



# Brazos River Authority

## Request for Proposals

June 26, 2020

RFP No. 20-07-1176

Dear Prospective Respondent:

Statements of Qualifications hereafter referred to Request for Proposals (RFP or Proposal(s)) will be received in the office of the Purchasing Manager, Brazos River Authority ("BRA"), 4600 Cobbs Drive, Waco, Texas 76710 until **3:00 PM, July 22, 2020** for **Flow Control Gate Replacement** at Possum Kingdom. 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 opening date and time specified above. Any Proposals received later than the specified time, whether delivered in person or mailed, shall not be considered. The BRA is **NOT** responsible for ensuring the delivery of Proposals to our offices.

**Email Proposals to:** Purchasing Manager, [Clarissa.Cabrera@Brazos.org](mailto:Clarissa.Cabrera@Brazos.org)

**Proposal must be plainly marked as follows:**

**PROPOSAL: Flow Control Gate Replacement**

**RFP NO: 20-07-1176**

**RFP DUE DATE: 3:00 PM, July 22, 2020**

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 COVID-19, 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,

*Clarissa Cabrera, CTPM, CTCM*

Clarissa Cabrera, CTPM, CTCM  
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 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 hand written, digital or electronic means 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 **Clarissa Cabrera**, Purchasing Manager no later than five (5) days prior to the opening of the Proposal. Mrs. Cabrera's email address is clarissa.cabrera@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 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 for any cause 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 may only be changed by change order or by a written amendment.

**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](mailto: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.

**REQUEST FOR PROPOSALS  
FLOW CONTROL GATE REPLACEMENT  
RFP NO. 20-07-1176**

**SUBMITTAL SCHEDULE**

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

Friday, June 26, 2020	RFP is available to download from the BRA website at <a href="http://www.brazos.org/Doing-Business/Purchasing-Professional-Services/Request-for-Proposals">http://www.brazos.org/Doing-Business/Purchasing-Professional-Services/Request-for-Proposals</a> , and click on “ <i>View this RFP</i> ”.
4:00 PM, Tuesday, July 14, 2020	Last date and time to ask questions or request additional information. Email questions to <a href="mailto:clarissa.cabrera@brazos.org">clarissa.cabrera@brazos.org</a>
4:00 PM, Wednesday, July 15, 2020	Post response to questions received as of the deadline or as soon thereafter, as an Addendum on the BRA website – <a href="http://www.brazos.org/Doing-Business/Purchasing-and-Professional-Services/Request-for-Proposals">www.brazos.org/ Doing Business/Purchasing and Professional Services/Request for Proposals</a> .
3:00 PM, Wednesday, July 22, 2020	Proposals will be opened.

**REQUEST FOR PROPOSALS  
FLOW CONTROL GAT REPLACEMENT  
RFP NO. 20-07-1176**

**1. General**

The BRA owns and operates Morris Sheppard Dam, which forms Possum Kingdom Reservoir ("PK"), which is a water supply reservoir, and is located in Palo Pinto County approximately 25 miles northwest of Mineral Wells, Texas. Morris Sheppard Dam was constructed in 1941 and consists of an Ambursen flat-slab and buttress dam structure with a service spillway, earthen embankment section, emergency spillway, power intake structure and powerhouse

Morris Sheppard Dam has 9 Bear Trap flood control gates/bays. Each gate/bay has one 30" X 60" Roller Gate and actuator that allows water into the gate chamber to float the gate. Each gate/bay has one Slide (Sluice) Gate and actuator that allows water out of the gate chamber. Furthermore, there are three low flow outlets that are opened and closed with at 24" X 30" Slide Gate and actuator. In total there are 21 actuators. The purpose of this project includes, but is not limited to, accomplishing the following tasks and any associated work:

1. Replace 9 Roller Gates with Slide Gates and any associated components, including but not limited to, actuators, gate stems and pedestals with stainless steel.
2. Replace 9 Sluice (Slide) Gate associated components, including but not limited, to actuators/gate stems/pedestals with stainless steel. The 9 existing Sluice Gates will not be replaced.
3. Replace 3 Low Flow Slide Gates and associated components, including but not limited to, actuators/gate stems/pedestals with stainless steel.
4. Replace 240 volt electrical system with 480 volt system that is currently available on the dam.
5. Perform structural analysis to determine how much additional weight may be added to the walking bridge.
6. Any other related work, including but not limited to, evaluation, design, bidding, construction oversight, and resident project representative services.

The BRA is seeking proposals from individuals or firms ("Firm") to provide engineering services in relation to the evaluation, design, and construction oversight of the PK Morris Sheppard Dam Flow Control Gate Replacement and related components ("Project"). Firms must demonstrate a proven record and a strong background providing dam and intake engineering services. Proposals shall be submitted in accordance with this Request for Proposals ("RFP") and will be evaluated based upon the criteria set forth herein. Services the selected Firm may be called up to perform include but are not limited to those set forth in the Scope of Services section below.

**BRA will evaluate all relevant COVID-19, 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.**

**2. Scope of Services**

The services under this RFP may include preliminary engineering design, final engineering design, bidding support services, and/or construction phase engineering/administrative/resident project representative services. The BRA reserves the right to award to the selected Firm one or more Professional Services Agreements based on the RFP.

**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.

Tab A: Include the following:

- (1) Date your company 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 that are proposed for performing the professional services under this RFP. List all such litigation involving owners and/or general contractors. 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.
- (5) 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.
- (6) Confirm your company carries Professional Liability Insurance, Errors and Omissions coverage or Fidelity Bond.

Tab B: Include the following:

- (1) A summary of Firm's experience designing slide gates, and associated components including by not limited to actuators, gate stems, and pedestals at large high hazard (as defined by TCEQ) dam facilities.
- (2) A summary of Firm's experience designing electrical systems at large high hazard (as defined by TCEQ) dam facilities.
- (3) A summary of Firm's experience evaluating structural components at large high hazard (as defined by TCEQ) dam facilities.
- (4) A summary of Firm's experience conducting construction phase engineering services at large high hazard (as defined by TCEQ) dam facilities.
- (5) Names and technical qualifications of the personnel that will be utilized by the firm that will conduct the Mechanical, Corrosion, Structural, Hydraulic, Civil, Industrial Hygiene, Materials Testing, and Environmental engineering tasks for the improvements specified in Paragraph A of this RFP.
- (6) Provide the name and address of any sub-consultants that will be utilized by the Firm and their proposed role in the project. **NOTE:** The firm is not required to utilize sub-consultants. However, if the Firm chooses to utilize sub-consultants, the sub-consultants insurance requirements will be identical to the Firm's insurance requirements.
- (7) The identification of the person proposed by the Firm to serve as the point of contact for scope of services development and negotiations. Please provide contact information.
- (8) A detailed description of the Firm's quality control methodology for dam & intake structure engineering.

- (9) A description of the Firm's ability to meet current and long-term workloads and staff's ability to develop and meet schedules, milestone dates, and deadlines on an as needed basis.
- (10) Describe you firm's ability to provide services for the Upper Region of the Brazos River Authority. These services can be provided by teaming efforts between your Firm's offices and/or your sub-consultants offices.
- (11) A description of the Firm's ability to complete projects without significant cost escalations or overruns.
- (12) Provide the Firm's professional registrations and the identification of the project manager and team members with their professional licenses and qualifications to perform the proposed professional services in the State of Texas.
- (13) A demonstration that the Firm and any sub-consultants can maintain insurance coverage.
- (14) Resumes for team members associated with the project.

