



Brazos River Authority

Request for Proposals for Professional Services

November 22, 2023

RFP No. 24-1328

Dear Prospective Respondent:

Statements of Qualifications hereafter referred to Request for Proposals (RFP or Proposal(s)) will be received by the Purchasing Agent or other designee of the Brazos River Authority no later than **10:00 AM, January 11, 2024** for **Lake Granbury Embankment Stability Analysis and Assessment**. All qualified firms including Small, Minority, Women Owned Businesses and Historically Underutilized Businesses are encouraged to submit proposals in response to this request.

Proposals must be submitted and received no later than the due date and time specified. Any Proposal received later than the specified time, shall not be considered. The BRA is **NOT** responsible for ensuring the delivery of Proposals.

Refer to Section 15. Delivery of Proposal Submittals for instructions on submitting a response to this solicitation.

Proposal must be clearly identified as follows on the outside of the sealed physical submission or the electronic submission subject line. The BRA shall not be responsible for submissions that are not properly identified. Proper identification of Respondent's proposal is the sole responsibility of the Respondent and failure to do so may result in the submission not being included in the proposal opening:

RFP TITLE:	<u>Lake Granbury Embankment Stability Analysis and Assessment</u>
RFP NO:	<u>24-1328</u>
RFP DUE DATE:	<u>10:00 AM, January 11, 2024</u>

The BRA shall have the right to accept or reject any or all Proposals, or any part thereof, and to waive any technicalities in the interest of the BRA.

BRA will evaluate all relevant, health, safety and business factors on all solicitations to determine when to initiate a notice to proceed on all projects, delivery of goods and/or services or procurement of construction related services to best attempt to balance BRA needs and to protect the health and safety of BRA employees, the employees of respondents and the public at large.

Sincerely,

Bryan Gray

Bryan Gray
Purchasing Manager

4600 Cobbs Drive • Waco, Texas 76710
254-761-3123

SUPPLIER DIVERSITY PURCHASING POLICY

The Brazos River Authority (BRA) will ensure that purchases of equipment, materials, supplies, and/or services conform with Texas Procurement law as applicable to the BRA, are cost effective, and contribute to the competitiveness of the BRA and its customers.

Procurement activities will be conducted in an open and fair manner with equal opportunity provided to all qualified parties. The BRA will provide equal contracting opportunities as provided by all applicable State and Federal laws to small business enterprises, Historically Underutilized Businesses and Disadvantaged Business enterprises.

GENERAL INSTRUCTIONS TO RESPONDENTS

The Work consists of the furnishing of all labor, materials, services, equipment, and appliances required for the delivery and the supplying of products and/or services as described herein and in the contract documents.

1. PROPOSAL SUBMISSION: Proposals must be received no later than the Proposal opening date and time specified above. All Proposals received after closing time will not be considered.

- A. To be considered as eligible, a Respondent shall have complied with all legal requirements to permit them to operate in the State of Texas.
- B. Proposals must be emailed, mailed or hand delivered to be considered.

2. WITHDRAWAL OF PROPOSALS: No Proposal may be withdrawn for a period of ninety (90) days after Proposal opening, except by: 1) mutual consent of the BRA and Respondent; or 2) a previously submitted Proposals may be withdrawn upon written request received from Respondent prior to time established for receipt of Proposals.

3. SIGNATURE ON PROPOSALS: To be valid, Proposals must be signed by an authorized person. By such signature, Respondent agrees to strictly abide by the terms, conditions, and Scope of Services embodied in this Request for Proposal.

4. EXAMINATION OF PROPOSAL DOCUMENTS: Before submitting a Proposal, all Respondents shall examine the complete Proposal documents, including Proposal Notice, Instruction to Respondent, and Scope of Services, all of which are part of the Proposal documents.

5. ADDENDA: *Unless otherwise stated in the Proposal*, answers to all questions, inquiries, and request for additional information will be issued in the form of Addenda. During the Proposal period, prospective Respondent may be advised by Addenda of additions, deletions from, or changes in the requirements of the Proposal documents. The BRA will not be responsible for the authenticity or correctness of oral interpretations of the Proposal documents or for information obtained in any other manner than through the media of Addenda. Receipt of each Addendum shall be acknowledged by the Respondent.

Any questions concerning this Proposal should be emailed to Bryan Gray, Purchasing Manager no later than five (5) days prior to the opening of the Proposal at submissions@brazos.org. This is to allow the BRA sufficient time to respond to inquiries and provide information to all interested Respondents by Addendum. *Unless otherwise stated in the Proposal*, Addenda will be posted on the BRA web site at www.brazos.org, Doing Business, Purchasing and Professional Services, Request for Proposals.

Respondent is responsible for checking the BRA web site (www.brazos.org) for updates and Addenda until the time at which the submission is due. Failure to respond to all requirements, including those Addenda, shall be grounds for rejection of your Proposal.

6. TAXATION: The BRA is exempt under the Texas Sales Tax and Use Tax Laws, and the Respondent shall not include such taxes in the Proposal.

7. QUALIFICATION OF RESPONDENTS: The BRA reserves the right to reject any Proposal if the evidence submitted by, or investigation of, such Respondent fails to satisfy the BRA that such Respondent is properly qualified to carry out the obligations of the contract and to complete the Services contemplated herein. Conditional Proposals will not be accepted.

8. CONSIDERATION OF PROPOSALS: Unless stated otherwise in the Advertisement or Request for Proposal, the properly identified Proposals received on time will be opened publicly and only the names of the Respondent will be read aloud. Respondents are invited to be present.

9. COMPLIANCE WITH SCOPE OF SERVICES AND RIGHT OF SELECTION: The Respondent shall abide by and comply with the true intent of the scope of services and not take advantage of any unintentional error or omission.

10. DEVIATION FROM SCOPE OF SERVICES: All deviations from the scope of services must be noted in detail by the Respondent, in writing, at the time of submittal of the formal Proposal. The absence of a written list of deviations at the time of submittal of the Proposal will be considered acceptance of the Scope of Services as written. Any deviations from the Scope of Services as written not previously submitted, as required by the above, will be grounds for rejection of the material and/or item when delivered.

In case of ambiguity or lack of clarity, the BRA reserves the right to consider the most advantageous Proposal or reject the Proposal.

11. REPRESENTATIONS: By execution and submission of this Proposal, the Respondent hereby represents and warrants to the BRA that Respondent has read and understands the Proposal Documents and this Proposal is made in accordance with the Proposal Documents.

12. INDEMNIFICATION:
THE RESPONDENT SHALL COMPLY WITH THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES, AND REGULATIONS AND SHALL EXONERATE, INDEMNIFY AND HOLD HARMLESS THE BRA FROM ANY AND ALL LIABILITY OR DAMAGES RESULTING FROM FAILURE TO DO SO.

IN ADDITION, THE RESPONDENT AGREES TO INDEMNIFY, KEEP, SAVE AND HOLD THE BRA HARMLESS FROM ANY AND ALL ACTIONS, LIABILITIES, DAMAGES, JUDGMENTS, COSTS AND EXPENSES INCLUDING REASONABLE ATTORNEY'S FEES, IN CASE AN ACTION IS FILED OR DOES IN ANY WAY ACCRUE AGAINST THE BRA, ITS OFFICIALS, OFFICERS, AND EMPLOYEES IN CONSEQUENCE OF THE AWARDED CONTRACT FOR ANY NEGLIGENT ACT OR OMISSION OF THE RESPONDENT IN THE PROVISION OF SERVICES UNDER THE AWARDED CONTRACT, OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF THE RESPONDENT OR THE RESPONDENT'S OFFICERS, AGENT, CONTRACTORS, ASSIGNS OR EMPLOYEES. IN THE EVENT A JUDGMENT IS RECOVERED

AGAINST THE BRA FOR ANY SUCH LIABILITY, COSTS OR EXPENSES, SUCH JUDGMENT SHALL BE CONCLUSIVE AGAINST THE RESPONDENT.

IT IS SPECIFICALLY UNDERSTOOD AND AGREED BY THE RESPONDENT THAT SUCH INDEMNITY IS INDEMNITY BY THE RESPONDENT TO INDEMNIFY AND PROTECT THE BRA FROM LIABILITY, CLAIMS, SUITS, LOSSES, DAMAGES OR CAUSES OF ACTION DUE TO THE RESPONDENT'S NEGLIGENCE, ERROR OR OMISSION.

13. CRITERIA FOR AWARD: The BRA will select the most highly qualified Respondent on the basis of demonstrated competence and qualifications and then attempt to negotiate with that Respondent a contract at a fair and reasonable price. If a satisfactory contract cannot be negotiated with the most highly qualified Respondent, the BRA will select the next most highly qualified Respondent and attempt to negotiate a contract with that Respondent at a fair and reasonable price.

