

# **REQUEST FOR COMPETITIVE SEALED PROPOSALS**

## **Performance Contract**

**for**

**City of Deer Park**

**June 7, 2023**

Pursuant to Chapter 2269 of the Texas Government Code, the City of Deer Park (the City) is seeking Competitive Sealed Proposals with statements of qualification for selection and award of a performance contract for installed equipment from an Energy Service Company (ESCO) or similarly qualified firm (to be referred to as “ESCO” through the remainder of this document) interested in providing Advanced Metering Infrastructure (AMI) and Energy Conservation Retrofits of utility assets,.

The City does not seek continuation service following the installation of the AMI. As such, the City does not seek to award this Project through the authorization and parameters contained in chapter 302 of the local government code. Nor does the City require post installation performance or savings guarantees.

The City currently owns approximately 10,772 meters in its water system. The City will consider ESCOs that provide turnkey Energy conservation measures and AMI solutions to achieve the best ultimate outcome for the City and its customers.

Interested parties must submit their responses with preliminary budget pricing for opening by 2:00 p.m. on July 20, 2023 at the City office located at 710 East San Augustine, Deer Park, Texas 77536. The Request for Proposals (RFP) shall be available for viewing and free download at [www.CivcastUSA.com](http://www.CivcastUSA.com), (search project 3995-23), the City of Deer Park website at <https://deerparktx.gov/Bids.aspx>, and to interested individuals and entities from the Date Issued until the Due Date and Time.

Respondents shall be responsible for all costs incurred in preparation of the proposal package. The City reserves the right to terminate this project prior to responses being received, to reject any or all responses, and to be the sole judge of the value and merit of the responses offered for consideration.

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The City expects the selection and project evaluation process to follow the schedule noted here.

## **TIMELINE**

<b><u>Date</u></b>	<b><u>Action Item</u></b>
<b>Jun. 6, 2023</b>	<b>The City approves advertising for RFP</b>
<b>Jun. 7, 2023</b>	<b>RFP notice is sent to newspapers and posted on Civcast</b>
<b>Jun. 14, 2023</b>	<b>RFP is advertised in two local papers</b>
<b>Jun. 21, 2023</b>	<b>RFP is advertised a second time in two local papers</b>
<b>Jun. 30, 2023</b>	<b>Non-Mandatory Pre-Proposal Meeting (optional) at 2:00 p.m. at City Hall</b>
<b>Jul. 13, 2023</b>	<b>Question submissions are due at 5:00 p.m. via Civcast</b>
<b>Jul. 20, 2023</b>	<b>Responses are due at 2:00 p.m. at City Hall</b>
<b>Jul. 20, 2023</b>	<b>Public Proposal openings at 2:00 p.m. at City Hall</b>
<b>Aug. 1-4, 2023</b>	<b>Possible in-person interviews with proposers</b>
<b>Aug. 15, 2023</b>	<b>City of Deer Park City Council selects ESCO</b>
<b>TBD</b>	<b>ESCO performs Investment Grade Audit (IGA) and Project scoping</b>
<b>TBD</b>	<b>ESCO presents IGA results, M&amp;V plan, and draft contract to City</b>
<b>TBD</b>	<b>Third-party engineer IGA review</b>
<b>TBD</b>	<b>Final scope and firm pricing are determined</b>
<b>TBD</b>	<b>City of Deer Park City Council executes contract with ESCO</b>
<b>TBD</b>	<b>Financing is secured for the project (if needed)</b>
<b>TBD</b>	<b>Project implementation begins</b>
<b>TBD</b>	<b>Substantial Completion of Project</b>

# **I. PROJECT OVERVIEW**

## **PROPOSED PROJECT DESCRIPTION AND PREFERENCES**

**The purpose of this project is to increase the operational efficiency of the City's water distribution system by implementing an AMI system that enables wireless communications between utility systems and the metering endpoints while removing any uncertainty for the City and ensuring any future cost savings go to the benefit of the City. Project implementation should include upgrades to the City's water customers with a fully functional and scalable AMI water meter system. The ESCO that is ultimately selected should provide, at minimum, the following in their respective proposal responses:**

- The system must use Ultrasonic Meters with no moving parts that meet American Water Works Association (AWWA) standards. Mechanical Meters will not be given consideration.
- The system selected shall have a 20-year operational life span with a 20-year accuracy and battery warranty with at least 10 years of replacement at no cost and an additional 10-year warranty prorated for each year thereafter (commonly referred to as 10/10).
- System software must be capable of providing individual account reports with Tamper alarms, reverse flow alarms, and continuous flow "leak detection."
- Ability to view specific meter information including meter ID, consumption data, latitude/longitude location data, and images of meters installed in the field.
- A customer portal that will allow customers to view their water usage and other account information.
- Ability to capture consumption and other meter data through alternative communication technology including Bluetooth, and Wi-Fi.

**The solicitation is for a complete turnkey AMI Solution, including:**

- Investment Grade Audit (IGA)
- Communication Propagation Study with a "Fixed Based" Communication system for the AMI system. The City does NOT want a "cellular" system with an ongoing monthly service fee for communication. Existing City tower infrastructure will be used for collection sites.
- Meter Selection Guidance to meter manufacturers, based off features and functions of each meter manufacturer. The City may require a demonstration of the meters and functions once the IGA has started. Final selection is the sole choice of the City.
- Installation of meters, including various fittings, valves with new meter boxes and or lids.
  - There are approximately 250 homes within Deer Park that contain lines in the backyard of the property. The City will assume responsibility of obtaining rights-of-entry and relocating said lines to the front of each property. Upon completion

of the line relocations, the meter replacements and all that implies will fall within the scope of the ESCO agreement.

- Implementation and integration of AMI system to the cities software utilized for Utility Billing that includes provisions for ensuring secure data methods and data is not lost once received by the City billing software.
- Implementation of redundant data collection hardware including portable data collector(s) and built-in preventions of data loss due to data collector failure.
- Implementation and host “workshops” for Customer Portal. This should include train the trainer for the City staff involving ample and sufficient training opportunities prior to going live.
- Performance Assurance of the system installation and operation.
- Existing meters shall be photographed with its consumption displayed prior to removal. Photographs and a spreadsheet detailing the address, consumption level, serial number of the meter, and new serial number shall be delivered to the City on a periodic basis throughout the installation phase.
- Existing meters shall be delivered to the City of Deer Park Meter Reader Shop after removal. The City will dispose of meters at the end of the project. If the vendor chooses to retain the meters, the bid shall include a specific cost adjustment accordingly.

**Respondents MUST:**

1. **Respond fully to this RFP and**
2. **Be a National Association of Energy Service Companies (NAESCO) Accredited Company.**

**The City will select an ESCO based on its evaluation of the scoring criteria detailed in Section III. The City will rank each Respondent based on the responsive information provided in its statement of qualifications. The City’s evaluation and ranking will be based on the weighted scoring criteria, and based on the rankings, the City intends to select the most highly qualified ESCO based on demonstrated competence and qualifications. The selected ESCO will perform an IGA at no cost to the City. Once a final scope and all selections are made, the City and ESCO will attempt to negotiate a contract at a fair and reasonable price. If a satisfactory contract is agreed upon, the City and ESCO will execute the contract. The contract forms attached to this RFP will form the basis of any contract between the City and its selected service provider subject to final scope and negotiated deal terms.**

**If a satisfactory contract cannot be negotiated, the City will formally end negotiations with that ESCO and select the next ranked ESCO and attempt to negotiate a pursuant to the authority of chapter 2269 and this RFP. This process shall continue until the City enters into a contract with an ESCO or ends negotiations with all respondents.**

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**The City may contact any of respondents' references in determining ESCO's qualifications and reserves the right to evaluate each respondent based on past performance of submitted relevant project experience, including contacting references even if no contact information has been provided with a response to this RFP. The City may check to determine if references provided support ESCO's ability to comply with the requirements of this request for qualifications. The City may use these references to obtain additional information, break tied scores, or verify any information needed.**

**ESCO must disclose any relationship(s) with proposed manufacturers, and describe their ability to source meters in a timely manner while addressing volatility and/or escalation of material pricing during the duration of the Project.**

**The City reserves the right to divide the project into phases as it sees fit to serve the best interest of the City. The City may reject any or all proposals and may cancel this request for qualifications at any time.**

## **II. RESPONSE FORMAT AND CONTENT**

**Responses must be submitted in the format specified in this Section II. The City reserves the right to eliminate from further consideration any Statement of Qualifications deemed to be substantially or materially unresponsive to the request for qualifications contained herein. ESCOs must submit clear and concise responses in spiral bound or three ring binders intended for 8 ½ x 11” documents. Please submit ten (10) hard copies and an electronic copy on a USB drive, to be delivered to:**

The City of Deer Park  
c/o Angela Smith, City Secretary  
710 E. San Augustine  
Deer Park, TX 77536

**All proposals shall be labeled as shown below:**

Request for proposals on: City of Deer Park AMI Performance Contract Project  
Reference Number 3995-23, AMI RFCSP-2023  
Due Date and Time: July 20, 2023 at 2:00 p.m.

**The cost for preparing a response to this request, including site visits and engineering analysis, will not be reimbursed by the City.**

### **A. Table of Contents**

Responses shall include a table of contents properly indicating the section and page numbers of the requested information.

### **B. Executive Summary**

Responses shall include a concise summary stating the respondent’s qualifications and interest in the project.

### **C. Company Information**

This section should include the following information regarding the ESCO.

1. Company name
2. Address (headquarters and servicing office)
3. Telephone
4. Primary contact person(s) for this project
5. Email address
6. Number of years ESCO has been in business and operating in Texas

7. State the number of years of experience with AMI system deployments
8. Has ESCO ever defaulted on a contract? If yes, provide a detailed explanation.
9. Last two (2) years of audited financial statements.
10. Lead Personnel for the project.
  - a. List of Lead Personnel employed by the ESCO. Include a resume for each person detailing their experience and their role on this project.
  - b. Provide an organizational chart (including names and titles as available) for implementing and managing the project. Describe the responsibilities of each individual and show the lines of authority within the overall organization.
11. Professional Services requirement
  - a. Respondent must be able to demonstrate capabilities and experience using must employ a minimum of one (1) full-time employee, who is registered as a licensed Professional Engineer in the State of Texas.
    1. If the ESCO does not employee a minimum of one (1) full-time employee, who is registered as a licensed Professional Engineer in the State of Texas, the ESCO must furnish proof that a registered licensed Professional Engineer in the State of Texas is contracted to work on this project within the same capacity as if they were directly employed by the ESCO.
  - b. Include the names and P.E. numbers for all full-time employees who are registered as licensed Professional Engineers in the State of Texas.
  - c. Provide customer satisfaction survey results (from an independent third-party company) for the last 2 years. Include customer comments.
  - d. Please provide a sample of an annual report for a completed AMI project in the State of Texas with the performance assurance.