Tab C: Include the following:

- (1) Complete and submit the attached W-9 form.
- (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. Submittal Requirements**

Submit proposals in an electronic format.

The Respondent shall be responsible for any and all costs associated with the preparation, transmittal, presentation, or material submitted in response to this RFP. The BRA will not be responsible for any expenses incurred in the preparation of Proposal or presentation, including travel.

#### **5. RFP Inquiries**

All inquiries, including clarifying questions, related to this RFP shall **only** be directed to the Purchasing Manager via e-mail to [clarissa.cabrera@brazos.org](mailto:clarissa.cabrera@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](http://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.**

#### **6. 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 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.

#### **7. 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.

### **8. Disclosure of Interested Parties**

Pursuant to Section 2252.908 of the Government Code, the selected Firm 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 Firm who have a controlling interest in the selected 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](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

### **9. Term of Agreement**

The services of the PROVIDER shall commence on the Effective Date of this Contract and shall continue until the Work is completed.

### **10. Selection Process**

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.

### **11. 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 Firm 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.

## 12. 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:	\$ 1,000,000 per occurrence/ \$2,000,000 aggregate
Workers' Compensation:	Statutory
Automobile Liability:	\$ 1,000,000 per claim
Employers' Liability	\$ 1,000,000 policy limit

## 13. Recycled and Recyclable Products

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

**REQUEST FOR PROPOSALS  
FLOW CONTROL GATE REPLACEMENT  
RFP NO. 20-07-1176**

**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 HAND WRITTEN.**

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

**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.

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



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 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> 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](http://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](http://www.irs.gov/Businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. Go to [www.irs.gov/Forms](http://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](http://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 <sup>1</sup>
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 <sup>2</sup>
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
6. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
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 <sup>4</sup>
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

<sup>1</sup> 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.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> 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.

<sup>4</sup> 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](mailto: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](mailto:spam@uce.gov) or report them at [www.ftc.gov/complaint](http://www.ftc.gov/complaint). You can contact the FTC at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see [www.IdentityTheft.gov](http://www.IdentityTheft.gov) and Pub. 5027.

Visit [www.irs.gov/IdentityTheft](http://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.

STATE OF TEXAS                   §  
   §  
 COUNTY OF MCLENNAN       §

**PROFESSIONAL SERVICES AGREEMENT**

**THIS PROFESSIONAL SERVICES AGREEMENT**, hereinafter referred to as the AGREEMENT, is made and entered into this day by and between the BRAZOS RIVER AUTHORITY, a River Authority, organized and existing under the laws of the State of Texas, acting by and through its General Manager/CEO, hereunto duly authorized, and hereinafter referred to as the OWNER, and \_\_\_\_\_ hereinafter referred to as the ENGINEER.

**WITNESSETH:** that whereas the OWNER has determined the need for professional engineering services in connection with \_\_\_\_\_ as generally shown/described in “Exhibit A”, hereinafter referred to as the PROJECT; and

**WHEREAS**, to address the PROJECT needs, the OWNER requires professional engineering and associated services; and

**WHEREAS**, the ENGINEER, having 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, has the professional abilities and expertise to undertake studies, evaluations, determinations, and analyses to counsel the OWNER in the selection and analysis of PROJECT alternatives; to provide cost estimates, technical opinions and recommendations; provide \_\_\_\_\_ engineering services to the OWNER for the implementation of the PROJECT improvements; and

**WHEREAS**, the ENGINEER has presented a satisfactory proposal to provide professional engineering and related services for the PROJECT; and

**NOW, THEREFORE**, the OWNER and the ENGINEER, in consideration of their mutual covenants herein, agree in respect to the performance of the professional services to be furnished or rendered by the ENGINEER and to the payment for these services by the OWNER, as set forth above and hereinafter.

**SECTION I.           EMPLOYMENT OF THE ENGINEER AND PERFORMANCE OF SERVICES**

**1.1 GENERAL:** The OWNER agrees to employ the ENGINEER and the ENGINEER agrees to perform the professional engineering and associated services, hereinafter referred to as SERVICES, as set forth in “Exhibit A”, attached hereto and incorporated by reference herein; and, in rendering such SERVICES, the OWNER agrees to compensate the ENGINEER for performance of the SERVICES as stated in “Exhibit B”, attached hereto and incorporated by reference herein.

**1.2 PERFORMANCE OF SERVICES:** The ENGINEER'S employees and the ENGINEER'S associates to be utilized in the performance of the SERVICES for the PROJECT are identified in "Exhibit A", attached hereto and incorporated by reference herein. The person identified as PROJECT Manager shown in "Exhibit A" shall not be changed without the OWNER'S prior written acknowledgment and concurrence, which shall not be unreasonably withheld. ENGINEER shall report to OWNER'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 to the OWNER of such accreditation 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 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 OWNER all of the SERVICES and work 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, information, data, and other means and items necessary to perform the SERVICES.

**2.2** The ENGINEER hereby covenants and agrees, as an independent contractor, to perform the work and 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.

**2.3** The ENGINEER shall serve as the OWNER'S professional ENGINEER in those phases of the PROJECT to which this AGREEMENT applies; and, will give consultation and advice to the OWNER during the performance of the SERVICES.

**2.4** It is understood and agreed by the ENGINEER that the OWNER 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.

**2.5** OWNER and ENGINEER agree that the Scope of Services attached hereto as “Exhibit A” accurately reflects and contemplates all of the SERVICES 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 OWNER of such circumstance in writing, and OWNER and ENGINEER will negotiate regarding any required services of the ENGINEER in relation to such circumstance as further contemplated in Section III. Additional Services in “Exhibit B” of this Agreement.

### **SECTION III. PAYMENTS TO THE ENGINEER**

**3.1** Payments for performance of the SERVICES contemplated by this AGREEMENT shall be in the amount and in accordance with the provisions set forth in “Exhibit B”.

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

**3.3** OWNER 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 OWNER 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 services to complete actions not specifically listed for successful completion of the work. The total amount of compensation set forth in “Exhibit B” shall not be exceeded without the prior written consent of the OWNER.

### **SECTION IV. THE OWNER'S RESPONSIBILITIES**

**4.1** The OWNER will:

- i. Provide full information as to its requirements for the PROJECT.
- ii. Designate the OWNER'S PROJECT Representative.
- iii. Assist ENGINEER by placing at its disposal available reports and other data relevant to the development of the PROJECT, all of which information the ENGINEER may reasonably rely upon in the performance of the SERVICES under

this AGREEMENT.

**iv.** Furnish ENGINEER with available property, boundary, easement, right-of-way, topographic and utility surveys; zoning and deed restrictions; and other special data or conditions known to the OWNER.

**v.** Assist ENGINEER in gaining entry to public and private property as may be required by the ENGINEER in the performance of the SERVICES under this AGREEMENT.

**vi.** Examine all studies, reports, sketches, estimates, drawings, proposals and other documents presented by the ENGINEER and render decisions pertaining thereto within a reasonable time so as not to unreasonably delay the SERVICES of the ENGINEER.

## **SECTION V. ENGINEER'S RESPONSIBILITY**

**5.1** 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.

**5.2** Acceptance of the work by OWNER 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.

**5.3** 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 OWNER.

**5.4** The ENGINEER shall inform the OWNER of the construction contractor's failure to perform their work in accordance with the construction contract and shall recommend to the OWNER 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.

