

**Texas Parks and Wildlife Department
Infrastructure Division
4200 Smith School Road
Austin, Texas 78744**

ADDENDUM

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|----------------------|-------------------------------------|--------|--------------|
| Addendum Number: | 01 | Dated: | July 1, 2024 |
| Solicitation Number: | 1111304 | | |
| Solicitation Title: | Water System Development – New Well | | |
| Due Date/Deadline: | 2:00 PM (CST); July 16, 2024 | | |
| Contract Manager: | Lyndsi Sandoval, CTCD, CTCM | | |

PURPOSE OF ADDENDUM: PROVIDE RESPONSES TO QUESTIONS RECEIVED AND
PROVIDE DESIGN-BUILD AGREEMENT BETWEEN OWNER AND DESIGN-BUILD
CONTRACTOR WITH AN OPTION FOR A GUARANTEED MAXIMUM PRICE

Except as provided herein, all terms and conditions of the document referenced herein, remain unchanged and in full force and effect. The following are official revisions, specifications and/or clarifications to this solicitation. This Addendum shall be attached to and form a part of the referenced solicitation document and any resulting awarded contract and must be considered in your response.

Respondents are advised to check for updates, addenda issuance, and proposal opening date changes through the Comptroller's website under *Electronic State Business Daily (ESBD)* at <http://www.txsmartbuy.com/sp>

QUESTIONS AND ANSWERS

Q1: Who is responsible if the well has a very low production rate and does not meet the intended purpose?

A1: It is ultimately the responsibility of the contractor/engineer. However, TPWD understands the unknowns when developing a water well. The final design will be based on discussions with TPWD and the contractor/engineer.

Q2: Who is responsible if the aquifer is of limited extent and goes dry after the well is pumped for a relatively short period of time?

A2: It is ultimately the responsibility of the contractor/engineer. However, TPWD understands the unknowns when developing a water well. The final design will be based on discussions with TPWD and the contractor/engineer.

Q3: Who is responsible if the water quality is too poor to be used as a drinking water supply?

A3: The contract/engineer is responsible for the design of the treatment system. However, TPWD understands the unknowns when developing a water well. The final design will be based on discussions with TPWD and the contractor/engineer.

Q4: If casing advance methods are used during drilling as required in Section 1.3.1.5 it will not be possible to collect a full suite of geophysical logs. The statement of work should be modified to address the fact that many of the required logs in Section 1.3.1.6 do not work in a cased hole.

A4: Well logs are typically performed prior to the installation of the casing. It will ultimately be the responsibility of the contractor/engineer on how to perform the well logs.

Q5: Is the test hole currently open to the total depth logged?

A5: The monitoring well shall be installed to an appropriate depth to monitor the new well.

Q6: Shall the monitoring well be installed to whatever the current borehole depth is?

A6: The monitoring well shall be installed to a depth as required to monitor the new water well.

Q7: If the test hole is not open to total depth logged, what is the process for obtaining a change order to clean the borehole to total depth?

A7: It is the responsibility of the contractor/engineer to re-open the test borehole to at least the original logged depth. The monitoring well shall be installed to help monitor the well aquifer.

Q8: The test hole reportedly had stability problems and sloughed in at a number of places. Who is responsible for borehole stability problems with work associated at the test hole?

A8: It is the responsibility of the contractor/engineer to re-open the test borehole to at least the original logged depth. The monitoring well shall be installed to help monitor the well aquifer.

Q9: What are the deviation and alignment results from the test hole?

A9: The drift survey indicated the average drift was approximately 26"-horizontal/100-ft depth from 0-500ft and 12"-horizontal/100-ft depth from 500-1,050ft. Please review the information in the specifications.

Q10: What are the results of test pumping the test hole?

A10: The pumping rate was approximately 35 gpm. Please review the information in the specifications.

Q11: What is the non-pumping depth to water in the test hole?

A11: The static water level was approx. 864' below ground surface. Please review the information in the specifications.

Q12: Can the requirement for bonds be included in Phase 2 of the project when construction work will actually be performed?

A12: The construction bonds must be in the full amount of the construction services costs (minus design fees).

Q13: Can the bonds be required for only from those on the Team that will perform construction work during Phase 2, not the design Team?

A13: Refer to 1.23 Bond and Insurance Requirements: Offeror's must submit a letter from the surety with their response stating they have the ability to be bonded for the full contract amount. The Payment and Performance bonds does not have to be provide until the GMP is executed for Construction Phase Services.

Q14: During the prebid, it was stated that the scope of work included the relocation of the pump station & ancillary equipment to the proposed well location. What is the purpose or intent for this relocation? The proposed well pump could be sized to deliver water to the existing tank and pump station, is this not an acceptable solution?

A14: At this time we are interested in moving the entire water system to one area adjacent to the well.

Q15: Would the TPWD be willing to share a standard contract template for preliminary review, or are only the shortlisted candidates able to review contract language? The intent is to review language in order to better understand the Contract and its provisions.

A15: Yes, DESIGN-BUILD AGREEMENT BETWEEN OWNER AND DESIGN-BUILD CONTRACTOR WITH AN OPTION FOR A GUARANTEED MAXIMUM PRICE is attached to this Addendum.

Attachments: **DESIGN-BUILD AGREEMENT BETWEEN OWNER AND DESIGN-BUILD**

Addendum OF 113 (5/5/2022)

CONTRACTOR WITH AN OPTION FOR A GUARANTEED MAXIMUM PRICE

Respondents are to acknowledge receipt of this Addendum. Return a signed copy of this notice with your response submission.

I acknowledge receipt of this addendum.

Respondent Company Name

Respondent's Authorized Signature

Date

EXHIBIT A

**DESIGN-BUILD AGREEMENT
BETWEEN OWNER AND DESIGN-BUILD CONTRACTOR
WITH AN OPTION FOR A GUARANTEED MAXIMUM PRICE**

This Agreement is made as of _____, 20__ (the "Effective Date"), by and between:

The Owner:

TEXAS PARKS AND WILDLIFE DEPARTMENT
4200 Smith School Rd.
Austin, Texas 78744

And

The Design-Build Contractor:

| | |
|--------------------------|---|
| Project Name: | Trail Design and Construction |
| Project Location: | Albert & Bessie Kronkosky State Natural Area |
| Project Number: | TR1111416 |

The Owner and the Design-Build Contractor agree as follows:

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ARTICLE 1 SCOPE OF WORK AND FIXED PROJECT BUDGET

1.1 The Design-Build Contractor has overall responsibility for and shall provide complete Pre-Construction Phase Services and Construction Phase Services and furnish all Design Services, materials, equipment, tools and labor as necessary or reasonably inferable to complete the Project, or any phase of the Project, in accordance with the Owner's requirements and the terms of this Agreement.

1.2 Fixed Project Budget

1.2.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents. **There is a fixed project budget of _____ and No/100 Dollars (\$_____)** ("Fixed Project Budget") for the Project, including contingencies, as described below. During the preconstruction phase and as the design of the Project progresses, the Owner, based on the information and professional services provided by the Design-Builder, may modify the Fixed Project Budget from time to time based on modifications in the design and the detailed statement of probable construction cost. The Fixed Project Budget, as established by the Owner, will be the amount of funds which Owner, will have available for the payment of all costs for the Project.

1.2.2 In order to accommodate the Fixed Project Budget of _____ and no/100 Dollars (\$_____), the Design-Builder shall determine what materials, equipment, component systems and types of construction are to be included in the scope of the Project, may make reasonable adjustments in the scope of the Project, subject to the approval of Owner and may include in the Construction Documents alternate designs and specifications.

1.2.3 If the Fixed Project Budget is exceeded, the Design-Builder, without additional charge, shall modify the Drawings and Specifications, as necessary to comply with the Fixed Project Budget.

1.3 Phases of Services and the Work. The services and the Work to be performed by or through the Design-Builder shall be divided into the Pre-Construction Phase and the Construction Phase. The Work to be performed under the Construction Phase may commence before the Pre-Construction Phase is completed. However, no Work shall commence under the Construction Phase until a Notice to Proceed with regard to such Work has been issued by the Owner in accordance with the terms of the Contract.

1.3.1 **Work Packages.** The Construction Phase Work may be divided into one or more packages (individually, a "Work Package") which identify a specific scope of Work and which will be ready for commencement of construction before it is appropriate to arrive at an overall Guaranteed Maximum Price (as defined herein and also referred to as "GMP") for the entire Work. Individual Work Packages will have an independent GMP that will in the aggregate of all Work Packages constitute the entire GMP for the Project.

1.3.2 **Work Authorization Amendments.** When the parties have identified the Work to be performed in a Work Package and have agreed on any applicable Contract Time for that Work Package and such other terms and conditions relating to that Work Package, including

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but not limited to a GMP for the Work Package, the parties shall enter into a Work Authorization Amendment which shall amend this Agreement and incorporate the terms thereof into the Contract. However, no Work shall commence under a Work Package until a Notice to Proceed with regard to such Work has been issued by the Owner in accordance with the terms of the Contract Documents.

ARTICLE 2 THE DESIGN-BUILD CONTRACT DOCUMENTS

The Contract Documents form the entire and integrated Contract between Owner and Design-Build Contractor and supersede all prior negotiations, representations or agreements, written or oral. The Contract Documents consist of:

- 2.1** This Agreement between Owner and Design-Build Contractor and all attachments hereto;
- 2.2** The project Criteria including changes to the project Criteria proposed by the Design-Build Contractor and accepted by the Owner, if any;
- 2.3** The Request for Qualification issued by the Owner and accepted by the Design-Build Contractor;
- 2.4** The Request for Additional Information document issued by the Owner and accepted by the Design-Build Contractor;
- 2.5** The Design-Build Contractor's proposal and written modifications to the Proposal accepted by the Owner, if any;
- 2.6** The Uniform General and Supplementary Conditions for Building Construction Contracts;
- 2.7** Special Conditions and Division 1 Specifications prepared by the Owner;
- 2.8** Project Manuals developed for the design or construction of the Project;
- 2.9** The Owner's Design Guidelines / Design Criteria;
- 2.10** All Addenda issued prior to the Effective Date of this Agreement;
- 2.11** The Phase 1 HUB Subcontracting Plan for Design Phase Services;
- 2.12** The Guaranteed Maximum Price Proposal as executed by the parties;
- 2.13** The Phase 2, HUB Change Request for Construction Phase Services when accepted by the Owner;
- 2.14** All Additional Services Proposals when accepted by the Owner;
- 2.15** All Change Orders issued after the Effective Date of this Agreement;
- 2.16** The Drawings and Specifications developed by Design-Build Contractor and accepted by Owner;
- 2.17** The Drawings and Specifications developed or prepared by Owner's independent consultants, if any, that are included in the GMP Price Proposal; and
- 2.18** Any other documents listed in this Agreement.

ARTICLE 3 DEFINITIONS

The terms, words and phrases used in the Contract Documents shall have the meanings given in the Uniform General and Supplementary Conditions and as follows.

- 3.1 "Contract Documents"** means all the written and graphic documents concerning execution of a particular construction contract. These include the Request for Qualification document, Request for Additional Information document, Agreement between the Owner and drawings, any changes to the specifications and drawings, any changes to the original contract, and any other items specifically itemized as being part of the contract documents.

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3.2 “Construction Phase Services” means the implementation and execution of the construction work required by the Contract Documents. The construction phase of the Project may be divided into different stages, each with different start and completion dates.

