

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

**AGREEMENT WITH GREATER FORT BEND ECONOMIC DEVELOPMENT COUNCIL
FOR FLOOD RISK CONSULTING SERVICES**

THAT, this Agreement is made and entered into by and between the FORT BEND COUNTY Drainage District, acting by and through its Board of Directors (hereinafter referred to as "District")and the Greater Fort Bend Economic Development Council (the "GFBEDC"). The County District and the GFBEDC may be referred to individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, the District is a Special District created under TX Special District Local Laws Code Chapter 6604 for the purpose of reclamation and drainage of the district's overflowed lands and other lands needing drainage in Fort Bend County;

WHEREAS, the District desires that the GFBEDC provide consulting services on behalf of District that include coordinating efforts between the Fort Bend Flood Management Committee (the "FBFMC"), 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, this Agreement has been determined by the governing body of the District to be necessary to carry out the purposes of the District and is authorized by Section 6604.051 of the TX Special District Local Laws Code;

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

WHEREAS, the District and the GFBEDC 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

During the term of this Agreement, GFBEDC (by and through the FMFBC) shall render the following Program Consulting Services, on behalf of the County:

- A. Host regular 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;
- B. Offer members opportunities to engage with associations that lead on national standards, waterways and conservation that impact flood mitigation and protection regulations;
- C. 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;
- D. Engage subject matter experts to:
 1. 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;
 2. Challenge the transfer of premium setting from flood mitigation infrastructure to residual risk concerns;
 3. Ensuring the availability of voluntary affordable flood insurance within accredited levee protected areas; and
 4. 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.
- E. Reporting. GFBEDC shall provide a detailed written performance report describing GFBEDC'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, 2023, for the Services provided during the term of this Agreement.
- F. GFBEDC 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 reports directly to the Fort Bend County Commissioners Court.

Section 3. Compensation and Payment

- A. As compensation for all services provided hereunder, the District shall pay the GFBEDC a total amount not to exceed seventy-six thousand dollars and 00/100 (\$76,000.00) for the County's portion of all services and costs under this Agreement. GFBEDC 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.

- B. Payment shall be made in one lump sum within 30 days of the execution of this agreement.
- C. GFBEDC clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that District shall have available the total maximum sum of seventy-six thousand dollars and 00/100 (\$76,000.00) specifically allocated to fully discharge any and all liabilities District may incur for the term of this Agreement

Section 4. Term of Agreement

The term of this Agreement is effective as of January 1, 2023 through June 30, 2023, unless terminated in accordance with this Agreement. The Parties acknowledge and agree that any Services have been and will be supported by good and valuable consideration during the Term of this Agreement, the sufficiency of which is acknowledged by the Parties.

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 GFBEDC 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 GFBEDC. These requirements do not establish limits of the GFBEDC's liability: (i) all policies of insurance shall waive all rights of subrogation against the County, its officers, employees, and agents; (ii) upon request, certified copies of original insurance policies shall be furnished to the County; and (iii) the District reserves the right to require additional insurance as it deems it necessary. GFBEDC 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 Two Million Dollars (\$2,000,000.00) per project; Umbrella/Excess Liability One Million Dollars

(\$1,000,000.00) Each Occurrence, Two Million Dollars (\$2,000,000.00) 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 County) 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

GFBEDC 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 GFBEDC, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF GFBEDC OR ANY OF GFBEDC'S AGENTS, SERVANTS OR EMPLOYEES. THE PARTIES AGREE THAT THIS INDEMNIFICATION PROVISION SHALL APPLY DURING THE PERFORMANCE OF SERVICES AS WELL AS DURING THE PERORMANCE OF ANY CONTINUING OBLIGATIONS THAT MAY EXIST (IF ANY) AFTER THE EXPIRATION OF THIS AGREEMENT.

Section 8. Confidential and Proprietary Information

- A. GFBEDC 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 County. All information of any form obtained by GFBEDC or its employees or agents from District in the performance of this Agreement marked or otherwise designated Confidential and Proprietary shall be deemed to be confidential information of District ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by GFBEDC 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 GFBEDC) publicly known or is contained in a publicly available document; (b) is rightfully in GFBEDC'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 GFBEDC who can be shown to have had no access to the Confidential Information.

- B. GFBEDC agrees to hold Confidential Information in strict confidence, using at least the same degree of care that GFBEDC 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 District hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. GFBEDC shall use its best efforts to assist District in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, GFBEDC shall advise District immediately in the event GFBEDC 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 GFBEDC will at its expense cooperate with District in seeking injunctive or other equitable relief in the name of District or GFBEDC against any such person. GFBEDC agrees that, except as directed by County, GFBEDC 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 County's request, GFBEDC will promptly turn over to District all documents, papers, and other matter in GFBEDC's possession which embody Confidential Information.
- C. GFBEDC 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 District that is inadequately compensable in damages. Accordingly, 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. GFBEDC 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. GFBEDC in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- E. GFBEDC expressly acknowledges that 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, 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 GFBEDC records in County's possession, the District shall notify the GFBEDC of such request and GFBEDC shall have the opportunity to object to the request, as allowed by Section 552.305 of the Texas Government Code.

- F. GFBEDC is a not for profit private corporation¹ and if District receives a request for public information from any party for records that have been marked as Confidential and Proprietary by the GFBEDC, District shall not release those records but shall comply with Texas Government Code Section 552.305 and provide GFBEDC with notice of the request and instructions for how the GFBEDC may submit their own comments to the Texas Attorney General for why the information ought not be disclosed. At no time, will the District be required to disregard a ruling from the Texas Attorney General requiring the release of information even if the information has been marked Confidential and Proprietary.
- G. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 9. Independent Contractor

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

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

C. In the performance of work or services hereunder, GFBEDC 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 GFBEDC.

D. GFBEDC 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.

¹ See OR2015-14855, Texas Attorney General Opinion, July 21, 2015 Ref: 10#570346; included for reference purposes only

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:

District: Fort Bend Drainage District
Attn: Chief Engineer
301 Jackson Street
Richmond, Texas 77469

With a copy to: Fort Bend County
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469

GFBEDC: Greater Fort Bend Economic Development Council
Attention: Jeff Wiley
One Fluor Daniel Drive
Sugar Land, Texas 77478

Section 13. Compliance with Laws

GFBEDC 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 County, GFBEDC 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 County, 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 County'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

GFBEDC agrees to coordinate and will only release any information on behalf of the District related to this Agreement, only after receiving consent from the Fort Bend District Drainage District Chief Engineer.

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, GFBEDC hereby verifies that GFBEDC 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, GFBEDC 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, GFBEDC 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, GFBEDC 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, GFBEDC 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.

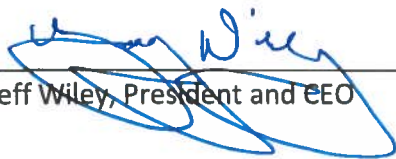
Section 21. Execution

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

FORT BEND COUNTY

GREATER FORT BEND ECONOMIC DEVELOPMENT COUNCIL

KP George, County Judge



Jeff Wiley, President and CEO

Date: _____

Date: 1-31-2023

ATTEST:

Laura Richard, County Clerk

REVIEWED:

Mark Vogler
Drainage District Chief Engineer

AUDITOR'S CERTIFICATE

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

Robert Ed Sturdivant, County Auditor

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