**5.5** 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 OWNER 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 OWNER. Any such work or materials furnished by the ENGINEER without such written OWNER request and authorization first being given 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 VI. INDEMNIFICATION**

**6.1** THE ENGINEER SHALL COMPLY WITH THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES AND REGULATIONS AND SHALL EXONERATE, INDEMNIFY AND HOLD THE OWNER HARMLESS FROM ANY AND ALL LIABILITY OR DAMAGES RESULTING FROM FAILURE TO DO SO.

IN ADDITION, THE ENGINEER AGREES TO KEEP, SAVE AND HOLD OWNER 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 OWNER, 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, OR EMPLOYEES. IN THE EVENT A JUDGMENT IS RECOVERED AGAINST OWNER 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, OR EMPLOYEES, SUCH JUDGMENT SHALL BE CONCLUSIVE AGAINST THE ENGINEER.

**6.2** IT IS SPECIFICALLY UNDERSTOOD AND AGREED BY THE ENGINEER THAT SUCH INDEMNITY IS INDEMNITY BY THE ENGINEER TO INDEMNIFY AND PROTECT OWNER 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 OWNER 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 VII. INSURANCE REQUIREMENTS**

**7.1** 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 \$1,000,000 per occurrence including products/completed operations, where appropriate, with a separate aggregate of \$2,000,000. The policy shall contain the following provisions:
  - a. Blanket contractual liability coverage for liability assumed under the AGREEMENT and all AGREEMENTS relative to the PROJECT.
  - b. Independent Contractors coverage.
  - c. Thirty (30)-day Notice of Cancellation in favor of the Brazos River Authority, endorsement.
  - d. Waiver of Transfer of Rights of Recovery Against Others in favor of the OWNER'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 \$1,000,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of the OWNER:
  - 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 \$1,000,000 per claim and \$2,000,000 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 30 day notice of cancellation in favor of the OWNER.

**7.2 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 OWNER with a certificate of insurance as evidence of such insurance.

**7.3** 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.

**7.4** The ENGINEER's subcontractors shall carry and maintain insurance in the types and amounts as further provided in "Exhibit B" for the duration of this AGREEMENT. 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 OWNER:

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

**7.5** 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 by the OWNER. 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 OWNER shall not relieve or decrease the liability of the ENGINEER hereunder.

**7.6** 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.

**7.7** Certificate of Insurance and all endorsements shall read:

Brazos River Authority  
4600 Cobbs Drive  
Waco, Texas 76710

**7.8** The “other” insurance clause shall not apply to the OWNER where the OWNER is an additional insured shown on the policy. It is intended that policies required in this AGREEMENT, covering both the OWNER and the ENGINEER, shall be considered primary coverage as applicable.

**7.9** The OWNER 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.

**7.10** 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.

**7.11** The OWNER reserves the right to review the insurance requirements of this section during the effective period of the AGREEMENT and to make reasonable adjustments to insurance coverages and their limits when deemed necessary and prudent by the OWNER 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).

**7.12** Actual losses for which the ENGINEER is found liable under Section VI and/or Paragraph 7.13 shall be paid by the ENGINEER if they are not covered by insurance as required by this AGREEMENT.

**7.13** THE ENGINEER HEREBY EXPRESSLY AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER AND THE OWNER’S OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, DEMANDS, COSTS, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND AND NATURE, INCLUDING REASONABLE ATTORNEY’S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING DIRECTLY FROM, OR IN ANY WAY CONNECTED WITH, THE NEGLIGENT PERFORMANCE OF WORK OR SERVICES IN CONNECTION WITH THIS AGREEMENT BY THE ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES AND PARTIES WITH WHOM IT CONTRACTS. THE ENGINEER SHALL NOT BE RESPONSIBLE TO INDEMNIFY OR PAY DEFENSE COSTS FOR THE NEGLIGENCE OF THE OWNER.

## SECTION VIII. DEFAULT

**8.1** OWNER 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.

**8.2** On such termination, OWNER may take possession of all the intellectual property prepared or gathered to date in performance of the PROJECT and finish the PROJECT in whatever way OWNER deems expedient. On such default by the ENGINEER, OWNER may elect not to terminate the AGREEMENT, and in such event OWNER 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 IX. TERMINATION

**9.1** This AGREEMENT may be terminated at any time by OWNER for any cause without penalty or liability. Upon receipt of such notice by OWNER, the ENGINEER shall immediately discontinue all SERVICES and actions on behalf of OWNER.

**9.2** 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 OWNER all portions of the SERVICES performed and instruments of service created on the PROJECT to the date of termination. OWNER shall then pay the ENGINEER promptly the accrued and unpaid SERVICES to the date of termination, to the extent the SERVICES are approved by OWNER.

## SECTION X. OWNERSHIP AND USE OF DOCUMENTS

**10.1** 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 OWNER and shall be delivered to OWNER.

**10.2** 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.

**10.3** OWNER 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 the 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 OWNER and shall be delivered to OWNER.

**10.4** 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 OWNER, is/are subject to the rights of the OWNER 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.

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

**10.6** 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 OWNER reuses such items without the ENGINEER'S specific written verification or adaptation, such reuse will be at the risk of the OWNER, without liability to the ENGINEER.

## **SECTION XI. PERIOD OF SERVICE**

**11.1** The ENGINEER contracts and agrees to commence the SERVICES and work 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 XII. SUCCESSOR AND ASSIGNS**

**12.1** OWNER and ENGINEER each binds itself, its partners, successors, executors, administrators, and assigns to the other party of the AGREEMENT in respect to all covenants of this AGREEMENT. Neither OWNER nor ENGINEER shall assign, sublet or transfer its interest in this AGREEMENT without the written consent of the other.

## **SECTION XIII. ENGINEERS COORDINATION WITH OWNER**

**13.1** The ENGINEER shall be available for conferences with OWNER so that SERVICES and work can be provided and completed with the full benefit of OWNER experience and knowledge of existing needs and facilities and be consistent with current policies and construction standards of the OWNER.

## **SECTION XIV. CONFIDENTIALITY**

**14.1** During the performance of this AGREEMENT, the ENGINEER has or will have access to confidential or proprietary information belonging to OWNER. The ENGINEER herein agrees to maintain the confidentiality of the information received from OWNER and

information derived from performance of the PROJECT. This obligation shall not apply to information already in the public domain.

## **SECTION XV. INDEPENDENT CONTRACTOR**

**15.1** The ENGINEER covenants and agrees that ENGINEER is an Independent Contractor and not an officer, agent, servant or employee of OWNER. The ENGINEER hereby acknowledges that it shall have exclusive control of and exclusive right to control the details of the SERVICES and work 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.

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

## **SECTION XVI. DISCLOSURE**

**16.1** By signature of this AGREEMENT, the ENGINEER acknowledges to OWNER 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.

**16.2** 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 the AGREEMENT.

## **SECTION XVII. COMPLIANCE WITH LAWS**

**17.1** 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 his or their employees, agents or servants, engaged in performance of the SERVICES or provision of the work contemplated by this AGREEMENT.

