

THE STATE OF TEXAS           §  
                                          §        **KNOW ALL MEN BY THESE PRESENTS:**  
COUNTY OF FORT BEND       §

**AGREEMENT FOR PROGRAM CONSULTING SERVICES  
RISK RATING 2.0/NATIONAL FLOOD INSURANCE PROGRAM**

This Agreement is made and entered into by and between Fort Bend County Drainage District, a Special District created under the laws of the State of Texas, acting by and through its Board (the "Board") and the Fort Bend Chamber (the "CHAMBER"). The District and the CHAMBER may be referred to individually as a "Party" and collectively as the "Parties".

**RECITALS**

WHEREAS, the District desires that the CHAMBER provide the District with community and economic development services consulting (hereinafter "Services") intended to stimulate business and commercial activity in Fort Bend by reducing and managing the District's flood risk; and

WHEREAS, specifically the District desires that the Services provided by the CHAMBER include coordinating efforts between the Fort Bend Flood Management Committee (the "FBFMC") and Risk Rating 2.0/National Flood Insurance Program ("RR 2.0/NFIP") Working Group, a collaboration with local Fort Bend County Levee Improvement Districts, Municipal Utility Districts and other entities to monitor, mitigate and engage with key stakeholders to address flood risks and associated mitigation activities (the "Project"); and

WHEREAS, the Texas County Purchasing Act exempts from competitive bidding contracts that are for a personal or professional services under Texas Local Govt. Code, §262.024 (4) and also exempts contracts for community and economic development made under Texas Local Govt. Code, §262.024 (a) (10) as allowed by Texas Local Govt. Code, §381.004 <sup>1</sup> and

WHEREAS, the District specifically finds<sup>2</sup> that this Agreement is one for a personal and/or professional service and also one for community and economic development and therefore grants exemption from competitive bidding on both grounds, insofar as any competitive bidding statute might apply; and

WHEREAS, the District finds that the Project contemplated in this Agreement serves a District purpose; and

---

<sup>1</sup> While Texas Local Govt. Code, §381.004 refers to contracts for community and economic development made by Commissioners Court, Special District Local Laws § 6604.051 provides

- (a) The commissioners court is the governing body of the district and the agency through which the management and control of the district is administered.
- (b) The commissioners court may perform any act necessary to carry out the purposes of this chapter.

<sup>2</sup> See FN 1 above

WHEREAS, the District and the CHAMBER agree to participate in this Project according to the terms of this Agreement; and

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to both Parties, it is agreed as follows:

### **AGREEMENT**

#### **Section 1. Incorporation of Recitals**

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.

#### **Section 2. Scope of Work**

- A. During the term of this Agreement, CHAMBER (by and through the FMFBC and the RR 2.0/NFIP Working Groups shall render Services in accordance with the attached and incorporated Exhibit A.
- B. Services shall be performed subject to the direction of the Fort Bend Drainage District Chief Engineer.

#### **Section 3. Compensation and Payment**

- A. The District's sole financial obligation under this Agreement is to provide funding in an amount of fifty-nine thousand dollars and 00/100 (\$59,000.00) payable as follows:

| Date                                                  | Amount                                                                                       |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------|
| Within 10 business days of execution by both Parties. | Thirty-nine thousand three hundred thirty-three dollars and thirty-three cents (\$39,333.00) |
| July 1, 2024                                          | Nineteen thousand six hundred sixty-seven dollars (\$19,667.000)                             |

- B. The District is not obligated to expend any further funds above fifty-nine thousand dollars and 00/100 (\$59,000.00) on the Project. The District shall have available the total maximum sum of fifty-nine thousand dollars and 00/100 (\$59,000.00) specifically allocated to fully discharge any and all liabilities District may incur on the Project. Further, the total maximum compensation that CHAMBER may become entitled to and the total maximum sum that District may become liable to pay to CHAMBER for Services provided under this Agreement shall not under any conditions, circumstances, or interpretations thereof exceed fifty-nine thousand dollars and 00/100 (\$59,000.00).

- C. CHAMBER understands and agrees that the Maximum Compensation stated is an all inclusive amount and no additional fee, cost or reimbursed expense shall be added whatsoever to the fees stated.
- D. All performance of the Scope of Services by CHAMBER including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.
- E. County reserves the right to withhold payment or demand payment be returned pending verification of satisfactory work performed. CHAMBER shall ensure that all deliverables detailed in Exhibit A have been provided to the Fort Bend Drainage District Chief Engineer.

