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**Status:** Posted

**Solicitation ID:**RFQ720-1815

**Solicitation Title:**RFQ720-1815

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**Organization Name:** University Of Texas System - 720

**Posting Requirements:** Emergency (Less than 14 days) or Procurement Under 25,000

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**Solicitation Posting Date:** 3/9/2018

**Response Due Date:**3/23/2018

**Response Due Time:** 2:30 PM

**Solicitation Description:** RFQ 720-1815 Reserve Estimation Upstream and Midstream Economic Analyses and Operator Methane Emissions Analysis Services

**Class/Item Code:** 90662-Petroleum And Fuel (Storage And Distribution) - Architectural

### Record Attachments

#	Name	Description
1	<a href="#">ESBD_File_125832_RFQ720-1815 Reserve Estimation Upstream and Midstream Economic Analyses and Operator Methane Emissions Analysis Services.docx</a>	RFQ Document
2	<a href="#">ESBD_File_125832_RFQ 720-1815 - APPENDIX ONE - Sample Engineering Services Agreement.docx</a>	APPENDIX ONE
3	<a href="#">ESBD_File_125832_RFQ720-1815 APPENDIX TWO - Part1HSP(NSD)-ProfessionalServices(UT System Administration).pdf</a>	APPENDIX TWO



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## REQUEST FOR QUALIFICATIONS

**RFQ No. 720-1815 Reserve Estimation, Upstream and Midstream Technical  
and Economic Analysis Services**

**RFQ Submittal Deadline: Friday, March 23rd, 2018 at 2:30 PM CST**

The University of Texas System  
UNIVERSITY LANDS

Prepared By:  
Darya Vienne  
The University of Texas System  
210 West 7th St.  
Austin, Texas 78701-2891  
dvienne@utsystem.edu  
March 9th, 2018

**REQUEST FOR QUALIFICATIONS**

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## SECTION 1

### INTRODUCTION

#### 1.1 Description of The University of Texas System

The University of Texas System (“**UT System**”) is one of the nation’s largest systems of higher education, consisting of fourteen university and medical institutions that collectively enroll more than 217,000 students and employ more than 20,000 faculty and 70,000 healthcare professionals. UT System is committed to improving the lives of Texans and people all over the world through education, research and health care.

#### 1.2 Objective of Request for Qualifications

UT System requests responses from qualified companies (“**Respondents**”) in order to identify and select an exceptional engineering company experienced in providing services in reserve estimation and upstream / midstream technical and economic analyses. Reserve analyses will provide an estimate of proven, probable, and possible reserves and values (both including and excluding state production and ad valorem taxes).

Services would be made available to the UT System for a period of three (3) years after signed contract, with the option of up to two (2) additional one (1) year extensions.

#### 1.3 Overview of Services Requested

Working with University Lands technical and financial staff, successful Respondent (“**Contractor**”) must:

1. Prepare the Reserve Report in accordance with the definitions and guidelines set forth in the 2007 Petroleum Resources Management System (PRMS) approved by the Society of Petroleum Engineers.
2. Estimate proved, probable and possible reserves on the University of Texas System, Permanent University Fund lands net royalty interests.
3. Prepare an official estimate of the future values associated with the proved, probable and possible reserves including state production taxes and ad valorem taxes, along with a secondary estimate of the future values associated with the proved, probable and possible reserves excluding state production taxes and ad valorem taxes.
4. Respond to various questions from The University of Texas System, University Lands (“**UL**”), and the audit process that may be requested.
5. Provide pertinent technical and economic oil and gas upstream and midstream economic analyses, on an as needed basis.
6. Provide PHDWin database and files of any maps used to perform services outlined in lines 1-6.

## SECTION 2

### RESPONSE REQUIREMENTS

#### 2.1 Submittal Deadline

UT System will accept Responses submitted in response to this RFQ until 2:30 p.m., Central Standard Time (“CST”) on Friday, March 23rd, 2018 (the “**Submittal Deadline**”).

#### 2.2 University Contact Person

Respondents to this RFQ should direct all questions or concerns regarding this RFQ to the following University contact (“**UT System Contact**”):

**Darya Vienne**  
**Email: [dvienne@utsystem.edu](mailto:dvienne@utsystem.edu)**

University specifically requests that Respondents restrict all contact and questions regarding this RFQ to the above named individual via email. Discussions (written or verbal) related to the services in this RFQ with parties other than the University Point of Contact are grounds for Respondent disqualification. University Contact must receive all questions or concerns no later than 2:30 p.m. CST on Wednesday, March 14th, 2018. University will have a reasonable amount of time to respond to questions or concerns. It is University’s intent to respond to all appropriate questions and concerns; however, University reserves the right to decline to respond to any question or concern.

#### 2.3 Criteria for Selection

The successful Respondent, if any, selected by UT System through this RFQ will be based on - Respondents’ submittal on or before the Submittal Deadline and the information provided in response to **Section 3. Qualification Criteria**.

The evaluation of responses and the selection of qualified Respondents will be based on the information provided in the responses. UT System may consider additional information if UT System determines the information is relevant.

Criteria to be considered by UT System in evaluating responses and selecting qualified Respondents, will be these factors:

- A. Vendor Capabilities to Meet Scope of Work and Additional Services (30%);
- B. Experience (30%);
- C. Service Quality, Operational Plan and Familiarity with the Software (e.g. Petra, PHDWin) (30%);
- D. Staffing / Resources / Capacity / Support (10%);
- E. Information Security: General Data Protection (NOT SCORED).

UT System reserves the right to award none, any, or all of the Services described in this RFQ.

Pricing is not an element of the RFQ process, and information related to pricing should not be included in response to this RFQ.

#### 2.4 Notice

All Respondents will be notified of determination of qualification / non-qualification by the UT System point of contact via e-mail.

## 2.5 Key Events Schedule

Issuance of RFQ	Friday, March 9th, 2018
Deadline for Questions / Concerns (ref. <b>Section 2.2</b> of this RFQ)	2:30p.m. CST on Wednesday, March 14 <sup>th</sup> , 2018
Submittal Deadline (ref. <b>Section 2.1</b> of this RFQ)	2:30p.m. CST on Friday, March 23rd, 2018

## 2.6 Number of Copies

Responder must submit:

- A. One (1) complete paper copy of its *entire* response. Response must be typed on letter-size (8-1/2" x 11") paper. Preprinted material should be referenced in the proposal and included as labeled attachments. Sections within a response should be divided by tabs for ease of reference.

An original signature by an authorized officer of Responder must appear on the Qualification Request Form (ref. **Section 4**). ***UT System does not consider electronic signatures to be valid therefore the original signature must be a "wet signature."***

- B. One (1) complete and identical electronic copy of its entire proposal in a single .pdf file on USB Flash Drive. The USB Flash Drive must include a protective cover and be labeled with Respondents name and RFQ number.

## 2.7 Submission

Responses must be received by UT System on or before the Submittal Deadline (ref. **Section 2.1** of this RFQ) and should be delivered to:

The University of Texas System Administration  
210 West 7th St.  
Austin, Texas 78701-2891  
**Attn: Darya Vienne**

**NOTE: Show the Request for Qualification number and submittal date in the lower left-hand corner of sealed bid envelope (box / container).**

Late responses properly identified will be returned to Respondent unopened. Late responses will not be considered under any circumstances.