3.3 “Contract Sum” means the total amount of all compensation payable to the Design-Build Contractor for the Project and shall not exceed the sum total amount of the GMP Price Proposal accepted by the parties, subject to adjustment for Additional Services or Change Orders requested by the Owner. Any costs that exceed the Contract Sum shall be borne solely by Design-Build Contractor without reimbursement by Owner.

3.4 “Cost of the Work” means costs reasonably incurred by Design-Build in the proper performance of the Work. The Cost of Work shall include the elements described in Section 9.2 of this Agreement.

3.5 “Design Build Method” means a method to deliver a project in which the design and construction services are contracted by a single entity known as the Design-Builder or Design-Build contractor and Design Build Team is an entity in charge of performing those services.

3.6 “Design Consultant” means any licensed professionals or firms, other than the Project Design Professional, engaged by Owner as independent consultants for the Project Improvements.

3.7 “Design Criteria Manual” means all the design guidelines including the Design Criteria that are provided for explaining the design intent of the project.

3.8 “Design Services” means all professional services required to fulfill the Pre-Construction Phase and Construction Phase, including but not limited to programming, schematic design, design development, construction documents and construction phase observation.

3.9 “General Conditions Costs” means costs incurred and minor work performed on the jobsite by the Design-Build Contractor without the need for competitive bids/proposals.

3.10 “Guaranteed Maximum Price” means a cost-type contract such that the contractor is compensated for actual costs incurred plus a fixed fee, limited to a maximum price. The Design-Build Contractor is responsible for cost overruns greater than the GMP, unless the GMP has been increased by a formal change order (only as a result of additional scope from the Owner, not price overruns, errors, or Omissions).

3.11 “Pre-Construction Phase Services” means the services provided by the Design-Build Firm during the pre-construction phase, which include project management, overall planning, coordination and control of the Project, and all required design services.

3.12 “Project Design Professional” means the professional engineer, architect, or landscape architect employed by the Design-Build Contractor to perform all or part of the Design Services or the Construction Contract Administration Services in accordance with the Contract. The Project Design Professional and its professional consultants must be qualified to perform the Design Services and the Construction Contract Administration Services and be licensed in the State of Texas in their respective professions.

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3.13 “Project Criteria Documents” means all the documents that explains the project intent and guidelines for the construction and design of the project. Also referred to as the “Design Criteria Manual” (DCM).

3.14 “Project Team” means the Owner, Design-Build Contractor, Project Design Professional, any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The constitution of the Project Team may vary at different phases of the Project. The Project Team will be designated by the Owner and may be modified from at any time by Owner.

3.15 “Standards and Standard Specifications” means the construction and design requirements and standards of The Texas Parks and Wildlife Department, and various building and life safety codes as specified (Owner’s Design Guidelines which are incorporated by reference).

3.16 “Subcontractor” means a person or entity who has an agreement with the Design-Build Contractor to perform any portion of the Work. The term Subcontractor does not include the Project Design Professional, or any person or entity hired directly by the Owner.

3.17 “Work” means the provision of all services, design, labor, materials, supplies, and equipment which are required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents. Work includes, but is not limited to, the Pre-Construction Phase Services, Design Services, the Construction Phase Services, and any Additional Services and other services required. The term “reasonably inferable” takes into consideration the understanding of the parties that not every detail will be shown on the Drawings and included in the Specifications.

ARTICLE 4 DESIGN-BUILD CONTRACTOR’S GENERAL RESPONSIBILITIES

4.1 Design-Build Contractor shall perform all services specifically allocated to it by the Contract Documents as well as those services reasonably inferable from the Contract Documents as necessary for completion of the Work and the Project. Design-Build Contractor agrees to perform these services using its best efforts, skills, judgments and abilities.

4.2 Design-Build Contractor shall coordinate with the Project Team and endeavor to further the interests of the Owner and the Project. Design-Build Contractor shall furnish Pre-Construction Phase Services and Construction Phase Services and complete the Project in an expeditious and economical manner consistent with the interests of the Owner and in accordance with the Project Schedule.

4.3 Within ten (10) days of receipt of the Notice to Proceed with Pre-Construction Phase Services, the Design-Build Contractor shall submit for the Owner’s review and acceptance a Critical Path Method (CPM) Milestone Schedule in accordance with the Project Planning and Scheduling requirements of the Owner’s Specifications. The CPM Milestone Schedule shall encompass the entire Project duration, including performance of the both the Pre-Construction Phase Services and the Construction Phase Services with sufficient total Project float to allow for a minimum of Construction Phase float as specified.

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4.4 The CPM Milestone Schedule for the Pre-Construction Phase of the Project shall include reasonable amounts of time for the Owner's review and approval of design drawings and specifications and for approval of authorities having jurisdiction over the Project.

4.5 Upon acceptance of the CPM Milestone Schedule, it shall become the baseline for evaluating performance of the Project and Design-Build Contractor shall monitor the progress of the Project in relation to the CPM Milestone Schedule and provide the Owner with at least monthly updates and status reports as outlined in the Owner's Specifications. The time periods established in the CPM Milestone Schedule for the Pre-Construction Phase and the Construction Phase, and the overall duration of the Project shall not be changed without written consent from the Owner. Modifications to the CPM Milestone Schedule logic, coding, layouts and filters, detail, and activity durations shall be in accordance with the Owner's Specifications.

4.6 Design-Build Contractor shall designate a representative authorized to act on the Design-Build Contractor's behalf with respect to the Project.

4.7 Design-Build Contractor shall establish procedures for communication and coordination among the Project Team, Subcontractors, separate contractors, and others with respect to all aspects of the construction of the Project and implement such procedures.

4.8 Design-Build Contractor shall establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplementary instructions and shall provide updated records at each Owner's meeting and when requested.

4.9 Fast Track/Multiple Completion Times. If the Owner elects to "fast-track" or develop the Project in multiple stages, Design-Build Contractor shall organize and perform its services as appropriate to each stage. Each stage of the Project may have a unique schedule for completion and a specific Construction Cost Limitation, at Owner's discretion.

4.10 Design-Build Contractor shall attend and participate in Project team meetings for all phases of the Project.

4.11 Design-Build Contractor shall identify to the Owner the employees and other personnel that it will assign to the Project and provide the Monthly Salary Rate for each of them. Design-Build Contractor shall also identify any consultants that will be performing services for the Project. Pursuant to Texas Government Code, §2269, Subchapter H, after execution of this Agreement by the Owner, Design-Build Contractor shall not remove or replace the persons or entities assigned to the Project except with the Owner's written consent, which consent shall not be unreasonably withheld. Design-Build Contractor shall not assign to the Project or contract with any person or entity to which Owner has a reasonable objection. Design-Build Contractor shall promptly update the list of persons and consultants if they change during the course of the Project.

4.12 Design-Build Contractor, as a provision of the Agreement, must comply with the requirements and adhere to the HUB Subcontracting Plans submitted for Pre-Construction Phase and Construction Phase Services. No changes to the HUB Subcontracting Plans can be made by the Design-Build Contractor without the written approval of Owner in accordance with the Policy.

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ARTICLE 5 PRE-CONSTRUCTION PHASE

The Pre-Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed with Pre-Construction Phase Services issued by Owner and shall continue through completion of the Construction Documents and procurement of all major Pre-Construction Phase Services may overlap Construction Phase Services. The Design-Build Contractor shall perform the following Pre-Construction Phase Services.

5.1 PRE-CONSTRUCTION SERVICES

5.1.1 General Coordination

5.1.1.1 The Design-Build Contractor's Pre-Construction Phase Services team shall attend Project Team meetings with the Owner, the Owner's representatives, and the Project Design Professional at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent Project Team meetings are anticipated after the Owner's acceptance of the GMP and during completion of the Construction Documents. The Design Build Team shall prepare and distribute to the entire team the meeting minutes after every meeting. The Design Build Team will need to provide a monthly report showing the progress of the project from Design through Construction using the format provided by the TPWD in Exhibit G.

5.1.1.2 Provide a preliminary evaluation of the Owner's Design Criteria and the Owner's budget for construction, each in terms of the other.

5.1.1.3 Visit the site and inspect the existing facilities, systems and conditions to ensure an accurate understanding of the existing conditions as required.

5.1.1.4 At Owner's request, attend public meetings and hearings concerning the development and schedule of the Project.

5.1.2 Change Control

5.1.2.1 Problem-solving, issue tracking, and change control during the design and Construction phases.

5.1.3 Coordination of Design and Construction Contract Documents

5.1.3.1 Review all Drawings, Specifications, and other Construction Documents as they are developed by the Project Design Professional during the design development, and construction document design stages of the Project.

5.1.3.2 Consult with Owner and Project Design Professional on the selection of materials, equipment, component systems, and types of construction used on the Project. Advise Owner on site use, construction feasibility, availability of labor and materials, procurement time requirements, and construction coordination.

5.1.3.3 Identify and resolve any error, inconsistency or omission discovered in the drawings, specifications and other Construction Documents.

5.1.3.4 Review the Construction Documents for compliance with all applicable laws, rules and regulations and contract document requirements.

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5.1.4 Construction Planning and Bid Package Strategy

5.1.4.1 Identify equipment or material(s) requiring extended delivery times and coordinate as needed on expedited procurement of those items.

5.1.4.2 Make recommendations to the Project Design Team regarding organization of the Construction Documents to facilitate the bidding and awarding of construction subcontracts in a manner that promotes the interests of the Project and the Owner. These recommendations may include, but are not limited to, phased or staged construction or multiple separate contracts. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, the Owner's goals for HUB contractor participation, and other constraints.

5.1.4.3 Review the Construction Documents with the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner's separate contractors.

5.1.4.4 Assist the Owner, the Project Design Professional, Owner's other consultants, if any, and the Owner's separate contractors in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project including, without limitation, the Texas Department of Licensing and Regulation, the State Fire Marshal, the local fire department, and all applicable codes and regulations as identified by TPWD.

5.1.4.5 Refine, implement and monitor required HUB Subcontracting Plans to promote equal employment opportunity in the provision of goods and services to the Owner for the Project.

5.1.4.6 Design-Build Contractor shall review the Construction Documents to ensure that they contain adequate provision for all temporary facilities necessary for performance of the Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.

5.1.4.7 Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or stages.

5.1.5 Obtaining Bids/Proposals for the Work

5.1.5.1 Design-Build Contractor shall have an approved list of identified HUB subcontracting opportunities and associated potential HUB subcontractors list from TPWD before soliciting for subs. The Design-Build Contractor shall publicly advertise and solicit competitive lump sum bids/proposals from trade contractors or subcontractors, as needed to meet HUB requirement and any other federal or state regulations.

5.1.5.2 If a selected trade contractor or subcontractor fails to execute a subcontract after being selected in accordance with this section or defaults in the performance of its work, the Design-Build Contractor shall, without further advertising, fulfill the subcontract requirements itself or select a replacement trade contractor or subcontractor to do so. The Design-Build contractor shall notify the TPWD HUB Coordinator, and make sure the new subcontractor will

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meet all HUB requirements or any other requirements as per the Request for Qualifications and Request for Proposals.

5.1.6 Safety

5.1.6.1 In accordance with Owner's Uniform General and Supplementary Conditions, Design-Build Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable federal, state and local laws and regulations.