## **SECTION XVIII. SEVERABILITY**

**18.1** If any word, phrase, clause, sentence or provision of the 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 effect such word, phrase, clause, sentence or provision, and such finding shall not affect the remaining portions of the 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 XIX. CONSTRUCTION OF AGREEMENT**

**19.1** Although the 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 XX. NO THIRD PARTY BENEFICIARY**

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

## **SECTION XXI. ENTIRE AGREEMENT**

**21.1** This AGREEMENT sets forth the entire agreement of the OWNER 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 OWNER 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 XXII. AMENDMENTS**

**22.1** 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 OWNER and the ENGINEER.

## **SECTION XXIII. HEADINGS**

**23.1** 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 XXIV. REMEDIES**

**24.1** 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 XXV. VENUE**

**25.1** 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.

## **SECTION XXVI. REVIEW OF AGREEMENT**

**26.1** 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 work, the AGREEMENT price or AGREEMENT time that have not been clarified in writing by the OWNER to the satisfaction of the ENGINEER.

## **SECTION XXVII. RIGHT TO AUDIT**

**27.1** The ENGINEER shall establish and maintain a reasonable accounting system that enables OWNER to readily identify the ENGINEER's assets, expenses, costs of goods, and use of funds. OWNER 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; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

**27.2** The ENGINEER shall, at all times during the term of this AGREEMENT and for a period of ten 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 OWNER, 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 OWNER. Such records shall be made available to OWNER during normal business hours at the ENGINEER's office or place of business and subject to a three 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 OWNER.

**27.3** The ENGINEER shall ensure OWNER 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 OWNER.

### **SECTION XXVIII. Prohibition on Boycotting Israel**

**28.1** ENGINEER hereby verifies that ENGINEER:

- i. Does not boycott Israel; and
- ii. Will not boycott Israel during the term of this AGREEMENT.

### **SECTION XXIX. NOTICES**

**29.1** All notices, communications, and reports required under the AGREEMENT shall be personally delivered or mailed to the respective parties by certified mail, return receipt requested at the addresses shown below or designated from time to time by the parties in writing.

If intended for OWNER, to:

Brazos River Authority  
4600 Cobbs Drive  
Waco, Texas 76710  
Bus: (254) 761-3100  
Fax: (254) 761-3207

If intended for THE ENGINEER, to:

### **SECTION XXX. FORCE MAJEURE**

**30.1** 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 the 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.

[Signatures appear on the following page]

SAMPLE

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be duly executed, in multiple counterparts, intending to be bound thereby on this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**BRAZOS RIVER AUTHORITY**

By: \_\_\_\_\_  
**DAVID COLLINSWORTH**  
Title: **GENERAL MANAGER/CEO**  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

SAMPLE

## EXHIBIT A SCOPE OF SERVICES

### SECTION I. PROJECT BACKGROUND AND OVERVIEW

- 1.1 [Describe Project background]
- 1.2 [Provide brief overview of the Project]

### SECTION II. OBJECTIVES

- 2.1 [List Project objectives]

### SECTION III. PROJECT DESCRIPTION AND REQUIRED TASKS

3.1 The ENGINEER shall perform the following tasks, hereinafter referred to as the PROJECT:

- i. **Task One: Preliminary Evaluation [if applicable]**
  - a. [Provide brief description of Task One]
- ii. **Task Two: [Engineering Design Services, etc.]**
  - a. [Provide brief description of Task Two]
- iii. **Task Three: [Bidding/ Contract Award Services, etc.]**
  - a. [Provide brief description of Task Three]
- iv. **Task Four: [Construction Contract Administration SERVICES]**
  - a. [Provide brief description of Task Four]
- v. **Task Five: [Construction Phase Engineering Services, etc.]**
  - a. [Provide brief description of Task Five]
- vi. **Task Six: [Resident Project Representative Services, etc.]**
  - a. [Provide brief description of Task Six]
- vii. **Task x: [List other Tasks as necessary.]**
  - a. [Provide brief description of Task x]

## SECTION IV. PROJECT REQUIREMENTS

**4.1** In performing this Scope of Work, the ENGINEER shall ensure the following PROJECT requirements are met:

- i. [List important requirements such as laws to be followed, regulations, specific requirements work must conform with, etc.]

## SECTION V. OBLIGATIONS OF THE ENGINEER

**5.1** In performing the SERVICES under the terms of this Agreement, ENGINEER shall:

- i. Coordinate all activities with OWNER.
- ii. Perform PROJECT site visits as determined necessary by the ENGINEER to successfully accomplish the Tasks set forth herein.
- iii. Conduct meetings at the PROJECT site or OWNER's Central Office Facility, as needed to successfully accomplish the Tasks associated with this AGREEMENT. For each meeting, ENGINEER shall, at a minimum, perform the following tasks:
  - a. Prepare and distribute draft meeting minutes to OWNER for comments.
  - b. Following a two-week comment period, prepare and distribute the final meeting minutes.
  - c. Prepare or amend a list of issues discussed at the meeting.
- iv. Conduct telephone or video conferences with the OWNER as requested by the OWNER, to successfully accomplish the Tasks associated with this AGREEMENT and to assure that recommendations from the OWNER are duly considered.
- v. Provide monthly progress reports, and ENGINEER's project manager shall participate in monthly conference calls with OWNER's project engineer.
- vi. Prepare reports to document investigation protocols and findings.
- vii. Provide all deliverables required by the terms of this Agreement.
- viii. ENGINEER shall comply with all federal, state, and local regulations in connection with the ENGINEER's SERVICES on the PROJECT.
- ix. ENGINEER shall provide documentation of the ENGINEER's Quality Control/Quality Assurance activity in each Task, demonstrating compliance with

and fulfillment of the obligations of the ENGINEER as detailed in Section \_\_\_ of this Scope of Work.

x. ENGINEER will protect OWNER in providing these SERVICES. It is understood that ENGINEER does not guarantee the Contractors performance. ENGINEER shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the PROJECT site or otherwise performing any of the work of the PROJECT.

xi. The following key staff of ENGINEER to be utilized for the PROJECT shall not be changed without the OWNER's prior written consent:

[REDACTED]

xii. Unless specifically set forth in this Agreement or approved by the OWNER in writing in advance, the ENGINEER shall not delegate the responsibility for design of any component of a **construction** project to the contractor or any manufacturer, supplier, sub-contractor or vendor engaged by the contractor. The ENGINEER shall expressly assume the design responsibility for all elements of the design unless such delegation of design responsibility is so authorized by the OWNER. In the event the ENGINEER is authorized to delegate design responsibility for any component of the PROJECT, the ENGINEER shall be responsible for establishing methods to determine that the component, as designed by the third party, meets or exceeds any and all requisites necessary for effective performance and compliance with the ENGINEER's design of the PROJECT. In addition, the ENGINEER shall provide design and performance criteria in order to test, validate, and ensure the efficacy of the component.

xiii. Any specification prepared by the ENGINEER for a product, system, item of equipment or component of the PROJECT shall include a means by which to determine the compliance of that completed component with predetermined criteria upon which to accept or reject the completed component of the PROJECT, consistent with the applicable professional standard of care and in order to ensure the overall efficacy of such product, system, item of equipment or component for the PROJECT.

xiv. If requested by ENGINEER, OWNER will furnish any available information pertinent to the PROJECT including reports and data relative to previous designs, or investigation in the PROJECT area. Following ENGINEER'S assessment of initially-available PROJECT information and data and upon ENGINEER'S request, furnish or otherwise make available in a timely manner such additional PROJECT related information and data as is reasonably required to enable ENGINEER to complete its basic SERVICES. The ENGINEER may use the OWNER provided information for familiarization; however, the ENGINEER will not rely on any computations, assertions, or conclusions without first coordinating with the OWNER and obtaining the express written consent of the OWNER. In the event

the OWNER and the ENGINEER agree that the ENGINEER can rely upon a specific document, the OWNER will provide documentation authorizing such reliance. If the ENGINEER observes that the OWNER provided documentation is inaccurate, the ENGINEER shall not rely upon the information and shall notify the OWNER of the issue. Documentation to be provided by OWNER includes but is not limited to the following:

