



# Brazos River Authority



## Request for Proposals

October 20, 2023

RFP No. 24-1327

Dear Prospective Respondent:

Competitive Sealed Proposals will be received in the office of the Purchasing Manager, Brazos River Authority ("BRA"), 4600 Cobbs Drive, Waco, Texas 76710 until **10:00 AM, November 16, 2023, for Phase I for Technical Security Systems Upgrade**. This delivery method will be a two-phase procurement process. The due date for Phase II submissions will be determined.

All qualified firms including Small, Minority, Women Owned Businesses and Historically Underutilized Businesses are encouraged to submit Proposals in response to this request.

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

**Refer to Section 16.** Delivery of Proposal Submittals for instructions on submitting a response to this solicitation.

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

**PROPOSAL:** Technical Security Systems Upgrade

**RFP NO:** 24-1327

**RFP PHASE I DUE DATE:** 10:00 AM, November 16, 2023

**RFP PHASE II DUE DATE:** TBD

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

**BRA will evaluate all relevant COVID-19, health, safety and business factors on all solicitations to determine when to initiate a notice to proceed on all projects, delivery of goods and/or services or procurement of construction related services to best attempt to balance BRA needs and to protect the health and safety of BRA employees, the employees of respondents and the public at large.**

Sincerely,

*Bryan Gray*

Bryan Gray  
Purchasing Manager

4600 Cobbs Drive • Waco, Texas 76710  
254 761 3123

## REQUEST FOR PROPOSALS SUPPLIER DIVERSITY PURCHASING POLICY

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

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

### GENERAL INSTRUCTIONS TO RESPONDENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**13. CRITERIA FOR AWARD:** The contract will be awarded to the Respondent determined to be the most experienced and highly qualified respondent, taking into consideration BRA's discretionary evaluation of the criteria listed in Section 4. A. for Phase I and Section 7 for Phase II of this RFP. If a satisfactory contract cannot be negotiated with the most highly qualified Respondent, the BRA will select the next most highly qualified Respondent and attempt to negotiate a contract with that Respondent.

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

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

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

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

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

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

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

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

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

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

**TECHNICAL SECURITY SYSTEMS UPGRADE  
RFP NO. 24-1327**

**SUBMITTAL SCHEDULE**

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

Friday, October 20, 2023	RFP is available to download from the BRA website at <a href="http://www.brazos.org/Doing-Business/Purchasing-Professional-Services/Request-for-Proposals">http://www.brazos.org/Doing-Business/Purchasing-Professional-Services/Request-for-Proposals</a> , and click on “ <i>View this RFP</i> ”.
10:00 AM: Thursday, November 16, 2023	Submittals for Phase I are due
10:30 AM: Thursday, November 16, 2023	Submittals for Phase I will be opened virtually at the link below  <a href="https://youtube.com/live/u93jFGQr-Oc?feature=share">https://youtube.com/live/u93jFGQr-Oc?feature=share</a>
TBD	Site visits will be disclosed to the respondents that are selected to move forward to Phase II.
TBD	Last date and time to ask questions or request additional information for Phase II. Email questions to <a href="mailto:submissions@brazos.org">submissions@brazos.org</a>
TBD	Post response to questions received as of the deadline or as soon thereafter, as an Addendum for Phase II on the BRA website –  <a href="http://www.brazos.org/Doing-Business/Purchasing-Professional-Services/Request-for-Proposals">http://www.brazos.org/Doing-Business/Purchasing-Professional-Services/Request-for-Proposals</a>
TBD	Proposals for Phase II are due.

**REQUEST FOR PROPOSALS  
TECHNICAL SECURITY SYSTEMS UPGRADE  
RFP NO. 24-1327**

**1. General**

The Brazos River Authority (BRA) is soliciting sealed proposals for securing critical infrastructure for six (6) BRA-owned facilities. The proposer will submit a proposal for the following, but not limited to a comprehensive plan for installation upgrades and monitoring services. This delivery method will be a two-phase procurement process.

**2. Scope of Services**

Proposals shall include a comprehensive and detailed plan for updating the BRA's current security by providing a proposal for protecting, securing, and monitoring the BRA's critical infrastructure sites, which are set forth on Exhibit A.. Exhibit A will be provided if respondent is selected to attend site visits after Phase I evaluations.

**3. Base Proposal**

Please submit a line-by-line cost proposal for a turn-key project including, but not limited to, all labor, materials, tools, equipment, monitoring, testing, training, implementation, and incidentals necessary to satisfactorily design, fabricate, manufacture, furnish, deliver components, and complete installation.

**4. Information Required in the RFP Submittal - Tab Format**

The BRA specifically requests succinct submittals tailored to the general and discipline-specific scope of services summarized above. All submittals become the property of the BRA. Each proposal shall include the information requested below. Tab A below will be submitted for the Phase I of the RFP process:

**Tab A: Include the following for Phase I submittal:**

Respondent must demonstrate conformance with the established threshold requirements for site visits. The items listed below will be evaluated for Phase I of this process. Respondents will provide the following information by **November 16, 2023, at 10:00 AM CST. PLEASE DO NOT SUBMIT ANY PRICING WITH THE PHASE 1 SUBMITTAL.**

1. All members of the site visit team must pass a comprehensive background check prior to attending the site visit and no one with any criminal violation above a class c misdemeanor will be permitted to participate in the site visit.
2. All firms proposing must have a minimum of seven (7) years of experience providing critical infrastructure security services for no less than three (3) other comparably sized projects and must provide a list of the prior services and references.
3. All firms must demonstrate an ability to establish an operational presence in the areas requiring services to secure the BRA critical infrastructure.
4. Date your company was established and a brief history; number of employees; provide number and location of offices.
5. Provide name, title and office location of person who will be the principal contact for the BRA and the billing location if different.
6. Describe the types of organizations that your company typically serves and general nature of the work.