5.1.6.2 Design-Build Contractor shall provide a safety plan regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Design-Build Contractor shall verify that appropriate safety provisions are included in the Construction Documents.

5.2 DESIGN SERVICES

5.2.1 General Responsibilities

5.2.1.1 Design-Build Contractor shall designate in writing a representative who is responsible for the day-to-day management of the Design Services. The designated representative shall be the Owner's primary contact during the design phase of the Project and shall be available as required for the benefit of the Project and the Owner. The designated representative shall be authorized to act on behalf of and to bind the Design-Build Contractor in all matters related to Design Services. The designated representative shall not be changed without advance written approval from the Owner, which approval shall not be unreasonably withheld.

5.2.1.2 Design-Build Contractor shall engage the services of a Project Design Professional and other qualified professionals as required for performance of the Design Services. Design-Build Contractor certifies that the Project Design Professional and all other professional consultants have been or will be selected on the basis of competence and qualifications pursuant to *Government Code, Title 10, Sec 2269, Subchapter H*. Design-Build Contractor shall not perform any architectural or engineering services directly unless Design-Build Contractor is licensed in Texas to perform such services. All drawings, specifications, change orders and other design documents shall bear the seal of the licensed professional who prepared them in accordance with the applicable laws and regulations of the State of Texas.

5.2.1.3 Design-Build Contractor shall be solely responsible for all obligations to the Project Design Professional and shall pay for the services of the Project Design Professional and all other professional service providers out of the fees for this Agreement. However, the Owner shall be identified as an intended beneficiary in all such agreements and the Project Design Professional and all other professional service providers shall acknowledge that they owe a duty of professional care to the Owner for the Design Services provided for the Project. Nothing in this Agreement shall create any contractual obligation from the Owner to the Project Design Professional or other design professionals not hired directly by the Owner.

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5.2.1.4 Design-Build Contractor shall be responsible for verifying the information provided by the Owner including but not limited to Geotechnical Report, Hazardous Materials Report, Topographic survey, etc.

5.2.1.5 The Design-Build Contractor shall provide the Texas Department of Licensing and Regulation Report to TPWD for their records and information.

5.2.1.6 All Design Services for the Project shall be provided in accordance with the Owner's Design Guidelines, Design Criteria and the Request for Additional Information and Request for Qualifications, which are incorporated herein by reference, and any other criteria applicable to the facility program and the needs of the Owner.

5.2.1.7 The Design-Build Contractor warrants to Owner the sufficiency and completeness of all Design Services performed, and that all drawings, specifications, and other information furnished or provided by Design-Build Contractor shall be free from material errors and omissions. Approval or acceptance of any Design Services by Owner shall not in any way release Design-Build Contractor from any duty, responsibility or liability for such services, it being understood that Owner is at all times relying upon Design-Build Contractor's skill and knowledge in performing the Design Phase Services.

5.2.1.8 Owner shall have the right to reject any defective Design Services or Services that does not meet Owner's Design Criteria, or other defective Work on the Project of which Owner becomes aware and Design-Build Contractor shall promptly correct any such defect at Design-Build Contractor's expense. Should any portion of the Project Work (Construction) be damaged or defective due to an error or omission in the Design Services, including but not limited to, errors or omissions in any plans, drawings, specifications, and other construction document materials prepared or furnished by any member of the Design-Build Team, Design-Build Contractor shall promptly correct any such damage or defect at no additional cost to the Owner. Should the Design-Build Contractor refuse or neglect to correct any such damage or defect within a reasonable time after notice, Owner may cause the damage or defect to be corrected and withhold payment or collect monetary damages equal to the cost of replacing or repairing the defective Work.

5.2.1.9 Owner may elect, at its option, to stage or to "fast-track" construction of the Project in different stages. Such stages may or may not overlap. Design-Build Contractor shall perform Design Services in staged packages as appropriate to each stage of construction which may result in differing schedules and reviews for the completion of each design stage and for each stage of planned construction. Each stage of design as stated in the RFP shall be approved by the Owner prior to moving to next design stage. The Owner may elect, at its option, to establish a different Construction Cost Limitation for each such stage.

5.2.1.10 At each stage of the Design Services, Design-Build Contractor shall provide the following professional services and others as appropriate:

- Additional Geotechnical Engineering
- Additional Topographical Surveying
- Civil Engineering
- Architecture

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Landscape Architecture
Structural Engineering
Registered Accessibility Specialist (RAS) review and inspection
Cost Estimating

5.2.1.11 The Design-Build Contractor, as part of Basic Services, shall assist with and attend with Owner representatives up to [insert amount] meetings to be held pursuant to Texas Government Code §2269.301 Subchapter H, to discuss the project status with interested parties as defined by the Owner.

5.2.1.12 Design-Build Contractor shall employ a qualified Consultant (the "TPDES Consultant"), experienced in the Texas Pollutant Discharge Elimination System (TPDES) requirements and in the best management practices used at construction sites to control erosion and sediment, to prevent the discharge of pollutants and to prevent or mitigate the impacts of storm water runoff on water quality (collectively "BMPs"), which TPDES Consultant shall be approved in writing in advance by Owner, to provide expertise with respect to Texas Commission on Environmental Quality regulations and BMPs through all phases of the Project. The TPDES Consultant's services shall include, without limitation, (1) recommending structural and non-structural BMPs to Project Design Professional or other subcontractors under this Contract, (2) preparing of Storm Water Pollution Prevention Plans (SWPPPs) and, as requested in writing by Owner, assisting in the updating of SWPPPs and all other permit documentation required by the TCEQ for the Project, and (3) the drafting of technical specifications governing the Design-Build Contractor's obligations under the applicable TPDES regulations and the TCEQ General Permit for Storm Water Discharges From Construction Sites ("General Permit") No. TXR 150000 and governing the Design-Build Contractor's recommended courses of action under BMPs. The TPDES Consultant shall ensure that the storm water pollution prevention plan has been prepared for the site in accordance with the General Permit and that such plan complies with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits, including, without limitation, any TPDES permit issued to the Texas Parks and Wildlife Department component on which the site is located. The TPDES Consultant, through the Design-Build Contractor, shall determine whether General Permit coverage is required, and, if so, shall advise Owner of Owner's obligations under the General Permit and shall advise Owner of the Design-Build Contractor's obligations under the General Permit. If there are multiple projects proposed to be conducted concurrently in contiguous areas and general permit coverage is required, the TPDES Consultant shall prepare one SWPPP for the entire area encompassing all projects and shall amend such SWPPP at the request of Owner to ensure that the Design-Build Contractor of each project can comply with TPDES requirements and BMPs. DESIGN-BUILD CONTRACTOR SHALL INDEMNIFY AND HOLDS HARMLESS OWNER FROM ANY AND ALL LIABILITY, LOSS, DAMAGE, COST, AND EXPENSE ARISING OUT OF A VIOLATION OF THE APPLICABLE TCEQ TPDES REGULATIONS, BMPs, THIS PARAGRAPH OF THIS AGREEMENT, OR THE TERMS AND CONDITIONS OF THE GENERAL PERMIT TO THE EXTENT ATTRIBUTABLE TO AN ACT OR OMISSION OF DESIGN-BUILD CONTRACTOR, PROJECT DESIGN PROFESSIONAL OR ITS CONSULTANTS.

5.2.1.13 Design-Build Contractor shall not proceed to any subsequent stage of Design Services until Owner has authorized Design-Build Contractor to proceed in writing. Proceeding without Owner's consent will be at the Design-Build Contractor's sole financial risk.

5.2.1.14 Standard of Care for Architectural and Engineering Contractors: Pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Design-Build Contractor shall perform

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services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

5.2.1.15 Pursuant to Texas Government Code §2269.365, the Design-Build Contractor is required to comply with the following:

(a) the firm's engineers shall submit all design elements for review and determination of scope compliance to the governmental entity before or concurrently with construction.

(b) An appropriately licensed design professional shall sign and seal construction documents before the documents are released for construction.

5.2.2 Design Development Stage

5.2.2.1 Based on the contract documents and any adjustments to the Program or Construction Cost Limitation authorized by the Owner, the Design-Build Contractor shall prepare Design Development documents and submit them to the Owner for approval. The Design Development Documents shall fix and describe the size and character of the entire Project, including site work, architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

5.2.2.2 The Design-Build Contractor shall furnish and deliver to the Owner a complete set of PDFs (sized to plot 24" x 36") of the Design Development documents. Specification documents can be PDF only.

5.2.2.3 Before proceeding into the Construction Document Stage, the Design-Build Contractor shall obtain Owner's written approval of the Design Development documents.

5.2.3 Construction Documents Stage

5.2.3.1 Based on the approved Design Development Documents, as authorized by the Owner, the Design-Build Contractor shall prepare Construction Documents consisting of Drawings and Specifications and submit them to the Owner for approval. The Construction Documents shall set forth in detail the requirements for construction of the Project.

5.2.3.2 The Construction Documents shall be consistent in all material respects with Design-Build Contractor's prior design proposals to Owner and with the approved GMP Price proposal.

5.2.3.3 The Design-Build Contractor shall advise and inform the Owner regarding any changes to the construction phasing and scheduling, and such other construction conditions considered appropriate for the Project at no additional cost and or construction timeline extensions.

5.2.3.4 The Design-Build Contractor shall assist and advise the Owner in connection with the Owner's responsibility and procedures for obtaining approval of authorities having jurisdiction over the Project.

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5.2.3.5 The Design-Build Contractor shall furnish and deliver to the Owner a complete set of PDF's (sized to plot 24" x 36") of the Construction documents. Specification documents can be PDF only. At 100% Construction Documents, provide only PDF of all documents.

5.2.3.6 Following Owner's approval of the Construction Documents, Design-Build Contractor shall deliver to the Owner Computer-aided Design and Drafting ("CADD") system copies of the Construction Documents in the format and media specified by the Owner in Exhibit C of these contract documents.

5.2.3.7 The Design-Build Contractor shall not be entitled to any adjustment in the approved GMP Price except for changes in Project scope which materially increase or decrease the cost to construct the Project that are ordered by Owner, in writing, in accordance with the Contract Documents.

5.2.4 Review Drawings

5.2.4.1 The Design-Build Contractor, at its sole expense, shall provide Owner with the required number of design document review sets at each required stage of completion of any proposed design document package:

- 30% Construction Documents
- 50% Construction Documents
- 95% Construction Documents
- 100% Sealed Construction Documents

Review documents should include 3D representation of items such as proposed bridges or retaining walls or other vertical elements.

5.2.4.2 The Design-Build Contractor shall incorporate into the documents such corrections and amendments as the Owner requests at each stage review, unless the Design-Build Contractor objects to such changes in writing and Owner agrees to the objections. Any additional cost incurred due to Design-Build Contractor's failure to incorporate Owner's requested corrections and amendments shall be borne by the Design-Build Contractor.

5.2.4.3 Design-Build Contractor shall identify and resolve in writing anything in the Design-Build Contractor's drawings and specifications and any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Design-Build Contractor (by Owner or any other party) that Design-Build Contractor regards as unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished. Design-Build Contractor shall be solely responsible for the use of such documents or data unless Design-Build Contractor advises Owner in writing that in its opinion such documents or data are unsuitable, improper, or inaccurate and Owner instruct the Design-Build Contractor in writing to proceed in accordance with the documents or data as originally given.