[REDACTED]

## SECTION VI. PROJECT TASK SCHEDULE AND DELIVERABLES SCHEDULE

**6.1** ENGINEER shall complete the PROJECT Tasks in accordance with the following schedule:

- i. **Task One.**
- ii. **Task Two.**
- iii. **Task Three.**
- iv. **Task Four.**
- v. **Task x.**

**6.2** ENGINEER shall complete the PROJECT Deliverables in accordance with the following schedule:

- i. **[Task One or Deliverable One, etc.].**
- ii. **[Task Two or Deliverable Two, etc.].**
- iii. **[Task Three or Deliverable Three, etc.].**
- iv. **[Task Four or Deliverable Four, etc.].**
- v. **[Task x or Deliverable x, etc.].**

## SECTION VII. PROJECT TASKS

**7.1** The ENGINEER shall perform the tasks set forth in this section in phases, only as authorized by the OWNER in subsequent written authorizations to proceed. The contemplated Tasks to complete the PROJECT are as follows:

- i. **Task One: Preliminary Evaluation SERVICES.** ENGINEER shall perform Preliminary Evaluation SERVICES, which shall include, but not be limited to, the following:

- a. **[Describe Tasks associated with Task One]**
- b. **[Describe Deliverables Associated with Task One]**

ii. **Task Two: Design SERVICES.** ENGINEER shall perform Design SERVICES, which shall include, but not be limited to, the following:

- a. Review any and all available records and documents pertinent to the PROJECT;
- b. Perform field investigations and inspections pertinent to the PROJECT, and collect any and all data and other information necessary for completion of this PROJECT;
- c. Prepare construction drawings and technical specifications for the PROJECT, and develop pertinent assumptions;
- d. Consult and coordinate with OWNER and any pertinent sub-consultants;
- e. Prepare updated opinion of probable construction cost;
- f. Submit to OWNER and other applicable review agencies for approval;
- g. Coordinate with geotechnical sub-consultant re: soil borings and preparation of geotechnical report,
- h. Set survey control for construction,
- i. Prepare legal descriptions and exhibits required for acquisition of easements,
- j. Set easement monuments; and
- k. Incorporate review comments into final bidding documents.

iii. **Task Three: Bidding/Contract Award SERVICES.** ENGINEER shall perform Bidding/Contract SERVICES, which shall include, but not be limited to, the following:

- a. Prepare final drawings and specifications for bidding;
- b. Distribute bidding documents and maintain a record of prospective bidders to whom documents have been issued;
- c. Attend pre-bid meeting;
- d. Answer questions during bidding process;
- e. Prepare addenda as appropriate to interpret, clarify, or expand the bidding documents;
- f. Attend bid opening and prepare bid tabulation sheets;
- g. Provide assistance to OWNER in evaluating bids, review the submitted qualification information provided by the apparent low bidder to determine if they are qualified to construct the PROJECT and recommend award of contracts or other actions appropriate to be taken by the OWNER; and

**h.** Assemble contract documents (“Construction Contract”), in a form acceptable to OWNER, for execution by the selected bidder (“Contractor”) and OWNER.

**iv. Task Four: Construction Contract Administrative SERVICES.** If requested in writing by the OWNER, the ENGINEER shall perform Construction Contract Administrative SERVICES in support of the items described in Task Five and Task Six, which shall include, but not be limited to, the following:

**a.** Conduct a pre-construction conference with the Contractor and OWNER, review construction schedules prepared by the Contractor pursuant to the requirements of the construction contract, and prepare a proposed estimate of monthly cash requirements of the PROJECT from information provided by the Contractor.

**b.** Establish communication procedures with the OWNER and Contractor. ENGINEER shall submit a written PROJECT communications plan for OWNER review. At a minimum, the ENGINEER shall submit monthly reports of construction progress. Reports will describe construction progress in general terms and summarize PROJECT cost, cash flow, construction schedule and pending approved contract modifications.

**c.** At any time that a critical path item on the Contractors approved project schedule is more than 21 days past due, ENGINEER shall notify OWNER and Contractor, and shall direct Contractor to document for the record what corrective measures the Contractor will take to return both the task, and the project as a whole, to the approved completion date. The indicated actions of the Contractor will be monitored weekly by the ENGINEER to assess the effectiveness of the corrective measures. ENGINEER shall further inform Contractor in writing that Pay Requests will not be processed until the corrective measures have been implemented and have restored the task, and the project as a whole to the approved schedule status.

**d.** Establish and maintain a PROJECT documentation system consistent with the requirements of the Construction Contract Documents. Monitor the processing of Contractor's submittals and provide for filing and retrieval of PROJECT documentation. Produce monthly reports indicating the status of all submittals in the review process. Review Contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the Construction Contract Documents for the PROJECT. Monitor the progress of the Contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.

**e.** Establish procedures for administering constructive changes to the Construction Contract Documents. Prepare and make recommendations on change order documentation for consideration by the OWNER. Documentation of field orders, where cost to OWNER is not impacted, will

also be prepared. Substitutions of materials or equipment or design modifications requested by the OWNER are an additional service.

**f.** Prepare documentation for contract modifications required to implement modifications in the design of the PROJECT. Receive and evaluate notices of Contractor claims and make recommendations to the OWNER on the merit and value of the claim. Endeavor to negotiate a settlement value with the Contractor on behalf of the OWNER if appropriate and as directed by OWNER.

**g.** Receive from the Contractor's as-built documents reflecting field changes to the bid documents. Review Contractor's documents to determine that the drawings are being maintained during the construction of the PROJECT. The ENGINEER will review documents to ascertain the reflected field changes are complete and correct.

**h.** Compile Contractors', Resident PROJECT Representative's, and ENGINEER'S records and submit such compilation to the OWNER.

**i.** Submit monthly reports of construction progress. Reports will describe construction progress in general terms and summarize PROJECT costs, cash flow, construction schedule and pending and approved modifications to the Construction Contract Documents. Throughout the life of the Construction Contract, ENGINEER shall also inform OWNER and Contractor of events or conditions that could cause a delay in contract completion.

**j.** Process all submittals and maintain a submittal log for the PROJECT. Provide weekly updates and monthly reports to the OWNER.

**k.** Review the progress schedule, schedule of Shop Drawing submittals and schedules of values prepared by the Contractor and consult with ENGINEER concerning acceptability. Notify OWNER and Contractor if any critical path task falls behind schedule. Notify OWNER and Contractor if any non-critical path task becomes a critical path task.

**l.** Based on ENGINEER's observations as an experienced and qualified construction professional, and review of the Payment Requests and supporting documentation submitted by Contractor and RPR, determine the amount that ENGINEER recommends Contractor be paid on monthly and final estimates, pursuant to the Construction Contract Documents.

**m.** Upon receiving the Contractor's final request for payment, prepare a final reconciling Change Order to account for all outstanding Field Orders, quantity reconciliations, price adjustments and time adjustments not previously incorporated by Change Order.