NOTE: It is the responsibility of the Respondent to ensure that their response is submitted to meet the deadline date and time requirements.

## 2.8 General Instructions

- A. Respondents should carefully read the information contained herein.
- B. Submittals and any other information submitted by Respondents in response to this RFQ shall become the property of UT System.

- C. Failure to comply with the requirements contained in this RFQ may result in rejection of the response.
- D. Responses to **Section 3** of this RFQ cannot exceed twenty (20) pages.
- E. Responses submitted by telephone, facsimile (“FAX”), or Email are not acceptable in response to this RFQ.
- F. If Respondent takes exception to any terms or conditions set forth in the Engineering Services Agreement (ref. **APPENDIX ONE**), Respondent must redline **APPENDIX ONE** and include **APPENDIX ONE** as part of its response. If Respondent agrees with terms or conditions set forth in the **APPENDIX ONE**, Respondent will submit a written statement acknowledging it.

## 2.9 Submittal Checklist

Respondents are instructed to complete, sign, and return the following documents as a part of its proposal. If a Respondent fails to return each of the following items with its proposal, then UT System may reject the response:

- A. Responses to Qualification Criteria (ref. **Section 3**).
- B. Signed and Completed Qualification Request Form (ref. **Section 4**).
- C. Signed and completed originals of the HUB Subcontracting Plan or other applicable documents (ref. **Section 2.10** of this RFQ).
- D. Redlined **APPENDIX ONE**, Engineering Services Agreement (if applicable)

## 2.10 Historically Underutilized Businesses

HISTORICALLY UNDERUTILIZED BUSINESSES’ SUBMITTAL REQUIREMENTS: It is the policy of The University of Texas System and each of its component institutions, to promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses (HUB) in all contracts. Accordingly, The University of Texas System has adopted Exhibit H, Policy on Utilization of Historically Underutilized Businesses (see **APPENDIX TWO**). The Policy applies to all contracts with an expected value of \$100,000 or more. If University of Texas System determines that subcontracting opportunities are probable, then a HUB Subcontracting Plan is a required element of the Qualifications. Failure to submit a required HUB Subcontracting Plan will result in rejection of the Qualifications. The HUB participation goal for this RFQ is **23.7%**.

### STATEMENT OF PROBABILITY

The University of Texas System has determined that subcontracting opportunities are probable in connection with this procurement solicitation. Therefore, a HUB Subcontracting Plan (HSP) is required as a part of the respondent's Qualifications. The respondent shall develop and administer a HSP as a part of the respondent's Qualifications in accordance with the University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUB), Exhibit H.

Proposer must submit, **via email**, one (1) signed HSP in PDF format to University on Friday, March 23rd, 2018 at 2:30 PM CST (ref. **Section 3.2** of this RFQ.) to the email address below:

**HSP Submittal Email:** [utadminHSP@utsystem.edu](mailto:utadminHSP@utsystem.edu)



Respondent must include the following information in the email submission:

Subject Line: *RFQ #720-1815, Reserve Estimation, Upstream and Midstream Technical and Economic Analysis Services, Friday, March 23rd, 2018 at 2:30 PM CST, HUB Subcontracting Plan*

Body: Respondent company name and the name and contact information of the person who prepared the HSP.

*Questions regarding the HSP may be directed to:*

Contact: Kyle Hayes  
HUB Coordinator  
Phone: 512-322-3745  
Email: [khayes@utsystem.edu](mailto:khayes@utsystem.edu)

The HSP is submitted **separately from the submittal of qualifications**. Respondent must submit the HSP to the email address noted above.

## SECTION 3

### QUALIFICATION CRITERIA

Narratives provided in response to criteria listed below must address specific items noted with each criterion. Respondent can also include additional information Respondent believes UT System should know when determining qualifications. Respondent's response to **Section 3** cannot exceed the maximum number of pages (ref. **Section 2.8 D**).

#### Evaluation Questions for Supplier Response

<p>A. Vendor Capabilities to Meet Scope of Work and Additional Services <b>(30%)</b></p>	<ol style="list-style-type: none"><li>1. Describe how Respondent's product or service meets the preferred qualifications listed in Scope of Work.</li><li>2. Briefly describe the key strengths of Respondent's services.</li><li>3. Explain if Responder is able to provide pertinent and astute technical and economic analyses of oil and gas upstream and midstream projects.</li><li>4. Describe if Respondent is able to analyze UL operators' methane emissions to ensure that environmental best practices are being upheld.</li><li>5. Describe Respondent's capability to prepare a Reserves Report in accordance with the definitions and guidelines set forth in the 2007 Petroleum Resources Management System (PRMS) approved by the Society of Petroleum Engineers including:<ol style="list-style-type: none"><li>a. Estimates of proven, probable and possible reserves on the University of Texas System, Permanent University Fund lands net royalty interest.</li><li>b. An official estimate of future values associated with the proved probable and possible reserves, including state production taxes and ad valorem taxes.</li><li>c. A secondary estimate of future values associated with the proved probable and possible excluding state production taxes and ad valorem taxes</li><li>d. Data in a PHDWin database along with files of any maps used to perform services outlined in Exhibit 1-5 of the attached Scope of work?</li></ol></li></ol>
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	<ul style="list-style-type: none"> <li>e. Respondent's timetable for the Scope of Work, described in this RFQ.</li> <li>f. Responses to various questions from the University of Texas System, University Lands, and the Reserve Auditors regarding the above mentioned Reserves process and its findings in a timeframe defined by the auditors.</li> </ul>
B. Experience <b>(30%)</b>	<p>6. Provide Respondent's company business profile including years in business, structure of organization, client base, company growth over the last three (3) years, number of employees and other relative information.</p> <p>7. References: Provide a listing of Respondent's current and past projects / customers similar in size and scope to the services described in the RFQ. If applicable, list examples of services rendered in the state of Texas.</p>
C. Service Quality, Operational Plan and Familiarity with the Software (e.g. Petra, PHDWin) <b>(30%)</b>	<p>8. Describe Respondent's strategy to provide the Services, described in this RFQ.</p> <p>9. Explain in detail the timeline required to fulfill the work plan.</p> <p>10. Describe expertise in referenced software from a geological and engineering perspective</p>
D. Staffing / Resources / Capacity / Support <b>(10%)</b>	<p>11. Provide information on key staff who will be involved on working on UT System account including roles, responsibilities, and resumes.</p> <p>12. Describe accessibility throughout the process including post reserve process audit.</p>
E. Security Questions (NOT SCORED)	<p>While the responses to Security Questions will not be scored, failure to provide responses on each question below may disqualify the Respondent.</p> <p>13. Does Respondent have an information security plan in place, supported by security policies and procedures, to ensure the protection of information and information resources? If so, provide an outline of the plan and note how often it is updated. If not, describe what alternative methodology Respondent uses to ensure the protection of information and information resources.</p>