#### **D. Technical Approach**

Provide the technical approach to meet the City's energy efficiency, water efficiency, and operating cost reduction objectives.

1. **Investment Grade Audit Approach:** Describe your engineering methodology and approach to the IGA. This should include proposed meter testing with quantity of meters and sizes to be tested.
2. **Propagation Study:** Explain your approach and assumptions utilized to develop the propagation study and a summary of the findings as to system coverage, reliability, redundancy, and the infrastructure required to achieve these data points.
3. **Energy Engineering:** Provide a detailed explanation of how the ESCO intends to calculate energy savings thru implementation of AMI metering and other energy conservation measures of utility assets. Show examples of the energy savings



calculations and energy/efficiency savings of the provider's recent project.

4. **Contractor Selection:** Describe the process that the ESCO utilizes to obtain their subcontractors and what criteria will be used to make the subcontractor selections.
5. **Equipment Selection:** Describe the process that the ESCO utilizes to obtain the metering equipment and specifically what criteria will be used to make equipment selections and what the City's involvement will be.
6. **Installation Approach:** Describe how the ESCO intends to implement the installation phase of the project in terms of project management, priorities, philosophies, timeliness, change-orders and commissioning.
7. **Commissioning:** Describe in detail the commissioning processes that the ESCO intends to utilize.
8. **Performance Assurance:** Describe in detail the performance assurance processes that the ESCO intends to utilize to ensure the AMI systems operate at peak performance both at the completion of the installation phase and throughout the contract term. Also, provide details how you will meet the requirements of follow up meter testing.
9. **Legal:** List any judgments, convictions, charges, penalties, fines, legal rulings, and findings against ESCO in Texas in the past ten (10) years.
10. **Additional Information:** Supply additional relevant information about the ESCO's technical approach to the project that may be included in the response.
11. **Bonding Capacity:** Provide proof of ESCO's bonding capacity.

#### **E. Financial Criteria**

Section E should contain the financial processes and pricing structure of each respondent.

1. Unit Pricing: Complete Exhibit A-1

#### **F. Trade Secrets**

1. All proposals are public record and are subject to public inspection after the City issues Notice of Intent to Award. If an ESCO believes that any portion of its proposal contains any information that is a trade secret under the Texas Uniform Trade Secrets Act or otherwise is exempt from disclosure under Chapter 552 of the Government Code, the

ESCO shall complete and submit the Trade Secret Statement (Exhibit F and Exhibit F-1) and provide a fully redacted version of its statement of qualifications.

**G. Experience and Results**

1. Each respondent must have performed a minimum of five (5) AMI project installations with Texas entities to be considered. Provide the following project information for at least five (5) projects.

- Customer name and address
- Contract amount
- Description of work
- Completion date
- Owner contact information
- Project recognition/awards (if applicable)

2. **Client References**

Provide a list of Energy Savings Performance Contracts (ESPC) active and completed with Texas entities, including all forms of local and state government and educational facilities. Include the project name, owner contact name and phone number, contract amount, type of work, and completion date.

**The proposer is also required to submit:**

- Insurance and Indemnification Requirements (Exhibit C)
- Sales Tax Information
- HB1295 Information Sheet

**Other forms to complete and return:**

- Conflict of Interest Questionnaire (Exhibit D)
- Reference Data Sheet (Exhibit E)
- Historically Underutilized Business Form
- Certification Regarding Debarment
- Non-collusion Affidavit
- Texas Public Information Act

**BOND.** ESCO shall obtain a Performance Bond and a Payment Bond in the form provided herein.

### **III. EVALUATION CRITERIA**

**The City reserves the right to and will likely reject any responses that does NOT meet the minimum criteria described in this RFP. For responses meeting or exceeding the minimum criteria, the City will rank each Statement of Qualifications based on the weighted scoring criteria shown below. Based on the rankings, the City intends to select the most highly qualified ESCO based on demonstrated competence and qualifications to negotiate a contract.**

#### **A. Ability to Successfully Implement Program (20 Points)**

1. Proven experience of the ESCO and lead personnel for successfully implementing and providing proven energy/efficiency savings with scopes of work similar to those being considered for this project.
2. Background and qualifications of the people responsible for implementing the proposed ESPC. This includes business development and in-house engineers and technicians responsible for the designing, programming, and installation of the project.

#### **B. Technical Approach (20 Points)**

1. Approach the facility analysis, design and energy engineering. Preference will be given to responses that include a detailed and sound technical approach to meeting the City objectives. This includes the ESCO IGA strategy, process and documentation.
2. Processes for subcontractor, materials, or equipment selections, ensuring quality and value.
3. In-house capabilities to ensure energy efficiency savings results.

#### **C. Financial Consideration (40 Points)**

1. Exhibit A-1, Provide unit pricing for installed products per the itemized list.
2. Process to be utilized to price any work negotiated after contractor selection.

#### **D. Preparation of and Responsiveness to RFP (10 Points)**

1. Completeness and thoroughness, responsiveness to terms and conditions.

2. Understanding of the project.
3. Degree of interest shown in undertaking the project.

**E. Professional References (10 Points)**

1. Client references attesting to the ESCO's proven performance and client service.

## **Exhibit A Meter Sizes**

**The City records indicate the following meter sizes and approximate quantities regarding existing water meters:**

<b>Meter Size</b>	<b>Quantity</b>
5/8" x 3/4"	7394
1"	2835
1.5"	97
2"	409
3"	17
4"	11
6"	6
8"	3
<b>TOTAL</b>	<b>10,772</b>

### **AMI Meters**

Please submit a bid tab with the Meter Manufacturer and brief description of the meter's features and functions. This price should be an installed price. Please attach additional information on a separate page. Each Manufacturer should have their own Exhibit A-1, A-2, etc.

### **Fixed Based Communication System**

This should be an all-inclusive system that is installed and function with the meters and AMI System software. There should not be any recurring fees associated with the communication system. Software support should be listed separately (if any fees associated). The fixed based system should be bid as individual components listed on the bid tab sheet.

### **Price Sheet**

Please include a unit cost for the following:

- Meter boxes
- Meter box lids
- Angle stops
- Straight stops
- Meter tails per size

**\*\*The City will negotiate final maximum contract price after IGA is performed and final scope is determined. The final maximum contract price will be based off the unit prices**

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**included in the Bid tab for the final selected meter manufacturer. Once final contract is approved, the contract price will remain fixed and the City will not be issued any change orders within the parameters of the final approved scope.**

**In the event of a discrepancy between the total of the written line-item subtotals and the written project total when negotiating the final maximum contract price, then the total of the written line-item subtotals will prevail. The City expressly reserves the right to reject or disqualify any submission that contains errors or ambiguities associated with either unit pricing or total maximum contract price.**

## Exhibit A-1 Bid Tab

(Each Meter Manufacturer should be on a separate Bid Tab)  
[Each Bid Tab is (2) two pages and both pages must be completed]

**The City's preferred meter manufacturers\*:**

Neptune (most preferred)  
Badger

*\*Other manufacturers will be considered for comparable meters and/or approved equals designated by the scope of work.*

**Meter Manufacturer:** \_\_\_\_\_

**Make and/or Model:** \_\_\_\_\_

Meter Size	Price per Unit		
	0-100 units	101-1,000 units	> 1,000 units
5/8" X 3/4"			
1"			
1.5"			
2"			
3"			
4"			
6"			
8"			

**Meter Boxes Installed Price**

Meter Size	Price per Unit		
	0-100 units	101-1,000 units	> 1,000 units
5/8" x 3/4"			
1"			
1.5"			
2"			
3"			
4"			
6"			
8"			

**Communications**

Equipment	Price per Unit
Portable Data Collector (Backup)	
Portable Data Collector Setup	
Data Collector Station	
Data Collector Station Set Up	
70' Self Supporting Tower (if needed)	
Backhaul Communication (if needed)	
Total Number is Sites Estimated	



**Existing City Owned Communication Towers**

<b>Tower Description</b>	<b>Location</b>	<b>Height</b>
Fire Station #1	1301 Center Street	100'(under construction)
Fire Station #2	711 E. Pasadena Blvd.	100'(under construction)
Fire Station #3	2211 E. X Street	100'
Police Station	2911 Center Street	80'
PD Firing Range	291 Luella Avenue	60'
City Hall	710 E. San Augustine Street	93'
Pasadena Water Tower	7200 E. Pasadena Blvd	145'
Avon Water Tower	601 Avon Street	145'
Coy Water Tower	2702 Coy Drive	145'

## Exhibit B

### ENERGY SAVINGS PERFORMANCE CONTRACT

This Energy Savings Performance Contract (the “Contract”) is between the City of Deer Park, Texas (“Owner”), and:

Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State Zip: \_\_\_\_\_  
Fax #: \_\_\_\_\_ Phone: \_\_\_\_\_  
Tax ID #: \_\_\_\_\_

(“Consultant”) (collectively Owner and Consultant are referred to as the “Parties”). The “Project” refers to the Consultant providing Owner with Advanced Metering Infrastructure (AMI) and Energy Conservation Retrofits or utility assets. “Subconsultants” refers to any of the Consultant’s subcontractors, suppliers, consultants, vendors, or service providers used to complete the Project.

The “Work” shall mean the services provided by the Consultant to complete the Project, including design services, installment services, and other services as provided in the Project Overview and other descriptors contain in the RFP which is incorporated herein by reference.