**v. Task Five: Construction Phase Engineering SERVICES.** ENGINEER shall perform Construction Phase Engineering SERVICES, which shall include, but not be limited to, the following:

**a.** Conduct a pre-construction conference with the Contractor and OWNER, review construction schedules prepared by the Contractor

pursuant to the requirements of the Construction Contract, and prepare a proposed estimate of monthly cash requirements of the PROJECT from information provided by the Contractor.

**b.** Establish communication procedures with the OWNER and Contractor. ENGINEER shall submit a written PROJECT communications plan for OWNER review. At a minimum, the ENGINEER shall submit monthly reports of construction progress. Reports shall describe construction progress in general terms and summarize PROJECT cost, cash flow, construction schedule and pending approved Construction Contract modifications.

**c.** Establish and maintain a PROJECT documentation and document control system consistent with the requirements of the Construction Contract. Monitor the processing of Contractor's submittals and provide for filing and retrieval of PROJECT documentation. Produce monthly reports indicating the status of all submittals in the review process. Review Contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the Construction Contract for the PROJECT. Monitor the progress of the Contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.

**d.** Make visits to the site at a frequency sufficient to observe the progress and the quality of work as determined by the ENGINEER to determine the work is proceeding in accordance with the Construction Contract. In this effort ENGINEER will protect the OWNER against defects and deficiencies in the work of Contractor and will report any observed deficiencies to OWNER and make recommendations to the OWNER to remedy deficiencies.

**e.** Establish procedures for administering constructive changes to the Construction Contract. Prepare and make recommendations on change order documentation for consideration by the OWNER. Documentation of field orders, where cost to OWNER is not impacted, will also be prepared. Substitutions of materials or equipment or design modifications requested by the OWNER are an additional service.

**f.** Notify the Contractor of non-conforming work observed on site visits by either the ENGINEER or the OWNER. Review quality related documents provided by the Contractor such as test reports, equipment installation reports or other documentation required by the Construction Contract. Upon witnessing materials, construction or installation process, or levels of quality that do not meet the requirements of the Construction Contract, ENGINEER shall notify the OWNER and Contractor of such deviation and inquire about the Contractor's proposed corrective action.

**g.** Interpret the drawings and specifications for OWNER and Contractor. Review Contractor's request of substitutions of equipment and/or materials or deviations from the Construction Contract and specifications and make recommendations to the OWNER for acceptance

or rejection of Contractor's request. Such investigations, analyses, and studies requested by the Contractor and approved by OWNER, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.

**h.** Prepare documentation for contract modifications required to implement modifications in the design of the PROJECT. Receive and evaluate notices of Contractor claims and make recommendations to the OWNER on the merit and value of the claim. Endeavor to negotiate a settlement value with the Contractor on behalf of the OWNER, if appropriate.

**i.** Establish criteria and coordinate the work of testing laboratories and others required for the testing or inspection of materials, witnessed tests, factory testing, etc. for quality control of the PROJECT as deemed necessary by the ENGINEER. The ENGINEER will retain the services of independent testing entities, acceptable to the OWNER, to conduct testing at the site as well as all needed off site testing and certification. Cost for any testing required beyond budget established for testing in this Contract is an additional service.

**j.** Review Contractors samples, catalog data, schedules, shop drawings, laboratory, quarry, shop and mill tests of material and equipment; and other data which the Contractor is required to submit for conformance with the design concept of the PROJECT and compliance with the Construction Contract, and assemble written guarantees which are required by the Construction Contract. Submit copies of all equipment and machinery drawings and other Contractor submittals to OWNER.

**k.** Based on ENGINEER's observations as an experienced and qualified design professional and review of the Payment Requests and supporting documentation submitted by Contractor, determine the amount that ENGINEER recommends Contractor be paid on monthly and final estimates, pursuant to the Construction Contract.

**l.** Coordinate and review for contractual compliance all submittals of information from the Contractor required by the Construction Contract.

**m.** Conduct, in company with OWNER's representative, a final review of the PROJECT for conformance with the design concept of the PROJECT and general compliance with the Construction Contract. Prepare a list of deficiencies to be corrected by the Contractor before recommendation of final payment. After the Contractor has performed the required corrections, the ENGINEER shall notify the OWNER in writing that the work has been substantially performed according to the Construction Contract and is ready for final inspection by the OWNER and ENGINEER. The ENGINEER shall accompany the OWNER on the final inspection to assure that the total work has been completed in accordance with the Construction Contract. ENGINEER shall review and tabulate all warranties, guarantees, bonds, equipment-operating instructions and similar required materials and documents to make sure that all such materials and documents are received and that they meet the requirements of the Construction Contract,

after which they shall be transmitted to the OWNER or its designated representative(s). After determining that all requirements of the Construction Contract have been substantially met and certificate of final completion has been issued, the ENGINEER shall so certify and shall recommend approval of the Contractor's final application for payment.

n. Receive from the Contractor as-built documents reflecting field changes to the Construction Contract. Review Contractor's documents to determine that the drawings are being maintained during the construction of the PROJECT. The ENGINEER will review documents to ascertain the reflected field changes are complete and correct, and present the completed Contractor's as-built documents to the OWNER following final completion of the Construction Contract.

o. Compile Contractors', Resident PROJECT Representative's, and ENGINEER'S records and submit such compilation to the OWNER.

p. Prepare PROJECT record drawings of construction, incorporating all compiled change orders and field changes from the Construction Contract. A Texas professional engineer's seal shall be affixed and signed on each document, signifying the recorded changes have been transferred. Drawings shall be prepared in Auto CAD 2010 DWG or latest version format and on 24" x 36" Mylar drafting film. Drawings shall be accurate in scale and dimensions and shall reflect the final, as-constructed condition of the PROJECT as reported in the Contractor's as-built documents.

q. Conduct evaluation of the PROJECT and the work performed under the Construction Contract immediately prior to the expiration of the warranty period.

r. Maintain a photographic log of construction activities and provide copies to OWNER.

s. ENGINEER shall be obligated to comply with all provisions in the Construction Contract applicable to the ENGINEER, and such provisions shall be incorporated into this Agreement by amendment once the Construction Contract has been entered into between OWNER and Contractor.

vi. **Task Six: Resident Project Representative SERVICES.** ENGINEER shall perform Resident Project Representative SERVICES, which shall include, but not be limited to, the following:

a. Provide Resident Project Representative ("RPR") under the control and supervision and acting as an agent of the ENGINEER for construction of the PROJECT. It is understood that ENGINEER does not guarantee the Contractor's performance. ENGINEER shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the PROJECT site or otherwise performing any of the work of the PROJECT. The duties and responsibilities of the RPR are as described below:

b. In order to provide further protection for the OWNER against defects and deficiencies in the work performed by the Contractor, ENGINEER shall

provide the SERVICES of a full-time, on-site, senior, Resident Project Representative (“RPR”), acceptable to the OWNER. The RPR will provide construction administration and inspection SERVICES for the PROJECT and will coordinate the activities of all other field personnel provided by the OWNER or ENGINEER. The RPR will observe the progress of the work, monitor compliance with the schedules and requirements of the Contract Construction and help resolve any conflicts needing attention. The RPR will also serve as the coordination and contact point for all communications between the ENGINEER, Contractor and the OWNER.

**c.** The RPR will act as directed by the ENGINEER in order to provide more extensive on-site observations of the work in progress and field checks of materials and equipment.