14. TERMINATION: The awarded contract may be terminated at any time by the BRA, in BRA's sole discretion, for any cause or for convenience without penalty or liability. Upon receipt of such notice, the supplier shall immediately discontinue all services and actions. The BRA shall pay the Respondent promptly the accrued and unpaid amounts due for services to the date of termination, to the extent the services are approved by the BRA.

15. CHANGE OF CONTRACT PRICE:

The agreed upon contract price shall not be exceeded without the prior written consent of the BRA and may only be modified by a written amendment to the contract executed by both BRA and Respondent.

16. PAYMENT: Unless otherwise specified, payment for services and/or product will be processed within thirty (30) days from invoice date and acceptance of Services and/or product. Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing. Unit price on invoice shall be in two (2) decimal places only, i.e., \$.XX.

The BRA has set a goal to have as much paperwork submitted electronically. Respondents are asked to submit invoices electronically to the following Accounts Payable email address: accounts.payable@brazos.org. Respondents who use the electronic service should not mail the original invoice.

17. CONFIDENTIALITY OF DOCUMENTS: The BRA is subject to the Texas Public Information Act (PIA). Any information submitted to the BRA by a Respondent shall be considered non-confidential and available to the public, except as follows:

In the event a Respondent considers a specific portion of their Proposal to be confidential and subject to an exception to disclosure under the PIA, such portion must be clearly identified and marked "CONFIDENTIAL". Do not mark an entire Proposal confidential, as this is not in conformance with the PIA and is not acceptable. Only the specific portion or portions of the Proposal that the Respondent considers to be confidential pursuant to the PIA should be marked. **IF AN ENTIRE PROPOSAL IS MARKED CONFIDENTIAL, THE BRA WILL NOT TREAT ANY PORTION OF THE PROPOSAL AS CONFIDENTIAL AND THE PROPOSAL MAY BE REJECTED AS NON-CONFORMING.** The BRA will honor notations of confidentiality made in accordance with this paragraph and decline to release such information initially. However, final determination of whether a particular portion of a Proposal may in fact be withheld pursuant to the PIA will be made by the Texas Attorney General or a court of competent jurisdiction.

In the event a public information request is received for a portion of a Proposal that has been marked confidential, the BRA shall ask the affected Respondent if the information may be released. If the release is agreed to, the BRA shall release the information.

If the release is denied, the matter shall be referred to the Texas Attorney General's Office in accordance with the process set forth in the PIA. The Respondent shall be fully and solely responsible for submitting arguments and evidence within the statutory timeframes to the Texas Attorney General's Office regarding its claim of confidentiality. The BRA will **NOT** submit arguments on behalf of the Respondent.

The Texas Attorney General's office shall rule on the matter. In the event that it is determined by opinion or order of the Texas Attorney General or a court of competent jurisdiction that such information may not be withheld, then such information will be made available to the requester. If it is determined that the information may be withheld, BRA will withhold the information from the requestor.

Pricing information contained in Proposals or contracts is not considered confidential under the PIA and will be disclosed without making a request to the Texas Attorney General.

18. NO PRICE: The selection of the Selected Respondent under this RFP shall be in accordance with Chapter 2254 of the Texas Local Government Code. Do not include any price information within the submittal. Any submittal containing any price information will be automatically disqualified.

**REQUEST FOR PROPOSALS
LAKE GRANBURY EMBANKMENT STABILITY ANALYSIS AND ASSESSMENT
RFP NO. 24-1328**

SUBMITTAL SCHEDULE

Proposals are posted on the BRA website and prospective Respondents should check [www.brazos.org> Doing Business>](http://www.brazos.org/Doing-Business/), [Purchasing & Professional Services>](http://www.brazos.org/Purchasing-Professional-Services/), Request for Proposals for potential updates to Proposal requirements.

Wednesday, November 22, 2023	RFP is available to download from the BRA website at http://www.brazos.org/Doing-Business/Purchasing-Professional-Services/Request-for-Proposals , and click on “ <i>View this RFP</i> ”.
4:00 PM, Wednesday, December 20, 2023	Last date and time to ask questions or request additional information. Email questions to submissions@brazos.org .
4:00 PM, Thursday, December 14, 2023	Post response to questions received as of the deadline or as soon thereafter, as an Addendum on the BRA website – http://www.brazos.org/Doing-Business/Purchasing-Professional-Services/Request-for-Proposals
10:00 AM, Thursday, January 11, 2024	Proposals are due.
10:15 AM, Thursday, January 11, 2024	Proposals will be opened virtually at the link below: https://youtube.com/live/aMpvyymxnZo?feature=share

**REQUEST FOR PROPOSALS
LAKE GRANBURY EMBANKMENT STABILITY ANALYSIS AND ASSESSMENT
RFP NO. 24-1328**

1. General

DeCordova Bend Dam, owned and operated by the Brazos River Authority, was designed by Ambursen Engineering Corporation, and constructed in 1969 to form the Lake Granbury Reservoir. DeCordova Bend Dam is in Hood County, approximately 8 miles southeast of Granbury, Texas. DeCordova Bend Dam has a top of conservation pool elevation (693 feet above mean sea level - BRA datum) storage capacity of approximately 136,000 acre-feet and a spillway structure consisting of sixteen (16) tainter gates.

The embankments at DeCordova Bend Dam contain several active piezometers that have been in service for est. 45-55 years, which have exceeded their expected service life. In addition, each of these active piezometers were originally installed at different timeframes and purposes over the life of the project. Based on past inspections, it has been recommended to establish piezometer threshold values based upon an updated stability analysis as well as to evaluate the performance of those piezometers that have exceeded their expected service life.

In response, this Request for Proposals ("RFP") solicits information from prospective respondents ("Respondent") as to their qualifications to conduct a thorough evaluation of the stability of the DeCordova Bend Dam embankments, including, without limitations: determining which piezometers and/or other dam monitoring instrumentation should be replaced, rehabilitated, abandoned, and/or added to DeCordova Bend Dam in order to effectively monitor the performance of the embankments; determining the associated instrumentation threshold values based on a seepage and stability analysis; assessing the stability and settlement of the embankments; and, determining whether any repairs or modifications to improve the stability of the embankments are necessary in order to ensure the continued safe operation of the dam.

2. Scope of Services

A scope of services will be developed in conjunction with the negotiation of a total not to exceed, professional services contract between the BRA and the selected Respondent. The Brazos River Authority reserves the right to award to the selected Respondent one or more Professional Services Contracts for each task and/or group of combined tasks listed in this RFP. The scope of services presented below for each phase is a general description of the required work to develop this project and will be further developed during negotiations. Therefore, the actual scope of services for the Professional Services Agreement(s) may vary depending upon the final scope of work developed by the BRA and the Respondent. That is, prior to the issuance of a Professional Services Agreement(s), the BRA and the selected Respondent will develop a detailed Scope of Work, together with a total not-to-exceed fee and a schedule for each project task, which shall include all labor, materials, and equipment necessary to accomplish the task. The scope of services to be performed may include, but are not limited to, the following:

Planning/Preliminary Design Phase:

- a. Make site visits as necessary to observe the condition of the facility and its operational requirements.
- b. Review all available and pertinent historical engineering reports, survey records, and as-built drawings of the embankments.
- c. Conduct a seepage and stability analysis of the embankments.
- d. Assess the condition of the existing piezometers and determine their reliability and serviceability. From the conditional assessment, determine which existing piezometers should be replaced, rehabilitated, or abandoned. In addition, determine if any additional piezometers and/or other dam monitoring instrumentation (i.e., survey monuments, inclinometers, extensometers, relief wells, etc.) should be installed in order to effectively monitor the performance of the embankments.
- e. If recommended, replace, rehabilitate, and/or abandon the identified existing piezometers in accordance to State of Texas laws and regulations.
- f. If recommended, install all new and additional dam monitoring instrumentation.
- g. Assess the stability and settlement of each embankment.
- h. If applicable, determine concepts and probable life cycle cost for those repairs/improvements required to ensure the stability of the embankments.
- i. Submit a report to the Brazos River Authority documenting the findings, conclusions, and recommendations of the above activities.

Engineering Design Services (only if authorized by the BRA)

- a. Prepare 30%, 60%, 95%, and 100% final design plans.
- b. Prepare conformed construction plans, General and Supplementary Conditions, Division 1 Documents Technical Specifications for bidding.
- c. Prepare a detailed estimate of probable construction and life cycle cost.
- d. Review permitting requirements and procure approvals as necessary.