#### 1. RELATIONSHIP OF THE PARTIES

- 1.1 Consultant shall provide the Work to complete the Project in accordance with the terms and conditions of this Contract. Consultant’s performance of the Work shall be as a professional consultant to Owner to carry out the Project and to provide the technical documents and supervision to achieve Owner’s Project objectives.
- 1.2 In administering this Contract, Owner may retain the services of an independent project manager and other consultants as needed to fulfill Owner’s objectives.
- 1.3 Consultant shall provide a list of all sub-consultants which Consultant intends to utilize on the Project (“Sub-consultants”). This list shall include such information on the qualifications of the Sub-consultants as may be requested by Owner. Owner reserves the right to review the Sub-consultants proposed. Consultant shall not retain a Sub-consultant to which Owner has a reasonable objection.
- 1.4 Consultant acknowledges that this Contract was awarded on the basis of the unique background and abilities of the key personnel of Consultant and Sub-consultants identified by Consultant (collectively, the “Key Personnel” and individually, the “Key Person”). Therefore, Consultant shall make available Key Personnel as identified in its Statement of Qualifications. Consultant shall provide to Owner a list of the proposed Key Personnel to be assigned to the Project. This list shall include such information on the professional background of each Key Person as may be requested by Owner. If any Key Person becomes unavailable to Consultant, the Parties shall mutually agree

upon an appropriate replacement. Without prior notice to, and the written consent of, Owner, Consultant shall not:

- i. re-assign or transfer any Key Person to other duties or positions so that the Key Person is unable to fully perform his or her responsibilities under the Contract;
- ii. allow any Key Person to delegate to anyone his or her performance of any management authority or other responsibility required under the Contract; or
- iii. substitute any Key Person.

Any of these actions shall constitute a material breach of the Contract. Consultant shall remove any individual or Sub-consultant from the Project if so directed by owner in writing following discussion with Consultant, provided that Consultant shall have a reasonable time period within which to find a suitable replacement.

## **2. CONSULTANT'S RESPONSIBILITIES; REPRESENTATIONS AND WARRANTIES**

- 2.1 Consultant shall perform all Work with the professional skill and care ordinarily provided by a competent consultant practicing under the same or similar circumstances and professional license (the "Standard of Care").
- 2.2 Consultant shall prepare, in accordance with the Standard of Care, all drawings, specifications, deliverables, and other documents so that they accurately reflect, fully comply with and incorporate all applicable laws, rules, and regulations, and so that they are complete and functional for the purposes intended, except as to any deficiencies which are due to causes beyond the control of Consultant.
- 2.3 Consultant shall be responsible for correcting any inconsistencies, errors, or omissions in the drawings, specifications, deliverables, and other documents prepared by Consultant or Sub-consultants at no additional costs to Owner.
- 2.4 Owner's review or acceptance of documents shall not be deemed as approval of the adequacy of the drawings, specifications, deliverables, and other documents. Any review or acceptance by Owner will not relieve Consultant of any responsibility for complying with the Standard of Care.
- 2.5 Except as specifically provided, Consultant shall, at no additional cost to Owner, render assistance to Owner in resolving problems or other issues relating to the Project design or to specified materials.
- 2.6 During the term of the Contract, Consultant shall obtain, hold, maintain, and fully pay for all licenses and permits required for the Project, unless otherwise specified in the Contract. Consultant shall review the Project site and the nature of the Work and advise Owner throughout the course of the Project as to the necessity of obtaining all Project permits and licenses, the status of the issuance of any such permits and licenses, and any issues or impediments related to the issuance or continuation of any such permits and licenses.
- 2.7 Consultant shall pay all Sub-consultants and other subcontractors, or service providers as required by Consultant's contracts with those Sub-consultants, subcontractors, or service providers. Consultant agrees that Owner has no direct or indirect contractual obligation or other legal duty whatsoever to pay the Sub-consultants and other subcontractors of Consultant or otherwise ensure that Consultant makes full and timely payment to those Sub-consultants, subcontractors, or service providers for the Work performed on the Project.

2.8 Consultant represents and warrants to Owner that:

- 2.8.1 Consultant has the power and authority to enter into and perform this Contract; the persons executing this Contract on behalf of Consultant have the actual authority to bind Consultant to the terms of this Contract;
- 2.8.2 When executed and delivered, this Contract shall be a valid and binding obligation of Consultant enforceable in accordance with its terms; the provisions of this Contract do not conflict with or result in a default under any agreement or other instrument binding upon Consultant and do not result in a violation of any law, regulation, court decree or court order or other legal processes applicable to the Consultant;
- 2.8.3 Consultant shall, at all times during the term of this Contract, be duly licensed to perform the Work or services, and if there is no licensing requirement for the profession or Work, be duly qualified and competent;
- 2.8.4 Consultant is an experienced professional having the skill, legal capacity, and professional ability necessary to perform the Work required under this Contract and to design and administer a project having the scope and complexity of the Project;
- 2.8.5 Consultant has the capabilities and resources necessary to perform Consultant's obligations under this Contract;
- 2.8.6 Consultant is, or shall become, in a manner consistent with the Standard of Care, familiar with current laws, rules, and regulations which are applicable to the design and construction of the Project;
- 2.8.7 All Work shall be performed in accordance with the Standard of Care;
- 2.8.8 The Project, when completed and if constructed in accordance with the intent established by the drawings, specifications, deliverables and other documents prepared by Consultant pursuant to this Contract, shall be structurally sound and a complete properly functioning facility suitable for the purposes for which it is intended.; and
- 2.8.9 The published specifications that Consultant has specified, designated, and planned pursuant to this Contract conform to the Contract requirements.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in this Contract or at law.

### 3. GENERAL CONTRACT PROVISIONS

- 4.1 Contract Performance. Consultant shall at all times perform the Work diligently and without delay and shall punctually fulfill all Contract Document requirements consistent with the schedule for the performance of the Work set forth herein. Expiration or termination of the Contract shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any default or defect in performance. **Time is of the essence in the performance of this Contract.**
- 4.2 Access to Records. For not less than three (3) years after the Contract's expiration or termination, Owner, the State of Texas, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Consultant and the Sub-consultants which pertain to the Contract for the purpose of making audits, examination, excerpts, and transcripts. If, for any reason, any part of this Contract, any Project-related consultant contract, or any Project-related construction contract(s) is involved in litigation, Consultant shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. Consultant shall provide Owner and the other entities referenced above with full access to these records in preparation for and during litigation.
- 4.3 Funds Available and Authorized. Owner reasonably believes as for the Effective Date that sufficient funds are available and authorized for expenditure to finance the cost of this Contract

within Owner's appropriation or limitation. Consultant understands and agrees that, to the extent that sufficient funds are not available and authorized for expenditure to finance the cost of this Contract, Owner's payment of amounts under this Contract attributable to the Work performed after the last day of the current biennium is contingent on Owner receiving funds from the State, limitations or other expenditure authority sufficient to allow Owner, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

4.4 Contract Price. The "Contract Price," is the maximum, not-to-exceed, total amount payable under this Contract unless it is increased or decreased by the price of approved change orders.

4.4.1 The Consultant agrees that the portion of the Contract Price attributable to the Construction Work shall not exceed the guaranteed maximum price of \$8,200,000.00 (the "GMP"), that amount having been proposed by the Consultant as part of the proposal.

4.4.1.1 The Consultant's fee shall be included in the GMP as (\_\_\_\_\_) % of the Cost of the Work (as defined in Section 4.5 below).

4.4.2 Design and installation services, including project management, construction management, and construction administrative services, shall be included in the GMP.

4.4.3 Acceptance of the GMP. The execution of this Contract signifies the acceptance of the GMP by Owner. The full performance and payment bond required by this Contract and law shall be equal to the GMP.

4.4.4 GMP Savings. In the event that the actual and final Cost of the Work is less than the GMP as amended, the difference shall accrue 100% to Owner.

4.5 Cost of the Work. The term "Cost of the Work" shall mean costs necessarily incurred by the Consultant in the proper performance of the Work; provided, however, the Cost of the Work shall include only the items specifically identified in this section and must be directly related to the Work in this Project.

4.5.1 Labor Costs include the following:

4.5.1.1 Wages of workers directly employed by the Consultant to perform the Work;

4.5.1.2 Wages and salaries of the Consultant's supervisory and administrative personnel stationed at the site, and for such personnel off the site when specifically related to the Project and with Owner's agreement after review of any information and Documents required by Owner;

4.5.1.3 Wages and salaries of Consultant's supervisory or administrative personnel engaged at factories, workshops, or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time directly required for the work; and

4.5.1.4 Fringe benefit costs paid or incurred by the Consultant for taxes, insurance, contributions, assessments, and benefits required by law, and for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided such costs are based on wages and salaries included in the Cost of Work under this section.

4.5.2 Sub-consultants/Subcontract Costs include the following:

4.5.2.1 Payments made by the Consultant to Sub-consultants/subcontractors in accordance with the requirements of the subcontracts toward completion of the Project;

4.5.2.2 Costs, including transportation, of materials and equipment incorporated or to be incorporated into the completed Project; and

4.5.2.3 Costs of materials in excess of those actually installed but required to provide a reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be delivered to Owner at the completion of the Work, or, at Owners option, shall be sold by the Consultant. Any sale shall be commercially reasonable, and the Consultant shall provide an accounting for such a sale within 15 days of the transaction. Net

amounts realized, if any, from such sales shall be credited to Owner as a deduction from the Cost of Work.

**4.5.3 Costs of Other Materials and Equipment, and Related Items include the following costs:**

4.5.3.1 Costs, including transportation, installation, maintenance, dismantling, and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Consultant at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Consultant. Cost for items previously used by the Consultant shall mean fair market value;

4.5.3.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, are provided by the Consultant at the site. Rates and quantities of equipment rented shall be according to industry standards, shall not exceed acquisition costs, and for individual items exceeding \$10,000 shall be subject to Owner's prior approval;

4.5.3.3 Costs of removal of debris from the site; and

4.5.3.4 That portion of the reasonable travel and subsistence expenses from the Consultant's personnel, at Owner approved rates, but not in excess of the rates allowed by Owner's employees, incurred while traveling in the discharge of duties connected with the Work.

**4.5.4 Miscellaneous Costs that are allowable as Costs of Work include the following:**

4.5.4.1 That portion of premiums for insurance directly attributable to this Project, including deductible for builders all/risk insurance (but excluding premiums for comprehensive/commercial general liability, automobile liability, professional liability/errors & omissions, and worker's compensation coverage), and payment and performance bonds;

4.5.4.2 Sales, use, or similar excise taxes imposed by a governmental authority that are directly related to the Work for which the Consultant is liable;

4.5.4.3 Fees and assessments for permits, licenses, and inspections for which the Consultant is required by the Contract to pay;

4.5.4.4 Costs of drawings, Plans, Specification, and other Documents required to complete the Work, except as provided by Owner; and

4.5.4.5 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by Owner.

4.5.5 Repairs to damaged, defective, or nonconforming work. The Cost of Work shall also include costs, which are incurred by the Consultant in taking action to prevent threatened damage, injury, or loss in case of an emergency affecting the safety of persons and property.