14. Describe the procedures and tools used for monitoring the integrity and availability of the information systems interacting with the service proposed, detecting security incidents, and ensuring timely remediation.
15. Describe the physical access controls used to limit access to Respondent's data center and network components.
16. What procedures and best practices does Respondent follow to harden all information systems that would interact with the service proposed, including any systems that would hold, process, or from which UT System data may be accessed?
17. If Respondent were selected, would Respondent agree to a vulnerability scan and penetration tests by UT System of all information systems that would interact with the service proposed including any systems that would hold, process, or from which UT System data may be accessed? If the Respondent objects to a vulnerability scan, describe in detail the reasons for objection.
18. Does Respondent have a data backup and recovery plan, supported by policies and procedures, in place for the hosted environment? If so, provide an outline of the plan and note how often it is updated. If not, describe what alternative methodology Respondent will use to ensure the restoration and availability of UT System data.
19. Does Respondent encrypt data backups? If so, describe the methods used to encrypt backup data. If not, what alternative safeguards will Respondent use to protect UT System data backups against unauthorized access?
20. Does Respondent encrypt data in transit and at rest? If so, describe how that security is provided. If not, what alternative methods are used to safeguard data in transit and at rest?
21. What technical security measures does Respondent propose to take to detect and prevent unintentional

(accidental) and intentional corruption or loss of UT System data?

22. What safeguards does Respondent have in place to segregate UT System and other customers' data to prevent accidental or unauthorized access to UT System data?

23. What safeguards does Respondent have in place to prevent the unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access, or disclosure of UT System data?

24. What administrative safeguards and best practices does Respondent employ with respect to staff members (Respondent and third-party) who would have access to the environment hosting all information systems that would interact with the service proposed, including any information systems that would hold, process, or from which UT System data may be accessed, to ensure that UT System data and resources will not be accessed or used in an unauthorized manner.

25. Describe the procedures and methodology in place to detect information security breaches and notify customers in a manner that meets the requirements of HIPAA and Texas breach notification laws.

26. Describe the procedures Respondent has in place to isolate or disable all information systems that would interact with the service proposed, including any systems that would hold, process, or from which Institution data may be accessed, when a security breach is identified?

27. Describe the safeguards in place to ensure that all information systems that would interact with the service proposed, including any systems that would hold, process, or from which UT System data may be accessed, reside within the United States.

#### Data Security and Handling of Data

28. Data Separation. Describe Respondent's implementation strategy for segregating sensitive and non-sensitive data including: 1) How Respondent ensures different levels of protection

mechanisms and security controls based on the University of Texas System Data Classification scheme; and 2) How Respondent integrates updated or new security controls specified by the University of Texas System.

29. Data Disposition and Removal. Explain how Proposer reliably deletes UT System data upon request or under the terms of the contractual agreement. Describe the evidence that is available and provided after data has been successfully deleted.

30. Encryption for Data in Transit. Explain how strong encryption using a robust algorithm with keys of required strength are used for encryption in transmission and in processing per requirements identified in NIST 800-53v4. Explain how cryptographic keys are managed, protection mechanisms, and who has access to them. Describe how strong data encryption is used for web sessions and other network communication including data upload and downloads. Define how encryption in transmission is used to ensure data security between applications (whether cloud or on premise) and during session state.

31. Encryption for Data at Rest. Describe how strong data encryption is applied to data at rest in all locations where Confidential information is stored.

**SECTION 4**

**QUALIFICATION REQUEST FORM**

Name of responding entity: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

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

Contact E-mail Address: \_\_\_\_\_

Contact Phone Number(s): \_\_\_\_\_

By completing and signing this form, the Respondent affirms that all the information is true and correct. The person signing below further affirms that they are a duly authorized representative of the Respondent's firm.

Submitted and Certified by:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

AGREEMENT  
for  
MISCELLANEOUS ENGINEERING SERVICES  
on  
PROJECTS OF LIMITED SCOPE

This Agreement is made as of \_\_\_\_\_, 2018 (the "Effective Date"), by and between:

University Lands:      The Board of Regents of the University of Texas System  
                                 c/o University Lands  
                                 825 Town & Country Way, Suite 1100  
                                 Houston, Texas 77024

and

The Engineer:            \_\_\_\_\_  
                                 \_\_\_\_\_  
                                 \_\_\_\_\_

This Agreement is for the provision of reserves estimation, upstream and midstream technical and economic analysis services, to be performed on a non-exclusive basis, as requested by the University Lands in accordance with the terms of this Agreement. Engineer represents that it has the knowledge, ability, skills and resources to provide such services in accordance with the terms and requirements of this Agreement.

University Lands and Engineer agree as follows:

ARTICLE 1  
TERM OF AGREEMENT

1.01    **Initial Term:** This initial term of this Agreement shall begin on the effective date and shall expire thirty six (36) months after that date unless renewed or terminated in accordance with the terms of the Agreement.

1.02    **Renewal Option:** University Lands has the option to renew the Agreement on the terms herein for two (2) successive twelve (12) month periods upon written notice to the Engineer at least thirty (30) days prior to the expiration of the initial or any subsequent term.

1.03    **Completion of Work in Progress:** University Lands has the option to extend the term of this Agreement, or any renewal period, as necessary for Engineer to complete work on any project approved the University Lands prior to the expiration of the Agreement.

ARTICLE 2  
MAXIMUM AUTHORIZED CONTRACT SUM

2.01    **Maximum Contract Sum:** The total, maximum, not-to-exceed amount of money authorized for payment to Engineer for services provided pursuant to this Agreement is \_\_\_\_\_ Dollars (\$\_\_\_\_\_,00). Total billings for authorized work performed by the Engineer shall not exceed this maximum contract sum. The maximum contract sum shall not be increased except by written amendment to this Agreement executed by University Lands and the Engineer.



2.02 **No Minimum Amount of Work:** University Lands makes no representations regarding the amount or type of services, if any, that Engineer will be asked to provide to University Lands during the term(s) of this Agreement. It is expressly understood that University Lands is under no obligation to request any services from Engineer and no minimum amount of work is required or contemplated under this Agreement. All service requests will be made by the University Lands on an as-needed basis, subject to future agreement on the scope of the work and the fee.

### ARTICLE 3 SCOPE OF WORK

3.01 **In General:** The Engineer agrees to provide Engineering and technical services on a per-project basis as requested by the University Lands in accordance with the terms of this Agreement. These services are generally described as, but not limited to:

- Prepare the **Reserve Report [NTD: Defined in RFQ.]** in accordance with the definitions and guidelines set forth in the 2007 Petroleum Resources Management System (PRMS) approved by the Society of Petroleum Engineers.
- Estimate the proved, probable and possible reserves associated with the University of Texas System, Permanent University Fund lands net royalty interests.
- Prepare an official estimate of the future values associated with the proved, probable and possible reserves, including state production taxes and ad valorem taxes, along with a secondary estimate of the future values associated with the proved, probable and possible reserves excluding state production taxes and ad valorem taxes.
- Provide timely support and data in responding to various questions from The University of Texas System, University Lands and internal and external audits as requested.
- Provide other technical and economic oil and gas upstream and midstream economic analyses as requested by University Lands.
- Provide PHDWin database and files of any maps used to perform services outlined in foregoing services.

3.02 **Project Scope:** The specific scope of work for each project shall be determined in advance and in writing between University Lands and the Engineer.

