



**GOMESA GRANT AGREEMENT  
CMP PROJECT OF SPECIAL MERIT  
GLO CONTRACT NO. 21-155-005-C877**

The **GENERAL LAND OFFICE** (the “GLO”), an agency of the State of Texas, and **Ducks Unlimited, Inc.** (“Grantee”), each a “Party” and collectively the “Parties,” enter into this grant agreement (the “Contract”) to provide funding made available to the State of Texas under the Gulf of Mexico Energy Security Act of 2006 (“GOMESA”), and awarded pursuant to Texas Natural Resources Code, Chapter 33, for the implementation of a Coastal Management Program (“CMP”) Project of Special Merit, as approved by the Texas Land Commissioner and administered by the GLO.

**ARTICLE I – GENERAL PROVISIONS**

**1.01 PURPOSE AND AUTHORITY**

The purpose of this Contract is to set forth the terms and conditions of this grant of state GOMESA funds from the GLO to Grantee to implement the CMP Project of Special Merit entitled, “Beneficial Dredge Use Master Plan for Texas GLO Regions 3 (Coastal Bend) and 4 (Lower Coast)” (the “Project”). This Contract is entered into pursuant to Texas Natural Resources Code Section 33.204(g), which authorizes the Texas Land Commissioner to award grants to projects that further the goals and policies of the CMP, and in accordance with the authorized uses and purposes set forth in GOMESA.

**1.02 CONTRACT DOCUMENTS**

This document and the following Attachments, which are incorporated herein in their entirety for all purposes, shall govern the Contract:

**ATTACHMENT A: BUDGET AND WORK PLAN**

**ATTACHMENT B: GENERAL AFFIRMATIONS**

**1.03 DEFINITIONS**

“[Administrative and Audit Regulations](#)” means all applicable statutes, regulations, and other laws governing administration or audit of this Contract, including the Texas Uniform Grant Management Standards and Texas Government Code, Chapter 321.

“[Attachment](#)” means documents, terms, conditions, or additional information attached to this Contract following the execution page or incorporated by reference within the body of this Contract.

“[Budget](#)” means the budget for the Project funded by the Contract, in **Attachment A**.

“[CMP Rules](#)” means Title 31, Texas Administrative Code, Chapters 501-506.

“Comptroller” means the Texas Comptroller of Public Accounts.

“Contract” means this entire document, along with any Attachments, both physical and incorporated by reference.

“Deliverables” means a unit or increment of work, including any item, report, data, document, photograph, drawing, process, computer program or code, or other submission required to be delivered under the terms of this Contract.

“Equipment” means tangible personal property having a useful life of more than one year and an acquisition cost of **\$5,000.00** or more per unit.

“Event of Default” means the occurrence of any of the events set forth in **Section 3.03**.

“Fiscal Year” means the annual accounting period for the State of Texas, beginning September 1 and ending August 31 each year.

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“General Affirmations” means the statements in **Attachment B**.

“GOMESA” means the Gulf of Mexico Energy Security Act of 2006, Pub. L. 109–432, 120 Stat. 2922, 43 U.S.C. 1331 note.

“Grant Administrator” means the Director, Grant Programs, GLO Coastal Resources Division, or the Director’s designee.

“Intellectual Property” means patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights, and all applications and worldwide registration of such, schematics, industrial models, inventions, know-how, trade secrets, computer software programs, other intangible proprietary information, and all federal, state, or international registrations or applications for any of the foregoing.

“Progress Reports” means written progress reports that must be received by the GLO, in accordance with the format and schedule specified in the Work Plan.

“Project” means the work and activities involved in the CMP Project of Special Merit funded under this Contract and further detailed in the Work Plan in **Attachment A**.

“Public Information Act” means Chapter 552 of the Texas Government Code.

“Real Property” means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

“Subcontractor” means an individual or business that contracts to perform part of Grantee’s obligations under this Contract.

“Travel Regulations” means all applicable statutes, regulations, laws, and Comptroller guidance related to reimbursement of travel expenses under this Contract, including Title 34, Texas Administrative Code, Section 5.22; Texas Government Code, Chapter 660; the General Appropriations Act; and *Textravel*, the Comptroller’s travel regulation guidance available on the Comptroller’s website.

“UGMS” means the Texas Uniform Grant Management Standards issued by the Comptroller.