Bidding Services (only if authorized by the BRA)

- a. Provide engineering support services as required during bidding process.
- b. Review bid respondent submittals and prepare a recommendation assessment to BRA

Construction Engineering, Administration, and Resident Project Representative Services (only if authorized by the BRA)

- a. Provide construction contract administrative services, including but not limited to, conducting a pre-construction meeting and participating in regular construction progress meetings as determined with BRA.
- b. Provide construction engineering services, including but not limited to, making visits to the site at a frequency sufficient to observe the progress and the quality of work as determined necessary by the engineer and to make sure the work is proceeding in accordance with the construction contract documents and reviewing submittals to ensure that products are furnished in accordance with the contract documents.
- c. Provide a full-time Resident Project Representative to monitor construction for compliance with the contract documents.
- d. Prepare record documents to capture any changes during construction.
- e. Provide operation and maintenance manuals and applicable training as necessary.

3. Information Required in the RFP Submittal - Tab Format

The BRA specifically requests succinct submittals tailored to the general and discipline-specific scopes of services summarized above. Each response should describe in sufficient detail the relevance of the individual team member's expertise and experience to the specific requirements of the project. All submittals become the property of the BRA. Each submittal shall include the information requested below. Please limit each submittal to no more than 20 pages (not including resumes and required forms).

Tab A: Include the following:

- (1) Date your company (including any proposed subconsultants) was established and a brief history; number of employees; provide number and location of offices.
- (2) Provide name, title and office location of person who will be the principal contact for the BRA and the billing location if different.
- (3) Describe the types of organizations that your company typically serves and general nature of the work.
- (4) A list and description of similar services completed within the last five years under your current company name or any other company name similar in nature to this solicitation. This should include the name, the location, a brief description of Scope of Services, and a contact name and telephone number of a reference for each client. List litigation that your company has been a party to in the last five (5) years, under your current company name or any other company name. Include only litigation that involves business units in your company and all proposed subconsultants that are proposed for performing services under this RFP.
- (5) To be fully responsive, provide the level of detail in the attached example, as well as a name and phone number to contact an authorized representative of your company in the event that the BRA needs to clarify your response. Failure to be fully responsive will be sufficient grounds for the BRA to disqualify your company.
- (6) Have you ever defaulted, failed to complete a contract or had a contract terminated by the other party? If so, where and why? Provide name and telephone number of the other party.

Tab B: Include the following:

- (1) A summary of Respondent's experience of conducting geotechnical seepage and stability analyses of embankments at large high hazard dams (as defined by TCEQ).
- (2) A summary of Respondent's experience installing and properly abandoning dam monitoring instrumentation (i.e., piezometers, relief wells, extensometers, inclinometers, etc.) in accordance with State of Texas laws/regulations in order to effectively monitor the performance of the embankments at large high hazard dams (as defined by TCEQ).
- (3) A summary of Respondent's experience conducting geotechnical and stability conditional assessments of embankments at large high hazard dams (as defined by TCEQ) in order to verify stability, and if necessary, to determine required improvements/modifications.
- (4) A summary of Respondent's experience conducting precision surveys of critical dam components in order to verify horizontal and vertical stability in accordance with U.S Army Corps of Engineers manual for Structural Deformation Surveying (EM 1110-2-1009, revised February 1, 2018).
- (5) An organizational chart depicting the names of key engineering personnel (including subcontractors), their Texas P.E. license number, their associated engineering disciplines (i.e., geotechnical, civil, structural, hydraulic) that will serve as technical experts for the Respondent in order to conduct a seepage and stability analysis, conditional assessment of the embankments and piezometers, installation and abandonment of dam monitoring instrumentation, and design improvements (if necessary) to the embankments at DeCordova Bend Dam in accordance with Texas

Administrative Code (TAC), Title 30, Chapter 299 Dams and Reservoirs requirements (effective date January 1, 2009). Also, provide the name and address of sub-consultants that will be utilized by the Respondent and their proposed role in the project. Note: All engineering site inspectors must have a minimum of 5 years' experience inspecting and conducting design improvements to large high hazard dam facilities (as defined by TCEQ) as it relates to their associated engineering discipline/expertise. In addition, prior to executing the associated Professional Services Contract(s), each engineering site inspector/designer must obtain licensure in the state of Texas in their assigned project engineering discipline.

- (6) A summary of Respondent's experience conducting dam and intake structure engineering projects at large high hazard dams (as defined by TCEQ).
- (7) A detailed description of the Respondent's quality control methodology for dam and intake structure engineering projects at large high hazard dams (as defined by TCEQ).
- (8) A description of the Respondent's ability to complete projects without significant cost escalations or overruns.
- (9) A description of the Respondent's ability to meet current and long-term workloads and staff ability to develop and meet schedules, milestone dates, and deadlines on an as need basis.
- (10) The identification and contact information of the person proposed by the Respondent to serve as the point of contact for scope of services development and negotiations.
- (10) Describe Respondent's ability to provide services for the Upper Region of the Brazos River Authority. These services can be provided by teaming efforts between Respondent's offices and/or your sub-consultant's offices.
- (11) Provide Respondent's professional registrations, identification of the project manager, identification of the key team members, as well as each key team member's Texas PE license number/current Texas PE Licensure status to perform the proposed professional services described in Section 2 of this RFP.
- (12) A demonstration that Respondent and sub-consultants can maintain insurance coverage per the insurance requirements stated in this RFP.
- (13) Resumes for team members associated with the project.

Tab C: Include the following:

- (1) Complete and submit the attached W-9 form, or if foreign entity submit the appropriate tax document information.
- (2) Complete and submit the attached "Conflicts of Interest Questionnaire [CIQ]" form.
- (3) Complete and submit the "Acknowledgment of Request for Proposals and Receipt of Addenda" form. Respondent is required to complete, sign and submit this form with Respondent's Proposal. Failure to complete, sign and submit this form with Respondent's Proposal will disqualify the entire Proposal as non-responsive.
- (4) HUB Subcontracting Plan

4. RFP Inquiries

All inquiries, including clarifying questions, related to this RFP shall **only** be directed to the Purchasing Manager via e-mail to submissions@brazos.org. The Purchasing Manager will direct any inquiries to the appropriate BRA staff, a response will be issued and if warranted, an Addendum will be posted on the BRA's website at www.brazos.org. **Failure to adhere to this restriction during the advertising, evaluation, and selection phases will result in the rejection of a Respondent's Proposal.**

5. Hub Subcontracting Plan

This solicitation requires a HUB Subcontracting Plan to be completed and submitted even if the Respondent will not use the services of a HUB in the execution of this contract. This contract does not require that a HUB be used in the execution of this contract. The HUB Subcontracting Plan is attached to this solicitation. If you have any questions regarding the HUB Subcontracting Plan please contact David Thompson, HUB Coordinator at David.Thompson@Brazos.org.

6. Hub Subcontracting Plan Instructions (If Self Performing HUB and no Subcontractors)

If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), follow the instructions on the HUB Subcontracting Plan Checklist, first page of the HUB Plan included in this solicitation.

Section 1 - Respondent and Requisition Information

Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.

Section 3 - Self Performing Justification

Section 4 – Affirmation (**Remember to sign Section 4**)

If you are subcontracting any work please follow the instructions on the HUB Subcontracting Plan Checklist, first page of the HUB Plan included in this solicitation.

7. Respondent's Past Performance

BRA will consider Respondent's past performance and may conduct reference checks with other entities regarding past performance. BRA may examine Respondent's performance including, but not limited to: the Comptroller of Public Accounts Statewide Procurement Division Vendor Performance Tracking System, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, repeated negative performance, records of repeated non-responsiveness to performance issues, and non-renewals of contracts. Such sources of Respondent performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the Federal government. Further, BRA may initiate such examinations of Respondent performance based upon media reports. Any such investigations shall be at the sole discretion of BRA, and any negative findings, as determined by BRA, may result in non-award to Respondent.

8. Conflict of Interest

Pursuant to Chapter 176 of the Local Government Code, any person or agent of a person who contracts or seeks to contract for the sale or purchase of property, goods, or services with a local government entity (i.e., Brazos River Authority) must disclose in the Conflicts of Interest Questionnaire Form ("CIQ") the person's affiliation or business relationship that might cause a conflict of interest with the local government entity. By law, the CIQ must be filed with the BRA Records Management Officer no later than seven (7) days after the date the person begins contract discussions or negotiations with the BRA, or submits an application or response to a Request for Proposals, correspondence, or another writing related to a potential agreement with the BRA. Updated Questionnaires must be filed in conformance with Chapter 176.

A copy of the CIQ is attached. If you have any questions about compliance, please consult your own legal counsel. Compliance is the individual responsibility of each person or agent of a person who is subject to the filing requirement. An offense under Chapter 176 carries a penalty up to a Class A misdemeanor.