**4.6 Contract Time.**

4.6.1 Commencement of Work. The Work shall commence on the date the Owner issues the Notice to Proceed (the "Date of Commencement"), unless the parties mutually agree otherwise in writing. Owner's Notice to Proceed shall be issued on or after the effective date of this Contract.

4.6.2 Substantial Completion. Substantial Completion for the Work shall be achieved no later than December 31, 2025 ("Substantial Completion Date").

4.6.3 Acceptance of Work. A prerequisite to Owner's acceptance is that the Consultant must first warrant, by written notice to Owner's authorized representative, that the Consultant has substantially completed the Work.

4.6.4 Final Completion of the Work. Final Completion of the Work, or identified portions of the Work, shall be achieved as expeditiously as practicable. All of the dates set forth in this section shall be subject to adjustment by the Owner.

4.7 Liquidated Damages. Consultant understands that if it does not attain Substantial Completion by the Substantial Completion Date, Owner will suffer damages, which are difficult to determine and accurately specify. Consultant agrees that if it does not attain Substantial Completion by the Substantial Completion Date, Consultant shall pay to Owner \$1,100.00 per day as liquidated damages for each subsequent day until the Consultant attains Substantial Completion in accordance with the Contract Documents and the Owner's standards. The liquidated damages provided herein shall be in lieu of a claim for consequential damages incurred by Owner as a result of delay in achieving Substantial Completion.

4.8 Insurance. Consultant shall provide and maintain the following insurance until termination of this Contract

<b>Professional Liability:</b>	\$1,000,000 per claim and \$2,000,000 in the Aggregate
<b>Professional Liability Umbrella/Excess:</b>	\$5,000,000
<b>Worker's Compensation:</b>	\$1,000,000 or Statutory Limits
<b>Comprehensive General Liability:</b>	Occurrence \$1,000,000 Aggregate \$2,000,000 Personal Injury \$1,000,000 each person (Coverage to include groups A, B & C w/exclusion "C" aggregate removed)
<b>Automobile Liability:</b>	\$1,000,000 combined single limit
<b>Consultants' Subconsultants</b>	\$500,000

1. The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to Owner. Owner will contact the State Board of Insurance to confirm that the issuing companies are admitted and authorized to issue such policies in the State of Texas.

2. The policy so issued in the name of Consultant shall also name Owner as additional insured, except for professional liability insurance and worker's compensation insurance. All policies held by Consultant shall be primary coverage.

3. Consultant shall ensure Consultant's Subconsultants maintain the minimum level of insurance as required by Consultant under this Contract. Consultant shall furnish to Owner insurance certificates in form satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, a statement that no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar days prior written notice to Owner, and a statement that, except for professional liability insurance and worker's compensation insurance, Owner is named as additional insured. Consultant shall permit Owner to examine the insurance policies, or at Owner's option, Consultant shall furnish Owner with copies, certified by the carrier(s), of insurance policies required. If Consultant neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance at Consultant's expense.

4. Consultant's General Liability, Automobile Liability, and Worker's Compensation Insurance policies shall be endorsed to provide a waiver of subrogation in favor of Owner.

4.9 Indemnity.

4.9.1 **CLAIMS FOR OTHER THAN PROFESSIONAL LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW CONSULTANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, OWNER'S OFFICERS, CONSULTANTS,**

AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS', EXPERT, OR CONSULTANT FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK. FOR ANY SUCH CLAIM, DAMAGE, LOSS, COST OR EXPENSE THAT IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, CONTRACTOR'S INDEMNITY OBLIGATION APPLIES ONLY IF CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT ACTS OR OMISSIONS OF CONSULTANT, A SUBCONSULTANT OR SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 4.10.

- 4.9.1.1 THE INDEMNIFICATION OBLIGATION UNDER SECTION 4.10.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONSULTANT, OR A SUBCONSULTANT OR SUBCONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

**4.9.2 CLAIMS FOR PROFESSIONAL LIABILITY.**

A. GENERAL. TO THE FULLEST EXTENT PERMITTED BY LAW, CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS OWNER, ITS EMPLOYEES, AGENTS, AND REPRESENTATIVES (HEREINAFTER REFERRED TO INDIVIDUALLY AS AN "INDEMNITEE" AND COLLECTIVELY AS THE "INDEMNITEES") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COSTS INCURRED BY INDEMNITEES WHICH ARE:

1. DUE TO THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT IN THE PERFORMANCE OF THIS AGREEMENT, BY CONSULTANT, ITS AGENT, ANY SUBCONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL;
2. CAUSED BY OR RESULTING FROM ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION IN VIOLATION OF CONSULTANT'S STANDARD OF CARE, BY THE CONSULTANT, ITS AGENT, ANY SUBCONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL;
3. CAUSED BY OR RESULTING FROM ANY CLAIM ASSERTING INFRINGEMENT OR ALLEGED INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE INFORMATION FURNISHED BY OR THROUGH CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL;
4. DUE TO THE FAILURE OF CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL TO PAY THEIR SUBCONSULTANTS AMOUNTS DUE FOR SERVICES PROVIDED IN CONNECTION WITH THE PROJECT; OR
5. OTHERWISE ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, INCLUDING SUCH CLAIMS, DAMAGES, LOSSES OR EXPENSES ATTRIBUTABLE TO



BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT SUCH CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES ARE CAUSED BY OR RESULT FROM ANY NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF CONSULTANT, ITS AGENT, ANY SUBCONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL

**B. REIMBURSEMENT OF GOVERNMENTAL AGENCY'S FEES IN DEFENSE OF CLAIMS.**

TO THE EXTENT OWNER INCURS ATTORNEY'S FEES IN DEFENSE OF ANY CLAIM ASSERTED AGAINST OWNER WHICH ARISES OR RESULTS FROM THE ALLEGED ACTS OR OMISSIONS OF CONSULTANT DESCRIBED IN SECTION A ABOVE, CONSULTANT SHALL REIMBURSE OWNER ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE CONSULTANT'S LIABILITY FOUND AFTER A FINAL ADJUDICATION OF LIABILITY.

- 4.9.3 Owner defensive requirement. Notwithstanding the obligations under Sections 4.10.1 or 4.10.2, neither Consultant nor any attorney engaged by Consultant shall defend any claim in the name of Owner, nor purport to act as legal representative of the City, without the prior written consent of the City of Deer Park Attorney(s). Owner may, at any time and at its election, assume its own defense and settlement of any claims in the event that: it determines that Consultant is prohibited from defending the City; Consultant is not adequately defending the Owner's interests; an important governmental principle is at issue; or it is in the best interests of the Owner to do so. The City of Deer Park reserves all rights to pursue any claims it may have against Consultant if Owner elects to assume its own defense.
- 4.9.4 Owner's Actions. This Section 4.10 does not include indemnification by Consultant of the Owner or their officers, agents, and employees, for the acts or omissions of the Owner or their officers, agents, and employees, whether within the scope of the Contract or otherwise.
- 4.10 Consultant's Status.
- 4.10.1 Consultant shall perform all Work as an independent contractor. Although Owner reserves the right to set the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, Owner cannot and will not control the means and manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Work. Consultant, Consultant's employees and the Sub-consultants are not "officers, employees, or agents" of the Owner.
- 4.10.2 Consultant shall not have control or charge of, and shall not be responsible for, the acts or omissions of other consultants or contractors under contract with Owner who are performing services or construction work on the Project. However, this provision does not in any way change Consultant's professional responsibility to report to Owner any information, including information on the performance of consultants or contractors outside the control or charge of Consultant, concerning activities or conditions that have or could have an adverse effect on Owner or the Project.
- 4.11 Successors & Assignments. The provisions of this Contract shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. After the original Contract is executed, Consultant shall not enter into any Sub-consultant agreements for any of the Work or assign or transfer any of its interest in this Contract, without the prior written consent of the Owner.

- 4.12 Compliance with Applicable Law. Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work. Consultant, the Sub-consultants, if any, and all employers providing Work, labor or materials under this Contract are subject employers under the Texas workers' compensation law.
- 4.13 Governing Law; Jurisdiction; Venue. This Contract shall be governed by and construed in accordance with the laws of the State of Texas without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Owner and Consultant that arises from or relates to this Contract shall be brought and conducted solely and exclusively in court of competent jurisdiction in Harris County, Texas.
- 4.14 Mediation. Consultant and Owner, in an effort to resolve any conflicts that may rise during the design or construction of the Project or following the completion of the Project, agree that all disputes between them arising out of or relating to this Contract or any amendments hereto shall be submitted to non-binding mediation unless the Parties mutually agree otherwise. Consultant further agrees to include a similar provision in all agreements with Sub-consultants or subcontractors or agents retained for the Project, thereby providing for mediation as the primary method for dispute resolution between the Parties to those agreements. All parties agree to exercise their best effort in good faith to resolve all disputes in mediation.
- 4.15 Severability. The Parties agree that if any term or provision of this Contract is declared by a Court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 4.16 Force Majeure. Neither party shall be held responsible for delay or default in the performance of its obligations due to a cause beyond its reasonable control, including, but not limited to fire, riot, acts of God, terrorist acts, or war where such cause was beyond such party's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Contract.
- 4.17 Waiver. The failure of Owner to enforce any provision of this Contract shall not constitute a waiver by Owner of that or any other provision.
- 4.18 Third Party Beneficiaries. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against Owner or Consultant. Consultant's Work under this Contract shall be performed solely for Owner's benefit and no other entity or person shall have any claim against Consultant because of this Contract for the performance or nonperformance of Work hereunder.
- 4.19 Ownership of Work Product.
- 4.19.1 Definitions. As used in this Contract, the following terms have the meanings set forth: "Consultant Intellectual Property" means any intellectual property that is owned by Consultant and developed independently from this Contract and that is applicable to the Work or included in the Work Product. "Third Party Intellectual Property" means any intellectual property that is owned by parties other than Owner or Consultant and that is applicable to the Work or included in the Work Product. "Work Product" means the Work Consultant delivers or is required to deliver to Owner under this Contract. Work Product

includes every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein, and all copies of plans, specifications, reports and other materials, whether completed, partially completed or in draft form.