**d.** The RPR will confer with ENGINEER regarding the RPR’s actions. The RPR’s dealings in matters pertaining to the on-site work shall be with the ENGINEER and Contractor, keeping OWNER advised as necessary. The RPR’s dealings with subcontractors shall only be through or with full knowledge and approval of Contractor. The RPR shall generally communicate with OWNER with the knowledge of and under the direction of the ENGINEER.

**e.** The RPR shall also perform the following SERVICES, which shall include, but not be limited to, the following:

**1.** Attend pre-construction conferences progress meetings, job conferences, and other PROJECT related meetings with the OWNER and Contractors’ key personnel. Establish communication procedures with the OWNER, ENGINEER’s design personnel and Contractor. Prepare and circulate copies of minutes thereof. Establish communication procedures with the OWNER, ENGINEER’s personnel and Contractor.

**2.** Submit monthly reports of construction progress. Reports will describe construction progress in general terms and summarize PROJECT costs, cash flow, construction schedule and pending and approved modifications to the Construction Contract.

**3.** Maintain a PROJECT documentation system consistent with the requirements of the Construction Contract, including daily field inspection and construction reports and tracking corrections to defective work. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproduction of original Construction Contract, including all Proposed Contract Modifications, Requests for Interpretation, Change Orders, Field Orders, Written Amendments, additional drawings issued subsequent to the execution of the Construction Contract, ENGINEER’s clarifications and interpretations, progress reports, submittals and correspondence received from and delivered to the Contractor and other PROJECT related documents.

- 4.** Monitor Contractor's quality assurance obligations in accordance with the Construction Contract. Notify Contractor of non-conforming work observed. Take action, up to and including stopping work until performance is achieved, to ensure Contractor initiates corrective procedures for defective work, coordinates special materials tests and performance tests needed to obtain a quality PROJECT.
- 5.** Participate in preparation of field orders and change orders related to the PROJECT.
- 6.** Process all submittals and maintain a submittal log for the PROJECT. Provide weekly updates and monthly reports to the OWNER.
- 7.** Review documents provided by the Contractor such as test reports, equipment installation reports or other documentation as required by the Construction Contract.
- 8.** Assist in PROJECT completion activities at the conclusion of construction. Observe completed construction for conformance with the Construction Contract and prepare a list of deficiencies to be corrected by the Contractor before recommendation of final payment.
- 9.** Coordinate all PROJECT startup activities related to the PROJECT and coordinate with the OWNER, equipment suppliers or other contractors for the start-up and performance testing. Coordinate inspections by specialty inspectors, governmental agencies, and the ENGINEER. Record the results of these inspections, and report to ENGINEER.
- 10.** Review the progress schedule, schedule of Shop Drawing submittals and schedules of values prepared by the Contractor and consult with ENGINEER concerning acceptability.
- 11.** Serve as ENGINEER's liaison with Contractor, working principally through Contractor's Superintendent and assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-site operations.
- 12.** Assist in obtaining from OWNER additional details or information, when required for proper execution of the work.
- 13.** Advise ENGINEER and Contractor of the arrival of equipment or materials, or the commencement of any work requiring a Shop Drawing or Sample if the submittal has not been approved by the ENGINEER.
- 14.** Conduct on-site observations of work in progress to determine if the work is in accordance with the Construction Contract.
- 15.** Report to the ENGINEER and OWNER whenever the RPR believes that any work will not produce a completed project that conforms to the Construction Contract or will prejudice the integrity of the design concept of the completed PROJECT as a functioning whole as indicated in the Construction Contract, or has been

damaged or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of work the RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

**16.** RPR shall keep a daily report log, in a format acceptable to OWNER, that will be available to the OWNER upon request and shall be submitted to OWNER not less than weekly.

**17.** Verify that tests, equipment and systems start-up and operating and maintenance training are conducted in the presence of appropriate personnel, and the Contractor maintains adequate records thereof; and observe, record, and report to ENGINEER appropriate details relative to the test procedures and start-ups.

**18.** Consider and evaluate Contractor's suggestions for revisions to the Construction Drawings and Specifications and report with RPR's recommendation to ENGINEER [and OWNER]. Transmit to Contractor in writing decisions as issued by ENGINEER.

**19.** Furnish to ENGINEER periodic reports as required of progress of the work and of Contractor's compliance with the progress schedule and schedule of Shop Drawings and Submittals.

**20.** Consult with ENGINEER in advance of scheduled major test, inspections or start of important phases of the work.

**21.** Draft proposed Written Amendments and Change Orders , obtaining material from Contractor and recommend to ENGINEER Written Amendments, Change Orders, and Field Orders.

**22.** Report immediately to ENGINEER and OWNER the occurrence of any accident.

**23.** Payment Request: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendation to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, work completed and materials and equipment at the site but not incorporated into the work.

**24.** During the course of the work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by the Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the work.

**25.** Before ENGINEER issues a Certificate of Final Completion, submit to Contractor a list of observed items requiring completion or correction and confirm that completion or correction has been completed.

**26.** Observe whether Contractor has performed inspections required by laws or regulations, ordinances, codes, or order

applicable to the work, including but not limited to, those to be performed by public agencies having jurisdiction over the work.

**27.** Conduct a final inspection in the company of the ENGINEER, OWNER, and Contractor and prepare a final list of items to be completed or corrected.

**28.** Observe whether all items on the final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

**29.** The RPR shall not exceed limitations of ENGINEER's authority as set forth in this agreement; Shall not undertake any of the responsibilities of Contractor, Subcontractor, suppliers, or Contractors Superintendent; Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction; Shall not advise on, issue directives regarding or assume control over safety precautions and programs in connection with the work or any activities or operations of OWNER or Contractor; Shall not accept shop drawings or sample submittals from anyone other than the Contractor; Shall not participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by the ENGINEER.

**30.** The RPR shall perform any other obligations or responsibilities applicable to the RPR in the Construction Contract, which Construction Contract shall be incorporated into this Agreement by amendment once the Construction Contract has been entered into between OWNER and Contractor.

## **SECTION VIII. DELIVERABLES**

**8.1 Task One.**

**8.2 Task Two.**

**8.3 Task Three.**

**8.4 Task Four.**

**8.5 Task x**

**8.6 [If there are not deliverables for individual Tasks, but comprehensive deliverables covering multiple or all Tasks, then titles can be adjusted as necessary]**

**[THE FOLLOWING SECTIONS SHOULD ONLY BE ADDED WHEN NECESSARY]**

## **SECTION IX. HEALTH & SAFETY REQUIREMENTS**

**9.1** ENGINEER understands and acknowledges that ENGINEER may encounter potentially hazardous conditions while performing activities on or within the BRA's facility.

**9.2** ENGINEER understands and acknowledges that ENGINEER shall be solely responsible for his/her health and safety at BRA's facilities and for evaluating the potential hazards at the BRA site, whether inherent to the site and its normal operation, or resulting from ENGINEER's activities and practice.

**9.3** ENGINEER shall notify BRA in advance of any activities or practices that have the potential to add to or exacerbate hazards inherent to the site and its normal operation. Such activities or practices shall not commence until BRA has prepared BRA personnel to operate and maintain the facility while such activities or practices are underway by ENGINEER.

**9.4** BRA's documents regarding known hazards and hazard mitigation have been developed by the BRA solely to meet the needs of BRA's personnel performing routine duties concerning operation and maintenance of the facility. ENGINEER may, on request, receive a copy of the BRA's known hazards and hazard mitigation plan. Such documents will be provided for ENGINEER's information only.

