN according to Article II, Paragraph A of this Section. The CONTRACTOR shall submit the INITIALLY PREPARED REGIONAL WATER PLAN to the REGIONAL WATER PLANNING GROUP to allow the REGIONAL WATER PLANNING GROUP to conduct a public hearing to receive and consider comments on the INITIALLY PREPARED REGIONAL WATER PLAN. After such hearing the CONTRACTOR shall submit the INITIALLY PREPARED REGIONAL WATER PLAN to the EXECUTIVE ADMINISTRATOR, if the REGIONAL WATER PLANNING GROUP authorizes such submittal. CONTRACTOR will deliver twelve (12) double-sided copies and two

electronic copies, one (1) in searchable Portable Document Format (PDF) and one (1) in Microsoft Word (MSWord) Format, of an INITIALLY PREPARED REGIONAL WATER PLAN to the EXECUTIVE ADMINISTRATOR no later than the INITIALLY PREPARED REGIONAL WATER PLAN DEADLINE. The EXECUTIVE ADMINISTRATOR will provide any written comments to the CONTRACTOR within 120 calendar days.

The CONTRACTOR will populate the TWDB'S regional water planning database (DB17), prior to submission of the INITIALLY PREPARED REGIONAL WATER PLAN DEADLINE in accordance with Exhibit D to this CONTRACT. CONTRACTOR will incorporate the required online planning database reports from DB17 within the submitted INITIALLY PREPARED REGIONAL WATER PLAN in accordance with Exhibit A to this CONTRACT.

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

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

The CONTRACTOR will submit:

- one (1) electronic copy of all files on which the plan is based (e.g. spreadsheets, maps);
- two (2) electronic copies of the entire REGIONAL WATER PLAN, one (1) in searchable Portable Document Format (PDF) and one (1) in Microsoft Word (MSWord) Format. In compliance with Texas Administrative Code, Title 1, Part 10, Chapters 206 and 213 (**related to Accessibility and Usability of State Web Sites**), the electronic copy of the REGIONAL WATER PLAN will comply with the requirements and standards specified in statute.; and,
- nine (9) bound, double-sided copies of the REGIONAL WATER PLAN to the EXECUTIVE ADMINISTRATOR no later than the REGIONAL WATER PLAN DEADLINE.

- H. CONTRACTOR will make corrections, updates, or modifications, to the TWDB regional water planning database (DB17), as necessary, prior to REGIONAL WATER PLAN DEADLINE in accordance with Exhibit D to this CONTRACT. The TWDB will not accept a REGIONAL WATER PLAN or consider it administratively complete until the associated data in the TWDB'S regional water planning

database (DB17) is complete and accurate and the required online planning database reports from DB17 are included in the REGIONAL WATER PLAN in accordance with Exhibit A to this CONTRACT. The CONTRACTOR also will transfer copies of all data and reports generated by the planning process and used in developing the REGIONAL WATER PLAN to the EXECUTIVE ADMINISTRATOR no later than the REGIONAL WATER PLAN DEADLINE. The REGIONAL WATER PLAN and the data collected and transmitted for the REGIONAL WATER PLAN will be prepared in the format and according to specifications prescribed in Exhibits C and D to this CONTRACT. In the event the CONTRACTOR has produced a REGIONAL WATER PLAN, that despite the CONTRACTOR'S best efforts has not been adopted by the REGIONAL WATER PLANNING GROUP, the CONTRACTOR shall provide to the TWDB all data, material, reports, and work accomplished under the CONTRACT.

- I. Delivery of a REGIONAL WATER PLAN that meets statutory and rule requirements as determined by the EXECUTIVE ADMINISTRATOR on or before the REGIONAL WATER PLAN DEADLINE shall constitute completion of the terms of this CONTRACT by CONTRACTOR.
- J. After a 90-day review period, the EXECUTIVE ADMINISTRATOR will either accept or reject the REGIONAL WATER PLAN. If the final plan is rejected, the rejection letter sent to the CONTRACTOR shall state the reasons for rejection and the steps the CONTRACTOR needs to take to have the REGIONAL WATER PLAN accepted and the retainage released.

ARTICLE IV. COMPENSATION AND REIMBURSEMENT

- A. The TWDB agrees to compensate and reimburse the CONTRACTOR in a total amount not to exceed the COMMITTED FUNDS for costs incurred and paid by the CONTRACTOR pursuant to performance of this CONTRACT as specified in Section I.
- B. Eligible expenses incurred by the CONTRACTOR from the FIRST REIMBURSEABLE EXPENSE DATE through FINAL REIMBURSEABLE EXPENSE DATE will be reimbursed by TWDB.
- C. Requests for Advance or Reimbursement for Subcontractor Expenses. Requests for advance or reimbursement for subcontractor expenses will only be considered where such subcontracts or agreements have been determined by the EXECUTIVE ADMINISTRATOR to be consistent with the terms of this CONTRACT. The purpose of this review is SOLELY to ensure that the subcontracts and agreements are consistent with this CONTRACT and that the rights of the TWDB, particularly in regard to ownership of data, are protected.

CONTRACTOR understands that CONTRACTOR should obtain its own legal review of subcontracts and agreements that CONTRACTOR enters into. CONTRACTOR agrees that the TWDB assumes no legal obligations under its subcontracts or agreements and is merely a third-party beneficiary of the same. The CONTRACTOR is fully responsible for paying all charges by subcontractors prior to reimbursement by the TWDB.