- 4.19.2 Work Product. Except as provided in Sections 3.15.3 and 3.15.4, all Work Product is created by Consultant pursuant to this Contract, including derivative works and compilations, and whether or not such Work Product is considered a “work made for hire” or an employment to invent, shall be the exclusive property of Owner. Owner and Consultant agree that such original works of authorship are “work made for hire” of which the Owner is the author within the meaning of the United States Copyright Act. To the extent that Owner is not the Owner of the intellectual property rights in such Work Production, Consultant hereby irrevocably assigns to Owner any and all of its rights, title, and interest in all original Work Product created pursuant to this Contract, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Owners reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Owner. Consultant forever waives any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 4.19.3 Consultant Intellectual Property. In the event that Consultant Intellectual Property is necessary for the use of any Work Product, Consultant hereby grant to Owner an irrevocable, non-exclusive, non-transferable, perpetual royalty-free license to use Consultant Intellectual Property, including the right of Owner to authorize contractors, consultants and others to use Consultant Intellectual Property, for the purposes described in this Contract.
- 4.19.4 Third Party Intellectual Property. In the event that Third Party Intellectual Property is necessary for the use of any Work Production, Consultant shall secure on Owner’s behalf and in the name of Owner, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the Third-Party Intellectual Property, including the right of Owner to authorize contractors, consultants and others to use the Third-Party Intellectual Property, for the purposes described in this Contract.
- 4.19.5 Consultant Intellectual Property–Derivative Work. In the event that Work Product created by Consultant under this Contract is a derivative work based on Consultant Intellectual Property or is a compilation that includes Consultant Intellectual Property, Consultant hereby grants to Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of Consultant Intellectual Property employed in the Work Product, including the right of Owner to authorize contractors, consultants and others to use the pre-existing elements of Consultant Intellectual Property employed in a Work Product, for the purposes described in this Contract.
- 4.19.6 Third Party Intellectual Property–Derivative work. In the event that Work Product created by Consultant under this Contract is a derivative work base on Third Party Intellectual Property, Consultant shall secure on Owner’s behalf and in the name of Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of the Third Party Intellectual Property employed in a Contract Work Product, including the right to authorize contractors, consultants and others to use the pre-existing elements of the Third Party Intellectual Property employed in a Contract Work Product, for the purposes described in this Contract.
- 4.19.7 Consultant Use of Work Product. Consultant may refer to the Work Product in its brochures or other literature that consultant utilizes for advertising purposes and, unless otherwise specified, Consultant may use standard line drawings, specifications and calculations on other, unrelated projects.

- 4.20 Confidential Information. Consultant acknowledges that it or its employees, Sub-consultants, subcontractors or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is the confidential information of Owners or Owner's clients. Any and all information provided by Owner and marked confidential, or identified as confidential in a separate writing, that becomes available to Consultant or its employees, Sub-consultants, subcontractors or agents in the performance of this Contract shall be deemed to be confidential information of Owner ("Confidential Information"). Any reports or other documents or items, including software, that result from Consultant's use of the Confidential Information and any Work Product that Owner designates as confidential are deemed Confidential Information. Confidential Information shall be deemed not to include information that:
- a) is or becomes (other than by disclosure of Consultant) publicly known;
  - b) is furnished by Owner to others without restrictions similar to those imposed in this Contract;
  - c) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract;
  - d) is obtained from a source other than Owner without the obligation of confidentiality;
  - e) is disclosed with the written consent of the Owner; or
  - f) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.
- 4.20.1 Non-Disclosure. Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information for any purposes whatsoever other than the provision of Work to Owner under this Contract, and to advise each of its employees, Sub-consultants, subcontractors and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist Owner in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Consultant shall advise Owner immediately in the event Consultant learns or has a reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and Consultant will at its expense cooperate with Owner in seeking injunctive or other equitable relief in the name of Owner or Consultant against any such person. Consultant agrees that, except as directed by Owner, Consultant will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon the termination of this Contract or at Owners request, Consultant will turn over to Owner all documents, papers, and other matter in Consultant's possession that embody Confidential Information.
- 4.20.2 Injunctive Relief. Consultant acknowledges that breach of this Section, including disclosure of any Confidential Information, will give rise to irreparable injury to Owner that is inadequately compensable in damages. Accordingly, Owner may seek and obtain injunctive relief against the breach or threatened breach of this Section, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Owner and are reasonable in scope and content.
- 4.20.3 Publicity. Consultant agrees that news releases and other publicity relating to the subject of this Contract will be made only with the prior written consent of Owner.
- 4.20.4 Security. Consultant shall comply with all virus-protection, access control, back-up, password, and other security and other information technology policies of Owner when

using, having access to, or creating systems for any of Owner's computers, data, systems, personnel, or other information resources.

4.21 Termination.

4.21.1 Parties right to Terminate by Agreement. This Contract may be terminated at any time, in whole or in part, by written mutual consent of the Parties.

4.21.2 Owner's Right to Terminate for Convenience. Owner may, at its sole discretion, terminate this Contract, in whole or in part, by written notice to Consultant specifying the termination date of the Contract.

4.21.3 Owner's Right to Terminate for Cause. Owner may terminate this Contract immediately, in whole or in part, upon written notice to Consultant, or such late date as Owner may establish in such notice, upon the occurrence of any of the following events:

4.21.3.1 Owner lacks lawful funding, appropriations, limitations, or other expenditure authority at levels sufficient to allow Owner, in the exercise of its reasonable discretion, to pay for Consultant's Work;

4.21.3.2 Federal, state, or local laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Contract are prohibited or Owner is prohibited from paying for such Work from the planned funding source;

4.21.3.3 Consultant no longer holds all licenses or certificates that are required to perform the Work in the Project;

4.21.3.4 Consultant fails to provide Work within the times specified or allowed under this Contract; fails to perform any of the provisions of this Contract; or so fails to perform the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from Owner, does not correct such failures within the time that Owner specifies (which shall not be less than 10 calendar days, except in the case of emergency);

4.21.3.5 Consultant commits any material breach or is in default of any covenant, warranty obligation or agreement under this Contract;

4.21.3.6 Consultant makes any false or misleading representation or warranty to Owner.

4.21.3.7 Consultant:

- a) applies for or consents to the appointment or possession by, a receiver, custodian, trustee, or liquidator of Consultant or all or substantially all of its property;
- b) admits in writing its inability, or is unable, to pay its debts as they become due;
- c) makes a general assignment for the benefit of its creditors;
- d) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect);
- e) is adjudicated bankrupt or insolvent;
- f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, winding-up, or composition or adjustment of debts;
- g) acquiesces in writing to, any petition filed against it in an involuntary case under the Federal Bankruptcy Code (as not or hereafter in effect); or
- h) takes any corporate action for the purpose of effecting any of the foregoing.

4.21.3.8 A proceeding or case is commenced, without the application or consent of Consultant, in any court of competent jurisdiction, seeking:

- a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Consultant;

- b) the appointment of a receiver, custodian, trustee, liquidator, or the like of Consultant or of all or any substantial part of its assets; or
  - c) similar relief in respect to Consultant under any law relating to bankruptcy, insolvency, reorganization, liquidation, winding-up, or composition or adjustment of debts, and such proceeding or case continues un-dismissed, or an order, judgment or decree approving or ordering any of the foregoing is entered and continues un-stayed and in effect for a period of 20 consecutive days, or an order for relief against ESCO is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).
- 4.21.3.9 Consultant has any change in ownership or control without the prior approval of Owner, which consent shall not be unreasonably withheld.
- 4.21.4 Cessation of Services. Upon receiving a notice of termination, and except as otherwise directed in writing by Owner, Consultant shall immediately cease all activities related to the Work or the Project.
- 4.21.5 Consultant's Right to Terminate for Cause.
  - 4.21.5.1 Consultant may terminate this Contract if Owner fails to pay Consultant pursuant to this Contract, provided that Owner has failed to make such payment to Consultant within forty-five (45) calendar days after receiving written notice from Consultant of such failure.
- 4.21.6 Delivery of Work Product/Retained Remedies of Owner. As directed by Owner, Consultant shall, upon termination, promptly deliver to Owner all documents, information, works in progress and other property that are deliverables or would be deliverables if the Contract has been completed. Consultant shall remain responsible to Owner for the quality of its Work Product. By Consultant's signature on this Contract, Consultant allows Owner to use Work Product and other property for Owner's intended use. The rights and remedies of Owner provided in this Section 4.23 are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- 4.22 Payment Upon Termination.
  - 4.22.1 In the event of such termination, Consultant's sole and exclusive remedy will be to receive payment for any portion of the Work performed up to the date of termination, except in the event of a termination under Section 4.23.3, where Owner may elect to withhold payment from Consultant to the extent necessary to protect the Owner from damages arising from Consultant's breach. In no event will Consultant be entitled to any compensation, including close-out costs or otherwise, for any phase of the project for which the City has not previously issued a written Notice to Proceed. Within thirty (30) days after termination, Consultant shall submit an itemized invoice for all un-reimbursed Work completed before termination and Contract close-out costs actually incurred by Consultant. Owner shall not be obligated to pay for any such costs invoices to and received by Owner later than thirty (30) days after termination. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall promptly refund any excess amount upon demand.
  - 4.22.2 In the event of termination, Owner shall have any remedy available to it in law or equity. Such remedies may be pursued separately, collectively or in any order whatsoever.
- 4.23 Notice. Except as otherwise expressly provided in this Contract, any notices to be given hereunder shall be given in writing by personal delivery or mail, postage prepaid, to Consultant or Owner at the address or number set forth herein, or to such other address or number as either party may provide pursuant to this "Notice" section. Any notice delivered by mail shall be deemed to be given five (5) calendar days after the date of mailing. Any notice by personal delivery shall be

deemed to be given when actually delivered. Regular, day-to-day communications between the Parties may be transmitted through one of the methods set forth above, in person, by telephone, by e-mail, or by other similar electronic transmission.

4.24 Media. Consultant shall provide no news release, press release, or any other statement to a member of the news media regarding this Project, without Owner's prior written authorization.

4.25 Conflict of Interest. Except with Owner's prior written consent, Consultant shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear to compromise Consultant's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.

4.26 Entire Agreement. This Contract constitutes the entire agreement between the parties on the subject matters addressed herein. The terms of this Contract cannot be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the parties and containing all required City of Deer Park approvals. Any such waiver, alteration, modification, supplementation or amendment shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, regarding this contract except as contained, incorporated or referenced herein.

4.27 Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia. To the extent this Agreement relates to critical infrastructure in the State of Texas, Consultant represents the following:

1. it is not owned by or the majority of stock or other ownership interest in Consultant is not held or controlled by:
  - a. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2274.0103 of the Texas Government Code, as amended ("designated country"); or
  - b. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
2. it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

The foregoing representation is made solely to comply with Chapter 2274 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, "critical infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.