#### **Section 4. Term & Termination**

- A. The term of this Agreement is effective as of the date signed by both Parties through September 30, 2024, unless terminated in accordance with this Agreement. This Agreement does not automatically renew.
- B. Termination for Default
  - 1. District may terminate the whole or any part of this Agreement for cause in the following circumstances:
    - a. If CHAMBER fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the District in writing;
    - b. If CHAMBER materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to District's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from District specifying such breach or failure.
  - 2. If, after termination, it is determined by District that for any reason whatsoever that CHAMBER was not in default, or that the default was excusable, services may continue in accordance with the terms and conditions of this Agreement.
- C. Upon termination of this Agreement, District shall compensate CHAMBER in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to District.
- D. If District terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to CHAMBER.

## **Section 5. Modifications and Waivers**

A. The Parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

B. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

C. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

## **Section 6. Insurance Requirements**

- A. The CHAMBER shall, at all times during the term of this Agreement, maintain insurance coverage with not less than the type and requirements in this Article. Such insurance is to be provided at the sole cost of the CHAMBER. These requirements do not establish limits of the CHAMBER's liability: (i) all policies of insurance shall waive all rights of subrogation against the District, its officers, employees, and agents; (ii) upon request, certified copies of original insurance policies shall be furnished to the District; and (iii) the District reserves the right to require additional insurance as it deems it necessary. CHAMBER shall maintain at a minimum:
- B. Commercial General Liability Occurrence Form including, but not limited to, Premises and Operations, Products Liability Broad Form Property Damage, Contractual Liability, Personal and Advertising Injury Liability and where the exposure exists, coverage for watercraft, blasting collapse and explosions, blowout, cratering and underground damage. One Million Dollars (\$1,000,000.00) each occurrence Limit Bodily Injury; Products-Completed/Operations Limit One Million Dollars (\$1,000,000.00); One Million Dollars Personal and Advertising Injury Limit (\$1,000,000.00); General Aggregate One Million Dollars (\$1,000,000.00) per project; Umbrella/Excess Liability One Million Dollars (\$1,000,000.00) Each Occurrence, One Million Dollars (\$1,000,000.00) Aggregate. The District shall be named as an "additional insured" on the commercial general liability policy and any separate policies, where applicable, covering the requirements of this Article.
- C. Professional/Errors and Omissions Liability, One Million Dollars (\$1,000,000.00) Each Occurrence, One Million Dollars (\$1,000,000.00) Aggregate.
- D. Workers' Compensation (with Waiver of subrogation to the District) Employer's Liability, including all states, U.S. Longshoremen, Harbor Workers and other endorsements, if applicable to the Project, and in accordance with Texas state law.
- E. Automobile Liability Coverage: Combined single limit of One Million Dollars (\$1,000,000.00) Combined Liability Limits for Bodily Injury and Property Damage Combined. The District shall be named as an "additional insured" on the automobile policy.

- F. Proof of insurance with proof of waiver of subrogation and District designated as an "additional insured" must be returned attached to the signed Agreement.

#### **Section 7. Indemnity**

**CHAMBER SHALL INDEMNIFY AND DEFEND THE DISTRICT AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CHAMBER, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CHAMBER OR ANY OF CHAMBER'S AGENTS, SERVANTS OR EMPLOYEES. THE PARTIES AGREE THAT THIS INDEMNIFICATION PROVISION SHALL APPLY DURING THE PERFORMANCE OF SERVICES AS WELL AS DURING THE PERFORMANCE OF ANY CONTINUING OBLIGATIONS THAT MAY EXIST (IF ANY) AFTER THE EXPIRATION OF THIS AGREEMENT.**

#### **Section 8. Confidential and Proprietary Information**

A. CHAMBER acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to the District. Any and all information of any form obtained by CHAMBER or its employees or agents from the District in the performance of this Agreement shall be deemed to be confidential information of the District ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by CHAMBER shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by CHAMBER) publicly known or is contained in a publicly available document; (b) is rightfully in CHAMBER's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of CHAMBER who can be shown to have had no access to the Confidential Information.