5.2.4.4 The Design-Build Contractor shall pay all costs for plans, specifications and other design and construction documents used by the Design-Build Contractor and its consultants

EXHIBIT A

and subcontractors, and all documents produced for review and or permitting by the Owner, except for changes generated solely by Owner.

5.2.4.5 If any of the plans, specifications and other design and construction documents or other work materials produced or used by Design-Build Contractor pursuant to this Agreement are damaged or destroyed by fire or other casualty, Design-Build Contractor shall prepare and provide Owner with new copies of any such documents or materials, at no additional cost to the Owner.

5.2.5 Additional Design Services

5.2.5.1 Additional Design Services shall be provided by the Design-Build Contractor and paid for in accordance with this Agreement by the Owner if requested and authorized in writing by the Owner. Prior to commencing any Additional Design Service, Design-Build Contractor shall submit to the Owner an Additional Services Proposal in a form acceptable to the Owner. The Additional Services Proposal shall describe in detail the nature or scope of the Additional Design Services, the basis upon which Design-Build Contractor believes that such services are Additional Services, the maximum amount of fees and reimbursable expenses for performance of the Additional Services, and a proposed schedule for the performance of the Additional Services. Design-Build Contractor shall proceed with the Additional Design Service only after written acceptance by Owner of the Additional Services Proposal. Under no circumstances shall additional services be requested or approved for any item in the original project scope or inferable as secondary requirements to meet the project scope.

Upon acceptance by Owner, each Additional Services Proposal and the services performed by Design-Build Contractor pursuant to such Additional Services Proposal shall be incorporated into this Agreement by contract modification and become part of this Agreement and shall be subject to all the terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a Basic Service at the original execution of this Agreement.

5.2.5.2 Design-Build Contractor shall submit a full list of all personnel titles and the hourly billing rates for each to be incorporated into this Agreement as Exhibit G. For additional services, Design-Build Contractor's fee shall be calculated on the basis of agreed upon hourly billing rates as stated in Exhibit G.

- a. The hourly billing rates set forth in Exhibit G shall remain firm throughout the term of this Agreement
- b. The hourly billing rates set forth in Exhibit G shall be used to established fixed prices for services provided under this section.

5.2.5.3 The following services, if requested by the Owner, are Additional Design Services:

- a. Providing financial feasibility or other special studies other than as they relate to energy conservation and guaranteed savings, and the cost of the Project.
- b. Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.
- c. Providing coordination of Work performed by Owner's separate Contractors or by the Owner's own forces unless such work is the result of a lack of performance by the Design-Build Contractor or any of its employees or subcontractors.

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- d. Making revisions in Drawings, Specifications or other documents after submittal review and approval by the Owner when such revisions are due to Owner requested changes and are not due to errors or omissions by the Project Design Professional.
- e. Making revisions in Drawings, Specifications or other documents when such revisions are required by the enactment or revision of codes, laws or regulations enacted after to the preparation of such documents.
- f. Making investigations, surveys, valuations, inventories or detailed appraisals of existing facilities, except as necessary and appropriate for the performance of the Design Phase Services required in connection with construction performed by the Owner.
- g. Providing consultation concerning replacement of any Work damaged by fire or other cause during construction and furnishing services as may be required in connection with the replacement of such Work provided that the damage was not caused wholly or in part by the Design-Build Contractor or a Subcontractor.
- h. Providing services after final payment or expiration of the Warranty, whichever is later, except as otherwise required by the Contract.
- i. Preparing to serve or serving as an expert witness at the request of the Owner in connection with any arbitration proceeding or legal proceeding.
- j. Providing any other services not otherwise customarily furnished or inferable in accordance with generally accepted architectural or engineering practice.

ARTICLE 6 CONSTRUCTION PHASE SERVICES

The Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed issued by Owner, after approval of the design documents and the amended HUB plan and shall continue until Final Completion of all Work. Pre-Construction Phase Services may overlap Construction Phase Services. Design-Build Contractor shall not incur any subcontractor costs for construction of the Work prior to issuance by Owner of written authorization to commence such Work. The Design-Build Contractor shall perform the following Construction Phase Services.

6.1 General Responsibilities

6.1.1 Construct the Work in strict accordance with the Construction Documents and as required by the Uniform General and Supplementary General Conditions and Owner's Specifications within the time required by the Project Schedule approved by Owner.

6.1.2 Organize and maintain a competent, full-time staff at the Project site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct progress of the Work, and further the goals of the Project Team.

6.1.3 Designate in writing a representative who is responsible for the day-to-day management of the Construction Phase Services. The designated representative shall be the Owner's primary contact during the Construction Phase and shall be available as required for the benefit of the Project and the Owner. The designated representative shall be authorized to act on behalf of and to bind the Design-Build Contractor in all matters related to Construction Phase Services.

6.1.4 Attend Owner's regularly scheduled Project progress meetings and fully advise the Project Team of the Project status including schedule, costs and quality.

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6.1.5 In addition to attending Owner's regularly scheduled Project progress meetings, Design-Build Contractor shall schedule, direct and attend interim progress meetings with other members of the Project Team as required to maintain Project progress. Design-Build Contractor shall record and distribute the minutes of each meeting to each Project Team member and the Owner. The minutes shall identify critical activities that require action and the dates by which each activity must be completed.

6.1.6 Coordinate delivery and installation of Owner-procured material and equipment.

6.1.7 In accordance with the Uniform General and Supplementary Conditions, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Contract Documents.

6.1.8 Obtain permits as required by law or the Contract Documents. Assist Owner or Project Design Professional in obtaining all approvals required from authorities having jurisdiction over the Project.

6.1.9 Coordinate, monitor and inspect the work of Subcontractors to ensure conformance with the Contract Documents and all applicable codes & regulations to include submittal of weekly payroll as required by the contract, from all subcontractors.

6.1.10 Be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. The Design-Build Contractor shall keep the Owner informed of the progress and quality of the Work.

6.1.11 Design-Build Contractor shall promptly correct any defective Work at Design-Build Contractor's sole expense, unless the Owner specifically agrees to accept the Work.

6.1.12 Warrant that the materials and equipment provided for the Project will be of good quality and new unless otherwise required or permitted by the Contract Documents; that the construction will be free from faults and defects; and that the construction will conform to the requirements of the Contract Documents. The Design-Build Contractor shall be responsible for correcting Work that does not comply with the Construction Documents at its sole expense without cost to the Owner.

6.1.13 In accordance with the Uniform General and Supplemental Conditions regarding Record Documents and the Owner's Project Closeout Specification, the Design-Build Contractor shall maintain and deliver the required documents that describe changes or deviations from the Construction Documents that occurred during construction and that reflect the actual "As Built" conditions of the completed Work.

6.2 Construction Contract Administration

6.2.1 The Design-Build Contractor, through the Project Design Professional, shall furnish the following Contract Administration Services during the Construction Phase.

6.2.2 The Project Design Professional shall assist in the administration of the Contract for Construction as set forth below and in other associated contract documents.

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6.2.3 The Project Design Professional, and their related consultants, shall inspect the Project site at intervals appropriate to the type and stage of construction progress and as otherwise required by this Agreement to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of such onsite observations, the Project Design Professional shall observe and issue reports on the progress and quality of the Work and shall endeavor to guard the Owner against defects and deficiencies in the Work.

6.2.4 In addition to site visits for general inspection and observation, the Project Design Professional shall visit the site for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant work activities and for formal inspections of the Work. The Project Design Professional shall provide written reports of all site visits to the Owner and the Design-Build Contractor within seven business days.

6.2.5 The Design-Build Contractor shall establish and maintain a consistent format, naming, numbering and tracking system for all project records, including open items, decisions and changes, procurement schedule and shall provide updated records at each Owner's meeting and when requested.

6.2.6 The Design-Build Contractor shall administer all regular progress and special meetings scheduled by the Owner and shall promptly provide meeting minutes to all parties within two (2) business days. The Project Design Professional shall attend the Design-Build Contractor's regularly scheduled planning meetings and all Owner scheduled meetings.

6.2.7 The Design-Build Contractor shall prepare an agenda for and conduct construction progress meeting for attendance by representatives of the Design-Build Contractor, major Trade Contractors and Subcontractors, the Project Design Professional and the Owner, and prepare and distribute minutes of the meetings and a construction status report.

6.2.8 The Project Design Professional's certification of Design-Build Contractor's Estimate for Partial Payment for Construction Phase Services shall constitute a representation by the Project Design Professional to the Owner, based on the Project Design Professional's observations at the site as provided in this Agreement and on the data comprising the Design-Build Contractor's Estimate for Partial Payment that the Work has progressed to the point indicated; that, to the best of the Project Design Professional's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents. The Project Design Professional shall submit this certification to the Owner for approval of the Partial Payment through the Project Construction Project Manager

6.2.9 The Project Design Professional, with the approval of the Owner, shall interpret the technical requirements of the Contract Documents. The Project Design Professional shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Design-Build Contractor and shall render written recommendations to the Owner within a reasonable time on matters relating to the execution or progress of the Work or the interpretation of the Contract Documents.

6.2.10 The Project Design Professional shall provide consultation for the purpose of clarification and interpretation of the intent and scope of the Construction Documents. Project Design Professional's interpretations and recommendations shall be consistent with the intent of and reasonably inferable from the Contract Documents. Project Design Professional's

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interpretations shall be made in written and/or graphic form including, if necessary or appropriate, supplemental documents to amplify or clarify portions of the Construction Documents.

6.2.11 The Project Design Professional shall review and approve or take other appropriate action upon the Design-Build Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work set forth in the Contract Documents and shall respond to Design-Build Contractor's inquiries and questions and provide such supplemental information as appropriate. One copy of each submittal, shop drawing, product data, etc., shall be provided to the Owner.

6.2.12 The Project Design Professional shall prepare Change Orders for the Owner's approval and execution in accordance with the Contract Documents, and shall, with Owner's approval, have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time, which are not inconsistent with the intent of the Contract Documents. The Project Design Professional shall prepare revised Contract Drawings, where appropriate, to illustrate and document the work required by the Change.

6.2.13 Any Owner approved changes to drawings, plans and specifications, regardless of how initiated, shall be fully described in the document depicting them as to scope of work removed, or changed. The original copies of the Construction Documents may be revised to show such changes, provided that all such revisions shall be separately recorded on media acceptable to Owner, including, without limitation, CADD. Such revisions shall be clearly indicated, and a current revision date shall be included on the reproducible copy. Changes to the specifications shall be made by consecutively numbered and dated revision addenda. All changes to design documents or specifications will be identified by date of change, revision number and other customary identification references. Areas changed on drawings will be "clouded" to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded.

6.2.14 The Project Design Professional shall participate in concealed space inspections, systems start-up inspections, Substantial Completion and Pre-Final Inspections to determine the Dates of Substantial Completion, and Final Acceptance. The Project Design Professional shall also participate in the Owner's final walk thru inspection one year after Final Completion.

6.2.15 The Project Design Professional shall review, for conformance with the Contract Documents, Design-Build Contractor's submission of guarantees and warranties.

6.2.16 The Project Design Professional shall assist the Owner in checking as-built drawings during the course of the Work in association with reviewing progress payments and shall review final as-built documents for completeness and assure compliance with Contract requirements prior to submitting it to the Owner.

6.2.17 The Design-Build Contractor shall provide "as-built" record drawings (PDF's, 2 sets of bond 24X36 and CAD files) as described in the Owner's Project Closeout of the specifications.