4.28 Prohibition on Contracts with Companies Boycotting Energy Companies. Consultant hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, to the extent this Agreement is a contract for goods or services, will not boycott energy companies during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott energy companies” has the meaning used in Section 809.001 of the Texas Government Code, as amended. Consultant understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Consultant and exists to make a profit.

- 4.29 Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. Consultant hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” has the meaning used in Section 2274.001(3) of the Texas Government Code, as amended. Consultant understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Consultant and exists to make a profit.

- 4.30 Texas Public Information Act.

- A. Consultant recognizes that this Project is publicly owned, and Owner is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within the Contract Documents, Consultant agrees, at no additional cost to Owner, to cooperate with Owner for any particular needs or obligations arising out of Owner’s obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to Owner’s audit rights.
- B. This provision applies if the Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner in a fiscal year of Owner.
- C. Consultant must:
  - 1. preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to Owner for the duration of the Agreement;
  - 2. promptly provide to Owner any contracting information related to the Agreement that is in the custody or possession of Consultant on request of Owner; and
  - 3. on completion of the Contract, either:
    - a. provide at no cost to Owner all contracting information related to the Agreement that is in the custody or possession of Consultant; or
    - b. preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to Owner.



**City of Deer Park**

**June 7, 2023**

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract and Consultant agrees that the Contract can be terminated if Consultant knowingly or intentionally fails to comply with a requirement of that subchapter.

This Contract shall become effective on the date that the Contract is fully executed by the Parties and all required City of Deer Park approvals have been obtained (the "Effective Date"). No Work shall be performed prior to the Effective Date.

Consultant, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands this Contract, and agrees to be bound by all of this Contract's terms and conditions. This Contract, and any amendments to it, may be executed in counterparts (each of which shall be an original and all of which shall constitute but one and the same instrument) or in multiple originals.

AGREED TO AND SIGNED BY:

CONSULTANT:

\_\_\_\_\_  
Signature

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

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

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

CITY:

\_\_\_\_\_  
Signature

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

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

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

## **EXHIBIT C**

### **SUPPLEMENTAL CONDITIONS FOR FEDERAL-AID CONTRACTS**

#### **I. GENERAL**

- A. The term "Consultant" mentioned in this section shall also apply to any supplier, vendor, service provider, etc.
- B. Provisions provided herein supersede any conflicting terms and conditions contained in the Energy Savings Performance Contract.
- C. These Contract provisions shall apply to all Work performed on the Contract by the Consultant's organization and with the assistance of workers under the Consultant's immediate supervision and to all Work performed on the Contract by piecework, station work, or by subcontract.
- D. Except as otherwise provided for in each section, the Consultant shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions and further require their inclusion in any lower tier subcontract or purchase order that may, in turn, be made. The Required Contract Provisions shall not be incorporated by reference in any case. The Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with these Required Contract Provisions.
- E. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the Contract.
- F. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:
  - Section I, paragraph B;
  - Section IV, paragraphs 1, 2, 3, 4, and 7; and
  - Section V, paragraph A.
- G. Disputes arising out of the labor standards provisions (except paragraph E) of Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this Contract. Instead, such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (D.O.L.) as set forth in 29 C.F.R. 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Consultant (and any of its subconsultants) and the contracting agency, the D.O.L., or the Consultant's employees or their representatives.

H. **Selection of Labor:** During the performance of this Contract, the Consultant shall not:

1. Discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable); OR
2. Employ convict labor for any purpose within the limits of the Project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. **REMEDIES** (Applies to all contracts in excess of one hundred fifty thousand dollars [\$150,000]).

In addition to any other remedy available to the City of Deer Park as provided in this Contract, the City of Deer Park may, in its sole discretion, take any action in accordance with applicable law to protect the interests of the City of Deer Park in the event the Consultant fails to comply with any requirement specified in this Contract.

III. **TERMINATION FOR CAUSE**

- A. If the Consultant refuses or fails to prosecute the Work or any separable part, with the diligence that will ensure its completion within the time specified in this Contract including any extension, or fails to complete the Work within this time, the City of Deer Park may, by written notice to the Consultant, terminate the right to proceed with the Work (or the separable part of the Work) that has been delayed. In this event, the City of Deer Park may take over the Work and complete it by Contract or otherwise, and may take possession of and use any materials, appliances, and plans on the Work site necessary for completing the Work. The Consultant and its sureties shall be liable for any damage to the City of Deer Park resulting from the Consultant's refusal or failure to complete the Work within the specified time, whether or not the Consultant's right to proceed with the Work is terminated. This liability includes any increased costs incurred by the City of Deer Park in completing the Work.
- B. The Consultant's right to proceed shall not be terminated, nor the Consultant charged with damages under this clause, if:
1. The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Consultant. Examples of such causes include:
    - a. Acts of God or of the public enemy;
    - b. Acts of the City of Deer Park in either its sovereign or contractual capacity;

- c. Acts of another Consultant in the performance of a contract with the City of Deer Park;
  - d. Fires;
  - e. Floods;
  - f. Epidemics;
  - g. Quarantine restrictions;
  - h. Strikes;
  - i. Freight embargoes;
  - j. Unusually severe weather; OR
  - k. Delays of sub consultants or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Consultant and the sub consultants or suppliers.
- 2. The Consultant, within ten (10) days from the beginning of any delay (unless extended by the City of Deer Park), notifies the City of Deer Park in writing of the causes of delay. The City of Deer Park shall ascertain the facts and the extent of delay. If, in the judgment of the City of Deer Park, the findings of fact warrant such action, the time for completing the Work shall be extended. The findings of the City of Deer Park shall be final and conclusive on the parties.
- C. If, after termination of the Consultant's right to proceed, it is determined that the Consultant was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the City of Deer Park.
- D. The rights and remedies of the City of Deer Park in this clause are in addition to any other rights and remedies provided by law or under this Contract.

#### **IV. TERMINATION FOR CONVENIENCE**

- A. The City of Deer Park may terminate the performance of Work under this Contract in whole or, from time to time, in part, if the City of Deer Park determines that a termination is in the City of Deer Park's interest. The City of Deer Park shall terminate by delivering to the Consultant a Notice of Termination specifying the extent of termination and the effective date.
- B. After receipt of a Notice of Termination, and except as directed by the City of Deer Park, the Consultant shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

1. Stop Work as specified in the Notice of Termination.
  2. Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the Contract, if any.
  3. Terminate all subcontracts to the extent they relate to the Work terminated.
  4. Assign to the City of Deer Park all right, title, and interest of the Consultant under the subcontracts terminated, in which case the City of Deer Park shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  5. With approval or ratification to the extent required by the City of Deer Park, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
  6. Complete performance of any Work not terminated.
  7. Take any action that may be necessary, or that the City of Deer Park may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Consultant and the City of Deer Park has or may acquire an interest.
- C. After termination, the Consultant shall submit a termination settlement proposal to the City of Deer Park in the form and with the certification prescribed by the City of Deer Park. The Consultant shall submit the proposal promptly, but no later than six (6) months from the effective date of termination, unless extended in writing by the City of Deer Park upon written request of the Consultant within this six (6) month period. If the Consultant fails to submit the proposal within the time allowed, the City of Deer Park may determine, on the basis of information available, the amount, if any, due the Consultant because of the termination and shall pay the amount determined.
- D. Subject to paragraph (C) of this clause, the Consultant and the City of Deer Park may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on Work done. The agreed amount, however, whether under this paragraph (D) may not exceed the total Contract price as reduced by (1) the number of payments previously made and (2) the Contract price of Work not terminated. The Contract shall be modified, and the Consultant paid the agreed amount.
- E. If the Consultant and the City of Deer Park fail to agree on the whole

amount to be paid because of the termination of Work, the City of Deer Park shall pay the Consultant the reasonable amounts determined by the City of Deer Park to be due and owing to the Consultant.

**V. EQUAL EMPLOYMENT OPPORTUNITY “EEO”- COMPLIANCE  
WITH EXECUTIVE ORDER 11246**

During the performance of this Contract, the Consultant agrees as follows:

- A. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- C. The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Consultant's legal duty to furnish information.
- D. The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- E. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Consultant's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Consultant will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub consultant or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a sub-consultant or vendor as a result of such direction by the administering agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

**VI. COMPLIANCE WITH COPELAND ANTI-KICKBACK ACT**

- A. Consultant. The Consultant shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Contract.
- B. Subcontracts. The Consultant or Sub Consultant shall insert in any subcontracts the clause above and such other clauses as federal grants may by appropriate instructions require, and also a clause requiring the Sub Consultants to include these clauses in any lower tier subcontracts. The Consultant shall be responsible for the compliance by any Sub Consultant

or lower tier Sub Consultant with all of these contract clauses.

- C. Breach. A breach of the contract clauses above may be grounds for termination of the Contract, and for debarment as a Consultant and Sub Consultant as provided in 29 C.F.R. §5.12.

**VII. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.**

- A. Overtime requirements. No Consultant or Sub Consultant contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to work in excess of forty (40) hours in a such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of (40) forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this section, the Consultant and any Sub Consultant responsible therefore shall be liable for the unpaid wages. In addition, such Consultant and Sub Consultant shall be liable to the United States (in the case of Work done under Contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of ten dollars (\$10) for each Calendar Day on which such individual was required or permitted to work in excess of the standard workweek of (40) forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.
- C. Withholding for unpaid wages and liquidated damages. The City of Deer Park shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any money payable on account of Work performed by the Consultant or Sub Consultant under any such contract or any other federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or Sub Consultant for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.
- D. Subcontracts. The Consultant or Sub Consultant shall insert in any subcontracts the clauses set forth in paragraphs (A) through (D) of this



section and also a clause requiring the Sub Consultants to include these clauses in any lower tier subcontracts. The Consultant shall be responsible for compliance by any Sub Consultant or lower tier Sub Consultant with the clauses set forth in paragraphs (A) through (D) of this section.

**VIII. ACCESS TO RECORDS**

The following access to records requirements applies to this Contract:

- A. The Consultant agrees to provide the City of Deer Park, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- D. The Consultant agrees to provide the Grant Administrator or his authorized representative's access to construction or other work sites pertaining to the Work being completed under the Contract.

**IX. RETENTION OF RECORDS**

The Consultant agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Consultant agrees to maintain same until the City of Deer Park, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.