3.03 **Project RFP:** University Lands shall prepare a Project Request for Proposal (“Project RFP”) identifying the project and describing, in general, the intended scope and character of the project, the preliminary cost estimate and schedule for the project, and the basic services to be provided by the Engineer for the project.

3.04 **Project Proposal:** In response to a Project RFP, the Engineer shall provide University Lands with a written Project Proposal. The Project Proposal shall include the following:

- a. A narrative description of Engineer’s understanding of the project scope of work;
- b. A detailed statement of the basic and additional services anticipated for the project, including a list of deliverables;
- c. A description of particular phases of the scope of the work, if applicable;
- d. A Fee Proposal detailing:
  1. the total fee for providing the basic services expressed as a “Not to Exceed” amount;
  2. the total fee for providing additional services expressed as a “Not to Exceed” amount;
  - and
  3. the total anticipated amount for reimbursable expenses;

- e. A proposed date to commence the work;
- f. A list of all consultants, persons and firms that Engineer proposes to use in the performance of Engineer's scope of work;
- g. A schedule of hourly billing rates for any consultants that Engineer proposes to use in the performance of Engineer's scope of work;
- h. A HUB Subcontracting plan, if required;
- i. Any qualifications or conditions applicable to the Project Proposal; and
- j. A summary statement of the amount of all previous proposals entered into under this Agreement to date.

3.05 **Project Proposal Review:** University Lands and the Engineer shall review Engineer's Project Proposal and negotiate any changes, clarifications or modifications thereto. The Engineer shall submit a revised Project Proposal incorporating any changes, clarifications or modifications made in the review process. The University Lands may accept, reject or seek modification of any Project Proposal.

3.06 **Notice to Proceed:** Upon approval of a Project Proposal by the University Lands, the University Lands shall issue a written Notice to Proceed. The Notice to Proceed authorizes the Engineer to begin the work identified in the Project Proposal on the date specified in the Notice. The Notice to Proceed shall include a Purchase Order number specific to the project.

#### ARTICLE 4 ENGINEER'S GENERAL SERVICES AND RESPONSIBILITIES

4.01 **Project Manager:** The Engineer shall manage the Engineer's services and administer any project authorized pursuant to this Agreement. The Engineer shall provide and/or coordinate the basic services necessary and reasonably inferable for the complete performance of any project authorized pursuant to this Agreement.

4.02 **Standard of Care:** Engineer agrees and acknowledges that University Lands is entering into this Agreement in reliance on Project Engineer's represented professional abilities with respect to performing Project Engineer's services, duties, and obligations under this Agreement. Project Engineer shall perform its Services (i) with the professional skill and care ordinarily provided by competent Engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent Engineer; and (iii) in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. There are no obligations, commitments, or impediments of any kind known to the Project Engineer that will limit or prevent performance by Project Engineer of its services. Project Engineer hereby agrees to correct, at its own cost, any of its Services, and the services of its consultants, that do not meet the standard of care.

Engineer shall at all times provide a sufficient number of qualified personnel to accomplish Engineer's services within the time limits set forth in the schedule.

4.03 **Compliance with Laws:** Engineer shall endeavor to perform Engineer's Services in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project.

4.04 **Existing Conditions:** Engineer shall use reasonable efforts to verify the accuracy and suitability of instructions, information, requests and other data supplied to Engineer by University Lands, or any other party, that Engineer uses for the Project.

4.05 **Correction of Work:** Engineer's services shall be reasonably accurate and free from material errors or omissions. Upon notice, Engineer shall promptly correct any known or discovered error, omission, or other defect without any additional cost or expense to University Lands.

4.06 **Representative:** Engineer shall designate a representative primarily responsible for Engineer's services under this Agreement. The designated representative shall act on behalf of Engineer with respect to all phases of Engineer's services and shall be available as required for the benefit of any project and University Lands. The designated representative shall not be changed without prior approval of the University Lands, which approval shall not be unreasonably withheld.

4.07 **Documentation:** The Engineer shall fully document its project activities, in drawings, reports or other methods as appropriate to the scope of work and as identified in the Project Proposal. The Engineer shall bear the cost of providing all plans, specifications and other documents used by the Engineer and its consultants.

## ARTICLE 5 UNIVERSITY LANDS'S RESPONSIBILITIES

5.01 **Project Program:** University Lands shall provide a Project RFP setting forth the description of the project scope and a description of the basic services to be provided by the Engineer for the project.

5.02 **Representative:** The University Lands designates the Office of Facilities Services as its representative authorized to act in the University Lands's behalf with respect to the Project. The University Lands designates the Director of Facilities Services or his designee as its representative for the purpose of administering this contract.

5.03 **Special Information:** University Lands shall furnish available data relevant to the project. University Lands makes no warranties or representations as to the accuracy or suitability of information provided to the Engineer by University Lands or by others.

5.04 **Entry on Land:** University Lands shall assist Engineer in gaining entry to state owned or controlled property as necessary for Engineer to perform its services under this Agreement.

5.05 **Administrative Services:** University Lands shall furnish all legal, accounting, auditing and insurance counseling services that it requires for the Project.

5.06 **Review of Work:** University Lands will review the Engineer's documents as described in the Project Proposal. University Lands will provide its review comments or decisions regarding the documents to Engineer in a reasonably prompt manner. University Lands will notify Engineer in writing of any material error or omission or other defect in the project or any conflict in the contract documents that University Lands becomes aware of, but University Lands shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist.

5.07 **Time for Response:** University Lands shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Engineer's services and of the Work.

ARTICLE 6  
ACCEPTANCE OF WORK

6.01 **University Lands Satisfaction:** All work performed under this Agreement shall be completed to the satisfaction of the University Lands representative assigned to the project. The University Lands representative shall decide all questions regarding Engineer's performance under the Agreement and such decisions shall be final and conclusive.

6.02 **Correction of Work:** If Engineer's services do not conform to the requirements of this Agreement and the Project Proposal as determined by the University Lands representative, University Lands may order the Engineer to re-perform such services at no additional expense to the University Lands or deduct the fees for such services from any other fees payable to the Engineer.

6.03 **Liability:** The approval or acceptance by University Lands of Engineer's services will not release Engineer from any liability for such services because University Lands is, at all times, relying upon Engineer's skill and knowledge in performing Engineer's services.

ARTICLE 7  
COMPENSATION FOR SERVICES RENDERED

7.01 **University Lands Approval Required:** University Lands agrees to pay Engineer for those services rendered at the specific request of University Lands, in advance and in writing.

7.02 **Scheduled Billing Rates:** Attached as Exhibit A, and incorporated herein, is Engineer's Schedule of Billing Rates, including hourly billing rates and/or per service billing rates as applicable. The Billing Rates include all costs for any identified services and the Engineer shall not be entitled to any additional compensation for providing those services. The Schedule of Billing rates shall remain in full force and effect for the term of this Agreement, including all renewal periods.

7.03 **Basic Service:** For Basic Services rendered in connection with any project authorized pursuant to this Agreement, Engineer shall be compensated on an hourly rate basis or on a per-service fee basis in accordance with Engineer's Project Proposal, up to the maximum "Not to Exceed" amount approved in Engineer's Project Proposal.