7. A list and description of similar services completed within the last five years under your current company name or any other company name similar in nature to this solicitation. This should include the name, the location, a brief description of Scope of Services, and a contact name and telephone number of a reference for each client. List litigation that your company has been a party to in the last five (5) years, under your current company name or any other company name. Include only litigation that involves business units in your company that are proposed for performing services under this RFP.
8. List all such litigation involving owners and/or general contractors. To be fully responsive, provide the level of detail in the attached example, as well as a name and phone number to contact an authorized representative of your company in the event that the BRA needs to clarify your response. Failure to be fully responsive will be sufficient grounds for the BRA to disqualify your company.
9. Have you ever defaulted, failed to complete a contract, or had a contract terminated by the other party? If so, where, and why? Provide name and telephone number of the other party.

After the evaluation of the Phase I submittals, if determined qualified, respondents will be provided the opportunity to attend scheduled site visit(s) to each site to enable the respondents to develop a plan for securing the site and providing the contemplated services. All qualified providers will execute a NDA (Non-Disclosure Agreement) prior to participating in the site visit. Failure to execute the BRA's NDA will disqualify the provider.

It is the intent of BRA that the firm will utilize their professional expertise, experience, skillset, knowledge, and abilities to prepare and provide a recommended scope of activities to promote a high standard of security and protect the BRA's critical infrastructure.

By implementing these measures, the BRA can enhance the security of facilities and create a safer environment.

After site visits are completed, qualified respondents will be invited to submit proposals for the second phase of this procurement delivery method.

**PHASE II REQUIREMENTS – The due date for Phase II submissions will be determined.**

Tab A: Include the following:

- (1) A comprehensive and detailed description of the firm's plan for protecting, securing and monitoring the BRA's critical infrastructure sites.
- (2) A comprehensive and detailed description of the firm's plan for design, installation, implementation, and monitoring of access control systems.
- (3) A comprehensive and detailed description of the firm's plan for possibly monitoring the existing video surveillance systems.
- (4) A comprehensive and detailed description of the firm's plan for design, installation, implementation, and monitoring of intrusion detection systems.
- (5) A comprehensive and detailed description of the firm's plan for design, installation, implementation, and monitoring of emergency alert systems.
- (6) A comprehensive and detailed description of the firm's plan for appropriate training and provision of operational requirements for the BRA's use of the systems.
- (7) A description of any recommended additional security components or system(s).
- (8) Any additional recommendations regarding the most efficient and effective methods for securing the BRA's critical infrastructure; and
- (9) Costs for the proposed plan

Tab B: Include the following:

- (1) Base Proposal - Submit a line-by-line cost proposal for a turn-key project including, but not limited to, all labor, materials, tools, equipment, monitoring, testing, training, implementation, and incidentals necessary to satisfactorily design, fabricate, manufacture, furnish, deliver components, and complete installation. **State the total amount of the turn-key project at the bottom of the proposal.**
- (2) Acknowledgement of Request for Proposals and Receipt of Addenda form.
- (3) Complete and submit the attached W-9 form, or if foreign entity submit the appropriate tax document information.
- (4) Complete and submit the attached Conflicts of Interest Questionnaire [CIQ] form.
- (5) Complete and submit the Non-Collusion Affidavit form.
- (6) Bid Bond.

## 5. Bid Bond

Each proposal must be accompanied by a Bid security deposit made payable to the BRA in an amount of 5% of the Respondent's maximum proposal price. All bonds shall be issued by a surety authorized to conduct business in the State of Texas.

## 6. Performance, Payment and Warranty Bonds

Awarded Respondent must provide performance and payment bonds and warranty bond for this contract. All bonds shall be issued by a surety authorized to conduct business in the State of Texas.

## 7. Selection Process

Proposals submitted for Phase II will be evaluated and scored based on the factors listed below.

<b>Price Proposal</b>	<b>25%</b>
<b>The remaining performance factors will be scored:</b>	<b>75%</b>
<b>Capabilities and strength of the system</b>	
<b>Efficacy of the proposed system in addressing perceived and anticipated threats</b>	
<b>Respondent's Experience</b>	
<b>Project approach and timeline</b>	
<b>Quality and detail of the system(s) design</b>	
<b>Quality and detail of the system(s) installation plan</b>	
<b>Quality and detail of the implementation plan</b>	
<b>Quality and detail of the monitoring system(s)</b>	
<b>Reporting and documentation capabilities</b>	
<b>Quality of customer service</b>	
<b>Ease of Use</b>	
<b>References</b>	

## 8. RFP Inquiries

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

## **9. Respondent's Past Performance**

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

## **10. Conflict of Interest**

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

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

## **11. Disclosure of Interested Parties**

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

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

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

## **12. Term of Agreement**

The term of this Contract shall be for a period of five (5) years, commencing on the Effective Date, and may be renewed by subsequent agreement of the parties for up to five (5) additional one (1) year periods, for a total potential term of ten (10) years.