6.2.18 The Project Design Professional in conjunction with the Owner's representative shall prepare and administer the construction punch list until all punch list items have been resolved to the Owner's satisfaction.

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6.2.19 The Project Design Professional shall review Design-Build Contractor's submission of operating and maintenance instructions, and all manuals, brochures, drawings, and other close-out documentation furnished by the Design-Build Contractor for conformance with the requirements of the contract documents.

ARTICLE 7 OWNER'S RESPONSIBILITIES

7.1 The Owner will provide the Design Criteria Manual for the Project.

7.2 The Owner will designate a representative authorized to act in the Owner's behalf with respect to the Project. The Owner's Designated Representative shall examine the documents submitted by the Design-Build Contractor and shall render decisions pertaining thereto.

7.3 The Owner, at Owner's cost, will secure third-party construction materials testing services. The Design-Build Contractor shall provide the Owner with parameters for inclusion in the Owner's instructions to such providers.

7.4 The Owner shall examine the design documents submitted by the Design-Build Contractor and provide comments concerning corrections or amendments to such documents in writing to the Design-Build Contractor. The Owner may obtain independent review of the design documents by its own Design Consultant. The Owner may require the Design-Build Contractor to halt production during design review. The Design-Build Contractor shall address the comments to the Owner's satisfaction unless there is a code, regulation, or contractual conflict.

7.5 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Design-Build Contractor's services and of the Work.

7.6 The Owner will designate a Construction Project Manager of its own who shall be given access to the Work as requested or needed. Construction Project Manager will certify partial payments based on a percentage of completion. The Construction Project Manager will receive and review the certified payroll and ensure compliance with the prevailing wages. The provision of such Construction Project Manager by Owner shall not reduce or lessen in any respect Design-Build Contractor's responsibilities for the Work. Design-Build Contractor shall remain fully and solely responsible for the drawings, specifications, and other contract documents furnished or provided by Design-Build Contractor, and for constructing the Project in strict accordance with the Contract Documents.

7.7 Owner shall have the right to reject any defective Work on the Project. Should Design-Build Contractor refuse or neglect to correct any such Work within a reasonable time after notice, Owner may have the Work corrected and recover all expenses incurred from Design-Build Contractor on demand.

ARTICLE 8 OWNERSHIP AND USE OF DOCUMENTS

8.1 Design drawings, specifications, BIM Model drawings, and other documents furnished by the Design-Build Contractor or Project Design Professional are instruments of service and shall remain their property whether the Project for which they are made is executed or not. The

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Owner shall be permitted to retain copies, including reproducible copies and CADD Copies, of the drawings, specifications and other documents for information and reference in connection with the Owner’s use and occupancy of the Project. Design-Build Contractor and Project Design Professional hereby grant Owner an irrevocable, fully paid-up, perpetual license and right to use the drawings, specification and other documents furnished, including the originals thereof, and the ideas and designs contained therein, for any purpose regardless of whether their services for the Project are completed, modified or terminated if at the Owner’s discretion it becomes necessary, the Design-Build Contractor and Project Design Professional hereby expressly consent to the employment by Owner of a substitute design professional to complete the Design Services under this agreement, with the substitute design professional having all of the rights and privileges of the original Project Design Professional.

8.2 Submission or distribution of the project documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Design-Build Contractor’s or Project Design Professional’s rights.

ARTICLE 9 COMPENSATION AND PAYMENTS

9.1 Pre-Construction Phase Fee (Design Fees)

For Pre-Construction Phase Services, Owner shall pay Design-Build Contractor a stipulated Pre-Construction Phase Fee of:

TOTAL PRE-CONSTRUCTION PHASE FEE..... \$ _____

9.2 Reimbursable Expenses

Reimbursable Expenses for Pre-Construction Phase Services and Construction Phase Services shall, without exception, be included in the GMP.

9.3 Construction Phase Services

9.3.1 Design-Builder’s Construction Phase Fee: Exclusive of the cost of the Work identified in paragraph 10.3, the Design-Builder’s Fee required to perform the remainder of the Design-Build services, shall mean the payment the Design-Builder shall receive for its overhead and profit in performing its services and shall be the fixed percent of _____ percent (_____ %) to be applied as a multiplier to the itemized Cost of the Work, as adjusted in accordance with Section 9.3.2 below.

9.3.2 The **Design-Builder’s Construction Phase Fee** cannot be increased except with the express written approval of the TPWD. If the Owner agrees to any increases in the Design-Builder’s Construction Phase Fee during or before the Construction Phase (for example, change orders funded by Owner’s Construction Contingency) the Design-Build Contractor’s fee for these increases shall be calculated accordance with the provisions of the Uniform General and Supplementary Conditions for Change Orders.

9.4 Cost of the Work: The cost of the work includes, without limitation: Construction Phase Fee, Design-Build Contractor’s General Conditions Costs and Costs of the Work organized by trade; Contingency amounts; and all cost related with the completion of the project as

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specified in the Contract Documents. Under no circumstances shall the Contractor be eligible to apply for payments that exceed the GMP.

9.5 Owner's Contingency. The Owner may elect to carry its own contingency through the award of the GMP. The Owner's Contingency, if any, is not included in the GMP price.

9.6 The Guaranteed Maximum Price

9.6.1 GMP Established Upon Execution of this Agreement: Not Applicable to this Project.

9.6.2 GMP Established after Execution of this Agreement: GMP Proposal Requirements. At ___ percent (___%) *{for example sixty five percent (65%)}* completion of the Construction Documents Preparation or such other time as Owner may specify, the Design-Builder shall submit a GMP Proposal on a Request for Proposal form provided by Owner attached hereto as **Exhibit G**, which shall include the following, unless the parties mutually agree otherwise. A proposed GMP, which shall be the sum of:

9.6.2.2 **Cost of the Work:** The cost of the work includes, without limitation: Construction Phase Fee, Design-Build Contractor's General Conditions Costs and Costs of the Work organized by trade; Contingency amounts; and all cost related with the completion of the project as specified in the Contract Documents. Under no circumstances shall the Contractor be eligible to apply for payments that exceed the GMP.

9.6.2.3 a list of the drawings and specifications, including all other information used as the basis for the GMP Proposal;

9.6.2.4 a list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications;

9.6.2.5 the Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established under Article 20 hereof,

9.6.2.6 a Schedule of Values based upon the Scheduled Substantial Completion Date;

9.6.2.7 if applicable, a list of allowances and a statement of their basis;

9.6.2.8 if applicable, a schedule of Unit Prices;

9.6.2.9 if applicable, a statement of any proposed Additional Services;

9.6.2.10 any other information requested in the attached form, Exhibit G of the GMP Proposal

9.7.3 Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall promptly meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

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9.7.4 Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Owner and Design-Builder, the GMP and its basis shall be set forth by change order issued by the Owner.

9.7.5 Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, or fails to notify Design-Builder in writing within thirty (30) calendar days of receipt of the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

9.7.5.1 Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 9.7.4 above;

9.7.5.2 Owner may terminate this Agreement for convenience in accordance with Article 15 hereof; provided, however, in this event, Design-Builder shall be entitled to the payment provided for in Article 15 hereof.

9.7.5.3 If Owner fails to exercise any of the above options, Design-Builder shall have the right to (i) continue with the Work as if Owner had elected to proceed in accordance with Item .2 above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work, or (ii) suspend performance of Work in accordance with Section 15.4 of the Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 15.1 hereof.

9.7.6 If the GMP, as established by the parties, includes a Contingency, the Contingency will be available for Design-Builder's use with the written approval of the Owner for costs that are incurred in performing the Work that are not included in a specific line item or the basis for a Change Order under the Contract Documents, which approval will not be unreasonably withheld or delayed. By way of example, and not as a limitation, such costs include trade buy-out differentials, overtime, acceleration, and Subcontractor defaults. The Contingency is not available to Owner for changes in scope or any other item that would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner with notice of all anticipated charges against the Contingency for Owner's review and approval, and will provide an updated monthly financial accounting report of expenses and remaining balance with each monthly Progress Payment.

9.7.7 **Allowances.** "Allowance" is defined as "a not-to-be-exceeded amount", either individually or in the aggregate, which is established between the Owner and the Design-Builder as part of a GMP Proposal when the precise scope of a particular line item(s) has not been defined to a level which is adequate for the DB to provide a definitive line item pricing for that particular scope of Work. The use of any Allowances by the Design-Builder in any GMP Proposal will be subject to the Owner's sole approval and it is the Owner's intent to minimize the use of Allowances to the fullest extent possible. For any Allowances which the Owner allows the Design-Builder to use, the following rules shall apply: (i) Allowances shall cover the cost to the Design-Builder of the Cost of Work, as defined in the Agreement; (ii) Design-Builder's portion of the Fee for overhead and profit associated with the stated Allowance shall be included in the GMP Proposal; and (iii) upon completion of the portion of the Work subject to an Allowance, the Contract Amount for that portion of the Work will be adjusted

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based upon the approved actual Cost of the Work, including the proportionate fee, which will not exceed the approved aggregate amount of the Allowances.

9.7.8 **Savings:** If the sum of the actual Cost of the Work and Design-Builder's Fee is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be credited in total to the Owner.

9.7.8.1 Savings shall be calculated and reconciled as part of Final Payment.

9.8 CHANGES IN THE WORK

9.8.1 Adjustments of the Contract Sum will be authorized only if changes in the scope of work are required and approved by Owner.

ARTICLE 10 TIME

10.1 Unless otherwise approved, the Owner and the Design-Build Contractor shall perform their respective obligations under the Contract as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

10.2 Time limits stated in the Contract Documents are of the essence of this Agreement. The Design-Build Contractor shall be responsible for schedule development, updating and reporting throughout the entire Project, including Pre-Construction Phase Services and Construction Phase Services. The Design-Build Contractor shall comply in all regards with requirements set forth in the approved project schedule. The proposed Contract Time will include dates for Notice to Proceed, Substantial Completion and Final Completion.

ARTICLE 11 GENERAL REQUIREMENTS

11.1 Each schedule of values submitted with an Application for Payment shall include the originally established value for each work classification line item or subcontract and shall identify, by the addition of new data rows immediately below the previously accepted data rows, any revisions to the costs or cost estimates for each work classification or subcontract. The format and tracking method of the original schedule of values and of all updates shall be subject to approval by the Owner. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work, including Design-Build Contractor's overhead and profit, shall not exceed the unpaid balance of the GMP Price, less retainage on Work previously completed.

11.2 Retainage as specified in the Uniform General and Supplementary Conditions will be withheld from the entire amount approved in an Application for Payment.

11.3 Owner is an agency of the State of Texas and materials and services utilized in the construction of the Project may be exempted from state and local taxes. Design-Build Contractor is responsible for taking full advantage of all tax exemptions applicable to the Project. Owner will deduct from the Applications for Payment and from the Request for Final Payment any taxes paid for materials or services that were entitled to tax exemption.

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11.4 This Agreement is subject to the assessment of liquidated damages against Design-Build Contractor. Amounts assessed as liquidated damages, and other amounts to which Owner is entitled by way of setoff or recovery, may be deducted from any moneys due Design-Build Contractor.

11.5 Owner shall have the right to withhold from payments due Design-Build Contractor such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Design-Build Contractor or any Subcontractor or failure of Design-Build Contractor or any Subcontractor to perform their obligations under this Agreement.