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

- D. The CONTRACTOR must adhere to all requirements in state law and TWDB rules pertaining to the procurement of professional services, including 31 TAC §355.93(e). Prior to associated reimbursements, the CONTRACTOR must submit a Certification of Procurement of Professional Services in accordance with Exhibit F to this CONTRACT, evidencing that the Region's subcontractors were properly and competitively procured after the submission of the Region's 2011 Regional Water Plan to the TWDB. Expenses incurred under subcontracts or agreements that have not been approved by the EXECUTIVE ADMINISTRATOR or do not otherwise comply with the terms of this CONTRACT are not eligible for reimbursement.

- E. At the sole discretion of the EXECUTIVE ADMINISTRATOR, the CONTRACTOR may modify task and expense budget categories to the extent that the resulting change in amount in any one task or expense category does not exceed 35% of the total authorized amount by this CONTRACT for that task or category. Larger deviations shall require submission of a written request that is approved by the Regional Water Planning Group and approved by the EXECUTIVE ADMINISTRATOR or designee which will be documented through an Approved Budget Memorandum to the TWDB contract file. The CONTRACTOR will be required to provide written explanation for the overage and reallocation of the task and expense amount. Associated shifts in amounts between budget task and expense categories authorized under this paragraph shall not change the COMMITTED FUNDS amount.

Subcontractors have budget flexibility within task and expense budget categories, however, TWDB staff may require a written justification if any one task or expense category exceeds 35% of task and expense budget estimates provided by the subcontractor.

- F. The CONTRACTOR and its subcontractors shall maintain satisfactory financial accounting documents and records, including copies of invoices, receipts, time and attendance records, supporting salaries and wages, in accordance with generally accepted accounting principles for a term of three years after completion of this CONTRACT and shall make them available for examination and audit by the TWDB at any time upon 24 hours notice by the EXECUTIVE ADMINISTRATOR or the EXECUTIVE ADMINISTRATOR's designee. Accounting by the CONTRACTOR and its subcontractors shall be in a manner consistent with generally accepted accounting principles.

- G. The CONTRACTOR will provide information to an entity or person who is independent of the CONTRACTOR and who is selected by the REGIONAL WATER PLANNING GROUP sufficient to allow that person or entity to routinely provide reports of expenses and use of planning funds to the REGIONAL WATER PLANNING GROUP. The person to whom the information is provided may be a member of the REGIONAL WATER PLANNING GROUP. The CONTRACTOR shall allow such person or entity full access to all records relating to this CONTRACT, including all financial records.

Method of Payment: [CONTRACTORS must make a choice between Option 1 and 2 – final contract documents will only contain the language associated with the selected choice. Please notify your TWDB project manager of selected option]

Option 1(Advance)

- H. Within thirty (30) days after the execution of this CONTRACT, the EXECUTIVE ADMINISTRATOR will advance to the CONTRACTOR twenty percent of the COMMITTED FUNDS, unless the CONTRACTOR requests and the EXECUTIVE ADMINISTRATOR approves advances of less than twenty percent. .
- I. All advanced funds received must be deposited into a separate interest bearing account by the CONTRACTOR.
- K. When CONTRACTOR has paid expenses equal to ninety (90) percent of the previous advance, the CONTRACTOR will submit a written request to the EXECUTIVE ADMINISTRATOR for another twenty percent advance of the COMMITTED FUNDS (or less if requested by the CONTRACTOR and approved by the EXECUTIVE ADMINISTRATOR). The CONTRACTOR will attach to the request a written progress report described in Article III, Paragraph C of this Section, a listing of actual expenses incurred and documents showing payment of such expenses (including those for force labor activities valued at rates consistent with those ordinarily paid for similar work in CONTRACTOR's organization), and statements or documents showing any interest earned on the previous advance. Any interest earned by the CONTRACTOR shall be considered as part of the TWDB's payment of COMMITTED FUNDS and used only for COMMITTED FUNDS.

The written progress report required by Article III, Paragraph C of this Section, and the following documentation which documents the COMMITTED FUNDS shall be submitted by the CONTRACTOR to the EXECUTIVE ADMINISTRATOR in support of its requests for advances. The CONTRACTOR shall submit a progress report and the following documentation which documents the COMMITTED FUNDS for the reporting period even if the COMMITTED FUNDS is ZERO.

- 1. Completed and Signed Payment Request Checklist which includes the following:
 - (a) TWDB CONTRACT Number;
 - (b) Total expenses for the billing period; beginning (date) to ending (date);
 - (c) Total Services for this billing period;
 - (d) Total In-kind services;
 - (e) Less Interest Earned for this billing period;
 - (f) Total TWDB's share of the COMMITTED FUNDS for the billing period;
 - (g) Total costs to be reimbursed by the TWDB for the billing period; and

(h) Certification, signed by the CONTRACTOR's authorized representative, that the expenses submitted for the billing period are a true and correct representation of amounts paid for work performed directly related to this CONTRACT.