## **13. Contract**

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



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

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

**14. Insurance Requirements**

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

General Liability Insurance:	
Bodily Injury	\$ 500,000 per person
Bodily Injury	\$ 1,000,000 per occurrence
Property Damage	\$ 1,000,000 per occurrence
Aggregate	\$ 2,000,000
Professional Liability:	\$ 1,000,000 per occurrence
Workers’ Compensation:	Statutory
Automobile Liability:	\$ 1,000,000 per claim / aggregate
Employers’ Liability	\$ 1,000,000 policy limit

**15. Testing**

The BRA reserves the right to inspect and test the submitted product. The BRA in its sole discretion may disqualify a submitted product as non-conforming to the specifications if the product does not meet the requirements of the specifications during testing.

**16. Delivery of Proposal Submittals**

Proposals may be submitted in the following manner:

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



Brazos River Authority



**TECHNICAL SECURITY SYSTEMS UPGRADE  
RFP No. 24-1327  
ACKNOWLEDGMENT OF REQUEST FOR PROPOSALS AND  
RECEIPT OF ADDENDA**

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

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

**ACKNOWLEDGMENT OF REQUEST FOR PROPOSALS:**

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

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

☐

YES

☐

NO

\_\_\_\_\_  
Name of Firm (Respondent)

\_\_\_\_\_  
Signature – Authorized Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
E-mail Address

\_\_\_\_\_  
Telephone Number

#### EXAMPLE RESPONSE TO LITIGATION HISTORY QUESTION

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

# Request for Taxpayer Identification Number and Certification

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

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

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

## Part I Taxpayer Identification Number (TIN)

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

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

Social security number									
				-				-	
or									
Employer identification number									
				-					

## Part II Certification

Under penalties of perjury, I certify that:

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

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

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

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

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

## Purpose of Form

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

- Form 1099-INT (interest earned or paid)

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

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

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

By signing the filled-out form, you:

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

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

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

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

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

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

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

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

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

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

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

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

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

## Backup Withholding

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

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

**Payments you receive will be subject to backup withholding if:**

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

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

Also see *Special rules for partnerships*, earlier.

## What is FATCA Reporting?

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

## Updating Your Information

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

## Penalties

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

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

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

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

## Specific Instructions

### Line 1

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

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

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

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

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

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

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

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

### Line 2

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

### Line 3

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

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

### Line 4, Exemptions

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

#### Exempt payee code.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

G—A real estate investment trust

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

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

J—A bank as defined in section 581

K—A broker

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

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

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

## Line 5

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

## Line 6

Enter your city, state, and ZIP code.

## Part I. Taxpayer Identification Number (TIN)

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

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

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

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

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

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

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

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

## Part II. Certification

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

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

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

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

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

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

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

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

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

**What Name and Number To Give the Requester**

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

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

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

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

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

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

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

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

**Secure Your Tax Records From Identity Theft**

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

To reduce your risk:

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

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

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

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

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

**Protect yourself from suspicious emails or phishing schemes.**

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



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

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

Visit [www.irs.gov/IdentityTheft](http://www.irs.gov/IdentityTheft) to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

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

# CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

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

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

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

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

## OFFICE USE ONLY

Date Received

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

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

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

\_\_\_\_\_  
Name of Officer

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

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

7

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date

## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

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

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

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

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

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

\*\*\*

- (2) the vendor:

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

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

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

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

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

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

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

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

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

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

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

- (1) the date that the vendor:

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

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

- (2) the date the vendor becomes aware:

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

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

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

## NON-COLLUSION AFFIDAVIT

STATE OF TEXAS                   §

   §

COUNTY OF \_\_\_\_\_ §

By the signature below, the signatory for the bidder certifies that neither he nor the firm, corporation, partnership or institution represented by the signatory or anyone acting for the firm bidding this project has violated the antitrust laws of this State, codified at Section 15.01, *et seq.*, Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in the same line of business, nor has the signatory or anyone acting for the firm, corporation or institution submitting a bid committed any other act of collusion related to the development and submission of this bid proposal.

Signature:

Printed  
Name:

Printed  
Name:

Title:

Company:

Date:

SUBSCRIBED and sworn to before me the undersigned authority by \_\_\_\_\_ the \_\_\_\_\_ of, \_\_\_\_\_ on behalf of said bidder.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

My commission expires: \_\_\_\_\_

**00400 BID BOND**

Surety Bond No. \_\_\_\_\_

STATE OF TEXAS

§

KNOW ALL PERSONS BY THESE

PRESENTS:

COUNTY OF McLENNAN

§

That we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are hereby held and firmly bound unto the Brazos River Authority, Waco, McLennan County, Texas, as Oblige, in the penal sum of \_\_\_\_\_ and No/100 (\$\_\_\_\_\_.00), for the Project defined below, for payment whereof the said Principal and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Whereas the Principal has executed an agreement with Oblige, dated \_\_\_\_\_, 202\_, ("Agreement") for the installation of Technical Security Upgrades Project, RFP No. 24-1327, (the "Project").

Whereas, the Agreement allows the Work to be performed in incremental components of the Work (each, individually, a "Work Component") with the scope of Work and a Guaranteed Maximum Price to be established for each such Work Component through an Work Authorization Amendment to the Agreement, and further requires the Principal to provide Performance and Payment Bonds in the amount of 100% of each such Guaranteed Maximum Price within 10 days after the execution of the Work Authorization Amendment.