11.6 Notwithstanding any other contractual provision to the contrary, Owner shall not be obligated to make any payment to Design-Build Contractor under any of the following circumstances:

11.6.1 Design-Build Contractor persistently fails to perform the Work in accordance with the Contract Documents or is otherwise in material breach or default under this Agreement; The payment request includes services that are not performed in accordance with the Contract Documents; provided, however, Owner shall pay for those services performed in accordance with the Contract Documents;

11.6.2 The payment request has insufficient documentation to support the amount of payment requested for Project costs; provided, however, Owner shall pay for allowable Project costs for which there is sufficient documentation;

11.6.3 Design-Build Contractor is in violation of the HUB requirements, Prevailing Wage requirements or has failed to make payments promptly to Subcontractors or other third parties used in connection with any services or materials for which Owner has made payment to Design-Build Contractor;

11.6.4 If Owner, in its good faith judgment, determines that the unpaid balance of the GMP Price is not sufficient to complete the Work in accordance with the Contract Documents.

11.6.5 Design-Build Contractor has persistently failed to complete the Work in accordance with the Critical Path Method (CPM) Schedule requirements or if Owner, in its good faith judgment, determines that the remaining Work will not be completed within the contract time;

11.6.6 Design-Build Contractor is insolvent, makes a general assignment for the benefit of its creditors or otherwise seeks protection under the laws and regulations of the bankruptcy courts; or

11.6.7 Design-Build Contractor fails to obtain, maintain or renew insurance coverage as required by the Agreement.

11.6.8 No partial payment made by the Owner shall constitute, or be construed to constitute, final acceptance or approval of the work to which the partial payment relates or of the documentation provided in support of the partial payment. No partial payment made by the Owner shall constitute, or be construed to constitute, a release of Design-Build Contractor from any of its obligations or liabilities with respect to the Work.

11.6.9 Owner shall have the right to verify and audit the details of Design-Build Contractor's billings, certificates, accountings, cost data, and statements, either before or after payment,

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by (1) inspecting the books and records of Design-Build Contractor during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Design-Build Contractor's employees; (4) visiting the Project site; and (5) any other reasonable action. Design-Build Contractor's records shall be kept on the basis of generally accepted accounting principles in accordance with cost accounting standards issued by the Federal Office of Management and Budget Cost Accounting Standards Board and organized by each Application for Payment period.

11.7 Pre-Construction Phase Payments (Design Services)

11.7.1 Payments for Pre-Construction Phase Services shall be made monthly based on the percentage completion of the Design-Build Contractor's required services for each stage of development of the Construction Documents and the procurement of Subcontractor bids/proposals in accordance with the schedule in Article 20, Compensation.

11.7.2 All payment requests for Pre-Construction Phase Services shall be submitted on an Application for Payment and Schedule of Values approved by the Owner and includes all required attachments identifying payments to Project Design Professional, Historically Underutilized Businesses and to all Subcontractors.

11.8 Construction Phase Payments

11.8.1 Payments for Construction Phase Services shall be made as provided for in the Uniform General and Supplementary Conditions and the Owner's Specifications. All payment requests shall be submitted on an Application for Payment with a schedule of values approved by the Owner and certified by the Project Inspector and include all required attachments identifying payments to Historically Underutilized Businesses and to all Subcontractors. Failure to submit "HUB Progress Assessment Report Documentations of Subcontracted Work" form with each Application for Payment Application will cause rejection of the application by the Owner and its return to the Design-Build Contractor.

11.8.2 Pay requests for Subcontractor work included in an Application for Payment shall not exceed the percentage of Work allocated to that Subcontractor for each respective schedule of values work classification which has been actually completed and shall not exceed the total value of the subcontract amount.

11.8.3 Design-Build Contractor's Request for Final Payment shall not be made until all Work is completed and all requirements of the Contract Documents have been satisfied including, without limitation: Delivery to Owner of a complete release of all liens and claims arising out of the Work; written consent of surety to release of final payment; and an affidavit that, to the best of Design-Build Contractor information, knowledge and belief, includes and covers all materials and services over which Design-Build Contractor has control and for which a lien could be filed and that all known debts and claims arising from the Project have been satisfied. Alternatively, Design-Build Contractor may, at its sole expense, furnish a bond satisfactory to Owner to indemnify Owner against any lien arising out of the Work. If any lien is asserted against Owner after all payments are made, Design-Build Contractor shall reimburse Owner for all damages and costs Owner may incur in discharging such lien, including all costs or court and reasonable attorneys' fees, and Owner shall retain all other remedies available to it at law and in equity.

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11.8.4 Owner shall have no obligation to make Final Payment until a complete and final accounting of the Direct Construction Cost has been submitted by Design-Build Contractor and has been verified by Owner or Owner's representatives.

11.8.5 Nothing contained herein shall require the Owner to pay the Design-Build Contractor an aggregate amount for Construction Phase Services that exceeds the amount designated for the construction in the GMP Price or to make any payment if, in the Owner's belief, the cost to complete the Work would exceed the GMP Price less previous payments to Design-Build Contractor. The total amount of all Construction Phase payments to the Design-Build Contractor shall not exceed the amount designated in the GMP Price for the construction phase.

11.8.6 The acceptance by Design-Build Contractor or Design-Build Contractor's successors of Final Payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that Design-Build Contractor, its Subcontractors, suppliers and consultants or any of their successors or assigns have or may have against Owner arising from the Project or any provision(s) of this Agreement.

ARTICLE 12 PRE-EXISTING CONDITIONS; DESIGN ERRORS AND OMISSIONS

12.1 The Design-Build Contractor acknowledges that it was afforded unrestricted access to the existing improvements and conditions on the Project site and it has thoroughly investigated those conditions. The results of Design-Build Contractor's investigation have been taken into account in establishing the GMP Price of the Work. Therefore, Design-Build Contractor shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for Design Phase Services or for Construction Phase Services arising from Project conditions that Design-Build Contractor discovered or, in the exercise of reasonable care, should have discovered in Design-Build Contractor's investigation.

12.2 Before proceeding with the Work, the Design-Build Contractor shall review the drawings, specifications and other Construction Documents and notify the Owner of any errors, omissions, or discrepancies in the documents of which it is aware. Design-Build Contractor is responsible for discovering and correcting any error, omission, conflict, inconsistency or lack of clarity, in the Construction Documents prepared by Design-Build Contractor or its Design Professional of Record. Design-Build Contractor shall be responsible for all costs, including the cost of redoing or remedying the Work and time delays, resulting from any error or omission in the Contract Documents.

ARTICLE 13 BONDS AND INSURANCE

13.1 Within ten (10) days of acceptance by the Owner of a GMP Price Proposal and award of the contract, the Design-Build Contractor shall provide performance and payment bonds on forms prescribed by Owner, in accordance with the requirements set forth in the Uniform General and Supplementary Conditions, Article 5. Owner reserves the right to reject a bond if the surety is not acceptable to TPWD.

13.2 The Design-Build Contractor shall carry professional liability and errors and omissions insurance, covering the design services provided under this Agreement, as is acceptable to and approved by the Owner. See Uniform General Conditions, Article 5 for additional information. In case of conflict the most restrictive should apply. Such insurance shall have minimum policy limits of One Million Dollars (\$1,000,000) in the aggregate and One Million Dollars (\$1,000,000) per claim. The fees for such insurance will be at the expense of the

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Design-Build Contractor. The Design-Build Contractor shall maintain such insurance throughout the course of the Work and for a minimum of one (1) year following Substantial Completion of the Work. A Certificate of Insurance indicating the expiration date of the Design-Build Contractor's professional liability insurance is required. No policy providing such insurance shall be cancelled without thirty (30) days prior written notice to the Owner. If Design-Build Contractor is performing the Design Services, then the professional liability insurance shall be in Design-Build Contractor's name and shall include a Design-Build Endorsement in form acceptable to Owner. If Design-Build Contractor is furnishing the Design Services through others, then the professional liability policy or policies shall be in the name of the respective professionals performing such services, which shall include all architects and engineers furnishing services for the Project, and Design-Build Contractor shall also provide a Contractor's Errors and Omissions policy naming it as the insured. If Design-Build Contractor is performing some design services and furnishing others, then the insurance policies shall be provided covering all design entities in accordance with the previously stated requirements.

13.3 Prior to commencing any work under the Agreement, the following insurance coverages shall be provided by the Design-Build Contractor pursuant to the Uniform General Conditions, Article 5 and as follows:

13.3.1 Pre-Construction Phase: Design-Build Contractor shall provide evidence as required by this Article that coverages for Professional Liability and Errors and Omissions; Contractor's Errors and Omissions; Employer's Liability, Workers' Compensation, Commercial General Liability, and Automobile Liability, as set forth in the Contract Documents are in full force.

13.3.2 Construction Phase: In addition to those coverages required for the Pre-Construction Phase, Insurance requirements, as set forth in the Uniform General and Supplementary Conditions, shall also be provided.

13.4 The Owner shall not approve payment for the Design-Build Contractor's additional general liability insurance, builder's risk or any other form of insurance coverage in excess of the required coverage amounts specified in this Agreement. Any Additional costs for coverages in addition to those coverages specifically required by this contract shall be the sole responsibility of the Design-Build Contractor.

ARTICLE 14 DISPUTE RESOLUTION

14.1 The dispute resolution process provided for in Chapter 2260 of Texas Gov't Code and TPWD regulations shall be used by TPWD and the Respondent to resolve all disputes arising under this contract. The Contractor shall comply with such rules, as revised from time to time.

14.2 The dispute resolution process provided for in Chapter 2260 and TPWD regulations shall be used, as further described herein, to attempt to resolve any claim for breach of contract asserted by the Contractor under the Contract. If the Contractor's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

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14.3 The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by TPWD if the Parties are unable to resolve their disputes as described above.

14.4 Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by TPWD nor any other conduct of any representative of TPWD relating to the Contract shall be considered a waiver of sovereign immunity to suit.

14.5 Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by TPWD, the Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of §2251.051, Gov't Code, and such suspension of performance is expressly applicable and authorized under that law.

14.6 Dispute Resolution (Engineering, Architectural or Construction Services): Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set forth below in subsections (a)-(f) shall be used by the parties to attempt to resolve all disputes arising under this contract. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d).

- (a) Notwithstanding Texas Government Code, Chapter 2260.002(3) and Chapter 114.012 and any other statute or applicable law, if the Respondent's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Respondent may make a claim against Agency for breach of contract and the Agency may assert a counterclaim against the Respondent as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, Respondent must provide written notice to Agency of a claim for breach of the contract not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity: (1) the nature of the alleged breach; (2) the amount the Respondent seeks as damages; and (3) the legal theory of recovery.
- (b) The chief administrative officer, or if designated in the contract, another officer of the Agency, shall examine the claim and any counterclaim and negotiate with the Respondent in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052.
- (c) If the negotiation under paragraph (b) above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a party's rights under this contract as to the parts of the claim that are not resolved.

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- (d) If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with Agency, unless the parties agree in writing to an extension of time, the parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is the Respondent's sole and exclusive process for seeking a remedy for an alleged breach of contract by the Agency if the parties are unable to resolve their disputes as described in this section.
- (e) Nothing in the contract shall be construed as a waiver of the state's or the Agency's sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. Agency does not waive any privileges, rights, defenses, or immunities available to Agency by entering into this contract or by its conduct, or by the conduct of any representative of Agency, prior to or subsequent to entering into this contract.
- (f) Compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the Respondent:
- 1) filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code; or
 - 2) initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Govt. Code.