2. For direct expenses incurred by the CONTRACTOR other than subcontracted work:
 - (1) A spreadsheet showing the tasks that were performed; the percent and cost of each task completed; a total cost figure for each direct expense category including labor, fringe, overhead, travel, and other expenses such as communication and postage, technical and computer services, expendable supplies, printing and reproduction; and
 - (2) Copies of invoices for other expenses
3. For direct expenses incurred by the CONTRACTOR for subcontracted work:
 - (1) Copies of invoices from the subcontractors to the CONTRACTOR
 - (2) A spreadsheet showing the tasks that were performed; the percent and cost of each task completed; a total cost figure for each direct expense category including labor, fringe, overhead, travel, and other expenses such as communication and postage, technical and computer services, expendable supplies, printing and reproduction; and the total dollar amount due to the consultant; and
 - (3) Copies of invoices for other expenses
4. For travel expenses for the CONTRACTOR and/or Subcontractor(s) –
 - (1) Names, dates, work locations, time periods at work locations, itemization of subsistence expenses of each employee, which will be reimbursed at rates authorized for state employees by the General Appropriations Act, Tex. Leg. Regular Session, 2009, Article IX, Part 5, as amended or superceded. Receipts required for lodging. Any eligible travel expenses related to a subcontract may be reimbursed at the current rate for State of Texas employees which can be found at:
<https://fmx.cpa.state.tx.us/fmx/travel/texttravel/trans/personal.php>
 - (2) Copies of invoices or tickets for transportation costs or, if not available, names, dates, and points of travel of individuals; and
 - (3) All other reimbursable travel expenses -- invoices or purchase vouchers showing reason for expense with receipts to evidence the amount incurred.
5. Incomplete requests will be returned to the CONTRACTOR if deficiencies are not resolved within ten (10) business days.
6. If for some reason the reimbursement request cannot be processed due to the need for an amendment to the CONTRACT, the CONTRACTOR will be required to resubmit

the Payment Request Checklist dated after the execution of the amendment.

- L. Within thirty (30) days of approving the request, the EXECUTIVE ADMINISTRATOR will advance another twenty percent of the COMMITTED FUNDS up to ninety-five percent of the total COMMITTED FUNDS. The remaining five percent of the COMMITTED FUNDS (retainage) will be held until the CONTRACTOR submits a REGIONAL WATER PLAN, as described in Article III, Paragraphs G and H of this Section. If the EXECUTIVE ADMINISTRATOR determines that CONTRACTOR has utilized its best efforts to have an INITIALLY PREPARED REGIONAL WATER PLAN adopted by the REGIONAL WATER PLANNING GROUP for submittal to the TWDB, but has been unable, despite those best efforts, to do so, the EXECUTIVE ADMINISTRATOR may choose to release the final five percent retainage.
- M. The five percent retainage is to encourage completion of the REGIONAL WATER PLAN. In lieu of the five percent retainage, the TWDB will accept a performance bond or letter of credit from the CONTRACTOR with the TWDB as the beneficiary if the EXECUTIVE ADMINISTRATOR determines that such action would accomplish the same purpose as holding retainage. Performance bond or letter of credit from a subcontractor is unacceptable.
- N. In accordance with Section I, Article I , the CONTRACTOR will provide a final reconciliation of expended amounts under the CONTRACT. Within thirty (30) days of the EXECUTIVE ADMINISTRATOR'S final accounting of the amounts expended by the CONTRACTOR and the amounts advanced by the TWDB to the CONTRACTOR, the CONTRACTOR will refund to the TWDB any advances not used for expenses approved by the EXECUTIVE ADMINISTRATOR, and any interest earned but not expended on such approved expenses. If the amounts expended by the CONTRACTOR exceed the amounts advanced by the TWDB, the EXECUTIVE ADMINISTRATOR will reimburse the difference provided the reimbursement does not exceed the COMMITTED FUNDS.

Option 2(Invoice)

- H. The TWDB agrees to compensate and reimburse the CONTRACTOR in a total amount not to exceed the COMMITTED FUNDS available for costs incurred and paid by the CONTRACTOR pursuant to performance of this CONTRACT. The TWDB shall reimburse the CONTRACTOR for ninety five percent of each invoice pending the CONTRACTOR's performance. The five percent retainage will be held until the CONTRACTOR submits a REGIONAL WATER PLAN, as described in Article III, Paragraphs G and H of this section. If the EXECUTIVE ADMINISTRATOR determines that CONTRACTOR has utilized its best efforts to have an INITIALLY PREPARED REGIONAL WATER PLAN adopted by the REGIONAL WATER PLANNING GROUP for submittal to the TWDB, but has been unable, despite those best efforts, to do so, the EXECUTIVE ADMINISTRATOR may release the five percent retainage solely within the EXECUTIVE ADMINISTRATOR's discretion.
- I. The five percent retainage is to encourage completion of the REGIONAL WATER PLAN. In lieu of the five percent retainage, the TWDB will accept a performance bond or letter of credit from the CONTRACTOR with the TWDB as the beneficiary if the EXECUTIVE ADMINISTRATOR determines that such action would accomplish the same purpose as holding retainage. Performance bond or letter of credit from a subcontractor is unacceptable.
- J. The CONTRACTOR shall submit payment requests and documentation for reimbursement in accordance with the approved task and expense budgets contained in Exhibit B to this Contract. For all reimbursement billings, including any subcontractor's expenses, the EXECUTIVE ADMINISTRATOR must have provided written approval of all contracts or agreements between the CONTRACTOR and the subcontractor. The CONTRACTOR is fully responsible for paying all charges by subcontractors prior to reimbursement by the TWDB.
- K. The written progress report required by Article III, Paragraph C of this Section, and the following documentation which documents the COMMITTED FUNDS shall be submitted by the CONTRACTOR to the EXECUTIVE ADMINISTRATOR in support of its requests for advances. The CONTRACTOR shall submit a progress report and the following documentation which documents the COMMITTED FUNDS for the reporting period even if the COMMITTED FUNDS is ZERO.
1. Completed and Signed Payment Request Checklist which includes the following:
 - (a) TWDB CONTRACT Number;
 - (b) Total expenses for the billing period; beginning (date) to ending (date);
 - (c) Total Services for this billing period;
 - (d) Total In-kind services;
 - (e) Less Local Share of the COMMITTED FUNDS for the billing period;

(f) Total of TWDB's share of the COMMITTED FUNDS for the billing period;
(g) Amount of retainage to be withheld for the billing period;
(h) Total costs to be reimbursed by the TWDB for the billing period; and
(i) Certification, signed by the CONTRACTOR's authorized representative, that the expenses submitted for the billing period are a true and correct representation of amounts paid for work performed directly related to this CONTRACT.