NOW THEREFORE, the condition of this obligation is such that, if the Principal executes a Work Authorization Amendment with a Guaranteed Maximum Price as those terms are defined in the Agreement and Contract Documents, but fails to, within the time and as required by the Agreement, give Performance and Payment Bonds for the Work Package GMP or, as applicable, increase the penal sums on the previously issued bonds to the total sum of all approved Guaranteed Maximum Prices under all approved Work Authorization Amendments to secure the performance of the terms and conditions of the Agreement, the Principal and Surety will pay unto the Oblige the penal sum of this Bond, however, if the Principal provides such Performance and Payment Bonds, then this obligation becomes void.

This bond is executed pursuant to Section 271.118(l) of the Texas Local Government Code and Chapter 2253, Texas Government Code as amended and all liabilities on this bond will be determined in accordance with provisions of Chapter 2253 as if it were entirely copied herein.

IN WITNESS WHEREOF, the above named parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed, and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(SEAL)

ATTEST:

By: \_\_\_\_\_

(Typed Name and Title)

(SEAL)

ATTEST:

By: \_\_\_\_\_

(Typed Name and Title)

Principal

By: \_\_\_\_\_

(Typed Name and Title)

Surety

By: \_\_\_\_\_

(Typed Name and Title)

Name and address of the Resident Agent of Surety:

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Note: Bond must be issued by a solvent Surety company authorized to do business in Texas and must meet any other requirements established by law or by obligee pursuant to applicable law. A copy of Surety agent's Power of Attorney must be attached hereto.

**END of SECTION**

## 00610 PERFORMANCE BOND

STATE OF TEXAS

Bond No. \_\_\_\_\_

COUNTY OF \_\_\_\_\_

C.I.P. ID No. \_\_\_\_\_

Project Name \_\_\_\_\_

Know All Men By These Presents: That \_\_\_\_\_  
of the City of \_\_\_\_\_, County of \_\_\_\_\_, and  
State of \_\_\_\_\_, as Principal, and \_\_\_\_\_, a  
solvent company authorized under laws of the State of Texas to act as surety on bonds for  
principals, are held and firmly bound unto The Brazos River Authority (OWNER), in the penal sum  
of \_\_\_\_\_

U.S. Dollars (\$ \_\_\_\_\_ U.S.) for payment whereof, well and truly to be made,  
said Principal and Surety bind themselves and their heirs, administrators, executors, successors  
and assigns, jointly and severally, by these presents:

Conditions of this Bond are such that, whereas, Principal has entered into a certain written  
contract with OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
which Agreement is hereby referred to and made a part hereof as fully and to the same extent as  
if copied at length herein.

Now, therefore, the condition of this obligation is such, that if said Principal shall faithfully perform  
said Agreement and shall in all respects duly and faithfully observe and perform all and singular  
covenants, conditions and agreements in and by said contract agreed and covenanted by  
Principal to be observed and performed, and according to true intent and meaning of said  
Agreement hereto annexed, then this obligation shall be void; otherwise to remain in full force and  
effect. If OWNER notifies Principal and Surety the OWNER is considering declaring Principal in  
default, Surety agrees to meet with OWNER and Principal no later than fifteen days after receipt  
of such notice to discuss methods of performing the Work of the Contract.

Provided, however, that this bond is executed pursuant to provisions of Chapter 2253, Texas  
Government Code as amended and all liabilities on this bond shall be determined in accordance  
with provisions of said Article to same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change in Contract Time or Contract  
Amount shall in anywise affect its obligation on this bond, and it does hereby waive notice of any  
such change in Contract Time or Contract Amount.

In witness whereof, said Principal and Surety have signed and sealed this instrument this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

E-Mail Address \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Name and address of Resident Agent of Surety:

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Note: Bond shall be issued by a solvent Surety company authorized to do business in Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. A copy of surety agent's "Power of Attorney" must be attached hereto.

**END of SECTION**



## NOTE TO SPECIFIER – TECHNICAL SECURITY SYSTEMS UPGRADE

### 00620 PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR:

\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_

SURETY (Name and Address of Principal Place  
of Business):

OWNER (Name and Address):

Brazos River Authority  
4600 Cobbs Drive  
Waco, Texas 76710

CONTRACT

Date:

Amount: \$

Description: **Brazos River Authority – Technical Security Systems Upgrade**

BOND

Date (Not earlier than Contract Date):

Amount: \$

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company: \_\_\_\_\_.(Corp. Seal)

SURETY

Company: \_\_\_\_\_(Corp. Seal)

Signature: \_\_\_\_\_  
Name and Title:

(Attach Power of Attorney)

Signature: \_\_\_\_\_  
Name and Title:

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company: \_\_\_\_\_(Corp. Seal)

SURETY

Company: \_\_\_\_\_(Corp. Seal)

Signature: \_\_\_\_\_  
Name and Title:

Signature: \_\_\_\_\_  
Name and Title:

EJCDC No. 1910-28-B (1996 Edition)Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, the American Institute of Architects, the American Subcontractors Association, and the Associated Specialty Contractors.

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the OWNER to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference.

2. With respect to the OWNER, this obligation shall be null and void if the CONTRACTOR:

2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2. Defends, indemnifies and holds harmless the OWNER from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided the OWNER has promptly notified the CONTRACTOR and the Surety (at the addresses described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the CONTRACTOR and the Surety, and provided there is no OWNER Default.