ARTICLE 15 PROJECT TERMINATION AND SUSPENSION

15.1 This Agreement may be terminated during Pre-Construction Services by either party upon thirty (30) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, and such failure to perform is not cured within such thirty (30) day period.

15.2 This agreement may be terminated by the Owner upon at least three (3) days written notice to the Design-Build Contractor in the event that the Project is to be temporarily or permanently abandoned.

15.3 In the event of termination that is not the fault of the Design-Build Contractor, the Design-Build Contractor shall be entitled to compensation for all services performed to the termination date provided. However, the Design-Build Contractor has delivered to Owner such statements, accounts, reports and other materials as required, included but not limited to, all reports, documents and other materials prepared by Project Design Professional prior to termination. Upon such payment, Owner shall have no further obligation to the Design-Build Contractor.

15.4 Termination of this Agreement shall not relieve Design-Build Contractor or any of its employees, subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence, of Design-Build Contractor. In the event of a termination, Design-Build Contractor hereby consents to employment by Owner of a substitute Design-Build Contractor to complete the services under this Agreement, with the substitute Design-Build Contractor having all rights and privileges of the original Design-Build Contractor of the Project.

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15.5 As of the date of any termination of this Agreement, Design-Build Contractor shall furnish to Owner all statements, accounts, reports and other materials as are required hereunder or as have been prepared by Design-Build Contractor in connection with Design-Build Contractor's responsibilities hereunder. Owner shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise.

15.6 If the Project is suspended or abandoned in whole or in part for more than three months, the Design-Build Contractor shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment. If the Project is resumed after being suspended for more than three months, the Design-Build Contractor's compensation for Pre-Construction Phase Services shall be equitably adjusted if, in the Owner's reasonable opinion, such adjustment is warranted.

ARTICLE 16 INDEMNITY

To the fullest extent permitted by applicable law, the Design-Build Contractor and its Agents, Partners, Employees, and Consultants (collectively "Indemnitors") shall and do agree to indemnify, protect, defend with counsel approved by Owner, and hold harmless the Owner and the STATE OF TEXAS, its affiliated enterprises, representatives of the Owner, and their respective Officers, Directors, Partners, Employees and Agents (collectively "Indemnitees") from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorney fees, of any nature, kind, or description (collectively "Liabilities") of any person or entity whomsoever arising out of, caused by, or resulting from the performance of the Services or any part thereof which are caused in whole or in part by any negligent act or omission of the Design-Build Contractor, anyone directly or indirectly employed by it or anyone for whose acts it may be liable even if it is caused in part by the negligence or omission of any indemnitee, so long as it is not caused by the sole negligence or willful misconduct of any Indemnitee. In the event more than one of the Indemnitors are connected with an accident or occurrence covered by this Indemnification, then each of such Indemnitors shall be jointly and severally responsible to the Indemnitees for indemnification and the ultimate responsibility among such Indemnitors for the loss and expense of any such indemnification shall be settled by separate proceedings and without jeopardy to any Indemnitee. The indemnity provided for in this article shall not apply to any liability resulting from the negligence of Owner, its officers or employees or its separate contractors or assigned contractors to the extent that such negligence causes personal injury, death or property damage. The provisions of this article shall not be construed to eliminate or reduce any other indemnification or right which Owner or any of the Indemnitees has by law.

16.1 Design-Build Contractor shall protect and indemnify the Owner from and against all claims, damages, judgments and loss arising from infringement or alleged infringement of any United States patent, or copyright, arising by or out of any of the work performed hereunder or the use by Design-Build Contractor, or by Owner at the direction of Design-Build Contractor, of any article or material, provided that upon becoming aware of a suit or threat of suit for patent or copyright infringement, Owner shall promptly notify Design-Build Contractor and Design-Build Contractor shall be given full opportunity to negotiate a settlement. Design-Build Contractor does not warrant against infringement by reason of Owner's or Design Consultant's design of

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articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, Owner agrees to cooperate reasonably with Design-Build Contractor and parties shall be entitled, in connection with any such litigation, to be represented by counsel at their own expense.

16.2 The indemnities contained herein shall survive the termination of this Agreement for any reason whatsoever.

ARTICLE 17 SPECIAL WARRANTIES

17.1 Owner and Design-Build Contractor agree and acknowledge that Owner is entering into this Agreement in reliance on Design-Build Contractor's represented expertise and ability to provide Design-Build services. Design-Build Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

17.2 The Design-Build Contractor represents and agrees that it will perform its services in accordance with the usual and customary standards of Design-Build Contractor's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project. Design-Build Contractor agrees to bear the full cost of correcting Design-Build Contractor's negligent or improper work and services, those of its consultants, and any harm caused by the negligent or improper work or services.

17.3 The Design-Build Contractor's duties shall not be diminished by any approval by Owner nor shall the Design-Build Contractor be released from any liability by any approval by Owner, it being understood that the Owner is ultimately relying upon the Design-Build Contractor's skill and knowledge in performing the services required hereunder.

17.4 The Design-Build Contractor represents and agrees that all persons connected with the Design-Build Contractor directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if registration is required.

17.5 The Design-Build Contractor represents and agrees to advise Owner of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Design-Build Contractor (by the Owner or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished.

17.6 The Design-Build Contractor represents and agrees to perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of Owner.

17.7 The Design-Build Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

17.8 The Design-Build Contractor represents and agrees that the individual executing this Agreement on behalf of Design-Build Contractor has been duly authorized to act for and to bind Design-Build Contractor to its terms.

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17.9 Except for the obligation of Owner to pay Design-Build Contractor certain fees, costs, and expenses pursuant to the terms of this Agreement, Owner shall have no liability to Design-Build Contractor or to anyone claiming through or under Design-Build Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Design-Build Contractor, no present or future partner or affiliate of Owner or any agent, officer, director, of employee, or the Owner, The Texas Parks and Wildlife Department, or of the components comprising The Texas Parks and Wildlife Department, or anyone claiming under Owner has or shall have any personal liability to Design-Build Contractor or to anyone claiming through or under Design-Build Contractor by reason of the execution or performance of this Agreement.

ARTICLE 18 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

18.1 With each material submittal for the Project, the Design-Build Firm shall provide a Safety Data Sheet (SDS) and a statement certifying that no asbestos containing materials or work is included within the scope of the proposed submittal. A Certificate of no asbestos use is attached as an exhibit to the Request for Qualifications.

18.2 The Design-Build Firm shall ensure that Texas Department of State Health Services licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

18.3 The Design-Build Firm shall provide at Substantial Completion, a notarized affidavit to the Owner and the Project Design Professional stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

18.4 The Design-Build Contractor shall take whatever measures it deems necessary to ensure that all employees, suppliers, fabricators, materialmen, subcontractors, or their assigns, comply with this requirement.

18.5 All materials used on this Project shall be certified as non-Asbestos Containing Building Materials (ACBM). The Design-Build Contractor shall ensure compliance with the following acts from all of his subcontractors and assigns:

18.5.1 Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));

18.5.2 National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, National Emission Standard for Asbestos);

18.5.3 Texas Asbestos Health Protection Rules, 25 Tex. Admin. Code Ch. 295 Subchapter C;

18.5.4 Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this Project.

18.6 The Design-Build Contractor shall provide, in hard copy and electronic form, all necessary safety data sheets of all products used in the construction of the Project to the Texas Department of State Health Services licensed inspector or Project Design Professional or Engineer who will compile the information from the MSDS and, finding no asbestos in any of the product, make a certification statement.

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18.7 At Final Completion the Design-Build Contractor shall provide a notarized certification statement per 25 Tex. Admin. Code § 295.34c.1 that no ACBM was used during construction of the Project.

ARTICLE 19 MISCELLANEOUS PROVISIONS

19.1 Design-Build Contractor is not responsible for failure to perform an obligation under this Agreement if such failure is as a result of acts of God, war, order of legal authority, or other unavoidable cause not attributable to the fault or negligence of Design-Build Contractor. The burden of proof for relief based on force majeure rests upon Design-Build Contractor. Before Design-Build Contractor may be granted relief under force majeure for a failure to perform an obligation under this Agreement, Design-Build Contractor must notify Owner in writing of their intent to claim relief under force majeure, perform all reasonable measures to minimize delay or damages caused by foreseeable events, and fulfill all non-excused obligations under this Agreement.

19.2 Child Support Certification. Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated, and payment may be withheld if this certification is inaccurate.

19.3 Eligibility Certification. Pursuant to Section 2155.004, *Texas Government Code*, Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated, and payment withheld if this certification is inaccurate.

19.4 Franchise Tax Certification. A corporate or limited liability company Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

19.5 Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.093, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

19.6 Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Design-Build Contractor and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Design-Build Contractor and Owner.

19.7 Captions. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

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19.8 Governing Law and Venue. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. Travis County, Texas shall be the sole place of venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

19.9 Waivers. Neither the delay nor the failure of any party to exercise any right or power accruing to it under any of the provisions of this Agreement shall impair or be construed as a waiver of that right or power. A waiver by any party of any particular breach of this Agreement shall not be construed as a waiver of any subsequent breach unless specifically expressed in writing.

19.10 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

19.11 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Design-Build Contractor a representative to act partially or wholly for Owner in connection with the performance of Owner's obligations hereunder. Design-Build Contractor shall act only upon instructions from such representative unless otherwise specifically notified to the contrary.

19.12 Records. Records of Design-Build Contractor's costs and payments shall be available to Owner or its authorized representative during business hours and shall be retained for three years after final Payment or abandonment of the Project, unless Owner otherwise instructs Design-Build Contractor in writing.

19.13 Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Design-Build Contractor or Owner for whom it is intended; or sent by registered or certified U. S. mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective three business days after the date of mailing. Fax notices are deemed effective the next business day after faxing.

19.14 Severability. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

19.15 Illegal Dumping. The Design-Build Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.

19.16 Ethics Matters/No Financial Interest. Contractor and its employees, agents, representatives and subcontractors have read and understand TPWD's Conflicts of Interest Policy Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause TPWD employees to violate TPWD's Conflicts of Interest Policy, provisions described by TPWD's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

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19.17 By signature hereon, Design-Build Contractor certifies that no member of the TPWD, or Executive Officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.

19.18 Former Agency Employees: In accordance with Section 2252.901 of the Texas Government Code, Design-Builder represents and warrants that for professional services contracts as described by Chapter 2254 of the Texas Government Code, if a former employee of the Agency was employed by Design-Builder within one year of the employee's leaving the Agency, then such employee will not perform services on projects with Design-Builder that the employee worked on while employed by the Agency.

19.19 Non-Appropriation of Funds. Any contract resulting from this solicitation is subject to termination or cancellation, without penalty to TPWD, either in whole or in part, subject to the availability of state funds. TPWD is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TPWD becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render TPWD's or Design-Builder's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, TPWD will not be liable to Design-Builder for any damages, which are caused or associated with such termination, or cancellation and TPWD will not be required to give prior notice.

19.20 Proprietary or Confidential Information; Texas Public Information Act. Any proprietary, trade secret or otherwise confidential information Design-Build Contractor includes in its Response must be clearly labeled as proprietary or confidential information, and Design-Builder must identify the specific exception to disclosure in the Public Information Act (PIA). Merely making a blanket claim the entire Response is protected from disclosure because it contains some proprietary information is not acceptable and shall make the entire Response subject to release under the PIA. In order for the Owner to initial the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Response that are considered by the Design-Build Contractor to be proprietary or confidential must be clearly labeled as described herein. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA.