9. Disclosure of Interested Parties

Pursuant to Section 2252.908 of the Government Code, the selected Respondent in contracts for the sale or purchase of property, goods, or services with a local government entity (i.e., BRA) anticipated to have a value of at least \$250,000/\$500,000 must submit a Disclosure of Interested Parties Form to the local government entity that discloses all persons at the selected Respondent's firm who have a controlling interest in the selected Respondent's firm or who actively participated in facilitating the contract or negotiating the terms of the contract.

The requirements of Section 2252.908 of the Government Code are subject to change, and if you have any questions about compliance, please consult your own legal counsel.

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

10. Term of Agreement

The services of the Respondent shall commence on the effective date of the agreement and shall continue until the services are completed.

11. Selection Process

Proposals will be evaluated and scored based on the below criteria:

1. Respondent's Experience
 - a. Provide a list of projects, of similar size and scope, the proposed project team has successfully performed.
 - b. Provide detailed information for each project being used to support the Respondents experience.
 - c. Provide any additional substantive information the BRA should know to evaluate the Respondent's experience.
2. Respondent's Proposed Plan and Approach for Providing Services
 - a. Provide an explanation how Work Plans and Approach performed on other successful projects similar in size and scope will be used as guidance to successfully accomplish the Work required for this project.
 - b. Provide details how the Respondent will perform the service promptly, and in the time required, without delay or interference.
3. Respondent's Qualifications
 - a. Professional licensure or certification.
 - b. Provide copies of all current licenses and/or certificates supporting each individuals' qualifications to perform the work required for this project.
4. Respondent's Resource Availability
 - a. Describe how the Respondent plans to perform the Work required under this contract promptly and in the time required without delay or interference.

12. Contract

The executed contract between BRA and the selected Respondent shall be a BRA standard form contract for Professional Services. Contract terms are not subject to modification and Respondent will be expected to execute the contract in substantially the form provided. Respondent should not base a proposal on an expectation that BRA will modify its contract terms.

Compensation for services provided under the professional services contract to be entered into with the selected Respondent will be based on time and materials up to a total mutually agreeable not-to-exceed amount. Individual tasks under the contract will also be billed on a time and material basis up to a not-to-exceed amount for such task.

The BRA reserves the right to award contract(s) without any negotiations and reserves the right to not make awards. The BRA reserves the right to conduct studies and other investigations as necessary to evaluate any submittal. Submission of a proposal confers no legal right upon any Respondent.

The decision of BRA, or its designee with regard to the above, shall be administratively final. BRA, in its sole discretion, may waive administrative deficiencies and/or minor technicalities in submittals received.

13. Insurance Requirements

The Respondent shall, at Respondent's sole expense, maintain insurance coverage as determined acceptable to the BRA. The Respondent must obtain the following minimum insurance requirements and provide proof to the BRA prior to entering into a contract:

General Liability Insurance:	
Bodily Injury	\$ 500,000 per person
Bodily Injury	\$ 1,000,000 per occurrence
Property Damage	\$ 1,000,000 per occurrence
Aggregate	\$ 2,000,000
Professional Liability:	\$ 5,000,000 per claim / \$10,000,000 aggregate
Workers' Compensation:	Statutory
Automobile Liability:	\$ 1,000,000 per claim / aggregate
Employers' Liability	\$ 1,000,000 policy limit
Pollution Liability if requested by BRA	\$ 1,000,000 per claim / aggregate

Prior to commencement of work under this agreement, Respondent shall register with myCOLtracking.com and subsequently provide documentation that satisfies the insurance requirements of this agreement. Respondent shall add registration@myCOLtracking.com and certificaterequest@myCOLsolution.com to its safe sender's list for necessary communication from myCOL. For any registration difficulties, call myCOLtracking support team at (317) 759-9426.

14. Recycled and Recyclable Products

The BRA encourages the use of recycled products and products that may be recycled or reused.

15. Delivery of Proposal Submittals

Proposals may only be submitted in the following manner:

Electronic Transmission. Email transmission to submissions@brazos.org. Emailed proposal submissions shall be an attachment, in a Portable Document Format (PDF). Proposals shall be clearly identified in the Subject Line as follows: RFP Title, RFP Number and RFP Due Date. The BRA shall not be responsible for submissions that are not properly identified. Proper identification of Respondent's proposal is the sole responsibility of the Respondent and failure to do so may result in the submission not being included in the proposal opening.

**REQUEST FOR PROPOSALS
LAKE GRANBURY EMBANKMENT STABILITY ANALYSIS AND ASSESSMENT
RFP NO. 24-1328**

**ACKNOWLEDGMENT OF REQUEST FOR PROPOSALS AND
RECEIPT OF ADDENDA**

RESPONDENT MUST ACKNOWLEDGE RECEIPT OF THIS REQUEST FOR PROPOSALS AND ADDENDA BY SIGNING BELOW AND SUBMITTING THIS ACKNOWLEDGEMENT WITH YOUR PROPOSAL. FAILURE TO SIGN THIS ACKNOWLEDGEMENT WILL DISQUALIFY THE PROPOSAL AS NON-RESPONSIVE. SIGNATURE MAY BE DIGITAL, ELECTRONIC OR HANDWRITTEN.

This acknowledgement shall become part of your response and the subsequent contract documents if applicable.

ACKNOWLEDGMENT OF REQUEST FOR PROPOSALS:

Respondent hereby acknowledges that it has received and read the Request for Proposals and all Addenda, and that this Proposal is made in accordance with the provisions thereof. Respondent acknowledges that this Proposal meets or exceeds all terms, requirements, conditions, and/or specifications set forth in the Request for Proposals and Addenda, and exceptions or deviations from such terms, requirements, conditions, and/or specifications, if any, have been clearly and conspicuously identified as such in the Proposal.

Does your company have ten (10) or more full time employees? Check one box only.

☐

YES

☐

NO

Name of Firm (Respondent)

Signature – Authorized Representative

Printed Name

Date

E-mail Address

Telephone Number

EXAMPLE RESPONSE TO LITIGATION HISTORY QUESTION

<u>Date</u>	<u>Parties</u>	<u>Nature/Description of Litigation</u>	<u>Outcome</u>
2010	XYZ, Inc. v. Owner	Owner brought suit against XYZ, Inc. claiming flawed design of a concrete pad.	XYZ, Inc. Nonsuited
2011	XYZ, Inc. v. Owner	XYZ, Inc. retained to design bike path, the path collapsed in construction and owner sued XYZ, Inc. and contractor	Settled
2012	XYZ, Inc. v. Contractor	Contractor claimed XYZ, Inc. negligent on a project where Contractor was constructing a tower and the tower allegedly incorporated incorrect materials. XYZ, Inc. disputes the allegations.	Ongoing

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ► _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <small>(Applies to accounts maintained outside the U.S.)</small>
	5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
				-				-	
or									
Employer identification number									
				-					

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ►	Date ►
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/Businesses and clicking on Employer Identification Number (EIN) under Starting a Business. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.

You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor ²
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
6. Sole proprietorship or disregarded entity owned by an individual	The owner ³
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity ⁴
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

***Note:** The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.



HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
 - ☐ Section 1 - Respondent and Requisition Information
 - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
 - ☐ Section 2 c. - Yes
 - ☐ Section 4 - Affirmation
 - ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - ☐ Section 1 - Respondent and Requisition Information
 - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - ☐ Section 2 c. - No
 - ☐ Section 2 d. - Yes
 - ☐ Section 4 - Affirmation
 - ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - ☐ Section 1 - Respondent and Requisition Information
 - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - ☐ Section 2 c. - No
 - ☐ Section 2 d. - No
 - ☐ Section 4 - Affirmation
 - ☐ GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**
 - ☐ Section 1 - Respondent and Requisition Information
 - ☐ Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
 - ☐ Section 3 - Self Performing Justification
 - ☐ Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
Point of Contact: _____ Phone #: _____
E-mail Address: _____ Fax #: _____
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No
- c. Requisition #: _____ Bid Open Date: _____
(mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- ☐ - *Yes*, I will be subcontracting portions of the contract. (If *Yes*, complete Item b of this SECTION and continue to Item c of this SECTION.)
- ☐ - *No*, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If *No*, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- ☐ - *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- ☐ - *No* (If *No*, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- ☐ - *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- ☐ - *No* (If *No*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____

Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____ Requisition #: _____

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature

Printed Name

Title

Date
(mm/dd/yyyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

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HSP Good Faith Effort - Method B (Attachment B)

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Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded “No” to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- ☐ - Yes (If Yes, continue to SECTION B-4.)
- ☐ - No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be “day zero” and does not count as one of the seven (7) working days.