3. With respect to Claimants, this obligation shall be null and void if the CONTRACTOR promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1. Claimants who are employed by or have a direct contract with the CONTRACTOR have given notice to the Surety (at the addresses described in paragraph 12) and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2. Claimants who do not have a direct contract with the CONTRACTOR:

1. Have furnished written notice to the CONTRACTOR and sent a copy, or notice thereof, to the OWNER, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

2. Have either received a rejection in whole or in part from the CONTRACTOR, or not received within 30 days of furnishing the above notice any communication from the CONTRACTOR by which the CONTRACTOR had indicated the claim will be paid directly or indirectly; and

3. Not having been paid within the above 30 days, have sent a written notice to the Surety and sent a copy, or notice thereof, to the OWNER, stating that a claim

is being made under this Bond and enclosing a copy of the previous written notice furnished to the CONTRACTOR.

5. If a notice required by paragraph 4 is given by the OWNER to the CONTRACTOR or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1. Send an answer to the Claimant, with a copy to the OWNER, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2. Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the OWNER to the CONTRACTOR under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the

performance of the Contract are dedicated to satisfy obligations of the CONTRACTOR and the Surety under this Bond, subject to the OWNER's priority to use the funds for the completion of the Work.

9. The Surety shall not be liable to the OWNER, Claimants or others for obligations of the CONTRACTOR that are unrelated to the Contract. The OWNER shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.

~~11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4.1 or paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.~~

12. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the OWNER or the CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, the CONTRACTOR shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### 15. DEFINITIONS

15.1. Claimant: An individual or entity having a direct contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of the CONTRACTOR and the CONTRACTOR'S Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2. Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

15.3. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

**END OF SECTION**

## WARRANTY BOND

Any singular reference to VENDOR, Surety, BUYER or other party shall be considered plural where applicable.

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VENDOR:

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SURETY (Name and Address of Principal Place  
of Business):

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BUYER:

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### AGREEMENT

Date:  
Amount: \$  
Description:

### BOND

Date:  
Amount (10% of the original Contract Price): \$  
Modifications to this Bond Form:

Surety and VENDOR, intending to be legally bound hereby, subject to the terms printed herein, do each cause this Warranty Bond to be duly executed on its behalf by its authorized officer, agent or representative.

VENDOR AS PRINCIPAL

Company: \_\_\_\_\_(Corp. Seal)

Signature: \_\_\_\_\_  
Name and Title:

SURETY

Company: \_\_\_\_\_Corp. Seal)

Signature: \_\_\_\_\_  
Name and Title:  
(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

VENDOR AS PRINCIPAL

Company: \_\_\_\_\_(Corp. Seal)

Signature: \_\_\_\_\_  
Name and Title:

SURETY

Company: \_\_\_\_\_Corp. Seal)

Signature: \_\_\_\_\_  
Name and Title:  
(Attach Power of Attorney)

1. The VENDOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the BUYER for the performance of all warranty obligations in the Agreement, including payment of claims, subcontractors, suppliers and mechanics, as a condition of release of the Performance Bond and Payment Bond with respect to the Project by BUYER. The following terms and conditions shall apply with respect to this Bond:

1.1 The Agreement, including any Exhibits and amendments thereto, is incorporated herein by reference.

1.2 Surety's obligations under this Bond shall include the VENDOR's obligation to pay its subcontractors, suppliers and mechanics for warranty-related work or supply.

1.3 Surety's obligations under this Bond shall include without limitation the VENDOR's obligation design, fabricate, deliver, and warrant the Engineered Product.

1.4 The guarantees contained herein shall survive the final completion of the design and construction called for in the Agreement.

1.5 As a part of the obligation secured hereby and in addition to the face amount specified, costs and reasonable expenses and fees, including reasonable attorneys' fees incurred by BUYER in successfully enforcing the obligation, shall be included.

2. If the VENDOR shall promptly and faithfully perform all of its warranty obligations for the work specified in the Agreement Documents, as they may be amended or supplemented, including, without limitation, the fulfillment of all specified warranties for such work and payment of claims, subcontractors, suppliers and mechanics, then the Surety and the VENDOR have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1. Otherwise this obligation shall remain in full force and effect.

3. If there is no BUYER Default, the Surety's obligation under this Bond shall arise whenever the following actions are undertaken by the BUYER:

3.1. The BUYER notifies the VENDOR and the Surety at the addresses described in paragraph 9 below, that the BUYER is considering declaring a VENDOR Default and requests a conference with the VENDOR and the Surety be held not later than fifteen days after receipt of such notice to discuss

methods of performing the warranty obligations under the Agreement. If the BUYER, the VENDOR and the Surety agree, the VENDOR shall be allowed a reasonable time to perform the warranty work, but such an agreement shall not waive the BUYER's right, if any, subsequently to declare a VENDOR Default.

3.2. The BUYER has declared a VENDOR Default and formally terminated the VENDOR's right to complete the warranty obligations under the Agreement. Such VENDOR Default shall not be declared earlier than twenty days after the VENDOR and the Surety have received notice as provided in paragraph 3.1.

4. When the BUYER has satisfied the conditions of paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for VENDOR to perform and complete the warranty obligations of this Agreement.

4.2 Complete the warranty work itself in accordance with the terms and conditions of the Agreement Documents then in effect, through its agents or through independent Vendors.

4.3 Obtain bids or negotiated proposals from qualified Vendors acceptable to the BUYER for a contract for performance and completion of the warranty work (as defined in the Agreement), through a procurement process approved by the BUYER, arrange for a contract to be prepared for execution by the BUYER and the Vendor selected with the BUYER's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Agreement.

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new Vendor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which it may be liable to the BUYER and, as soon as practicable after the amount is determined, tender payment therefore to the BUYER, or (ii) deny liability in whole or in part and notify the BUYER citing reasons therefore.