**X. COMPLIANCE WITH THE CLEAN AIR ACT AND CLEAN WATER ACT (Applies to all contracts in excess of one hundred thousand dollars [\$100,000])**

Clean Air Act

- A. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §7401 et seq.
- B. The Consultant agrees to report each violation to the City of Deer Park

and understands and agrees that the City of Deer Park will, in turn, report each violation as required to assure notification to the State of Texas and the appropriate Environmental Protection Agency Regional Office.

- C. The Consultant agrees to include these requirements in each subcontract exceeding one hundred thousand dollars (\$100,000) financed in whole or in part with federal assistance provided by the American Rescue Plan Act “ARPA” Grant.

Federal Water Pollution Control Act

- A. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq. The Consultant agrees to report each violation to the City of Deer Park and understands and agrees that the City of Deer Park will, in turn, report each violation as required to assure notification to the State of Texas and the appropriate Environmental Protection Agency Regional Office.
- B. The Consultant agrees to include these requirements in each subcontract exceeding one hundred thousand dollars (\$100,000) financed in whole or in part with federal assistance provided by the ARPA Grant.

**XI. ENERGY EFFICIENCY**

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act.

**XII. SUSPENSION AND DEBARMENT**

- A. This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Consultant is required to verify that neither the Consultant, its principals (defined at 2 C.F.R. §180.995), or its affiliates (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. §180.935).
- B. The Consultant must comply with 2 C.F.R. Part 180, subpart C, and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the City of Deer Park. If it is later determined that the Consultant did not comply with 2 C.F.R. Part 180, subpart C, and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City of Deer Park, the federal government may pursue available remedies, including, but not limited to,

suspension and/or debarment.

- D. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C, and 2 C.F.R. Part 3000, subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**XIII. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION (D.B.E.)**

- A. It is the policy of the federal grant that D.B.E. firms as defined in 49 C.F.R. Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Deer Park obtained a grant for part of the cost of designing and constructing the Project. In order to qualify for grant funds, Deer Park, the Consultant, and its Sub Consultants must comply with the FAR regulations covering the participation of small business firms owned or controlled by socially and economically disadvantaged individuals which is defined in 49 C.F.R. Part 23.
- B. The proposing firm shall make good faith efforts, as defined in Appendix A of 49 C.F.R. Part 23, to subcontract a reasonable percentage of the Work in this Contract with D.B.E. firms. In the event that the successful proposing firm for this solicitation qualifies as a D.B.E., the Contract goal shall be deemed to have been met. Individuals who are reputably presumed to be socially and economically disadvantaged include Women, Blacks, Hispanics, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. A proposing firm that fails to meet the goal or which cannot demonstrate that it made good faith efforts to meet that goal will be considered nonresponsive to these Request for Proposal Instructions. A current list of certified D.B.E. firms which will be accepted for the purposes of this requirement may be obtained from the State of Texas Department of Transportation (State).
- C. Within five (5) consecutive Calendar Days of the deadline date for submitting Proposals, the proposing firms shall submit a Letter of Intent for each D.B.E. listed in their proposal as a Sub Consultant. Each Letter of Intent shall be accompanied by either the Sub Consultant's certification letter from the state or by a copy of its application for certification which has been submitted to the state.
- D. If any proposing firm does not meet the Project goal set forth above, it shall submit documents demonstrating that it made good faith efforts to achieve the goal. A copy of Appendix A to 49 C.F.R. 23.45 entitled "Guidance Concerning Good Faith Efforts" may be obtained from the state.

- E. In order to maximize business opportunities for D.B.E. firms, proposing firms are urged to meet the D.B.E. goal by subcontracting with as many D.B.E. firms as possible. Deer Park strongly discourages proposing firms from requiring exclusive dealing commitments from D.B.E. firms which would prevent them from being considered as Sub Consultants by other proposing firms.

**XIV. NONSEGREGATED FACILITIES (Applicable to all Federal-aid construction contracts and to all related subcontracts of ten thousand dollars [\$10,000] or more.)**

- A. By submission of this Proposal, the execution of this Contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, federal-aid construction Consultant, Sub Consultant, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this Contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- B. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by the explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g., disabled parking).
- C. The Consultant agrees that it has obtained or will obtain identical certification from proposed sub-consultants or material suppliers prior to award of subcontracts or consummation of material supply agreements of ten thousand dollars (\$10,000) or more and that it will retain such certifications in its files.

**XV. PROCUREMENT OF RECOVERED MATERIALS**

A non-federal entity that is a state agency or an agency of a political subdivision of a state and its Consultants must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency "E.P.A" at 40 C.F.R. Part 247

contains the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds ten thousand dollars (\$10,000) or the value of the quantity acquired by the preceding fiscal year exceeded ten thousand dollars (\$10,000); procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the E.P.A. guidelines.

**XVI. FORCE MAJEURE**

Force Majeure. A party shall not be liable for any failure of or delay in the performance of this Contract for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

**XVII. BYRD ANTI-LOBBYING AMENDMENT**

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Consultants who apply or bid for an award of one hundred thousand dollars (\$100,000) or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier-to-tier up to the recipient.

**XVIII. DEPARTMENT OF HOMELAND SECURITY SEAL "D.H.S." LOGO AND FLAGS**

The Consultant shall not use D.H.S. seal(s), logo, crests, or reproductions of flags or likenesses of D.H.S. agency officials without specific preapproval.

**XIX. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**

This is an acknowledgment that the ARPA grant financial assistance will be used to fund this Contract. The Consultant will comply with all applicable federal laws, regulations, executive orders, policies, procedures, and directives.

**XX. NO OBLIGATION BY THE FEDERAL GOVERNMENT**

The federal government is not a party to this Contract and is not subject to any obligations or liabilities to the non-federal entity, Consultant, or any other party pertaining to any matter resulting from the Contract.

**XXI. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.**

The Consultant acknowledges that 31 U.S.C Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's actions pertaining to this Contract.

**XXII. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.**

If the federal award meets the definition of "funding agreement" under 37 C.F.R. §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

## **Exhibit D**

### **Conflict of Interest Questionnaire**

In accordance with H.B. 914 the City of Deer Park is required to file the enclosed form (CIQ), Conflict of Interest Questionnaire with the City Secretary's office with any vendor that the City will contract with for purchases and services of any kind.

In order to comply with this State Requirement the City is requesting that your company as a potential contracted vendor with the City of Deer Park complete this form and submit it with your bid documents. This form will be considered part of the bid package. Failure to complete and submit this form with your bid could delay the award of your bid should you meet all other requirements.

# H.B. 1295

## Certificate of Interested Parties Procedure

### *The Texas Ethics Commission states:*

“In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.”

***The key issue is that the disclosure form must be submitted by the business entity before the signed contract is submitted in order for the contract to be valid.*** The Texas Ethics Commission requires each contract covered by law to have an ID # generated by the City in order to track the contract. Once the City generates an ID # this will be given to the business entity to file with the Ethics Commission.

### **WHO IS REQUIRED TO FILE FORM 1295?**

Any vendor or business entity that falls into one of these categories must file FORM 1295 with the Texas Ethics Commission.

- A) On projects over \$50,000: Once the lowest bidder has been determined the City will provide them with a project identification number to be submitted on Form 1295. The procedure, listed below, must be completed before Council approves the contract/agreement.
- B) All purchases requiring Council approval: Vendor will be required to submit Form 1295 following the procedure below.

### **FORM 1295 PROCEDURE**

1. Business entities must log on to the Texas Ethics Commission web page at <https://www.ethics.state.tx.us> on the left hand side of the screen choose “File Reports Electronically”, then choose “Form 1295 Certificates of Interested Parties Filing”.
2. Once the business entity generates the Disclosure Form on the Texas Ethics Commission website, the business entity will print the Form and Certification of Filing. The authorized agent of the vendor must sign the printed copy of the form and have the signature notarized.
3. The signed and notarized Form 1295 must be submitted to the City prior to the City Council meeting, at which time the contract or agreement will be considered for approval. The City must acknowledge the receipt of the filed Form 1295 no later than the 30<sup>th</sup> day after the date the contract binds all parties to the contract. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission website within 7 days.



# CERTIFICATE OF INTERESTED PARTIES

## FORM 1295

### OFFICE USE ONLY

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**1** Name of business entity filing form, and the city, state and country of the business entity's place of business.

**2** Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

**3** Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

**5** Check only if there is NO Interested Party.

☐

### **6** AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

\_\_\_\_\_  
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said \_\_\_\_\_, this the \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_, to certify which, witness my hand and seal of office.

\_\_\_\_\_  
Signature of officer administering oath

\_\_\_\_\_  
Printed name of officer administering oath

\_\_\_\_\_  
Title of officer administering oath

**ADD ADDITIONAL PAGES AS NECESSARY**

**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

## City of Deer Park

June 7, 2023

- (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.

### Instructions for the Conflict-of-Interest Questionnaire

Section 176.006 requires disclosure of a person's "affiliations or business relations that might cause a conflict of interest." The term "affiliation" is not defined in Chapter 176. However, the general definition of the word "affiliation" would mean any association or connection. Any affiliation, including such things as friendship, membership in some group or organization, relationship by blood or marriage, or any other connection, must be disclosed.

How to fill out the Conflict-of-Interest Questionnaire (each number corresponds with the number on Form CIQ):

1. Name of person (vendor) doing business with the City. If the vendor is a corporation, partnership, etc., then each person who acts as an agent for the business in dealings with the City must complete the form.  
Also state company name.
2. Check the box if you are filing an update to a previously filed questionnaire. Updates are required by law by September 1 of each year in which the person submits a proposal or bid, or begins contract discussions or negotiations with the City. Updates are also required by the 10th business day after an event that makes a statement in a previously filed questionnaire incomplete or inaccurate.
3. Complete this section by listing the name of the local government officer (City employee or Council member) with whom there is an affiliation or business relationship with.
4. Describe how you are affiliated or related to a City employee or Council member who may make recommendations to the City regarding expenditures of money. Answer questions A and B with "Yes" or "No" as applicable.  
Examples:

**City of Deer Park**

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- If you, your spouse, parent, or child is in business with a City employee that would be making a recommendation concerning a purchase or sales transaction involving you, the relationship must be reported.
- If you are a City employee and would be making a recommendation concerning a purchase or sales transaction involving you, the relationship must be reported.
- If your neighbor or friend is a City employee and would be making a recommendation concerning a purchase or sales transaction concerning you and you feel your relationship with this employee could affect their recommendation, the relationship must be reported.
- If you employ or do business with a spouse, parent, or child of a City employee that would be making a recommendation concerning a purchase or sales transaction involving you, the relationship must be reported.
- If any other situation exists that would result in a conflict of interest, the relationship must be reported.
- If your spouse, parent, or child is a City employee that does NOT make recommendations concerning purchases, this relationship should not be reported.