7.04 **Additional Services:** Additional Services are services not identified or reasonably inferable as Basic Services included in a Project Proposal. Additional Services shall be provided only if authorized or confirmed in writing by the University Lands. For approved Additional Services provided in connection with any project authorized by this Agreement, Engineer shall be compensated on an hourly rate basis or on a per-service fee basis in accordance with Engineer's Additional Services Proposal, up to the maximum "Not to Exceed" amount approved in Engineer's Additional Services Proposal.

7.05 **Consultant Costs:** Unless approved in advance by University Lands, Engineer shall pay for all consultant services and costs associated with its services under this Agreement, whether basic services or additional services, out of his fees. University Lands is not responsible for any such consultant fees or costs unless otherwise agreed to in writing.

7.06 This Agreement is not valid or effective for amounts in excess of \$1,000,000 without the approval of The University of Texas System Board of Regents and Contractor's appropriate completion and submission of Texas Ethics Commission Form 1295.

ARTICLE 8  
REIMBURSABLE EXPENSES

8.01 **Reimbursable Expenses:** Reimbursable Expenses are in addition to compensation for basic and additional services. Reimbursable Expenses recoverable by Engineer under this Agreement are limited to the following:

- a. Expenses in connection with out-of-state travel, including coach class air fare and reasonable living expenses, as directed and approved in advance and in writing by University Lands;
- b. Expenses in connection with in-state travel, including reasonable travel and living expenses, for Engineer's employees and consultants when a project is located more than 50 miles from the place where they are usually and customarily assigned, but only as directed and approved in advance and in writing by University Lands;
- c. Fees paid for securing approval of authorities having jurisdiction over any particular project;
- d. Expenses of reproductions, printing, collating, postage and handling of Drawings, Specifications, Reports and other documents or other project related work product, but excluding plotting costs of drawings, reproductions for the use of Engineer and Engineer's consultants as well as up to three (3) review sets as necessary for progressive reviews by University Lands in accordance with the Project Proposal.
- e. Communication expenses such as long distance telephone, facsimile transmissions, express charges and postage that are directly attributable to the project;
- f. Disbursements made by the Engineer under approved subcontracts;
- g. Reasonable costs for rental or use of special equipment, tools, and electronic data processing equipment required in connection with the project if approved in advance and in writing by University Lands;

8.02 **Compensation for Reimbursable Expenses:** Engineer and its employees and consultants, shall be compensated for the actual, out-of-pocket, reasonable costs for all approved Reimbursable Expenses that are incurred solely and directly in connection with the performance of the Engineer's services and duties under this Agreement or in the interest of any particular project.

8.03 **Proposal Costs Not Recoverable:** Engineer is solely responsible for any expenses or costs, including expenditures of time, incurred by the Engineer and its employees and consultants in the development of Project Proposals or Additional Services Proposals. Such expenses or costs are not Reimbursable Expenses.

ARTICLE 9  
INVOICING

9.01 **Monthly Invoices:** Engineer shall submit a monthly record or invoice of services performed under this Agreement identifying all fees earned and reimbursable expenses incurred in the previous month. Invoices shall be submitted in a format approved by the University Lands and must contain at least the following information:

- a. Project Name and Work Order Number;
- b. University Lands Agreement Number;
- c. Engineer's Tax Identification Number;
- d. Name of Project Manager;

- e. Identification of billing period, by calendar month, to which the invoice applies;
- f. Itemized description of services provided including the names, billing rates and amount of time per task expended by all persons who performed services on the project during the billing period.
- g. Completion status of project by percentage;
- h. Total amount of invoice;
- i. Total amount of prior invoices and maximum contract sum;
- j. Copy of all receipts in support of any reimbursable expenses invoiced;

9.02 **Limited to Maximum Contract Sum:** It is the responsibility of Engineer not to provide services or submit invoices that exceed the maximum contract sum. Services provided, and/or expenses incurred that exceed the maximum contract sum without the written consent of University Lands will be at Engineer's financial risk and University Lands shall not be obligated to pay for any such services or expenses.

9.03 **Prompt Payment:** For purposes of Texas Government Code § 2251.021(a)(2), the date the performance of service is completed is the date when the University Lands representative approves the invoice. Payment of invoices shall be made within 30 days of approval by University Lands.

9.04 **Invoice Submittal:** Invoices shall be submitted to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

9.05 **Exceptions to Payment:** Regardless of any other provision of this Agreement, University Lands shall not be obligated to make any payment requested by Engineer under this Agreement if any of the following conditions precedent exist:

- a. Engineer is in breach or default under this Agreement;
- b. The requested payment includes services not performed in accordance with this Agreement; provided, however, payment shall be made the balance of the services that are performed in accordance with this Agreement;
- c. The total of Engineer's invoices exceed the maximum contract sum;
- d. Engineer has failed to make payments promptly to consultants or other third parties used in connection with the services for which University Lands has made payment to Engineer;
- e. Engineer becomes insolvent, makes a general assignment of its rights or obligations for the benefit of its creditors, or voluntarily or involuntarily files for protection under the bankruptcy laws; or
- f. If University Lands, in its good faith judgment, determines that the balance of unpaid compensation is insufficient to complete the services required under this Agreement.

9.06 **Partial Payment:** No partial payment by University Lands shall constitute or be construed as final acceptance or approval of any services or as a release of any of Engineer's obligations or liabilities with respect to such services.

9.07 **Subcontractor Payment:** Engineer shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services.

9.08 **Final Payment and Release:** The acceptance by Engineer or Engineer's successors of final payment under this Agreement, shall constitute a full and complete release of University Lands from any and all claims, demands, and causes of action whatsoever that Engineer or Engineer's successors have or may have against University Lands pursuant to this Agreement except those claims specifically identified in writing by Engineer as unsettled at the time of the final request for payment.

#### ARTICLE 10 ENGINEER'S ACCOUNTING RECORDS

Engineer shall maintain records of costs, expenses and billings pertaining to services performed under this Agreement in accordance with generally accepted accounting principles. Such records shall be available to University Lands or the University Lands authorized representative at mutually convenient times for a period of at least three (3) years after expiration or termination of this Agreement. University Lands shall have the right to audit and to verify the details set forth in Engineer's billings, certificates, and statements, either before or after payment. The terms of this paragraph shall survive any termination of the Agreement.

#### ARTICLE 11 OWNERSHIP AND USE OF DOCUMENTS

11.01 All documents prepared by the Engineer will be the exclusive property of University lands. With written permission from University Lands, Engineer may to retain copies, including reproducible copies, of all documents prepared by the Engineer for information and reference only in connection with future services that may be provided to University Lands.

#### ARTICLE 12 TERMINATION OF AGREEMENT

12.01 **Termination for Cause:** This Agreement may be terminated by either party upon ten (10) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the terminating party and such failure is not fully cured prior to the expiration of the notice period. If a termination for cause under this section is later determined to be improper, the termination shall automatically convert to a termination for convenience under section 12.02, and Engineer's recovery for termination shall be strictly limited to the compensation allowable under section 12.02

12.02 **Termination for Convenience:** This agreement may be terminated for convenience by the University Lands in whole or in part, upon at least ten (10) days written notice to the Engineer.