2. For direct expenses incurred by the CONTRACTOR other than subcontracted work:
 - (a) A spreadsheet showing the tasks that were performed; the percent and cost of each task completed; a total cost figure for each direct expense category including labor, fringe, overhead, travel, and other expenses such as communication and postage, technical and computer services, expendable supplies, printing and reproduction; and
 - (b) Copies of invoices for other expenses
- 3 For direct expenses incurred by the CONTRACTOR for subcontracted work:
 - (a) Copies of invoices from the subcontractors to the CONTRACTOR
 - (b) A spreadsheet showing the tasks that were performed; the percent and cost of each task completed; a total cost figure for each direct expense category including labor, fringe, overhead, travel, and other expenses such as communication and postage, technical and computer services, expendable supplies, printing and reproduction; and the total dollar amount due to the Subcontractor; and
 - (c) Copies of invoices for other expenses
4. For travel expenses for the CONTRACTOR and/or subcontractor(s) –
 - (a) Names, dates, work locations, time periods at work locations, itemization of subsistence expenses of each employee, which will be reimbursed at rates authorized for state employees by the General Appropriations Act, Tex. Leg. Regular Session, 2009, Article IX, Part 5, as amended or superceded. Receipts required for lodging. Any eligible travel expenses related to a subcontract may be reimbursed at the current rate for State of Texas employees which can be found at: <https://fmx.cpa.state.tx.us/fmx/travel/texttravel/trans/personal.php>
 - (b) Copies of invoices or tickets for transportation costs or, if not available, names, dates, and points of travel of individuals; and
 - (c) All other reimbursable travel expenses -- invoices or purchase vouchers showing reason for expense with receipts to evidence the amount incurred.
5. Incomplete requests will be returned to the CONTRACTOR if deficiencies are not resolved within ten (10) business days.

6. If for some reason the reimbursement request cannot be processed due to the need for an amendment to the CONTRACT, the CONTRACTOR will be required to resubmit the Payment Request Checklist dated after the execution of the amendment.
- L. In accordance with Section I, Article I, the CONTRACTOR will provide a final reconciliation of expended amounts under the CONTRACT. Within thirty (30) days of the EXECUTIVE ADMINISTRATOR'S final accounting of the amounts expended by the CONTRACTOR and the amounts reimbursed by the TWDB to the CONTRACTOR, the CONTRACTOR will refund to the TWDB any advances not used for expenses approved by the EXECUTIVE ADMINISTRATOR, and any interest earned but not expended on such approved expenses. If the amounts expended by the CONTRACTOR exceed the amounts advanced by the TWDB, the EXECUTIVE ADMINISTRATOR will reimburse the difference provided the reimbursement does not exceed the COMMITTED FUNDS.

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

- A. "Use" of a work product, whether a CONTRACTOR Work, a Subcontractor Work or otherwise, shall mean and include, without limitation, any lawful use, copying or dissemination of the work product, or any lawful development, use, copying or dissemination of derivative works of the work product, in any media or forms, whether now known or later existing.
- B. "No Compensation Obligation" shall mean there is no obligation on the part of one co-owner or licensee of a work, whether a CONTRACTOR Work, a Subcontractor Work or otherwise, to compensate other co-owners, licensees or licensors of the work for any use of the work by the using co-owner or licensee, including but not limited to compensation for or in the form of: royalties; co-owner or licensee accounting; sharing of revenues or profits among co-owners, licensees or licensors; or any other form of compensation to the other co-owners, licensees or licensors on account of any use of the work.
- C. "Dissemination" shall include, without limitation, any and all manner of: physical distribution; publication; broadcast; electronic transmission; Internet streaming; posting on the Internet or world wide-web; or any other form of communication, transmission, distribution, sending or providing, in any forms or formats, and in or using any media, whether now known or later existing.
- D. The TWDB shall have an unlimited, unrestricted, perpetual, irrevocable, non-exclusive royalty-free right to access and receive in usable form and format, and to use all technical or other data or information developed by CONTRACTOR and

SUBCONTRACTOR in, or otherwise resulting from, the performance of services under this CONTRACT.

E. For purposes of this Article, "CONTRACTOR Works" are work products developed by CONTRACTOR and Subcontractor using funds provided under this CONTRACT or otherwise rendered in or related to the performance in whole or in part of this CONTRACT, including but not limited to reports, drafts of reports, or other material, data, drawings, studies, analyses, notes, plans, computer programs and codes, or other work products, whether final or intermediate.

1. It is agreed that all CONTRACTOR Works shall be the joint property of the TWDB and CONTRACTOR.

2. The parties hereby agree that, if recognized as such by applicable law, the CONTRACTOR Works are intended to and shall be works-made-for-hire with joint ownership between the TWDB and CONTRACTOR as such works are created in whole or in part.

3. If the CONTRACTOR Works do not qualify as works-made-for-hire under applicable law, CONTRACTOR hereby conveys co-ownership interest in such works to the TWDB as they are created in whole or in part. If present conveyance is ineffective under applicable law, CONTRACTOR agrees to convey a co-ownership interest in the CONTRACTOR Works to the TWDB after creation in whole or in part of such works, and to provide written documentation of such conveyance upon request by the TWDB.