## **SECTION X. SECURITY REQUIREMENTS**

**10.1** The ENGINEER shall comply with security requirements of the OWNER set forth from time to time in writing by the OWNER.

## **SECTION XI. ENGINEER's QA/QC Plan**

**11.1** ENGINEER shall implement and maintain a Quality Assurance /Quality Control ("QA/QC") plan that incorporates QA/QC for ENGINEER and all sub-consultants.

**11.2** The QA/QC plan ("Plan") shall be a comprehensive, well-defined, written set of procedures and activities carried out by the ENGINEER aimed at delivering products that meet the OWNER's expectations and contractual requirements. The ENGINEER'S Plan shall identify the organization or individuals responsible for Quality Control and the specific procedures used to ensure delivery of a quality product. The Plan shall also detail Quality Assurance measures and the method of accountability and required documentation.

**11.3** The QA/QC Plan shall at a minimum include the following:

- i. Organizational chart showing responsibilities for engineering or construction services and QA/QC checks.
- ii. Project schedule including deliverables and milestone

iii. Project QA/QC requirements and milestones

- a. Scoping Phase: All necessary disciplines shall be included when scoping a project.
- b. Design Phase: provide QA/QC reviews at every contractual milestone, within all necessary disciplines, and regarding any modifications or additions to the design.
- c. Construction Phase: The QA/QC Plan shall incorporate engineering during construction, contract administration, and resident project representative duties as set forth in the Contract.

**11.4** QA/QC checks shall be conducted by an independent person, well qualified in the specific scientific or technical area of review, that is not directly associated with the development of the project.

**11.5** Communications plan that outlines the protocol for all communications related to the QA/QC Plan.

**11.6** Format and schedule for checking design reports, calculations, plans and specifications, and construction work. The QA/QC Plan shall make provisions for review of reports, plans, specifications, estimates and construction work provided by sub-consultants.

**11.7** Format and procedure for documenting all comments, issues, and responses provided as part of the review process and coordinating this information with the OWNER. Where appropriate, established OWNER forms shall be provided and used for coordinating this information with the OWNER.

**11.8** Format and procedure for providing written certification that all of the requirements of the QA/QC Plan have been met and that all comments and issues have been resolved to the satisfaction of the review team.

**11.9** Check all documents for accuracy and completeness by using prescribed checklists, standards, policies, and procedures.

**EXHIBIT B  
COMPENSATION FOR SERVICES**

**Section I. Compensation**

**1.1** The ENGINEER shall be compensated for SERVICES actually performed on a time and materials basis, with an overall contractual not-to-exceed limit set forth herein. The ENGINEER shall submit invoices for SERVICES in a detailed format, with full back-up documentation, including but not limited to: task performed, time billed for each service provider for each task; and the title and hourly rate of the provider performing each service.

**1.2** The total fee for SERVICES under this AGREEMENT shall not exceed a total cost of \_\_\_\_\_ **dollars (\$\_\_\_\_\_)**, which amount shall be subject to further limitation based upon the not-to-exceed amounts associated with each Task as set forth below. This not-to-exceed fee will not be exceeded or increased, unless otherwise agreed to in writing by OWNER and memorialized in an amendment to this AGREEMENT. For successful performance of the SERVICES, ENGINEER will be compensated in accordance with the rates set forth below up, to the not-to-exceed Task values established herein.

**1.3** Each Task to be completed under this AGREEMENT shall be completed for the not-to-exceed price set forth in the table below. Each line item price will not be exceeded without prior written approval of the OWNER and approval of any modification to any line item price shall not increase the total AGREEMENT fee stated above.

Task One: Bidding/Contract Award Phase .....	\$ _____
Task Two: Construction Phase Engineering SERVICES .....	\$ _____
Task Three: Construction Phase Resident Representation SERVICES .....	\$ _____
<b>TOTAL CONTRACT AMOUNT NOT TO EXCEED .....</b>	<b>\$ _____</b>

**Section II. ENGINEER’s Schedule of Billing Rates**

**2.1** The Hourly Rate Schedule is as follows **[the following list is demonstrative]**:

<b>Personnel Classification</b>	<b>(Fees per hour)</b>
Principle-In-Charge .....	\$ _____
Project Manager .....	\$ _____
Electrical Engineer .....	\$ _____
Mechanical Engineer .....	\$ _____
Environmental Technician .....	\$ _____
Project Scheduler .....	\$ _____
QA/QC .....	\$ _____
Resident Project Representative .....	\$ _____

Document Control Technician .....	\$ _____
CAD/GIS Technician .....	\$ _____
Task Engineer .....	\$ _____
Administrative Assistant .....	\$ _____

**2.2** Position classifications listed above refer to the ENGINEER’s standardized classification system for employee compensation.

**2.3** The hourly rates are valid through the initial one-year term of the AGREEMENT. The hourly rates for subsequent years may be revised annually. In order to receive a rate adjustment, ENGINEER must request such adjustment in writing no less than sixty (60) days prior to the end of the hourly rate period. Adjustment of hourly rates shall be based upon the then-current most recently corrected month index (“Base Index”) United States Department of Labor Bureau of Labor Statistics Producer Price Index for:

Series Id: PCU54133-54133-  
 Series Title: PPI industry data for Engineering services, not seasonally adjusted

Adjustment of hourly rates shall be determined by comparing the Base Index to the current most recently released corrected same month index. For the first annual adjustment, the Base Index shall be the most recently released corrected index as of the Effective Date of this AGREEMENT, and for subsequent annual adjustments, the Base Index shall be the current most recently corrected index used in the previous annual adjustment. Adjustment shall be in accordance with the following formula:

$$\frac{\text{Current Most Recently Corrected Index}}{\text{Base Index}} \times \text{Current Hourly Rate} = \text{New Hourly Rate}$$

Notwithstanding the PPI calculation, hourly rates may not increase more than 5% per year and the total AGREEMENT not-to-exceed price shall not be increased due to the revised hourly rates.

**2.4** Non-exempt personnel will be billed at 1.5 times hourly rate and exempt personnel will be billed at the standard hourly rate for any overtime. **Unless specifically approved in advance by the OWNER, ENGINEER will not bill at overtime rates.**

**2.5** Reimbursable Expenses: ENGINEER’s meals, lodging, and automobile mileage will be reimbursed in accordance with the per diem rates for the date and location of travel as provided by the Texas Comptroller of Public Accounts. ENGINEER’S Sub-consultant Services and all other direct costs (i.e., airfare, rental cars, express mail, external reproduction, etc.) **will be invoiced at actual cost without markup or handling charge.** ENGINEER’s air travel will be reimbursed at cost for coach class or economy tickets, OWNER will not reimburse for upgraded tickets, unless no other tickets are available or upgraded seating is required to accommodate a disability.

**Section III. Sub-Consultants**

3.1 ENGINEER'S sub-consultants who may be utilized on this project include the following:

**Sub-Consultants:**

**Section IV. Additional Services**

4.1 Additional Services of the ENGINEER as provided for in "Exhibit A", Section VII shall be billed in accordance with the rate schedule set forth above, which shall remain effective until \_\_\_\_\_ and shall in no event exceed the cost negotiated in advance and approved by the OWNER. The basis of the negotiated cost shall be based on the hourly billing rate for employees as indicated above. The hourly billing rates will not be changed for a specific additional service once the additional service is approved by the OWNER.

SAMPLE