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas’ Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbldsearch/index.jsp>. HUB status code “A” signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company’s Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program’s webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.
- d.** List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

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Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
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	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
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- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: _____
Point-of-Contact: _____
E-mail Address: _____

State of Texas VID #: _____
Phone #: _____
Fax #: _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____
Point-of-Contact: _____
Requisition #: _____

Phone #: _____
Bid Open Date: _____
(mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than _____ on _____
Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications:

☐ - Not Applicable

4. Bonding/Insurance Requirements:

☐ - Not Applicable

5. Location to review plans/specifications:

☐ - Not Applicable

STATE OF TEXAS §
 §
 COUNTY OF MCLENNAN §

PROFESSIONAL SERVICES AGREEMENT

In consideration of the mutual promises as set forth below, this Professional Services Agreement (“Agreement”) is entered into as of the date last executed below (“Effective Date”), by and between [REDACTED] (“ENGINEER”), with a mailing address of [REDACTED], and the Brazos River Authority, (“BRA”), with a mailing address of 4600 Cobbs Drive, Waco, Texas 76710.

SECTION I. EMPLOYMENT OF THE ENGINEER AND PERFORMANCE OF SERVICES

1.1 GENERAL: The BRA has determined the need for professional engineering and associated services (“Services”) in connection with [REDACTED] (“Project”), as such Services and Project are more specifically set forth in “Exhibit A”, attached hereto and incorporated by reference herein for all purposes. The BRA hereby agrees to employ the ENGINEER and the ENGINEER agrees to perform such Services, and, in rendering such Services, the BRA agrees to compensate the ENGINEER for performance of the Services as stated in “Exhibit B”, attached hereto and incorporated by reference herein for all purposes.

1.2 PERFORMANCE OF SERVICES: The ENGINEER's employees and associates to be utilized in the performance of the Services for the Project are identified in “Exhibit A”. The person identified as Project Manager shown in “Exhibit A” shall not be changed without the BRA’s prior written acknowledgment and concurrence. ENGINEER shall report to BRA's designated Project Representative.

1.3 GEOTECHNICAL LABORATORY SERVICES: If geotechnical laboratory services are provided for the Project through this Agreement, either by the ENGINEER or its associates, these Services shall be performed by a laboratory accredited, in soils or geotechnical testing as appropriate, by the American Association of Laboratory Accreditation or by the American Association of State Highway and Transportation Officials. The ENGINEER agrees to provide evidence of such accreditation to the BRA on an annual basis for the duration of this Agreement.

1.4 OTHER LABORATORY SERVICES: If laboratory services are provided for the Project through this Agreement, either by the ENGINEER or its associates, these Services shall be performed in a laboratory selected by the ENGINEER (and/or the BRA as may be otherwise provided in this Agreement) as qualified to perform the Services.

SECTION II. BASIC PROJECT SERVICES OF THE ENGINEER

2.1 The ENGINEER shall provide, perform, and complete to the satisfaction of the

BRA all of the Services necessary for completion of the Project contemplated herein. A detailed description of the Project and the Services to be performed shall be attached hereto and incorporated by reference herein as “Exhibit A”. In performing the Services, the ENGINEER shall provide all necessary labor, services, transportation, equipment, information, data, and other means and items necessary to perform the Services.

2.2 ENGINEER shall provide professional and technical employees versed in fields of endeavor appropriate for the conduct of the Project including employees duly licensed and registered to practice engineering in the State of Texas, for each engineering discipline necessary for the Project, which employees shall have the professional abilities, experience and expertise to undertake studies, evaluations, determinations, and analyses to counsel the BRA in the selection and analysis of Project alternatives; to provide cost estimates, technical opinions and recommendations; and to provide professional engineering and associated services to the BRA for the Project.

2.3 The ENGINEER hereby agrees, as an independent contractor, to perform the Services herein contemplated in a manner consistent with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

2.4 The ENGINEER shall serve as the BRA's professional engineer in those phases of the Project to which this Agreement applies; and, shall give consultation and advice to the BRA during the performance of the Services.

2.5 It is understood and agreed by the ENGINEER that the BRA may, from time to time, make suggested revisions or recommendations regarding the Services to be performed under this Agreement. The ENGINEER may accept or reject any such suggestions or recommendations. Acceptance of any such suggestions or recommendations shall not relieve the ENGINEER of any of the ENGINEER's responsibilities or obligations under this Agreement.

2.6 BRA and ENGINEER agree that the Scope of Services attached hereto as “Exhibit A” accurately reflects and contemplates all of the Services that ENGINEER has reasonably anticipated that ENGINEER will need to perform in order to accomplish the tasks set forth therein; however, in the event a circumstance arises through no fault of the ENGINEER that is beyond the scope of this Agreement and could not have been reasonably anticipated by the ENGINEER as being required to accomplish the tasks set forth herein, ENGINEER shall notify BRA of such circumstance in writing, and BRA and ENGINEER will negotiate regarding any required services of the ENGINEER in relation to such circumstance as further contemplated in Section [REDACTED], Additional Services in “Exhibit B” of this Agreement.

SECTION III. AGREEMENT PRICE AND PAYMENT

3.1 Payments for performance of the Services contemplated by this Agreement shall

be in the not-to-exceed amounts and in accordance with the provisions set forth in “Exhibit B”.

3.2 Nothing contained in this Agreement shall require BRA to pay for any work that is unsatisfactory as determined by BRA or which is not submitted in compliance with the terms of this Agreement.

3.3 BRA will not be required to make any payments to the ENGINEER, when the ENGINEER is in default under this Agreement, nor shall this paragraph constitute a waiver of any right, at law or in equity, which BRA may have if the ENGINEER is in default, including the right to bring legal action for damages or for specific performance of this Agreement. Waiver of any default under this Agreement shall not be deemed a waiver of any subsequent default.

3.4 Nothing contained herein shall be construed as authorizing additional fees for work to complete actions not specifically listed for successful completion of the Services. The total amount of compensation set forth in “Exhibit B” shall not be exceeded without the prior written consent of the BRA.

SECTION IV. ENGINEER'S RESPONSIBILITY

4.1 The ENGINEER shall be solely and completely responsible for performing the Services with diligence and in a manner consistent with the level of care and skill ordinarily exercised for professional engineering service in the State of Texas. In the event the ENGINEER fails to perform in such a manner, then ENGINEER SHALL BE RESPONSIBLE FOR ALL DAMAGES AND COSTS ASSOCIATED WITH DEFECTS, FAILURES, ERRORS, OMISSIONS, OR OTHER INSUFFICIENCIES IN THE PROJECT, OR ANY PORTION THEREOF, ATTRIBUTABLE TO SERVICES PROVIDED BY OR THAT SHOULD HAVE BEEN PROVIDED BY THE ENGINEER PURSUANT TO THIS AGREEMENT, INCLUDING ANY AND ALL AMENDMENTS THERETO. SUCH COSTS SHALL INCLUDE, BUT NOT BE LIMITED TO: ALL EXPENSES REQUIRED TO SATISFACTORILY COMPLETE NECESSARY ANALYSES TO DETERMINE THE CAUSE OF THE FAILURE; COSTS TO DESIGN CORRECTIVE IMPROVEMENTS; COSTS TO PROVIDE ADDITIONAL CONSTRUCTION PHASE ENGINEERING AND RESIDENT PROJECT REPRESENTATIVE SERVICES ASSOCIATED WITH THE CORRECTIVE IMPROVEMENTS; AND ANY AND ALL CONSTRUCTION AND PROFESSIONAL SERVICES COSTS CAUSED BY, ARISING OUT OF, OR RELATED TO THE REMEDIATION OF THE ERROR, INCLUDING, BUT NOT LIMITED TO: THE COST TO CONSTRUCT ELEMENTS THAT MUST BE REMOVED; THE COST OF DEMOLITION AND DISPOSAL OF MATERIALS; AND THE COST TO MODIFY ELEMENTS OF THE INITIALLY COMPLETED WORK THAT CAN REMAIN. IN ADDITION, SHOULD THE BRA PREVAIL IN ANY DISPUTE CONCERNING THIS AGREEMENT THAT IS SUBMITTED TO LITIGATION, THE BRA SHALL BE ENTITLED TO RECOVER THE ATTORNEY'S FEES IT INCURS, UP TO A REASONABLE AMOUNT, PLUS ITS COSTS, INCLUDING WITNESS EXPENSES AND EXPERT WITNESS' FEES.

4.2 Acceptance of the Services by BRA shall not constitute nor be deemed a release of the responsibility and liability of the ENGINEER, its employees, agents, or sub-consultants for the accuracy and competency of the ENGINEER's Services, including but not limited to: work products, computer programs, or other documents, and Services prepared/performed under this Agreement.