4. The TWDB and CONTRACTOR acknowledge that the copyright in and to a copyrightable CONTRACTOR Work exists upon creation of the CONTRACTOR Work and its fixing in any tangible medium. CONTRACTOR or the TWDB may register the copyrights to such Works jointly in the names of the CONTRACTOR and the TWDB.

5. The TWDB and CONTRACTOR each shall have full and unrestricted rights to use a CONTRACTOR Work with No Compensation Obligation.

F. For purposes of this Article, "Subcontractor Works" include all work product developed in whole or in part by or on behalf of Subcontractors engaged by CONTRACTOR to perform work for or on behalf of CONTRACTOR under this CONTRACT (or by the Subcontractors' Subcontractors hereunder, and so on). CONTRACTOR shall secure in writing from any Subcontractors so engaged:

1. unlimited, unrestricted, perpetual, irrevocable, royalty-free rights of the TWDB (and, if desired, of CONTRACTOR) to access and receive, and to use, any and all technical or other data or information developed in or resulting from the

performance of services under such engagement, with No Compensation Obligation; and either:

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

CONTRACT or Subcontract or using any funding provided by the TWDB may be reproduced in any media, forms or formats by the TWDB or CONTRACTOR at their own cost, and be disseminated in any medium, format or form by any party at its sole cost and in its sole discretion. CONTRACTOR may utilize such work products as they may deem appropriate, including Dissemination of such work products or parts thereof under their own name, provided that any TWDB copyright is noted on the materials.

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

ARTICLE VI. SUBCONTRACTS

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

- A. **Contract Dates** – there should be a starting date and ending date for your agreement.
- B. **Contract Amount** – your agreement should list the total value of the subcontract.
- C. **Terms of Reimbursement** - Subcontracts must be cost reimbursable. Lump sum agreements are not permitted for services. Please also note that the TWDB does not reimburse “handling costs” (mark-ups) on any expenses. Any eligible travel expenses related to a subcontract may be reimbursed at the current rate for State of Texas employees which can be found at:
<https://fmx.cpa.state.tx.us/fmx/travel/texttravel/trans/personal.php>
- D. **Scope of Work** – the terms of the scope of work must be consistent with the scope of the CONTRACT.
- E. **Task Budget** – as appropriate. The task budget must be consistent with the task budget specified in the TWDB CONTRACT.
- F. **Expense Budget** – as appropriate. The expense budget must be consistent with the expense budget specified in the TWDB CONTRACT.
- G. **Signatures** – each subcontract must be executed appropriately by signature, by each party to the agreement.
- H. **State Auditor:** “By executing this Contract, the SUBCONTRACTOR accepts the authority of the State Auditor's Office, under direction of the legislative audit committee, to conduct audits and investigations in connection with any and all state funds received pursuant to this contract. The SUBCONTRACTOR shall

comply with and cooperate in any such investigation or audit. The SUBCONTRACTOR agrees to provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The SUBCONTRACTOR also agrees to include a provision in any subcontract related to this contract that requires the SUBCONTRACTOR to submit to audits and investigation by the State Auditor's Office in connection with any and all state funds received pursuant to the subcontract."

- I. **Financial Records:** "The SUBCONTRACTOR(S) and its contracted parties shall maintain satisfactory financial accounting documents and records, including copies of invoices and receipts, and shall make them available for examination and audit by the EXECUTIVE ADMINISTRATOR of the TWDB. Accounting by the SUBCONTRACTOR (S) and its contracted parties shall be in a manner consistent with generally accepted accounting principles."

- J. **No Debt Against the State:** "This SUBCONTRACT and Agreement shall not be construed as creating any debt by or on behalf of the State of Texas and the TWDB, and all obligations of the State of Texas are subject to the availability of funds. To the extent the performance of this SUBCONTRACT transcends the biennium in which this SUBCONTRACT is entered into, this SUBCONTRACT is specifically contingent upon the continued authority of the TWDB and appropriations therefore."

- K. **License, Permits, and Insurance:** "For the purpose of this CONTRACT, the SUBCONTRACTOR(S) will be considered an independent CONTRACTOR and therefore solely responsible for liability resulting from negligent acts or omissions. The SUBCONTRACTOR(S) shall obtain all necessary insurance, in the judgment of the SUBCONTRACTOR(S), to protect itself, the CONTRACTOR, the TWDB, and employees and officials of the TWDB from liability arising out of this CONTRACT. The SUBCONTRACTOR(S) shall indemnify and hold the TWDB and the State of Texas harmless, to the extent the SUBCONTRACTOR(S) may do so in accordance with state law, from any and all losses, damages, liability, or claims therefore, on account of personal injury, death, or property damage of any nature whatsoever caused by the SUBCONTRACTOR(S), arising out of the activities under this CONTRACT.

The SUBCONTRACTOR(S) shall be solely and entirely responsible for procuring all necessary licenses and permits which may be required for the SUBCONTRACTOR(S) to perform the subject work."

- L. **Ownership:** "It is agreed that all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this CONTRACT and developed by the (Name of SUBCONTRACTOR) pursuant to this CONTRACT

shall become the joint property of the REGIONAL WATER PLANNING GROUP, (Name of CONTRACTOR), (Name of SUBCONTRACTOR), and the Texas Water Development Board. These materials shall not be copyrighted or patented by the (Name of SUBCONTRACTOR). (Name of SUBCONTRACTOR) agrees that neither the Regional Water Planning Group nor the Texas Water Development Board are parties to this CONTRACT and agrees that that these entities have no liability under the terms of this CONTRACT. The Texas Water Development Board is solely a third-party beneficiary under this CONTRACT."