12.03 **Compensation:** In the event of termination not the fault of the Engineer, the Engineer shall be entitled to compensation for all services satisfactorily performed to the termination date, together with approved Reimbursable Expenses then due, provided Engineer delivers to University Lands statements, accounts, reports and other materials as required for payment along with all reports, documents and other materials prepared by Engineer prior to termination.

#### ARTICLE 13 DISPUTE RESOLUTION

13.01 To the extent that it is applicable, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used by the Engineer to resolve any claim for breach of

contract made by Engineer that is not resolved in the ordinary course of business between Project Engineer and University Lands.

13.02 **Alternative Dispute Resolution Process.** University Lands may establish a dispute resolution process to be utilized in advance of that outlined in Tex. Gov't Code, Chapter 2260.

13.03 Nothing herein shall hinder, prevent, or be construed as a waiver of University Lands's right to seek redress on any disputed matter in a court of competent jurisdiction.

13.04 In any litigation between the University Lands and the Engineer arising from this Agreement or this Project, neither party will be entitled to an award of legal fees or costs in any judgment regardless which one is deemed the prevailing party.

13.05 Nothing herein shall waive or be construed as a waiver of the State's sovereign immunity.

13.06 Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Engineer, in whole or in part. University Lands and Engineer agree that any periods set forth in this Agreement for notice and cure of defaults are not waived, delayed, or suspended by Chapter 2260 or this section.

13.07 In accordance with Chapter 2260, the University Lands designates \_\_\_\_\_ as its representative for the purpose of reviewing Engineer's claim(s) and negotiating with Engineer in an effort to resolve such claim(s).

#### ARTICLE 14 INSURANCE

14.01 Contractor, consistent with its status as an independent contractor will carry at its sole cost and will cause its subcontractors to carry, at its sole cost, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-:VII or better, in the following forms and with amounts not less than the following minimum limits of coverage:

14.01.1 Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

Employers Liability - Each Accident	\$1,000,000
Employers Liability - Each Employee	\$1,000,000
Employers Liability - Policy Limit	\$1,000,000

Workers' Compensation policy must include any states where contractor performs operations for University.

14.01.2 Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Personal & Advertising Liability	\$1,000,000
General Aggregate	\$2,000,000

The required Commercial General Liability policy will be issued on a form that insures Contractor's liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.



- 14.01.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for Bodily Injury and Property Damage
- 14.01.4 Umbrella/Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and aggregate, and will be excess over and at least as broad as the underlying coverage as required under sections 11.1.1 Employer's Liability; 11.1.2 Commercial General Liability; and 11.1.3 Business Auto Liability. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.
- 14.01.5 Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 per claim. Such insurance will cover all Work performed by or on behalf of Contractor under this Agreement. Contractor warrants that any professional subcontractors used to perform scope under this agreement will maintain the same coverage as Contractor. Policies written on a claims-made basis will maintain the same retroactive date, if any, as in effect at the inception of this Agreement or will be effective prior to the inception date of this agreement. If coverage is written on a claims-made basis, Contractor agrees to purchase and keep continuous coverage in force during the contract term with University. If a claims-made policy is cancelled, expires or is replaced during the contract term, Contractor agrees to purchase an *Extended Reporting Period Endorsement* effective for thirty-six (36) months after the expiration, cancellation or replacement of the policy in order to maintain continuous coverage throughout the contract period, and be effective thirty-six (36) months after the contract period, the expiration, cancellation or replacement of the policy. No Professional Liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least thirty-six (36) months after the expiration or termination of this Agreement for any reason.
- 14.01.6 Contractor will maintain Cyber Liability insurance with limits of not less than \$5,000,000 for each wrongful act, that provides coverage for:
- Liability for security or privacy breaches, including loss or unauthorized access to University Data, whether by Contractor or any of subcontractor or cloud service provider used by Contractor;
  - Costs associated with a privacy breach, including consumer notification, customer support/crisis management, and costs of providing credit monitoring services;
  - Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
  - Costs of restoring, updating or replacing UT data; Privacy liability losses connected to network security, privacy, and media liability.

Certificates of Insurance and Additional Insured Endorsements reflecting applicable limits, sub-limits, self-insured retentions and deductibles will be provided to University upon request. Engineer will be responsible for any and all deductibles, self-insured retentions or waiting period requirements. If the Cyber Liability policy is written on a claims-made basis, the retroactive date should be prior to the commencement of this agreement/addendum. If the Cyber Liability policy is written on a claims-made basis and non-renewed at any time during and up until the project completion signing date, Engineer shall purchase an Extended Reporting Period for at least a two-year period. University “its subsidiaries” and The Board of Regents of the University of Texas System will be named as an additional insureds and University will be provided with a waiver of subrogation, both by endorsement to the required Cyber Liability policy. In addition, the Insured vs. Insured exclusion shall not apply to University “its subsidiaries” and The Board of Regents of the University of Texas System for a wrongful act of Engineer.

- 14.02 Engineer will deliver to University:
- 14.02.1 Evidence of insurance on a Texas Department of Insurance approved certificate form (Acord form is a Texas Department of Insurance pre-approved form) verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance of any Work by Engineer under this Agreement. Additional evidence of insurance will be provided verifying the continued existence of all required insurance no later than thirty (30) days prior to each annual insurance policy renewal.
- 14.02.2 *All insurance policies* (with the exception of workers’ compensation, and employer’s liability and professional liability) will be endorsed and name The University of Texas System Board of Regents, the University of Texas System and University Lands as Additional Insureds for liability caused in whole or in part by Engineer’s acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by Engineer. Commercial General Liability Additional Insured endorsement including ongoing and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.
- 14.02.3 Engineer hereby waives all rights of subrogation against The University of Texas System Board of Regents, The University of Texas System and The University of Texas Health Science Center at San Antonio. *All insurance policies* will be endorsed to provide a waiver of subrogation in favor of The University of Texas System Board of Regents, The University of Texas System and The University of Texas Health Science Center at San Antonio. No policy will be canceled until after thirty (30) days' unconditional written notice to University. Engineer will be required to send notice to University thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this Section 14.
- 14.02.4 Engineer will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by University Lands prior to the performance of any Work by Engineer under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

14.02.5 Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following University contact:

Name:

Address:

Facsimile Number:

Email Address:

14.02.6 Engineer's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by University or the University of Texas System. Engineer's or subcontractor's insurance will be kept in force until all Work has been fully performed and accepted by University in writing.

14.02.7 Professional Liability Insurance should be kept in force continuously during the contract term with University. Coverage written on a claims-made basis requires Administrator to purchase an *Extended Reporting Period Endorsement*, if policy expires, is canceled or replaced during the contract term, effective for thirty-six (36) months after the expiration, cancellation, or replacement of the policy.

#### ARTICLE 15 INDEMNITY

Engineer shall hold University Lands, The University of Texas System, and the Regents, officers, agents and employees of both institutions harmless and free from any loss, damage or expense arising out of any occurrence relating to this Agreement or its performance and shall indemnify University Lands and The University of Texas System, their Regents, officers, employees, customers, agents, successors and assigns against any damage or claim of any type arising from the negligent or intentional acts or omission of the Engineer, its employees, agents and/or assigns.