4.3 The ENGINEER further agrees to correct programs or documents or re-execute Services as may be required due to the ENGINEER's development of programs or documents which are found to be in error or contain defects or omissions at no additional costs to the BRA.

4.4 In the event the BRA enters into a construction contract for the Project requiring construction phase services of the ENGINEER, the ENGINEER shall perform and act in accordance with the requisites set forth in the construction contract applicable to the ENGINEER and the provisions set forth in this Agreement. Further, the ENGINEER shall inform the BRA of the construction contractor's failure to perform their work in accordance with the construction contract and shall recommend to the BRA measures to correct such failures and shall approve suggested methods to correct such failure. In addition, the ENGINEER shall recommend withholding payment for such defective work until such failure is corrected.

4.5 It is distinctly understood and agreed that no claim for additional services, extra work completed or materials furnished by the ENGINEER will be allowed by the BRA except as provided herein, nor shall the ENGINEER perform any work, provide services or furnish any materials unless such work is first requested and authorized in writing by the BRA. Any such work or materials furnished by the ENGINEER without BRA's prior written request and authorization shall be at the ENGINEER's own risk, cost, and expense and the ENGINEER hereby agrees and covenants that without such written order, ENGINEER will make no claim for compensation for such work or materials furnished.

SECTION V. INDEMNIFICATION

5.1 THE ENGINEER SHALL COMPLY WITH THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES, AND REGULATIONS AND SHALL INDEMNIFY, KEEP, SAVE, AND HOLD BRA HARMLESS FROM ANY AND ALL LIABILITY OR DAMAGES RESULTING FROM FAILURE TO DO SO.

5.2 IN ADDITION, THE ENGINEER AGREES TO INDEMNIFY, KEEP, SAVE, AND HOLD BRA HARMLESS FROM ANY AND ALL ACTIONS, LIABILITIES, DAMAGES, JUDGMENTS, COSTS, AND EXPENSES INCLUDING THE ATTORNEY'S FEES IT INCURS, UP TO A REASONABLE AMOUNT, PLUS ITS COSTS, INCLUDING WITNESS EXPENSES AND EXPERT WITNESS' FEES, IN CASE AN ACTION IS FILED OR DOES IN ANY WAY ACCRUE AGAINST BRA, ITS OFFICIALS, OFFICERS, AND EMPLOYEES IN CONSEQUENCE OF THIS AGREEMENT FOR ANY NEGLIGENT ACT OR OMISSION OF THE ENGINEER IN THE PERFORMANCE OF THE SERVICES UNDER

THIS AGREEMENT, OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF THE ENGINEER OR THE ENGINEER'S AGENTS, ASSOCIATES, EMPLOYEES, SUCCESSORS, ASSIGNS, OR SUBCONTRACTORS. IN THE EVENT A JUDGMENT IS RECOVERED AGAINST THE BRA FOR ANY LIABILITY IN CONSEQUENCE OF THIS AGREEMENT FOR ENGINEER'S NEGLIGENT ACT(S) OR OMISSION(S) IN THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF THE ENGINEER OR THE ENGINEER'S AGENTS, ASSOCIATES, EMPLOYEES, SUCCESSORS, ASSIGNS, OR SUBCONTRACTORS, SUCH JUDGMENT SHALL BE CONCLUSIVE AGAINST THE ENGINEER.

5.3 IT IS SPECIFICALLY UNDERSTOOD AND AGREED BY THE ENGINEER THAT SUCH INDEMNITY IS INDEMNITY BY THE ENGINEER TO INDEMNIFY AND PROTECT BRA FROM LIABILITY, CLAIMS, SUITS, LOSSES, DAMAGES, OR CAUSES OF ACTION CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE ENGINEER, THE ENGINEER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL. BRA AGREES TO GIVE ENGINEER PROMPT NOTICE OF ANY CLAIM, CONTROL OF THE DEFENSE, OR SETTLEMENT OF THAT CLAIM AND REASONABLE ASSISTANCE AND INFORMATION RELATED TO THE CLAIM.

SECTION VI. INSURANCE REQUIREMENTS

6.1 The ENGINEER agrees to carry and maintain insurance in the following types and amounts for the duration of this Agreement, and furnish certificates of insurance and make available copies of policy declaration pages and policy endorsements as evidence thereof:

- i. Workers' Compensation and Employers' Liability coverage with limits consistent with statutory requirements.
- ii. Commercial General Liability with a combined single limit of \$ per occurrence including products/completed operations, where appropriate, with a separate aggregate of \$. The policy shall contain the following provisions:
 - a. Blanket contractual liability coverage for liability assumed under this Agreement and all agreements relative to the Project.
 - b. Independent Contractors coverage.
 - c. Thirty (30)-day Notice of Cancellation in favor of the BRA, endorsement.
 - d. Waiver of Transfer of Rights of Recovery Against Others in favor of the BRA's endorsement.
 - e. Additional Insured, endorsement

iii. Business Automobile Liability Insurance for all owned, non-owned, and hired vehicles with a minimum combined single limit of \$ [REDACTED] per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of the BRA:

- a. Waiver of Subrogation
- b. Thirty (30)-day Notice of Cancellation
- c. Additional Insured, endorsement

iv. Engineers' Professional Liability Insurance with a minimum limit of \$ [REDACTED] per claim and \$ [REDACTED] in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs, or specifications prepared or alleged to have been prepared by the assured. The policy shall provide for thirty (30)-day notice of cancellation in favor of the BRA.

6.2 General Requirements: The ENGINEER shall be responsible for insurance premiums, deductibles, and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificates of insurance required above. Applicable to all insurance policies: If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The ENGINEER shall maintain continuous coverage for the duration of this Agreement and for not less than twenty-four (24) months following final completion of the Project. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. The ENGINEER shall, on at least an annual basis, provide the BRA with a certificate of insurance, including any required endorsements, as evidence of such insurance.

6.3 If insurance policies are not written for amounts specified above, the ENGINEER shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

6.4 The ENGINEER's subcontractors shall carry and maintain insurance in the same types and amounts as the ENGINEER for the duration of this Agreement, unless otherwise authorized in writing by the BRA. ENGINEER shall be responsible for ensuring that subcontractors carry and maintain the requisite insurance policies. The subcontractor's policies, except for Professional Services and Workers Compensation, shall contain the following endorsements in favor of the BRA:

- a. Waiver of Subrogation
- b. Thirty (30)-day Notice of Cancellation

c. Additional Insured, endorsement

6.5 The ENGINEER shall not commence providing Services under this Agreement until such required insurance is in full force and effect, and until such insurance has been reviewed and deemed adequate by the BRA. The ENGINEER shall not allow any subcontractor to commence providing services on ENGINEER's subcontract until such time as ENGINEER's subcontractor(s) has obtained all requisite insurance. The ENGINEER shall not commence any work until the aforementioned requirements have been met. Approval of insurance by the BRA shall not relieve or decrease the liability of the ENGINEER hereunder.

6.6 Insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued and shall be written by a company with an A. M. Best rating of A or better.

6.7 Certificate of Insurance and all endorsements shall read:

Brazos River Authority
4600 Cobbs Drive
Waco, Texas 76710

6.8 The "other" insurance clause shall not apply to the BRA where the BRA is an additional insured shown on the policy. It is intended that policies required in this Agreement, covering both the BRA and the ENGINEER, shall be considered primary coverage as applicable.

6.9 The BRA shall be entitled, upon request and without expense, to receive copies of all ENGINEER, or ENGINEER's subcontractor(s), policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies and if such request for deletions, revisions, or modifications are commercially available.

6.10 The ENGINEER shall not cause any insurance required under this Agreement to be canceled nor permit any insurance to lapse during the term of this Agreement, nor shall the ENGINEER allow any subcontractor to cancel nor permit any requisite insurance to lapse during the term of the ENGINEER's subcontract.

6.11 The BRA reserves the right to review the insurance requirements of this section during the effective period of this Agreement and to make reasonable adjustments to insurance coverages and their limits when deemed necessary and prudent by the BRA based upon changes in statutory law, court decisions, or the claims history of the industry as well as the ENGINEER (such adjustments shall be commercially available to the ENGINEER).

6.12 Actual losses for which the ENGINEER is found liable under this Agreement shall be paid by the ENGINEER if they are not covered by insurance as required by this Agreement.

SECTION VII. DEFAULT

7.1 BRA may terminate this Agreement without prejudice to any other remedy it may have, when the ENGINEER defaults in performance of any provision herein, or fails to carry out the Services in accordance with the provisions of this Agreement.