5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the BUYER to the Surety demanding that the Surety perform its obligations under this Bond, and the BUYER shall be entitled to enforce any remedy available to the BUYER. If the Surety proceeds as

provided in paragraph 4.4, and the BUYER refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the BUYER shall be entitled to enforce any remedy available to the BUYER.

6. After the BUYER has terminated the VENDOR's right to complete the Agreement, and if the Surety elects to act under paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the BUYER shall not be greater than those of the VENDOR under the Agreement, and the responsibilities of the BUYER to the Surety shall not be greater than those of the BUYER under the Agreement. To a limit of the amount of this Bond plus reasonable expenses and fees incurred by BUYER in successfully enforcing this obligation, the Surety is obligated without duplication for the following:

6.1. The responsibilities of the VENDOR for correction of defective materials or labor.

6.2. Actual damages including additional legal, design professional and delay costs resulting from the VENDOR's Default or resulting from the actions or failure to act of the Surety.

6.3. Liquidated damages, or if no liquidated damages are specified in the Agreement, actual damages caused by delayed performance or non-performance of the VENDOR or the actions or failure to act of Surety under Paragraph 5.

7. The Surety shall not be liable to the BUYER or others for obligations of the VENDOR that are unrelated to the Agreement. No right of action shall accrue on this Bond to any person or entity other than the BUYER or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Agreement or to related subcontracts, purchase orders and other obligations.

9. Notice to the Surety, the BUYER or the VENDOR shall be mailed or delivered to the address shown on the signature page.

10. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Agreement was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed

incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

11. Initially capitalized terms not otherwise defined hereinafter shall have the definitions set forth in the Exhibit A of the Agreement.

11.1. Agreement: The agreement between the BUYER and the VENDOR identified on the signature page, including all exhibits and amendments thereto.

11.2. VENDOR Default: Failure of the VENDOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Agreement.

11.3. BUYER Default: Failure of the BUYER, which has neither been remedied nor waived, to pay the VENDOR as required by the Agreement or to perform and complete or comply with the other terms thereof.

12. No alteration, modification or supplement to the warranty provisions of the Agreement or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond.

## **END OF SECTION**

## **PROFESSIONAL SECURITY SERVICES AND PROVIDER AGREEMENT**

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

### **SECTION I. BASIC SERVICES OF THE PROVIDER**

**1.1** PROVIDER shall provide, perform, and complete to the satisfaction of the BRA all of the "Services" specified in "Exhibit A", attached hereto and incorporated by reference herein. The term "Services" as used herein shall mean the detailed description of tasks to be performed by the PROVIDER in developing a custom security plan and the provision of goods/products/equipment ("Merchandise"), including installation, training services, and monitoring services to facilitate the security plan, as established in "Exhibit A". In performing the Services, the PROVIDER shall provide all necessary labor, services, transportation, equipment, information, data, and other means and items necessary to perform the Services, and in rendering such Services, the BRA agrees to compensate the PROVIDER for performance of the Services as stated in "Exhibit B", attached hereto and incorporated by reference herein for all purposes.

**1.2** PROVIDER shall provide professional and technical employees versed in fields of endeavor appropriate for the Services including employees duly licensed and registered to practice in their field of expertise in the State of Texas, if applicable, which employees shall have the professional abilities and expertise to undertake studies, evaluations, determinations, and analyses to counsel the BRA in the selection and analysis of Service alternatives; to provide cost estimates, technical opinions and recommendations; and to provide professional and associated Services to the BRA.

**1.3** PROVIDER hereby covenants and agrees, as an independent contractor, to perform the Services herein contemplated in a manner consistent with the professional skill and care ordinarily provided by competent professionals in their field practicing under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent professional in their field.

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

**1.5** In the event Services beyond the scope of this Agreement become necessary, BRA and PROVIDER will negotiate regarding any such required services as further



contemplated in Section \_\_\_\_, Additional Services in “Exhibit B” of this Agreement.

## **SECTION II. AGREEMENT PRICE AND PAYMENT**

**2.1** Payments for performance of the Services contemplated by this Agreement shall be in the not-to-exceed amounts and in accordance with the provisions set forth in “Exhibit B”.

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

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

**2.4** The BRA is exempt from paying Texas sales and use taxes. PROVIDER shall not charge BRA for such taxes. Proof of exemption is available upon request.

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

## **SECTION III. PROVIDER'S RESPONSIBILITY**

**3.1** PROVIDER shall be solely and completely responsible for performing the Services with diligence and in a manner consistent with the level of care and skill ordinarily exercised for such Services in the State of Texas.

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

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

**3.4** It is distinctly understood and agreed that no claim for additional services, extra work completed or materials furnished by PROVIDER will be allowed by the BRA except

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

**3.5** Terms and conditions of PROVIDER not otherwise incorporated into this Agreement shall be void and inapplicable.

#### **SECTION IV. TERM**

**4.1** The Services of the PROVIDER shall commence on the Effective Date of this Agreement and shall continue until the Services are completed.

**4.2** The PROVIDER additionally agrees to abide by any and all schedules or timing representations set forth in "Exhibit A".

**4.3** If delivery of Services is not complete within the time specified, the BRA may, without liability and in addition to other rights and remedies, terminate the purchase by notice effective when received by PROVIDER, as to Services not yet rendered, including Merchandise not yet delivered, and the BRA may purchase substitute Services elsewhere and charge PROVIDER for any additional expense incurred. Acceptance of any part of the Agreement shall not deprive the BRA of the right to return Merchandise already accepted.