- M. **Compliance with TWDB rules and state law:** The SUB-CONTRACTOR(S) shall comply with TWDB rules and adhere to all requirements in state law pertaining to the procurement of professional services.

ARTICLE VII. AMENDMENT, TERMINATION, AND STOP ORDERS

- A. This CONTRACT may be altered or amended by mutual written consent or terminated by the EXECUTIVE ADMINISTRATOR at any time by written notice to the CONTRACTOR. The EXECUTIVE ADMINISTRATOR shall terminate this CONTRACT if the REGIONAL WATER PLANNING GROUP withdraws its designation of the CONTRACTOR as the CONTRACT representative of the REGIONAL WATER PLANNING GROUP. Upon receipt of such termination notice, the CONTRACTOR shall, unless the notice directs otherwise, immediately discontinue all work in connection with the performance of this CONTRACT and shall proceed to cancel promptly all existing orders insofar as such orders are chargeable to this CONTRACT. The CONTRACTOR shall submit a statement showing in detail the work performed under this CONTRACT up to the date of termination. The TWDB, in its discretion, shall then pay the CONTRACTOR that proportion of the prescribed fee, which applies to the work, actually performed under this CONTRACT, less all payments that have been previously made and any approved by the EXECUTIVE ADMINISTRATOR to conclude the CONTRACT. Thereupon, copies of all work accomplished under this CONTRACT shall be delivered promptly to the TWDB.
- B. Any request to amend the CONTRACT Scope of Work (Exhibit A) must be submitted in writing by the CONTRACTOR to the TWDB following approval by the REGIONAL WATER PLANNING GROUP [31 TAC Section 357.6(4)].
- C. The EXECUTIVE ADMINISTRATOR may issue a Stop Work Order to the CONTRACTOR at any time. Upon receipt of such order, the CONTRACTOR shall discontinue all work under this CONTRACT and cancel all orders pursuant to this CONTRACT, unless the Stop Work Order directs otherwise. If the EXECUTIVE ADMINISTRATOR does not issue a Restart Order within 60 days after receipt by the CONTRACTOR of the Stop Work Order, the CONTRACTOR shall regard this CONTRACT terminated in accordance with the foregoing provisions.

ARTICLE VIII. NO DEBT AGAINST THE STATE

This CONTRACT and Agreement shall not be construed as creating any debt by or on behalf of the State of Texas and the TWDB, and all obligations of the State of Texas are subject to the availability of funds. To the extent the performance of this CONTRACT transcends the biennium in which this CONTRACT is entered into, this CONTRACT is specifically contingent upon the continued authority of the TWDB and appropriations therefore. The TWDB and CONTRACTOR acknowledge that the completion of the terms of this CONTRACT, including the payment of COMMITTED FUNDS by the TWDB and submission of a REGIONAL WATER PLAN by the CONTRACTOR, will require funds that have not yet been appropriated.

ARTICLE IX. LICENSES, PERMIT, AND INSURANCE

- A. For the purpose of this CONTRACT, the CONTRACTOR will be considered an independent contractor and therefore solely responsible for liability resulting from negligent acts or omissions.
- B. The CONTRACTOR shall be solely and entirely responsible for procuring all necessary licenses and permits which may be required for the CONTRACTOR to perform the subject work.
- C. Indemnification. The CONTRACTOR shall indemnify and hold the TWDB and the State of Texas harmless, to the extent the CONTRACTOR may do so in accordance with state law, from any and all losses, damages, liability, or claims therefore, on account of personal injury, death, or property damage of any nature whatsoever caused by the CONTRACTOR, arising out of the activities and work conducted pursuant to this CONTRACT. The CONTRACTOR is solely responsible for liability arising out of its negligent acts or omissions during the performance of this CONTRACT.

ARTICLE X. SEVERANCE PROVISION

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

ARTICLE XI. GENERAL TERMS AND CONDITIONS

A. GENERAL TERMS

1. No Debt Against the State. This CONTRACT does not create any debt by or on behalf of the State of Texas and the TWDB. The TWDB'S obligations under this CONTRACT are contingent upon the availability of appropriated funds and the continued legal authority of the TWDB to enter into this CONTRACT.

2. Independent Contractor. Both parties hereto, in the performance of this contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

3. Procurement Laws. The CONTRACTOR shall comply with applicable State of Texas procurement laws, rules and policies, including but not limited to competitive bidding and the Professional Services Procurement Act, Government Code, Chapter 2254, relating to contracting with persons whose services are within the scope of practice of: accountants, architects, landscape architects, land surveyors, medical doctors, optometrists, professional engineers, professional geoscientists, real estate appraisers, professional nurses, and certified public accountants.

4. Right to Audit. The CONTRACTOR and its Subcontractors shall maintain all financial accounting documents and records, including copies of all invoices and receipts for expenditures, relating to the work under this CONTRACT. CONTRACTOR shall make such documents and records available for examination and audit by the Executive Administrator or any other authorized entity of the State of Texas. CONTRACTOR'S financial accounting documents and records shall be kept and maintained in accordance with generally accepted accounting principles. By executing this CONTRACT, the CONTRACTOR accepts the authority of the Texas State Auditor's Office to conduct audits and investigations in connection with all state funds received pursuant to this CONTRACT. The CONTRACTOR shall comply with directives from the Texas State Auditor and shall cooperate in any such investigation or audit. The CONTRACTOR agrees to provide the Texas State Auditor with access to any information the Texas State Auditor considers relevant to the investigation or audit. The CONTRACTOR also agrees to include a provision in any Subcontract related to this CONTRACT that requires the Subcontractor to submit to audits and investigation by the State Auditor's Office in connection with all state funds received pursuant to the Subcontract.