B. CHAMBER agrees to hold Confidential Information in strict confidence, using at least the same degree of care that CHAMBER uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to the District hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. CHAMBER shall use its best efforts to assist the District in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, CHAMBER shall advise the District immediately in the event CHAMBER learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and CHAMBER will at its expense cooperate with District in seeking injunctive or other equitable relief in the name of the District or CHAMBER against any such person. CHAMBER agrees that, except as directed by the District, CHAMBER will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at District's request, CHAMBER will promptly turn over to the District all

documents, papers, and other matter in CHAMBER's possession which embody Confidential Information.

C. CHAMBER acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to the District that is inadequately compensable in damages. Accordingly, the District may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. CHAMBER acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of District and are reasonable in scope and content.

D. CHAMBER in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

E. CHAMBER expressly acknowledges that the District is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 et seq., as amended, and notwithstanding any provision in the Agreement to the contrary, the District will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. In the event the District receives an open records request for CHAMBER records in the District's possession, the District shall notify the CHAMBER of such request and CHAMBER shall have the opportunity to object to the request, as allowed by Section 552.305 of the Texas Government Code.

F. The terms and conditions of the Agreement are not proprietary or confidential information.

#### **Section 9. Independent Contractor**

A. CHAMBER is a 501(c)(6) not for profit private corporation focused on economic development and quality growth in Fort Bend District, Texas. The relationship of CHAMBER to the District is that of an independent CHAMBER. The District has no authority to direct day-to-day activities of any CHAMBER employees, nor does the District have any authority over CHAMBER personnel decisions and CHAMBER may take positions adverse to the District so long as such positions do not constitute a breach of the CHAMBER's obligations under this Agreement.

B. This Agreement is not intended to direct, promote or restrict the operations of the CHAMBER but does identify those Services that CHAMBER shall perform pursuant to this Agreement on behalf of the District and those Services for which District is obligated to compensate CHAMBER.

C. In the performance of work or services hereunder, CHAMBER shall be deemed an independent contractor and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of CHAMBER.

D. CHAMBER and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of District and shall not be entitled to any of the privileges or benefits of District employment.

**Section 10. Assignment**

No party hereto shall make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other party.

**Section 11. No Third Party Beneficiaries**

The Parties do not intend that any specific third party obtain a right by virtue of the execution or performance of this Agreement.

**Section 12. Notices**

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the following addresses:

**If to District:** Fort Bend County Drainage District  
Attn: Chief Engineer  
301 Jackson Street,  
Richmond, Texas 77469

**And**

Fort Bend County, Texas  
Attention: County Judge  
401 Jackson Street, 1<sup>st</sup> Floor  
Richmond, Texas 77469

**CHAMBER:**

Fort Bend Chamber  
445 Commerce Green Blvd  
Sugar Land, TX 77478

**Section 13. Compliance with Laws**

CHAMBER shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by the District, CHAMBER shall furnish the District with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**Section 14. Applicable Law**

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend District, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the District's sovereign immunity.

**Section 15. Severability**

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable,

the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

**Section 16. Publicity**

Contact with citizens of Fort Bend District, media outlets, or governmental agencies shall be the sole responsibility of District. Under no circumstances whatsoever, shall CHAMBER release any material or information developed or received in the performance of the Services hereunder without the express written permission of District, except where required to do so by law.

**Section 17. Captions**

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

**Section 18. Certain State Law Requirements for Contracts**

For purposes of sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, CHAMBER hereby verifies that CHAMBER and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:

A. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.

B. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, CHAMBER does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in section 808.001 of the Texas Government Code.

C. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, CHAMBER does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in section 809.001 of the Texas Government Code.

D. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, CHAMBER does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in section 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in section 2274.001(6) and (7) of the Texas Government Code.

**Section 19. Human Trafficking**

BY ACCEPTANCE OF THIS AGREEMENT, CHAMBER ACKNOWLEDGES THAT THE DISTRICT IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO DISTRICT FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT WOULD VIOLATE HUMAN TRAFFICKING LAWS.

**Section 20. Entire Agreement**

This Agreement contains the entire agreement between the Parties relating to the rights granted and the obligations assumed. Any modifications concerning this instrument shall be of no force or effect, unless a subsequent modification in writing is signed by all Parties hereto. If a court finds or rules that any part of this Agreement is invalid or unlawful, the remainder of the Agreement continues to be binding on the Parties.

**Section 21. Execution**

This Agreement has been executed by the District and the CHAMBER upon and by the authority of their respective governing bodies.