#### **SECTION V. Warranties on Merchandise**

**5.1** Commencing upon the date of final acceptance of the installation of all Merchandise, PROVIDER shall provide a two (2) year warranty covering all Merchandise, expressly warranting that all Merchandise:

- i. Shall substantially conform to the specifications set forth in "Exhibit A";
- ii. Shall be free from all liens, claims, or other encumbrances, with PROVIDER having good title to all such Merchandise; and
- iii. Shall be free from defects in material and workmanship and be of the quality, size and dimensions specified in "Exhibit A".

**5.2** In addition to PROVIDER's two (2) year warranty, PROVIDER shall pass on to BRA any manufacturer's warranties for such Merchandise.

**5.3** No warranties provided hereunder shall be waived by reason of the acceptance of the Merchandise or payment therefore by the BRA.

**5.4** PROVIDER further warrants that VENDOR has reason to know the particular purpose for which BRA needs the Merchandise, and that all Merchandise provided to

BRA pursuant to this Agreement shall be merchantable and fit for the particular purpose of the BRA.

## **SECTION VI. Warranties on Services (Excluding Merchandise)**

**6.1** Commencing upon the date of final acceptance of the installation of all Merchandise, PROVIDER shall provide a two (2) year warranty covering all Services performed under this Agreement, expressly warranting that all such Services:

- i. Shall substantially conform to the specifications set forth in "Exhibit A"; and
- ii. Shall be performed in a good and workmanlike manner.

**6.2** No warranties provided hereunder shall be waived by reason of the acceptance of the Merchandise or payment therefore by the BRA.

## **SECTION VII. RISK OF LOSS**

**7.1** BRA shall not be liable for any loss or damage to, or destruction of the goods/products/equipment provided as part of the Services, irrespective of the cause thereof, prior to final installation and acceptance by BRA of such goods/products/equipment.

## **SECTION VIII. INDEMNIFICATION**

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

**8.2** IN ADDITION, PROVIDER AGREES TO INDEMNIFY, KEEP, SAVE, AND HOLD BRA HARMLESS FROM ANY AND ALL ACTIONS, LIABILITIES, DAMAGES, JUDGMENTS, COSTS, AND EXPENSES INCLUDING THE ATTORNEY'S FEES IT INCURS, UP TO A REASONABLE AMOUNT, PLUS ITS COSTS, INCLUDING WITNESS EXPENSES AND EXPERT WITNESS' FEES, IN CASE AN ACTION IS FILED OR DOES IN ANY WAY ACCRUE AGAINST BRA, ITS OFFICIALS, OFFICERS, AND EMPLOYEES IN CONSEQUENCE OF THIS AGREEMENT FOR ANY NEGLIGENT ACT OR OMISSION OF PROVIDER IN THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF PROVIDER OR PROVIDER'S AGENTS, ASSOCIATES, EMPLOYEES, SUCCESSORS, ASSIGNS, OR SUBCONTRACTORS. IN THE EVENT A JUDGMENT IS RECOVERED AGAINST THE BRA FOR ANY LIABILITY IN CONSEQUENCE OF THIS AGREEMENT FOR PROVIDER'S NEGLIGENT ACT(S) OR OMISSION(S) IN THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF PROVIDER OR PROVIDER'S AGENTS, ASSOCIATES, EMPLOYEES, SUCCESSORS, ASSIGNS, OR SUBCONTRACTORS, SUCH JUDGMENT SHALL BE CONCLUSIVE AGAINST

PROVIDER.

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

## **SECTION IX. INSURANCE REQUIREMENTS**

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

i. Workers' Compensation and Employers' Liability coverage with limits consistent with statutory requirements.

ii. Commercial General Liability with a combined single limit of \$ [REDACTED] per occurrence including products/completed operations, where appropriate, with a separate aggregate of \$ [REDACTED]. The policy shall contain the following provisions:

- a. Blanket contractual liability coverage for liability assumed under the Agreement and all agreements relative to the Services.
- b. Independent Contractors coverage.
- c. Thirty (30)-day Notice of Cancellation in favor of the BRA, endorsement.
- d. Waiver of Transfer of Rights of Recovery Against Others in favor of the BRA's endorsement.
- e. Additional Insured, endorsement in favor of the BRA

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

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

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

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

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

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

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

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

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

Brazos River Authority  
4600 Cobbs Drive  
Waco, Texas 76710

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

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

**9.10** PROVIDER shall not cause any insurance required under this Agreement to be canceled nor permit any insurance to lapse during the term of this Agreement, nor shall PROVIDER allow any subcontractor to cancel nor permit any requisite insurance to lapse during the term of PROVIDER’s subcontract.

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

**9.12** Actual losses for which PROVIDER is found liable under this Agreement shall be paid by PROVIDER if they are not covered by insurance as required by this Agreement.

## **SECTION X. DEFAULT**

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

**10.2** On such termination, BRA may take possession of all the work product and intellectual property prepared or gathered to date in performance of the Services, including, without limitations, taking possession of any goods/products/equipment supplied and paid for by BRA in accordance with this Agreement, and finish the Services in whatever way BRA deems expedient. On such default by PROVIDER, BRA may elect not to terminate this Agreement, and in such event BRA may make good the deficiency in which the default consists, and deduct the costs from the Agreement price to become due to PROVIDER.

## **SECTION XI. TERMINATION**

**11.1** This Agreement may be terminated at any time by BRA, in BRA’s sole discretion, for any cause or for convenience without penalty or liability. Upon receipt of such notice

by BRA, PROVIDER shall immediately discontinue all Services and actions on behalf of BRA.