“U.S.C.” means United States Code.

“Work Plan” means the statement of work for the Project, including any special conditions, in **Attachment A**.

#### **1.04 INTERPRETIVE PROVISIONS**

- (a) The meaning of a defined term applies to its singular and plural forms.
- (b) The words “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, attachment, work order, or schedule of this Contract unless otherwise specified.
- (c) The term “including” means “including without limitation.”
- (d) Unless otherwise expressed provided, a reference to a contract includes subsequent amendments and other modifications thereto executed according to the contract’s terms, and a reference to a statute, regulation, or other law includes subsequent amendments, renumbering, recodification, and other modifications thereto by the enacting authority.
- (e) The captions and headings of this Contract are for convenience of reference only and shall not affect the interpretation of this Contract.
- (f) The limitations, regulations, and policies contained herein are cumulative and each must be performed in accordance with its terms without regard to other limitations, regulations, and policies affecting the same matter.
- (g) Unless otherwise expressly provided, reference to any action of or by the GLO by way of consent, approval, or waiver is deemed modified by the phrase “in its/their sole discretion.” Notwithstanding the preceding, the GLO shall not unreasonably withhold or delay any approval, consent, or waiver.
- (h) All due dates and/or deadlines referenced in this Contract that occur on a weekend or holiday shall be considered as if occurring on the next business day.
- (i) All time periods in this Contract shall commence on the day after the date on which the applicable event occurred, report is submitted, or request is received.
- (j) Time is of the essence in this Contract.
- (k) If the provisions of this Contract and its Attachments conflict, such conflicts shall be resolved in the following order of precedence: Signed Contract; **Attachment A; Attachment B**.

### **ARTICLE II – PROJECT GRANT AND SCOPE**

#### **2.01 PROJECT GRANT**

Grantee submitted a CMP grant application to the GLO. The application was selected as a CMP Project of Special Merit eligible for a grant of GOMESA funds, as approved by the Texas Land Commissioner and as administered by the GLO. This Contract is entered into based on Grantee’s application.

Subject to the terms and conditions of this Contract, the GLO agrees to provide GOMESA funds to Grantee, in an amount not to exceed **\$796,656.00**, payable as reimbursement of allowable expenses incurred by Grantee, to be used in strict accordance

with the Budget in **Attachment A**. Any additional funds necessary for the completion of this Project are Grantee's responsibility. This Contract does not require Grantee to contribute matching funds.

**The GLO is not liable to Grantee for any expenses incurred by Grantee before the effective date of this Contract or after termination or expiration of this Contract.**

## **2.02 PROJECT SCOPE AND WORK PLAN**

Grantee shall perform the Project in strict accordance with the terms and conditions of this Contract and all provisions of the Work Plan, including any special conditions, set forth in **Attachment A**.

Grantee may request an amendment to the Work Plan or scope of the Project by submitting a written request and detailed justification to the Grant Administrator. If there are any costs included in the requested amendment that were not previously included in the Contract, Grantee is solely responsible for such costs it incurs while awaiting GLO approval. The Grant Administrator will inform Grantee in writing if the amendment request is approved.

## **2.03 AUTHORIZED USES OF GOMESA FUNDS**

Grantee represents and warrants that it will use all GOMESA funds provided under this Contract in accordance with all applicable federal and state laws and only for one or more of the following purposes: (a) projects and activities for the purposes of coastal protection, including conservation, coastal restoration, hurricane protection, and infrastructure directly affected by coastal wetland losses; (b) mitigation of damage to fish, wildlife, or natural resources; (c) implementation of a federally-approved marine, coastal, or comprehensive conservation management plan; or (d) mitigation of the impact of outer Continental Shelf (as that term is defined in 43 U.S.C. § 1331) activities through the funding of onshore infrastructure projects.

## **ARTICLE III – TERM**

### **3.01 DURATION**

This Contract shall be effective on April 1, 2021 and shall terminate upon the completion of the Project, in the GLO's sole determination, or on March 31, 2023, whichever occurs first. Upon receipt of a written request and acceptable justification from Grantee, the GLO may amend this Contract to extend the Contract Period for up to three additional one-year terms. Any request for extension must be received at least sixty (60) days before the Contract's original termination date.