19.20.1 Information the Design-Build Contractor provides to the Owner in response to this solicitation will be considered public and subject to disclosure under the Texas Public Information Act.

19.20.2 Design-Builder is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no charge to the state. Design-Builder will make sure information not excepted from disclosure available in an electronic format that is accessible to the public unless Design-Builder receives written approval from Owner to provide information in a different format, and such approval becomes a part of this Contract.

19.21 Right to Audit/Records Retention. Design-Builder understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, TPWD or any successor agency, to conduct an audit or investigation in connection with those funds. Design-Builder further agrees to cooperate fully with the above parties in the conduct

EXHIBIT A

of the audit or investigation, including providing all records requested. Design-Builder shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Design-Builder and the requirement to cooperate is included in any subcontract it awards. Design-Builder shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Design-Builder shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Design-Builder shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the work of this Contract. Design-Builder and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Design-Builder must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TPWD and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor. Design-Builder shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Design-Builder's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize TPWD and the State of Texas to immediately assess appropriate damages for such failure.

19.22 Immigration Reform. The Design-Builder represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996.

19.23 Civil Rights. The Design-Builder agrees that no person shall, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Contract shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

19.24 Federal, State and Local Requirements. Design-Builder shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Design-Builder is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Design-Builder shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Design-Builder or its employees for any Unemployment or Worker's Compensation coverage or federal or State withholding requirements. **Design-Builder shall indemnify the State of Texas and shall pay all costs, penalties or losses resulting from Design-Builder's omission or breach of this Section.**

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19.25 No Waiver. Nothing in this Contract shall be construed as a waiver of the state's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies or immunities available to the State of Texas. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. The Owner does not waive any privileges, rights, defenses or immunities available to the Owner by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

19.26 Deceptive Trade Practices; Unfair Business Practices. Design-Builder represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com Code, Chapter 17 or allegations of any unfair business practice in any administrative hearing or court suit and that Design-Builder has not been found to be liable for such practices in such proceedings. Design-Builder certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.

19.27 Felony Criminal Convictions. Design-Builder represents and warrants that Design-Builder has not and Design-Builder's employees have not been convicted of a felony criminal offense or that if such a conviction has occurred, Design-Builder has fully advised the Owner as to the facts and circumstances surrounding the conviction.

19.28 Assignments. The Design-Builder shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the Owner. Any attempted assignment in violation of this provision is void and without effect.

19.29 Independent Contractor. The Design-Builder shall not render the Design-Builder to an employee, officer or agent of the Owner for any purpose. The Design-Builder is and shall remain an independent Contractor in relationship to the Owner. The Owner shall not be responsible for withholding taxes from payments made under the Contract. The Design-Builder shall have no claim against the Owner for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

19.30 Patents, Trademarks or Copyrights. Contract agrees to defend and indemnify the Owner and State from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other proprietary rights, arising out of the Owner's or the State's use of any good or service provided by the Design-Builder as a result of this solicitation.

19.31 U.S. Department of Homeland Security's E-Verify System. By entering into this Contract, the Design-Builder certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- A. All persons employed to perform duties within Texas, during the term of the Contract; and
- B. All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America.

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19.32 The Design-Builder shall provide, upon request of Texas Parks and Wildlife Department, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Design-Builder, and Design-Builder's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Design-Builder shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract.

19.33 Non-Discrimination. The undersigned is subject to Title VI of the Civil Rights Act of 1964, Section 504 or Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex or disability. Further, it is agreed that no individual will be turned away or otherwise denied access to or benefit from any program or activity that is directly associated with a program on the basis of race, color, national origin, age, and sex (in educational activities) or disability. The prime Design-Builder shall ensure that this clause is included in all subcontracts.

19.34 Pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Offeror shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

20.35 Internet-Based Project Management Systems. At its option, Owner may administer its design and construction management through an Internet-based management system. In such cases, Design-Builder shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, Request for Information, vouchers or payment request and processing, amendments, Change Orders and other administrative activities. *Refer to Division 1 – General Requirements, Section 01 00 10 – Special Conditions – Design-Build – Construction Phase, paragraph 1.04.*

19.36 The undersigned shall comply with Texas Government Code, Title 10, Subchapter F, §§ 2252.201-2252.205 requires that all iron or steel products produced through a manufacturing process used in this project must be produced in the United States. By signing this proposal, Offeror certifies that its price represents full compensation for compliance with the requirements of Texas Government Code, Title 10, Subchapter F, §§ 2252.201-2252.205.

EXHIBIT A

ARTICLE 20 OTHER TERMS AND CONDITIONS

20.1 Time of Completion

20.1.1 The anticipated date for achieving Substantial Completion of the Project at the time this Agreement was executed is **twenty-four (24) months** from Owner’s written Notice to Proceed with Pre-Construction Services, subject to change as the Pre-construction Phase progresses and the schedule becomes more defined.

20.1.2 The Construction Phase shall be deemed to commence on the date specified in a Notice to Proceed issued by Owner.

20.1.3 The Design-Build Contractor shall achieve Substantial Completion of the Work and Final Completion of the Work on or before the dates agreed to in the Request for Fee Proposal, subject to time extensions granted by Change Order.

20.1.4 **The times set forth for completion of the work in the Notice to PROCEED ARE an essential element of the Agreement.** The Owner may elect, at its option, to stage or “fast-track” portions of the work. The Owner shall issue a separate Notice to Proceed or Change Order for each such stage and each such stage shall have a separate substantial completion date and a separate liquidated damages amount.

20.2 Liquidated Damages

20.2.1 For each consecutive calendar day after the Substantial Completion Date that the Work is not substantially completed, the Owner may deduct the amount of **one thousand three hundred seventy-five dollars and eight-two cents per day (\$1,375.82/day)** from any money due or that becomes due the Design-Build Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages that the Owner will sustain for late completion.

20.2.2 The parties stipulate and agree that calculating Owner’s actual damages for late completion of the Project would be impractical, unduly burdensome, and cause unnecessary delay and that the amount of daily liquidated damages set forth is reasonable.

20.3 **Notices:** Notices of claims or disputes or other legal notices required by this Agreement shall be sent to the following persons at the indicated locations.

If to Owner:

_____, CTCD, CTCM | Contract Manager

Email:
Texas Parks and Wildlife Department
4200 Smith School Road
Austin Texas, 78744

_____ Design Project Manager

Email:
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

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Todd George, Attorney, Legal Division
Email: todd.george@tpwd.texas.gov
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

If to Design-Build Contractor:

D-B Point of Contact _____
D-B Company Name _____
Address _____
Address _____
Email _____
Phone No. _____

The parties may make reasonable changes in the person or place designated for receipt of notices in advance written notice to the other party.

20.4 Party Representatives

20.4.1 The Owner's Designated Representative authorized to act in the Owner's behalf with respect to the Project is:

_____, Design Project
Manager Texas Parks and Wildlife
Department 4200 Smith School Road
Austin Texas, 78744
Email:

_____, Construction
Project Manager
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744
Email:

20.4.2 The Design-Build Contractor's designated representative authorized to act on the Design- Build Contractor's behalf and bind the Design-Build Contractor with respect to the Project is:

D-B Point of Contact _____
D-B Company Name _____
Address _____
Address _____
Email _____
Phone No. _____

20.4.3 The parties may make reasonable changes in their designated representatives upon advance written notice to the other party.

EXHIBIT A

20.5 Site Observation Requirements. The Project Design Professional, and their related consultants, shall inspect the Project site at intervals appropriate to the type and stage of construction progress during the entire Construction Phase to observe the progress and quality of the Work. In addition, each consultant shall visit the site as necessary to observe construction activities related to the consultant's discipline.

20.6 Monthly Progress Meetings. The Design-Build Firm shall conduct a monthly meeting on site, or as otherwise directed by the Owner.

20.7 Drawing Standards. Project Design Professional shall utilize a CADD drawing-layering standard comparable to the current AIA standard and shall review proposed standard with the Owner prior to commencing drawing preparation.

20.8 Reserved

20.9 As-Built Delivery. Project Design Professional shall revise the drawings and specifications upon Final Completion of the construction, to incorporate all Addenda, any revisions to the work, all Changes for the Work and any modifications recorded by the Contractor on the As-Built Drawings and Specifications maintained at the job site. The Project Design Professional shall label the revised drawings and specifications as "Record Drawings" and "Record Specifications" and shall deliver copies to the Owner for record purposes, as follows: 1 set of pdfs sized to print at 24x36, drawings in AutoCAD format, and specifications in both Microsoft Word and pdf format a set of AutoCad files.

ARTICLE 21 EXHIBITS

The following exhibits are incorporated by reference as part of this Agreement and the Contract:

- A. Uniform General and Supplementary General Conditions
- B. Additional Contract Documents and Specifications
- C. Infrastructure Division Drawing Standards
- D. Design Deliverables
- E. Design-Build Contractor's Payment and Performance Bond
- F. Design-Build Contractor's HUB Subcontracting Plan
- G. Design-Build Contractor's GMP Price Proposal and Hourly Billing Rates
- H. Design-Build Contractor's Insurance (*to be submitted by D-B prior to award*)

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EXHIBIT A

BY SIGNING BELOW, the Parties hereto have executed and bound themselves to this Agreement as of its Effective Date.

ATTEST:

By: _____ (original signature)

Printed Name _____ **Date:** _____

Texas Parks & Wildlife Department

By: _____
David Yoskowitz, Executive Director

EXHIBIT A

EXHIBIT A TO THE DESIGN-BUILD AGREEMENT

UNIFORM GENERAL AND SUPPLEMENTARY GENERAL CONDITIONS

DRAFT

EXHIBIT A

EXHIBIT B TO THE DESIGN-BUILD AGREEMENT

ADDITIONAL CONTRACT DOCUMENTS AND SPECIFICATIONS

(to be included at award)

DRAFT

EXHIBIT A

EXHIBIT C TO THE DESIGN-BUILD AGREEMENT
INFRASTRUCTURE DIVISION DRAWING STANDARDS

DRAFT

EXHIBIT A

EXHIBIT D TO THE DESIGN-BUILD AGREEMENT

DESIGN DELIVERABLES

DRAFT

EXHIBIT A

EXHIBIT E TO THE DESIGN-BUILD AGREEMENT

DESIGN-BUILD CONTRACTOR’S EXECUTED PAYMENT AND PERFORMANCE BONDS

(to be included at award)

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EXHIBIT A

EXHIBIT F TO THE DESIGN-BUILD AGREEMENT
DESIGN-BUILD CONTRACTOR’S APPROVED HUB SUBCONTRACTING PLAN
(to be included at award)

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EXHIBIT A

EXHIBIT G TO THE DESIGN-BUILD AGREEMENT
DESIGN-BUILD CONTRACTOR’S GUARANTEED MAXIMUM PRICE AND
HOURLY BILLING RATES
(to be included at award)

DRAFT

EXHIBIT A

**EXHIBIT H TO THE DESIGN-BUILD AGREEMENT
DESIGN-BUILD CONTRACTOR’S INSURANCE DOCUMENTS**

(to be included at award)

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