7.2 On such termination, BRA may take possession of all the work product and intellectual property prepared or gathered to date in performance of the Project and finish the Project in whatever way BRA deems expedient. On such default by the ENGINEER, BRA may elect not to terminate this Agreement, and in such event BRA may make good the deficiency in which the default consists, and deduct the costs from the Agreement sum to become due to the ENGINEER.

SECTION VIII. TERMINATION

8.1 This Agreement may be terminated at any time by BRA, in BRA's sole discretion, for any cause or for convenience without penalty or liability. Upon receipt of such notice by BRA, the ENGINEER shall immediately discontinue all Services and actions on behalf of BRA.

8.2 As soon as practicable after receipt of notice of termination, the ENGINEER, shall submit a statement, showing in detail the Services performed but not paid for under this Agreement to the date of termination. The ENGINEER will forward to BRA all portions of the Services performed and instruments of service created on the Project to the date of termination. BRA shall then pay the ENGINEER promptly the accrued and unpaid Services to the date of termination, to the extent the Services are approved by BRA.

SECTION IX. OWNERSHIP AND USE OF DOCUMENTS

9.1 Copies of all notes, letters, correspondence, drawings, specifications, and other documents or instruments of professional Services prepared or assembled by the ENGINEER under this Agreement shall become the sole property of BRA and shall be delivered to BRA.

9.2 The ENGINEER shall retain in its files all original notes, letters, correspondence, drawings, specifications, documents or instruments of professional Services as well as all other pertinent information for the work.

9.3 BRA shall require that all plans be sealed, dated, and signed by the ENGINEER, if designs and documents have been completed to the point where it is reasonably feasible to seal, under requirement of state law. If this Agreement is terminated before such plans, designs, and documents have been so sealed, such plans, designs and

documents shall nevertheless become the sole property of BRA and shall be delivered to BRA.

9.4 The ENGINEER agrees that items such as plans, drawings, photos, designs, studies, specifications, data, computer programs, schedules, technical reports, or other work products which is/are specified to be delivered under this Agreement, and which is/are to be paid for by the BRA, is/are subject to the rights of the BRA in effect on the date of execution of this Agreement. These rights include the right to use, duplicate, and disclose such items, in whole or in part, in any manner and for whatever purpose; and, to have others do so.

9.5 If an item produced by the ENGINEER is copyrightable, the ENGINEER may copyright it, subject to the rights of the BRA. The BRA reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, modify, and use such items and to authorize others to do so.

9.6 All such items furnished by the ENGINEER pursuant to this Agreement are considered instruments of its work and Services in respect to the Project. It is understood that the ENGINEER does not represent such items to be suitable for reuse on any other project or for any other purpose(s). If the BRA reuses such items without the ENGINEER's specific written verification or adaptation, such reuse will be at the risk of the BRA, without liability to the ENGINEER.

SECTION X. PERIOD OF SERVICE

10.1 Except as otherwise provided in Section 6.5 of this Agreement, the ENGINEER contracts and agrees to commence the Services contemplated herein upon execution of this Agreement. This Agreement shall remain in force for the period of time required to complete the Project, including required extensions thereto unless discontinued by any of the several provisions included elsewhere in this Agreement.

SECTION XI. SUCCESSOR AND ASSIGNS

11.1 BRA and ENGINEER each bind themselves, their partners, successors, executors, administrators, and assigns to the other party of this Agreement in respect to all covenants of this Agreement. The ENGINEER shall not assign, sublet, or transfer its interest in this Agreement without the written consent of the BRA.

11.2 Any attempted or purported assignment by the ENGINEER without the BRA's approval shall be void and of no force and effect and shall constitute a default under this Agreement.

SECTION XII. ENGINEER'S COORDINATION WITH BRA

12.1 The ENGINEER shall be available for conferences with BRA so that Services can be provided and completed with the full benefit of BRA experience and knowledge of

existing needs and facilities and be consistent with current policies and construction standards of the BRA.

SECTION XIII. INDEPENDENT CONTRACTOR

13.1 The ENGINEER covenants and agrees that ENGINEER is an independent contractor and not an officer, agent, servant, or employee of BRA. The ENGINEER hereby acknowledges that it shall have exclusive control of and exclusive right to control the details of the Services provided hereunder on the Project, and all persons performing same, and shall be liable for the acts and omissions of its officers, agents, and employees.

13.2 In addition, the ENGINEER agrees that the doctrine of *respondeat superior* shall not apply as between BRA and the ENGINEER and nothing herein shall be construed as creating a partnership or joint enterprise between BRA and the ENGINEER.

SECTION XIV. DISCLOSURE

14.1 By signature of this Agreement, the ENGINEER acknowledges to BRA that ENGINEER has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interests, direct or indirect, in property abutting the proposed Project and business relationships with abutting property owners.

14.2 The ENGINEER further agrees that ENGINEER will make disclosure in writing of any conflicts of interest, which develop subsequent to the signing of this Agreement and prior to final payment under this Agreement.

SECTION XV. COMPLIANCE WITH LAWS

15.1 The ENGINEER shall at all times observe and comply with all provisions of local, state, and federal laws, rules, and regulations which in any manner limit, control, or apply to the actions or operations of the ENGINEER, or its agents, associates, employees, successors, assigns, or subcontractors, engaged in performance of the Services or provision of the Services contemplated by this Agreement.

SECTION XVI. SEVERABILITY

16.1 If any word, phrase, clause, sentence, or provision of this Agreement, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid, or unenforceable, such finding shall only affect such word, phrase, clause, sentence, or provision, and such finding shall not affect the remaining portions of this Agreement, this being the intent of the parties in entering into this Agreement; and all provisions of this instrument are declared to be severable for this purpose.

SECTION XVII. CONSTRUCTION OF AGREEMENT

17.1 Although this Agreement is substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other.

SECTION XVIII. NO THIRD-PARTY BENEFICIARY

18.1 No claim as a third-party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the BRA and/or ENGINEER, and the BRA and ENGINEER shall not be liable for or be held to pay any money to any such person.

SECTION XIX. ENTIRE AGREEMENT

19.1 This Agreement sets forth the entire agreement of the BRA and the ENGINEER with respect to the accomplishment of the Services for the Project and the payment therefor, and there are no other understandings or agreements, oral or written, between the BRA and the ENGINEER with respect to performance of the Services for the Project and the compensation therefor, nor was the making and execution of this Project induced by any representation, statement, warranty, agreement, or action other than those expressed or explicitly referenced herein.

SECTION XX. AMENDMENTS

20.1 No modification, addition, deletion, revision, alteration, or other change to this Agreement shall be effective unless and until such change is reduced to writing and executed and delivered by the BRA and the ENGINEER.

SECTION XXI. HEADINGS

21.1 The headings used in this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

SECTION XXII. REMEDIES

22.1 No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but, each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Agreement may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition not be performed pursuant to this Agreement.

SECTION XXIII. VENUE AND CHOICE OF LAW

23.1 Venue and jurisdiction of any suit, right, or cause of action arising under or in connection with this agreement shall lie exclusively in McLennan County, Texas.

23.2 This Agreement shall be construed under Texas law (without regard for choice of law considerations).

SECTION XXIV. REVIEW OF AGREEMENT

24.1 The ENGINEER has carefully examined, reviewed, and accepted this Agreement and there are no discrepancies, errors, omissions, ambiguities, or conflicts in this Agreement that are material to the ENGINEER's provision, performance or completion of the Services, the Agreement price or Agreement time that have not been clarified in writing by the BRA to the satisfaction of the ENGINEER.

SECTION XXV. RIGHT TO AUDIT

25.1 The ENGINEER shall establish and maintain a reasonable accounting system that enables BRA to readily identify the ENGINEER's assets, expenses, costs of goods, and use of funds in relation to the Project. BRA and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of the ENGINEER, including, but not limited to those kept by the ENGINEER, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; canceled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; Agreement amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

25.2 The ENGINEER shall, at all times during the term of this Agreement and for a period of ten (10) years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials. The ENGINEER shall at any time requested by BRA, whether during or after completion of this Agreement, and at the ENGINEER's own expense make such records available for inspection and audit (including copies and extracts of records as required) by BRA. Such records shall be made available to BRA during normal business hours at the ENGINEER's office or place of business and subject to a three (3) day written notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for BRA.

25.3 The ENGINEER shall ensure BRA has these rights with the ENGINEER's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the ENGINEER and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the ENGINEER's obligations to BRA.