5. Force Majeure. Unless otherwise provided, neither CONTRACTOR nor the TWDB nor any agency of the State of Texas, shall be liable to the other for any delay in, or failure of performance of, a requirement contained in this CONTRACT caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure

is defined as acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within five (5) business days of the existence of such force majeure or otherwise waive this right as a defense.

B. STANDARDS OF PERFORMANCE.

1. Personnel. CONTRACTOR shall assign only qualified personnel to perform the services required under this CONTRACT. CONTRACTOR shall be responsible for ensuring that any Subcontractor utilized shall also assign only qualified personnel. Qualified personnel are persons who are properly licensed to perform the work and who have sufficient knowledge, skills and ability to perform the tasks and services required herein according to the standards of performance and care for their trade or profession.

2. Professional Standards. CONTRACTOR shall provide the services and deliverables in accordance with applicable professional standards. CONTRACTOR represents and warrants that it is authorized to acquire Subcontractors with the requisite qualifications, experience, personnel and other resources to perform in the manner required by this CONTRACT.

3. Antitrust. CONTRACTOR represents and warrants that neither CONTRACTOR nor any firm, corporation, partnership, or institution represented by, or affiliated with CONTRACTOR, or anyone acting for such firm, corporation, partnership, or institution has (1) violated the antitrust laws of the State of Texas under the Texas Business & Commerce Code, 15 United States Code Sections 1-7 of the federal antitrust laws; or (2) communicated directly or indirectly CONTRACTOR's proposal which has resulted in this CONTRACT to any competitor or other person engaged in such line of business during the procurement process for this CONTRACT.

4. Conflict of Interest. CONTRACTOR represents and warrants that CONTRACTOR has no actual or potential conflicts of interest in providing the deliverables required by this CONTRACT to the State of Texas and the TWDB. CONTRACTOR represents that the provision of services under this CONTRACT will not create an appearance of impropriety. CONTRACTOR also represents and warrants that, during the term of this CONTRACT, CONTRACTOR will immediately notify the TWDB, in writing, of any potential conflict of interest that could adversely affect the TWDB by creating a conflict or the appearance of a conflict of interest.

5. CONTRACTOR represents and warrants that neither CONTRACTOR nor any person or entity that will participate financially in this CONTRACT has received compensation from the TWDB or any agency of the State of Texas for participation in the preparation of specifications for this CONTRACT. CONTRACTOR represents and

warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant in connection with this CONTRACT.

6. Proprietary and Confidential Information. CONTRACTOR warrants and represents that any information that is proprietary or confidential, and is received by CONTRACTOR from the TWDB or any governmental entity, shall not be disclosed to third parties without the written consent of the TWDB or applicable governmental entity, whose consent shall not be unreasonably withheld.

7. Public Information Act. CONTRACTOR acknowledges and agrees that all documents, in any media, generated in the performance of work conducted under this CONTRACT are subject to public disclosure under the Public Information Act, Government Code, Chapter 552. CONTRACTOR shall produce all documents upon request of the TWDB within two (2) business days when the documents are required to comply with a request for information under the Public Information Act.

8. Accurate and Timely Record Keeping. CONTRACTOR warrants and represents that it will keep timely, accurate and honest books and records relating to the work performed and the payments received under this CONTRACT according to generally accepted accounting standards. Further, CONTRACTOR agrees that it will create such books and records at or about the time the transaction reflected in the books and records occurs.

9. Dispute Resolution. The CONTRACTOR and the TWDB agree to make a good faith effort to resolve any dispute relating to the work required under this CONTRACT through negotiation and mediation as provided by Government Code, Chapter 2260 relating to resolution of certain contract claims against the state. The CONTRACTOR and the TWDB further agree that they shall attempt to use any method of alternative dispute resolution mutually agreed upon to resolve any dispute arising under this CONTRACT if this CONTRACT is not subject to Chapter 2260.

10. Contract Administration. The TWDB shall designate a project manager for this CONTRACT. The project manager will serve as the point of contact between the TWDB and CONTRACTOR. The TWDB's project manager shall supervise the TWDB's review of CONTRACTOR'S technical work, deliverables, draft reports, the final report, payment requests, schedules, financial and budget administration, and similar matters. The project manager does not have any express or implied authority to vary the terms of the CONTRACT, amend the CONTRACT in any way or waive strict performance of the terms or conditions of the CONTRACT.