DISTRICT

FORT BEND CHAMBER

\_\_\_\_\_  
KP George, County Judge

Keri Schmidt  
Authorized Agent- Signature

Keri Schmidt  
Authorized Agent- Printed Name

President & CEO  
Title

\_\_\_\_\_  
Date

4/6/2024  
Date

ATTEST:

\_\_\_\_\_  
Laura Richard, County Clerk

REVIEWED:



Mark Vogler, P.E., Chief Engineer

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$\_\_\_\_\_ to accomplish and pay the obligation of Fort Bend District under the terms of this Agreement.

\_\_\_\_\_  
Robert Ed Sturdivant, District Auditor

i:\agreements\2024 agreements\drainage district\24-dmg-100659 agreement - program CHAMBER mlt 5.3.24.docx 5.6

# Exhibit A

# **Fort Bend Flood Management Committee (FBFMC)**

## **SCOPE OF WORK**

**Pursuant to the Agreement with Fort Bend County, the Fort Bend Chamber of Commerce (FBCC) will:**

1. Host regular FBFMC meetings to brief participants on changes by the United States Army Corps of Engineers (USACE) to flood mitigation and coastal storm damage protection requirements including certifications;
2. Offer members opportunities to engage with associations that lead on national standards, water ways and conservation that impact flood mitigation and protection regulations;
3. Serve as a forum to share best practices being implemented by levee improvement districts ("LIDs") and other entities to improve flood mitigation/protection in safe and cost-effective ways;
4. Engage subject matter experts to:
  - a. Monitor and engage with the Federal Emergency Management Agency (FEMA) as the agency pursues efforts to implement RR 2.0 and proposed changes to the NFIP that have the potential to impact billions of dollars in the County's property valuations currently protected by flood mitigation assets like levees and pump stations;
  - b. Maintaining the 100-year base elevation as the standard for levee accreditation and avoiding special flood hazard designation.
  - c. Challenge the transfer of premium setting from flood mitigation infrastructure to residual risk concerns;
  - d. Ensuring the availability of voluntary affordable flood insurance within accredited levee protected areas; and
  - e. Counsel board members of participating LIDs, pump station operating staff and others on required training such as semi-quantitative risk assessments (SQRA) that are important for maintaining federal LID certifications.
5. Reporting. FBCC shall provide a detailed written performance report describing FBCC's success in meeting the objectives and requirements of this Agreement; as well as rendering Services on behalf of the district. The Service Report is due to the Fort Bend County Drainage District Chief Engineer no later than August 31, 2024, for the Services provided during the term of this Agreement.
6. FBCC shall communicate all requests for direction, factual or statistical information relating to Services provided pursuant to this Agreement to the Fort Bend County Drainage District Chief Engineer, who in turn reports to the Fort Bend County Commissioners Court.
7. Contract and pay consultants and annual association membership fees (NAFSMA and TWBA).

**Fort Bend Chamber of Commerce (FBCC) to provide the following services to the FBFMC:**

1. Provide physical meeting space for in-person meetings as needed (4-6 times annually), as well as access to AV and virtual meeting capability and other related logistics;
2. Host monthly FBFMC virtual meetings as needed via the FBCC's virtual meeting account;
3. Schedule meetings and prepare agendas, minutes and monthly financials;
4. Coordinate, contract and pay consultants' and associations' fees;
5. Manage and maintain website presence for the Fort Bend Flood Management Committee on the Fort Bend Chamber Website;
6. Activate the FBCC's grassroots network through the Fort Bend Chamber Votes website as needed;
7. Coordinate meetings and various outreach efforts (i.e. press releases, op-eds) with elected officials and other stakeholders as needed;
8. Manage the financials within the FBCC including bookkeeping, taxes and other appropriate filings;
9. Prepare invoices and follow up on past dues;
10. Maintain the FBFMC member database and recruit new members; and,
11. Serve as the point of contact with the County's Commissioners Court and Drainage District.

**Compensation and Payment:**

1. As compensation for all services provided hereunder, the Drainage District shall pay the FBCC a total amount not to exceed \$59,000 for the County's portion of all services and costs under this Agreement. FBCC understands and agrees that the Maximum Compensation stated is an all-inclusive amount and no additional fee, cost or reimbursed expense shall be added whatsoever to the fees stated herein.
2. Payment shall be made in one lump sum within 30 days of the execution of this Agreement.