SECTION XXVI. BOYCOTTING AND PROHIBITION PROVISIONS

26.1 ENGINEER hereby verifies that ENGINEER:

- i. Does not currently, and will not for the term of this Agreement, boycott Israel;
- ii. Does not currently, and will not for the term of this Agreement, boycott any company that engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law;
- iii. Does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association;
- iv. Is not owned by, or the majority of stock or other ownership interest of ENGINEER is not held or controlled by:
 - a. Individuals who are citizens of China, Iran, North Korea, Russia, or any other country designated as a threat to critical infrastructure.
 - b. A company or other entity, including governmental entities, that is owned or controlled by citizens of, or is directly controlled by the government of, China, Iran, North Korea, Russia, or any other country designated as a threat to critical infrastructure;
- v. Is not headquartered in China, Iran, North Korea, or Russia; and
- vi. Agrees not to access BRA networks or enter BRA facilities with any device that contains software or hardware that is prohibited by the BRA.

SECTION XXVII. NOTICES

27.1 All notices, communications, and reports required under this Agreement shall be personally delivered or mailed to the respective parties by certified mail, return receipt requested or by standard overnight service at the addresses shown below or designated from time to time by the parties in writing.

If intended for BRA, to:

Brazos River Authority
4600 Cobbs Drive
Waco, Texas 76710

If intended for the ENGINEER, to:

SECTION XXVIII. FORCE MAJEURE

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RFP: ; SSS:

RFP No. 24-1328 Lake Granbury Embankment Stability Analysis and Assessment

28.1 Notwithstanding any provision herein to the contrary, neither party hereto shall be under any liability or be deemed in default with respect to its obligations under this Agreement for any delay in performing such party's obligations where such delay is due to force majeure, so long as and to the extent that such performance is prevented by such cause. The term force majeure shall only mean acts of God, natural disasters, or other natural catastrophes, war, terrorism, riots, strikes, lockouts, regulatory acts of any other governmental agencies, court orders, or other similar or dissimilar causes not within the reasonable control of such party and not due to the intentional, grossly negligent, and/or negligent act or omission of such party. Each party must give written notice to the other party within five (5) business days of their knowledge of a force majeure event that will affect their performance under this Agreement. The existence of a force majeure event shall serve to suspend the affected party's obligations under this Agreement, including any associated time periods to perform such obligations, for so long as and to the extent the force majeure event affects such obligations. Upon cessation of the force majeure event, such suspended obligations and any associated time periods to perform such obligations shall resume.

SECTION XXIX. NONDISCLOSURE AND CONFIDENTIALITY

29.1 Confidentiality. During the performance of this Agreement, the ENGINEER has or will have access to confidential or proprietary information belonging to BRA. The ENGINEER herein agrees to maintain the confidentiality of the information received from BRA and information derived from performance of the Project as further set forth in this Section.

29.2 Confidential Information. For the purposes of this Agreement, the term Confidential Information shall mean:

- i. Any information disclosed by BRA relating to **the Project**;
- ii. Any information disclosed by BRA marked or otherwise identified by BRA as "Confidential Information";
- iii. Any information acquired by ENGINEER relating to BRA or any property owned or controlled by BRA as a result of any on-site inspection, testing, appraisal, or other review or analysis of the property or any portion or component thereof performed by ENGINEER or any of its representatives; or
- iv. Any notes, analyses, proposed terms and conditions, proposed agreements, and other documents prepared by ENGINEER which use, summarize, identify, reference, analyze, evaluate, reflect, contain, are based on, or respond to any Confidential Information disclosed to ENGINEER by BRA or acquired by ENGINEER pursuant to Section 29.2iii, above.

29.3 Disclosure. BRA agrees to disclose, and ENGINEER agrees to receive the Confidential Information.

29.4 Confidentiality.

i. **No Use.** ENGINEER agrees not to use the Confidential Information in any way, or to manufacture or test any product embodying Confidential Information, except for the performance of Services in accordance with the terms of this Agreement (“Permitted Purpose”).

ii. **No Disclosure.** ENGINEER agrees to prevent and protect the Confidential Information, or any part thereof, from disclosure to any person other than those having a need for disclosure in connection with the Permitted Purpose. Accordingly, ENGINEER shall not at any time disclose or allow access by any person any of the Confidential Information other than to:

- a. Those employees and/or subcontractors of ENGINEER who require knowledge of the Confidential Information to achieve the Permitted Purpose;
- b. Those legal and/or other professional advisers who require knowledge of the Confidential Information to achieve the Permitted Purpose, and solely for the purpose of soliciting their professional advice on the Permitted Purpose;
- c. Any other person BRA approves in writing in advance.

ENGINEER shall require all persons obtaining the Confidential Information, pursuant to the authority provided in this section, to be bound by the requirements of this Agreement.

iii. **Protection of Secrecy.** ENGINEER agrees to take all steps reasonably necessary to protect the secrecy of the Confidential Information, and to prevent the Confidential Information from falling into the public domain or into the possession of unauthorized persons.

iv. **Records.** ENGINEER shall maintain a record of entities or persons to whom any Confidential Information is disclosed pursuant to this Agreement, together with the actual information disclosed to them, and shall make this record available to BRA upon request;

v. **Reproduction and Return of Confidential Information.** ENGINEER shall not reproduce the Confidential Information or any part thereof in any format or media except with BRA’s prior written consent. Upon termination of this Agreement or written request of BRA, ENGINEER shall immediately return to BRA all the Confidential Information. Additionally, ENGINEER shall destroy all copies of the Confidential Information, whether made by ENGINEER or a third party, and shall ensure that the destruction is performed in a manner that prevents disclosure.

Such destructions shall be certified to BRA in writing. ENGINEER shall ensure that any third persons who are provided Confidential Information, in accordance with the provisions of this Agreement, shall return to BRA all copies of that information and/or certify in writing to BRA that the copies of the Confidential Information have been destroyed.

vi. Notification of Disclosure. ENGINEER shall immediately notify the BRA, upon becoming aware of any unauthorized disclosure, copying, use or loss of any part or all of the Confidential Information. ENGINEER agrees that ENGINEER shall be responsible for any breach of any term of this Agreement by ENGINEER or those to whom ENGINEER provides the Confidential Information.

29.5 Limits on Confidential Information. Confidential Information shall not be deemed proprietary and the ENGINEER shall have no obligation with respect to such information where the information:

- i. Was known to ENGINEER prior to receiving any of the Confidential Information from BRA and was not received in confidentiality;
- ii. Has become publicly known through no wrongful act of ENGINEER;
- iii. Was received by ENGINEER without breach of this Agreement from a third party without restriction as to the use and disclosure of the information;
- iv. Was independently developed by ENGINEER without use of the Confidential Information; or
- v. Was ordered to be publicly released by the requirement of any governmental agency.

29.6 Disclosures Required by Law. Notwithstanding the obligations of confidentiality set forth herein, if ENGINEER believes it is required by law, whether by statute, regulation, court order, subpoena, or otherwise, to disclose any Confidential Information, it will provide prompt written notice to BRA so that BRA may seek legal protection of the Confidential Information. ENGINEER will cooperate with BRA and will use its best efforts to assist in obtaining such protection. If BRA is unable to obtain such protection, ENGINEER may disclose the Confidential Information, but only to the extent required by law.

29.7 Ownership of Confidential Information. ENGINEER agrees that all Confidential Information, including, without limitation, any and all intellectual property rights and derivatives thereof, shall remain the sole property of BRA, and that BRA may use such Confidential Information for any purpose without obligation to ENGINEER. Nothing contained herein shall be construed as granting or implying any transfer of rights or licenses, express or implied, to ENGINEER in the Confidential Information.

29.8 No Required Disclosure or Relationship. ENGINEER understands that nothing herein requires BRA to disclose any Confidential Information to ENGINEER or enter into any agreement, relationship, or other transaction with ENGINEER in connection with the disclosure of Confidential Information.

29.9 Disclaimer. THE CONFIDENTIAL INFORMATION IS PROVIDED “AS-IS”, “WHERE IS”, “WITH ALL FAULTS”, AND BRA MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE CONFIDENTIAL INFORMATION’S: FITNESS FOR ANY PARTICULAR PURPOSE, ACCURACY, AND/OR COMPLETENESS.

29.10 Term and Termination of Confidential Information. The obligations in this Agreement related to the confidentiality of the Confidential Information shall be binding upon ENGINEER until the Confidential Information is no longer confidential, as determined by the BRA.

29.11 Survival of Rights and Obligations. The obligation of confidentiality set forth herein shall be binding upon, inure to the benefit of, and be enforceable by the parties to this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed, in multiple counterparts, intending to be bound thereby as of the Effective Date.

BRAZOS RIVER AUTHORITY

ENGINEER

By: _____

By: _____

Name: **DAVID COLLINSWORTH**

Name: _____

Title: **GENERAL MANAGER/CEO**

Title: _____

Date: _____

Date: _____