**11.2** As soon as practicable after receipt of notice of termination, PROVIDER shall submit a statement, showing in detail the Services performed but not paid for under this Agreement to the date of termination. PROVIDER will forward to BRA all portions of the Services performed and instruments of service created up to the date of termination, including, without limitations, taking any goods/products/equipment procured by PROVIDER but not yet incorporated into the work. BRA shall then pay PROVIDER promptly the accrued and unpaid Services to the date of termination, to the extent the Services are approved by BRA.

## **SECTION XII. OWNERSHIP AND USE OF DOCUMENTS**

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

**12.2** PROVIDER shall retain in its files all original notes, letters, correspondence, drawings, specifications, documents or instruments as well as all other pertinent information for the Services.

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

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

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

## **SECTION XIII. SUCCESSOR AND ASSIGNS**

**13.1** BRA and PROVIDER each bind themselves, their partners, successors, executors, administrators, and assigns to the other party of this Agreement in respect to all covenants of this Agreement. PROVIDER shall not assign, sublet, or transfer its

interest in this Agreement without the written consent of the BRA.

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

#### **SECTION XIV. PROVIDER'S COORDINATION WITH BRA**

**14.1** PROVIDER shall be available for conferences with BRA so that Services can be provided and completed with the full benefit of BRA experience and knowledge of existing needs and facilities and be consistent with current policies and standards of the BRA.

#### **SECTION XV. INDEPENDENT CONTRACTOR**

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

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

#### **SECTION XVI. DISCLOSURE**

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

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

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

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



## **SECTION XVIII. SEVERABILITY**

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

## **SECTION XIX. CONSTRUCTION OF AGREEMENT**

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

## **SECTION XX. NO THIRD-PARTY BENEFICIARY**

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

## **SECTION XXI. ENTIRE AGREEMENT**

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

## **SECTION XXII. AMENDMENTS**

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

## **SECTION XXIII. HEADINGS**

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

## **SECTION XXIV. REMEDIES**

**24.1** No right or remedy granted herein or reserved to the parties is exclusive of any

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

## **SECTION XXV. VENUE AND CHOICE OF LAW**

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

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

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

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

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

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

**27.2** PROVIDER shall, at all times during the term of this Agreement and for a period of ten (10) years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials. PROVIDER shall at any time requested by BRA, whether during or after completion of this Agreement, and at the PROVIDER's own expense make such records available for inspection and audit (including copies and extracts of records as required) by BRA. Such records shall be made available to BRA during normal business hours at PROVIDER's office or place of

business and subject to a three (3) day written notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for BRA.

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

## **SECTION XXVIII. BOYCOTTING AND PROHIBITION PROVISIONS**

**28.1** PROVIDER hereby verifies that PROVIDER:

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

## **SECTION XXIX. NOTICES**

**29.1** All notices, communications, and reports required under this Agreement shall be personally delivered or mailed to the respective parties by certified mail, return receipt

requested or by standard overnight service at the addresses shown below or designated from time to time by the parties in writing.

If intended for BRA, to:

Brazos River Authority  
4600 Cobbs Drive  
Waco, Texas 76710

If intended for the PROVIDER, to:


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

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

### **SECTION XXXI. NONDISCLOSURE AND CONFIDENTIALITY**

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

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

- i. Any information disclosed by BRA relating to this Agreement;
- ii. Any information disclosed by BRA marked or otherwise identified by BRA as "Confidential Information";
- iii. Any information acquired by PROVIDER relating to BRA or any property owned or controlled by BRA as a result of any on-site inspection, testing, appraisal,

or other reviews or analyses of the property or any portion or component thereof performed by PROVIDER or any of its representatives; or

iv. Any notes, analyses, proposed terms and conditions, proposed agreements, and other documents prepared by PROVIDER which use, summarize, identify, reference, analyze, evaluate, reflect, contain, are based on, or respond to any Confidential Information disclosed to PROVIDER by BRA or acquired by PROVIDER pursuant to Section 28.2iii, above.

**31.3 Disclosure.** BRA agrees to disclose, and PROVIDER agrees to receive the Confidential Information.

**31.4 Confidentiality.**

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

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

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

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

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

iv. **Records.** PROVIDER shall maintain a record of entities or persons to whom any Confidential Information is disclosed pursuant to this Agreement,

together with the actual information disclosed to them, and shall make this record available to BRA upon request;

**v. Reproduction and Return of Confidential Information.** PROVIDER shall not reproduce the Confidential Information or any part thereof in any format or media except with BRA's prior written consent. Upon termination of this Agreement or written request of BRA, PROVIDER shall immediately return to BRA all the Confidential Information. Additionally, PROVIDER shall destroy all copies of the Confidential Information, whether made by PROVIDER or a third party, and shall ensure that the destruction is performed in a manner that prevents disclosure. Such destructions shall be certified to BRA in writing. PROVIDER shall ensure that any third persons who are provided Confidential Information, in accordance with the provisions of this Agreement, shall return to BRA all copies of that information and/or certify in writing to BRA that the copies of the Confidential Information have been destroyed.

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

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

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

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

PROVIDER may disclose the Confidential Information, but only to the extent required by law.

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

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

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

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

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

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

**BRAZOS RIVER AUTHORITY**

**PROVIDER**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: **DAVID COLLINSWORTH**

Name: \_\_\_\_\_

Title: **GENERAL MANAGER/CEO**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_