ARTICLE XII. CORRESPONDENCE

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

For the **TWDB:**

Contract Issues:
Texas Water Development Board
Attention: Contract Administration
P.O. Box 13231
Austin, Texas 78711-3231
Email: contracts@twdb.state.tx.us

Payment Request Submission:
Texas Water Development Board
Attention: Accounts Payable
P.O. Box 13231
Austin, Texas 78711-3231
Email: invoice@twdb.state.tx.us

Physical Address:
Stephen F. Austin State Office Building
1700 N. Congress Avenue
Austin, Texas 78701

For the **CONTRACTOR:**

Name
Company
Address
City State ZIP
Email

Exhibit A
Scope of Work

(Insert SOW)

Exhibit B
Task and Expense Budgets

CONTRACTOR TASK BUDGET

		TASK	Amount
Accounting Item No.	Regional Water Planning Task No.	Description	
1	2A	Non-Population Related Water Demand Projections (new projections)	\$.00
2	2B	Population & Population-Related Water Demand Projections (new projections)	\$.00
3	3	Evaluation of Existing Water Supply	\$.00
4	4A	<i>Identification of Water Needs (by TWDB) ‡</i>	\$ 0.00
5	4B	Identification of Potentially Feasible Water Management Strategies	\$.00
6	4C	Technical Memorandum (Summary of Tasks 2 - 4B) of Regional Water Plan	\$.00
7*	4D*	Evaluation and Selection of Water Management Strategies‡	\$.00
8	10	Adoption of Plan (administration & public participation for Tasks 1-4C)	\$.00
Total Committed Funds			\$.00

**Indicates contingent Task requiring a written 'Notice to Proceed' prior to commencing reimbursable work per Section I, Article II, Paragraph C.*

‡ The budget flexibility described under Section II, Article IV, Paragraph E does not apply to this task budget unless reimbursement of the task's budget is authorized by a Notice to Proceed

CONTRACTOR EXPENSE BUDGET

CATEGORY	Amount
Other Expenses ¹	\$.00
Subcontract Services #1	\$.00
Subcontract Services #2	\$.00
Subcontract Services #3	\$.00
Voting Planning Member Travel ²	\$.00
Total Committed Funds³	\$.00

¹**Eligible Other Expenses** associated with administration activities are defined to include expendable supplies, communications, reproduction, postage, and costs of public meetings. Administrative Costs (associated with Political Subdivisions) for Regional Water Plan development that will be reimbursable under the contract are limited to direct, non-labor costs including:

- Newspaper and other public notice posting costs;
 - Postage for mailed notification of application;
 - Communications;
 - Postage for mailed notification of meetings;
 - Reproduction costs associated with notification or plan activities (currently 10¢ per copy).
- Limited direct costs/fees of maintaining RWPG website domain , website hosting, and/ or web site - not to exceed \$250.00 per calendar year.

²**Voting Planning Member Travel Expenses** is defined as eligible travel expenses incurred by regional water planning members that cannot be reimbursed by any other entity, political subdivision, etc., (currently 51¢ per mile (as of Jan. 1, 2011) See: <https://fmx.cpa.state.tx.us/fm/travel/travelrates.php> for updates).

²**Ineligible Expenses** include, but are not limited to:

- Costs of generating or distributing newsletters;
 - Direct costs greater than \$250.00 per year for domain fees, website hosting, and/ or web site maintenance costs;
 - Direct or indirect labor costs associated with obtaining, developing, and/or maintaining websites including costs to track website use or post materials on websites;
- Food and Lodging for Regional Water Planning Group members;
 - Purchase of equipment (e.g. computers); and,
 - Costs associated with social events or tours.

Subcontractor EXPENSE BUDGET

- Template -
(to be submitted by Subcontractors)

CATEGORY	Total Amount
<i>Salaries & Wages¹</i>	\$ <i>template</i>
<i>Fringe²</i>	\$ <i>template</i>
<i>Travel</i>	\$ <i>template</i>
<i>Other Expenses³</i>	\$ <i>template</i>
<i>Subcontract Services #1</i>	\$ <i>template</i>
<i>Subcontract Services #2</i>	\$ <i>template</i>
<i>Subcontract Services #3</i>	\$ <i>template</i>
<i>Overhead⁴</i>	\$ <i>template</i>
<i>Profit</i>	\$ <i>template</i>
TOTAL COSTS⁵	\$ <i>template</i>

¹ **Salaries and Wages** is defined as the cost of salaries of engineers, draftsmen, stenographers, surveyors, clerks, laborers, etc., for time directly chargeable to this contract.

² **Fringe** is defined as the cost of social security contributions, unemployment, excise, and payroll taxes, employment compensation insurance, retirement benefits, medical and insurance benefits, sick leave, vacation, and holiday pay applicable thereto.

³ **Other Expenses** is defined to include expendable supplies, communications, reproduction, and postage.

⁴ **Overhead** is defined as the costs incurred in maintaining a place of business and performing professional services similar to those specified in this contract. These costs shall include the following:

- Indirect salaries, including that portion of the salary of principals and executives that is allocable to general supervision;
- Indirect salary fringe benefits;
- Accounting and legal services related to normal management and business operations;
- Travel costs incurred in the normal course of overall administration of the business;
- Equipment rental;
- Depreciation of furniture, fixtures, equipment, and vehicles;
- Dues, subscriptions, and fees associated with trade, business; technical, and professional organizations;

- Other insurance;
- Rent and utilities; and,
- Repairs and maintenance of furniture, fixtures, and equipment.

⁵ **Ineligible expenses** include, but are not limited to:

- Food and Lodging for Regional Water Planning Group members;
- Tips;
- Purchase of equipment (e.g. computers);
- Costs associated with social events and tours;
- Costs of generating or distributing newsletters;
- Direct costs greater than \$250.00 per year for domain fees, website hosting, and/ or web site maintenance costs; and,
- Direct or indirect labor costs associated with obtaining, developing, and/or maintaining websites including costs to track website use or post materials on websites.

Exhibit C
Guidelines for Regional Water Plan Development

(To be inserted)

Exhibit D
Guidelines for Regional Water Planning Data Deliverables
Draft (in development)

(To be inserted)

Exhibit E
Original Application

(Insert cover pages only)

Exhibit F
Certification of Procurement of Professional Services

(To be inserted)