5. State whether the vendor named in Section 1 is employed by a corporation or other business entity with which the City employee or Council member 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 City employee or Council member named in Section 3, or family member of the same, one or more gifts as describe in Section 176.003(a)(2)(B), excluding gifts in section 176.003(a-1).

7. Signature Box. Person completing the form must date and sign the form. If the form is being completed for a corporation, partnership, etc., the person signing should be authorized to act on their behalf.

**A signature is required in Section 7 regardless of any other entry on the form.**

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b> For vendor or other person doing business with local governmental entity		<b>FORM CIQ</b>
<p><b>This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.</b></p> <p><b>By law this questionnaire must be filed with the records administrator of the local government not later than the 7<sup>th</sup> business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.</b></p> <p><b>A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class 'C' misdemeanor.</b></p>	<b>OFFICE USE ONLY</b> Date Received:	
1. Name of person doing business with local governmental entity:		
2. <input type="checkbox"/> 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 September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7 <sup>th</sup> business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)		
3. Name each employee or contractor of the local governmental entity who makes recommendations to local government officer of the governmental entity with respect to expenditures of money AND describe the affiliation or business relationship.		
4. Name each local government officer who appoints or employs local government officers of the governmental entity for which this questionnaire is filed AND describe the affiliation or business relationship.		

## CONFLICT OF INTEREST QUESTIONNAIRE

For vendor or other person doing business with local governmental entity

**FORM CIQ**

Page 2

**5. Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is Yes)**

This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or other relationship. Attach additional pages to Form CIQ as necessary.

A. Is local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?

☐

Yes

☐

No

B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity?

☐

Yes

☐

No

C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐

Yes

☐

No

D. Describe each affiliation or business relationship.

**6.**

\_\_\_\_\_  
Signature of a person doing business with the government entity

\_\_\_\_\_  
Date

## Exhibit E Reference Data Sheet

**PROVIDE AT LEAST THREE (3) REFERENCES REPRODUCE SHEET AS NECESSARY.**

Provide client name, location, contact person, telephone number and appropriate information on contracted services that are similar to this solicitation document.

Client: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Title: \_\_\_\_\_

Project Begin & End Date: \_\_\_\_\_  
Project Budget: \_\_\_\_\_  
Services Provided: \_\_\_\_\_  
Describe your involvement in the project: principal firm, multi-firm collaboration, sub-consultant, etc.: \_\_\_\_\_

Client: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Title: \_\_\_\_\_

Project Begin & End Date: \_\_\_\_\_  
Project Budget: \_\_\_\_\_  
Services Provided: \_\_\_\_\_  
Describe your involvement in the project: principal firm, multi-firm collaboration, sub-consultant, etc.: \_\_\_\_\_

Client: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Title: \_\_\_\_\_

Project Begin & End Date: \_\_\_\_\_  
Project Budget: \_\_\_\_\_  
Services Provided: \_\_\_\_\_  
Describe your involvement in the project: principal firm, multi-firm collaboration, sub-consultant, etc.: \_\_\_\_\_

## Exhibit F

### Trade Secret Statement

1. I have read and am familiar with the provisions of Texas Uniform Trade Secrets Act and Chapter 552 of the Texas Government Code. I understand that the proposal is a public record held by a public body and is subjected to disclosure under Chapter 552 of the Texas Government Code unless specifically exempt from disclosure under that law.
2. I have reviewed the information contained in my proposal and believe the information is exempt from public disclosure (collectively, the “Exempt Information”), which is incorporated herein by reference. It is my opinion that the Exempt Information constitutes “Trade Secrets” under Texas law because that information falls under the exception stated in Section 552.110 of the Texas Government Code.
3. I have reviewed the information contained in my statement of qualifications and identify the information listed in Exhibit F-1 as the information exempt from public disclosure. I have also included a fully redacted version of the proposal with my un-redacted proposal.
4. I understand that disclosure of the information referenced may depend on a ruling by the Texas Attorney General or judicial determinations made in accordance with Chapter 552 of the Texas Government Code.

\_\_\_\_\_  
Signature of Proposer Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title



## Trade Secret Statement

**Respondent identifies the following information as exempt from public disclosure:**

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

## Exhibit G

### PERFORMANCE BOND

THE STATE OF TEXAS

§

KNOW ALL BY THESE PRESENTS:

§

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

§

That we, \_\_\_\_\_ [Contractor], as Principal herein, and \_\_\_\_\_ [Surety], a corporation organized and existing under the laws of the State of \_\_\_\_\_ and who is authorized and admitted to issue surety bonds in the State of Texas, Surety herein, are held and firmly bound unto the **City of Deer Park, Texas**, located in **Harris County, Texas**, Obligee herein, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a certain written contract with the Obligee dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, herein referred to as “the Contract” and incorporated herein and made a part hereof for all purposes, for the construction of the following project: **Advanced Metering Infrastructure (AMI) Project**.

NOW, THEREFORE, the condition of this obligation is such, if the said Principal shall faithfully perform the work in accordance with the plans, specifications, and other Contract Documents and shall fully indemnify and hold harmless the Obligee from all costs and damages which Obligee may suffer by reason of Principal’s failure to perform the Work in conformity with the Contract Documents, and reimburse and repay Obligee for all outlay and expense that Obligee may incur in making good such default, then this obligation shall be void; otherwise, to remain in full force and effect.

Whenever Principal shall be declared by Obligee to be in default under the Contract, the Surety shall, upon request of Obligee and within ten (10) calendar days from receipt of Obligee’s notice of Principal’s default, commence and thereafter complete performance of Contractor’s obligations under the Contract. Surety acknowledges that its obligations under this bond and as detailed herein and in the Contract Documents are not conditioned on a termination of the Principal by the Obligee. Surety further acknowledges and agrees that Surety shall obtain the Obligee’s approval and consent with respect to the contractor(s) that Surety may retain to replace defaulted Principal or otherwise honor the obligations under this Bond.

**City of Deer Park**  
**June 7, 2023**

This Bond covers all contractual obligations of Contractor under the Contract, including, without limitation, the indemnity, warranty and guaranty obligations. The Surety stipulates and agrees that no change, extension of time, alteration, omission, addition or other modification to the terms of any of the Contract will affect its obligations on this bond, and it hereby waives notice of any such changes, extensions of time, alterations, omissions, additions, or other modifications, to the Contract or to related subcontracts, purchase orders or other obligations, and any notices provided in such regard shall not create as to any party a duty related thereto. The penal limit of this bond shall automatically be increased by the amount of any change order, supplemental agreement or amendment which increases the price of the Contract.

PROVIDED, HOWEVER, that this bond is executed pursuant to Chapter 2253 of the Texas Government Code, as amended, and all rights and liabilities on this bond shall be determined in accordance with the provisions of such statute, to the same extent as if it were copied at length herein. All notices shall be delivered in writing to the addresses shown below or to addresses provided in the Contract Documents.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**The date of bond shall not be prior to date of Contract.**

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

(S E A L)

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
PRINCIPAL

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

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

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

Address: \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_  
SURETY

**City of Deer Park**  
**June 7, 2023**

ATTEST:

\_\_\_\_\_  
Secretary

(S E A L)

\_\_\_\_\_  
Witness as to Surety

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

Name: \_\_\_\_\_  
Attorney in Fact

Address: \_\_\_\_\_

\_\_\_\_\_

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

**An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.**

Approved as to Form:

City of Deer Park, Texas  
710 E. San Augustine  
Deer Park, Texas 77536

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

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

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

**Exhibit H**  
**PAYMENT BOND**

THE STATE OF TEXAS                   §  
  §                   KNOW ALL BY THESE PRESENTS:  
COUNTY OF \_\_\_\_\_ §

That we, \_\_\_\_\_, as Principal herein, and \_\_\_\_\_  
\_\_\_\_\_, a corporation organized and existing under the laws of the  
State of Texas and who is authorized and admitted to use surety bonds in the State of Texas, as  
surety, are held and firmly bound unto the **City of Deer Park Texas** so located in **Harris**  
**County, Texas**, Obligee herein, in the amount of \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_) for the payment whereof, the said Principal and Surety bind themselves and  
their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by  
these presents:

WHEREAS, the Principal has entered into a certain written contract with the Obligee  
dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, which contract is hereby referred to herein  
as “the Contract” and is incorporated herein to the same extent as if copied at length, for the  
following project: **Advanced Metering Infrastructure (AMI) Project**.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the  
said Principal shall directly or indirectly timely make payment to each and every claimant (as  
defined in Chapter 2253, Texas Government Code, as amended) supplying labor or materials in  
the prosecution of the work under the Contract, then this obligation shall be void; otherwise, to  
remain in full force and effect. *This obligation may be enforced by the Obligee in the event of  
bankruptcy or default by Principal in payments to suppliers of labor or materials in the  
prosecution of the work under the Contract, in either of which events the Surety shall make such  
payments as Principal has failed to pay and as may be required to complete the work under the  
contract.* The Surety stipulates and agrees that no change, extension of time, alteration,  
omission, addition or other modification to the terms of the Contract will affect its obligations on  
this bond, and it hereby waives notice of any such changes, extensions of time, alterations,  
omissions, additions, or other modifications, to the Contract or to related subcontracts, purchase  
orders or other obligations, and any notices provided in such regard shall not create as to any  
party a duty related thereto.

**City of Deer Park**  
**June 7, 2023**

PROVIDED, HOWEVER, that this bond is executed pursuant to Chapter 2253 of the Texas Government Code, as amended, and all rights and liabilities on this bond shall be determined in accordance with the provisions of said statute, to the same extent as if it were copied at length herein. All notices shall be delivered in writing to the addresses shown below or to addresses provided in the Contract Documents.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**The date of bond shall not be prior to date of Contract.**

	_____ PRINCIPAL
ATTEST:	By: _____
_____ (Principal) Secretary	Name: _____
	Title: _____
(S E A L)	Address: _____
	_____
	_____
_____ Witness as to Principal	Telephone Number: _____
	_____ SURETY
ATTEST:	By: _____
_____ Secretary	Name: _____
	Attorney in Fact
(S E A L)	Address: _____
	_____
	_____
_____ Witness as to Surety	Telephone Number: _____

**An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.**

**City of Deer Park**

**June 7, 2023**

Approved as to Form:

City of Deer Park, Texas

710 E. San Augustine

Deer Park, Texas 77536

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

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

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