#### ARTICLE 16 HISTORICALLY UNDERUTILIZED BUSINESSES

University Lands has adopted a policy on Utilization of Historically Underutilized Business ("Policy"), which is incorporated herein by reference. The Policy and its requirements can be found on the following website: <http://www.utsystem.edu/offices/historically-underutilized-business/hub-forms>

Engineer, as a material provision of the Agreement, must comply with the requirements of the Policy and adhere to any HUB Subcontracting Plan submitted with Engineer's Proposal. No changes to the HUB Subcontracting Plan can be made by the Engineer without the prior written approval of the University Lands in accordance with the Policy.

ARTICLE 17  
MISCELLANEOUS PROVISIONS

17.01 **Appointment of Representative:** University Lands may designate a representative to act partially or wholly for University Lands in connection with this Agreement. Engineer shall coordinate its services solely through the designated representative.

17.02 **Independent Contractor:** Engineer acknowledges that it is engaged as an independent contractor and that University Lands shall have no responsibility to provide Engineer or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Engineer is responsible for all income taxes required by applicable law.

17.03 **Confidentiality:** Engineer shall treat any University Lands supplied information or information pertaining to University Lands business as confidential and proprietary and shall not disclose any such information to others without written approval from University Lands and only as necessary for the performance of this Agreement.

17.04 **Successors and Assigns.** University Lands and Engineer, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to the terms and conditions of this Agreement. This Agreement is a personal service contract for the services of Engineer, and Engineer's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party without written consent of University Lands. The benefits and burdens of this Agreement are, however, assignable by University Lands.

17.05 **Subcontracting:** Engineer agrees not to subcontract any part of the work without the prior written consent of University Lands. If subcontracting is permitted, Engineer must identify the subcontractor(s) to University Lands prior to any subcontractor beginning work. Submission and approval of a Historically Underutilized Businesses (HUB) Sub Contractor Plan is considered consent under this Article.

17.06 **Loss of Funding:** Performance by University Lands under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University Lands shall issue written notice to Engineer and University Lands may terminate this Agreement without further duty or obligation hereunder. Engineer acknowledges that appropriation, allotment and allocation of funds are beyond the control of University Lands.

17.07 **Open Records:** All information, documentation and other material submitted by the Engineer may be subject to public disclosure under the Public Information Act, Texas Government Code Chapter 552.

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

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

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

17.11 **Taxes:** The University of Texas System is a tax exempt State of Texas Agency under Chapter 151, Texas Tax Code and an institution of higher education. Engineer shall avail itself of all tax exemptions applicable to Engineer's work or expenses.

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

17.13 **Severability:** Should any provisions(s) of this Agreement be held invalid or unenforceable in any respect, that provision shall not affect any other provisions and this Agreement shall be construed as if the invalid or unenforceable provision(s) had not been included.

17.14 **Waivers:** No delay or omission by either party in exercising any right or power provided under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver of the right or power. A written waiver granted by either of the parties of any provision of this Agreement shall not be construed as a future waiver of that provision or a waiver of any other provision of the Agreement.

17.15 **Force Majeure:** No party shall be liable or responsible to the other for any loss or damage or for any delays or failure to perform under this Agreement due to causes beyond its reasonable control, including, but not limited to, acts of God, employee strikes, epidemics, war, riots, flood, fire, sabotage, terrorist acts or any other circumstances of like character.

17.16 **Governing Law:** This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Texas without regard for choice of law principles. All obligations of the parties created hereunder are enforceable in Travis County, Texas.

17.17 **Entire Agreement:** This Agreement constitutes the sole and only agreement between the parties with respect to the services contracted for and supersedes any prior understandings, written or oral. No modification, alteration or waiver of this Agreement or any of its provisions shall be effective unless in writing and signed by both parties. No course of prior dealings, no usage of trade, and no course of performance shall be used to modify, supplement or explain any terms used in this Agreement.

17.18 **Ethics Matters/No Financial Interest:** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available at <http://www.utsystem.edu/policy/policies/int160.html>, University's Standards of Conduct Guide available at <http://www.utsystem.edu/systemcompliance/> and applicable state ethics laws and rules available at [www.utsystem.edu/ogc/ethics](http://www.utsystem.edu/ogc/ethics). Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, provisions described by University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

17.19 **Disclosure of Interested Parties:** By signature hereon, Engineer certifies that, if the value of this agreement exceeds \$1 Million, it has complied with Section 2252.908 of the Texas Government Code and Part 1 Texas Administrative Code Sections 46.1 through 46.3 as implemented by the Texas Ethics Commission

(TEC), if applicable, and has provided the University Lands with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the Engineer.

17.20 **No Publication:** Engineer will not make any press releases, public statements or advertisement referring to this Agreement, or release any information relative to this Agreement or any project authorized under this Agreement for publication, advertisement or any other purpose, without the prior written approval of the University Lands.

17.21 **Contractor Certification regarding Boycotting Israel.** Pursuant to Chapter 2270, *Texas Government Code*, Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

17.22 **Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

ARTICLE 18  
NOTICES

18.1 All notices, consents, approvals, demands, requests or other binding communications under this Agreement shall be in writing. Written notice may delivered in person to the designated representative of the Engineer or University Lands; mailed by U. S. mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective three business days after the date of mailing. Fax notices are deemed effective the next business day after faxing.

18.2 The initially designated representatives of the parties for receipt of notices are as follows. Either party may change their designated representative for receipt of notices by written notice.

(1) If to University Lands: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

(2) With Copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

(3) If to Engineer: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Fax: \_\_\_\_\_

IN WITNESS WHEREOF, University Lands and Engineer have executed and delivered this Agreement effective as of the date identified above.

UNIVERSITY LANDS:

ENGINEER:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

CONTENT APPROVED:

\_\_\_\_\_

**EXHIBIT A – Engineer’s Schedule of Billing Rates**





THE UNIVERSITY of TEXAS SYSTEM  
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

Office of HUB Programs  
512-499-4530  
[www.utsystem.edu/hub](http://www.utsystem.edu/hub)

## Exhibit H – Policy on Utilization Historically Underutilized Businesses

*No Current Scope Definition (NSD)*

### HUB Subcontracting Plan for:

- Professional Services - Self-performing

### UT System Administration Only

For questions or clarifications regarding the HUB Subcontracting Plan, please contact the appropriate HUB Coordinator listed in the RFQ to which you are responding:

Kyle Hayes  
HUB Coordinator  
512-322-3745  
[khayes@utsystem.edu](mailto:khayes@utsystem.edu)

Revision 2 dated June 5, 2017



I.	Instructions to Complete the Self-Performing HSP	Page 2
II.	Letter of HUB Commitment	Page 3
III.	Section 1: Respondent and Requisition Information	Page 4
IV.	Section 2: Respondent's Subcontracting Intentions	Page 5
V.	Section 3: Self Performing Justification	Page 6
VI.	Section 4: Affirmation	Page 6
VII.	Sample Prime Contractor Progress Assessment Report (PAR)*	Page 7

\* **Note 1:** *If awarded a contract, the Prime Contractor Progress Assessment Report (PAR) is a required form with each payment application submitted. This form is a condition of payment.*

**UT System Administration**  
**Historically Underutilized Subcontracting Plans (HSP)**  
Commodities-31.04%, Other Services-26%, Special Trades-32.9%,  
Miscellaneous Professional Services – 23.7%

**Option 1 - Complete a Self-Performing HSP as follows:**

**Section 1**

- Respondent and Requisition Information. Complete as indicated on the form. VID # refers to the tax ID number.

**Section 2A**

- Mark the 'NO', I will not be sub-consulting any portion of the contract, and I will be fulfilling the entire contract with my own resources. Continue to Section 3.

**Section 3**

- Mark the "NO" box and in the space provided indicate how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.

\_\_\_\_\_ has the resources to complete all scopes of this RFP with our own equipment, supplies, materials and personnel. If sub-contracting opportunities are identified at a future date, we will immediately contact the project manager and HUB Coordinator and commit to perform a Good Faith Effort through solicitation of HUB firms and submit an amended HUB Subcontracting Plan.

**Section 4**

- Sign the form. Include your e-mail address and contact phone number should UT System HUB have any questions.

**HUB Subcontracting Plan Required Documents**

HUB forms may also be downloaded at: <http://www.utsystem.edu/offices/historically-underutilized-business/hub-forms>

**Changes to the Plan**

Once the HUB Plan has been submitted any changes to the HSP must be approved in writing by the UT System project manager and HUB Coordinator **prior** to any work commencing by the new subcontractor. Once the contract has been awarded the HSP is considered part of the contract. Violations to the HSP can be deemed a breach of contract by UT System.

**Reporting – After Award**

Prime contractor payment requests shall include: Prime Contractor Progress Assessment Report (PAR) identify all HUB and non-HUB subcontractor payments. PAR form and instructions for completion can be found at: <http://www.utsystem.edu/offices/historically-underutilized-business/hub-forms>

***NOTE: RESPONSES THAT DO NOT INCLUDE AN HSP WILL BE REJECTED AS A MATERIAL FAILURE TO COMPLY WITH ADVERTISED SPECIFICATIONS IN ACCORDANCE WITH RFP/ RFQ.***

Regional HUB Coordinator  
Office of HUB Programs  
The University of Texas System  
201 W. 6<sup>th</sup> Street, Room B.140E  
Austin, TX 78701

RE: Historically Underutilized Business Plan for (Project Title): \_\_\_\_\_  
RFQ Number: \_\_\_\_\_

Dear

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs). In accordance with the requirements outlined in the HUB Subcontracting Plan (HSP), I am pleased to forward this HUB Subcontracting Plan as an integral part of our proposal in connection with your invitation for request for qualifications/proposals, referencing RFP Number \_\_\_\_\_.

The Good Faith Effort will be documented by a two- part HUB Subcontracting Plan (HSP) process. **Part One (1)** of the HSP submission will reflect self-performance with the appropriate sections completed as outlined in the HSP Instruction sheet located on page 2 of The University of Texas System Exhibit H Policy on Utilization of Historically Underutilized Businesses (NSD).

As the scope of work/project is defined (SD) under the terms of this contract, **Part Two (2)** of the process will require a revised HUB Subcontracting Plan (SD), if the Work/ Project value over the *duration* of the contract *meets or exceeds* \$100,000.00. The Good Faith Effort will be documented per instructions in **EXHIBIT H - Policy on Utilization Historically Underutilized Businesses (SD)**, pages 2-6. The revised HUB Subcontracting Plan will be submitted to the HUB Coordinator prior to execution of each contract and/or amendment process. A *Progress Assessment Report (PAR)* is required as a condition of payment with each monthly billing in conjunction with this contract amendment.

Sincerely,

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(print name)

Project Administrator



# HUB Subcontracting Plan (HSP)

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

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

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

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

**- - Agency Special Instructions/Additional Requirements - -**

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

In accordance with 34 TAC §20.13(d)(1)(D)(iii), the goals below are the applicable goals for **The University of Texas System Administration only** effective January 1, 2016.

## Professional Services – 23.7% See page 2 for HSP completion instructions

- Respondents shall submit a completed HUB Subcontracting Plan (HSP) to be considered responsive. Failure to submit a completed HSP shall result in the bid, proposal or other expression of interest to be considered Non-responsive.
- Prime Contractor Progress Assessment Report (PAR) shall be submitted with each request for payment as a condition of payment. A copy of the UT System Contract Management System (UTCMS) Compliance Report shall be attached to the State of Texas HUB PAR and shall be submitted with each request for payment as a condition of payment.
- Please note that phone logs are no longer acceptable documentation of Good Faith Effort. Only fax, email and certified letter are acceptable.

### SECTION 1: RESPONDENT AND REQUISITION INFORMATION

a. Respondent (Company) Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_  
 Point of Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_ Fax #: \_\_\_\_\_

b. Is your company a State of Texas certified HUB?    - Yes    - No

c. Requisition #: \_\_\_\_\_ Bid Open Date: \_\_\_\_\_  
 (mm/dd/yyyy)

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS**

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

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

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

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

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

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

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

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

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

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

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

Enter your company's name here: \_\_\_\_\_

Requisition #: \_\_\_\_\_

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

[Empty space for self-performing justification]

**SECTION 4: AFFIRMATION**

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

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

_____	_____	_____	_____
Signature	Printed Name	Title	Date (mm/dd/yyyy)
	_____	_____	
	email address	Phone Number	

**Reminder:**

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



# HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report

*This form must be completed and submitted to the contracting agency each month to document compliance with your HSP.*

Contract/Requisition Number: \_\_\_\_\_ Date of Award: \_\_\_\_\_ Object Code: \_\_\_\_\_  
 (mm/dd/yyyy) (Agency Use Only)

Contracting Agency/University Name: \_\_\_\_\_

Contractor (Company) Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_

Point of Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_

Reporting (Month) Period: \_\_\_\_\_ Total Amount Paid this Reporting Period to Contractor: \$ \_\_\_\_\_

## Report HUB and Non-HUB subcontractor information

Subcontractor's Name	Subcontractor's VID or HUB Certificate Number	*Texas Certified HUB? (Yes or No)	Total Contract Amount from HSP with Subcontractor	Total \$ Amount Paid This Reporting Period to Subcontractor	Total Contract \$ Amount Paid to Date to Subcontractor	Object Code (Agency Use Only)
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
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			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
<b>TOTALS:</b>			\$	\$	\$	

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Phone #: \_\_\_\_\_



## ADDENDUM 1

DATE: January 10, 2019  
RFP NO: RFQ 720-1815 Reserve Estimation Upstream and Midstream Economic Analyses and Operator Methane Emissions Analysis Services  
OWNER: The University of Texas System Administration  
TO: Prospective Respondents

This Addendum forms part of Contract Documents and modifies Qualification Documents dated March 9, 2018 with amendments and additions noted below.

### **Extension of Q&A and Submittal Deadline**

The Q&A and submittal deadlines for the RFP have been postponed to allow adequate time for submittal preparation. Submittal deadlines listed on the cover page, Section 2.1 (Submittal Deadline), 2.2 (University Contact Person) and Section 2.5 (Key Events Schedule) of the original documents shall now read:

**Deadline for Questions / Concerns: Wednesday, March 21<sup>st</sup>, 2018 at 2:30 PM, CST**

**Submittal Deadline: Wednesday, March 28<sup>th</sup>, 2018 at 2:30 PM, CST**