### **3.02 EARLY TERMINATION**

The GLO may terminate this Contract by giving Grantee written notice specifying a termination date at least thirty (30) days after the date of the notice. Upon receipt of such notice, Grantee shall cease work, terminate any subcontracts, and incur no further expense related to this Contract. Such early termination shall be subject to the equitable settlement of the respective interests of the Parties, accrued up to the date of termination.

### 3.03 EVENTS OF DEFAULT

Each of the following events shall constitute an Event of Default under this Contract: (i) Grantee fails to comply with any term, condition, covenant, or provision contained in this Contract or fails to comply with applicable federal, state, or local law or regulation; (ii) Grantee makes a general assignment for the benefit of creditors or takes any similar action for the protection or benefit of creditors; or (iii) if at any time, Grantee makes a materially incorrect representation in the Work Plan, any reimbursement request, or any report submitted to the GLO related to the Contract.

### 3.04 REMEDIES; NO WAIVER

Upon the occurrence of any Event of Default, the GLO may avail itself of any legal or equitable remedy available to it. The Parties' rights or remedies under this Contract are not intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Contract, or hereafter legally existing upon the occurrence of an Event of Default. Any failure by the GLO to insist at any time upon the strict observance or performance of any of the provisions of this Contract or to exercise any right or remedy as provided in this Contract shall not impair any such right or remedy or be construed as a waiver or relinquishment with respect to another Event of Default.

## ARTICLE IV – GRANT ADMINISTRATION

### 4.01 SUBMISSIONS AND FORMS

Except for legal notices that must be sent pursuant to **Section 9.09**, all written reports, forms, requests, and deliverables under this Contract must be submitted in electronic format to the Grant Administrator at [cmreceipts@glo.texas.gov](mailto:cmreceipts@glo.texas.gov).

Standard forms that Grantee must use for submissions to the Grant Administrator are available at <http://www.glo.texas.gov/coast/coastal-management/forms/index.html>. As the standard forms are updated from time to time, Grantee should periodically check the website for updated forms. Grantee is responsible for using the proper forms.

If there is not a standard form for a particular request allowed under this Contract, Grantee may submit the request in writing via email to the Grant Administrator for GLO review and approval. The request must include the nature of the request, the section of the Contract that authorizes the request, and a detailed justification for the request. The Grant Administrator will notify Grantee in writing if the request is approved.

### 4.02 PROGRESS REPORTS

Grantee shall submit periodic Progress Reports on a monthly or quarterly basis, as required in **Attachment A** and commencing on the date specified therein. Monthly reporting must be submitted on or before the 10th day of each calendar month during the term of this Contract. Quarterly reporting must be submitted on or before the 10th day of each calendar quarter during the term of this Contract. Grantee must submit Progress Reports using the **Progress Report Form**.

Progress Reports must include the following:

- (a) a brief statement of the overall progress since the preceding Progress Report of each task identified on the Work Plan;

- (b) a brief description of any problems encountered during the previous reporting period that will affect the Work Plan, delay the completion of any portion of this Contract, or inhibit the completion of or cause a change in any Work Plan objective;
- (c) a description of any action Grantee plans to undertake to correct any problems that have been encountered; and
- (d) a status report on the Budget, as defined in this Contract.

Grantee must submit a **Project Closeout Form** upon completion of the Project.

#### **4.03 DELIVERABLES**

Grantee shall electronically submit the Deliverables set forth in the Work Plan in **Attachment A**, in the time and manner specified therein, to the Grant Administrator. The GLO may require Grantee to conform any data presentation or product funded under this Contract to reflect GLO comments.

Grantee may request changes to Deliverable due dates by submitting a written request and detailed justification to the Grant Administrator for GLO review and approval. The Grant Administrator will notify Grantee in writing if the request is approved.

#### **4.04 REIMBURSEMENT REQUESTS**

Grantee shall submit reimbursement requests on either a monthly or quarterly basis as required in **Attachment A** and on or before the 10th day of each month or quarter as specified therein.

Reimbursement requests must:

- (a) prominently display “GLO Contract No. 21-155-005-C877”;
- (b) be submitted to [cmpreceipts@glo.texas.gov](mailto:cmpreceipts@glo.texas.gov) on the GLO standard form;
- (c) be supported by an invoice detailing each expense by Budget category in accordance with the Budget in **Attachment A**;
- (d) include a timesheet or a payroll clearing account spreadsheet; and
- (e) provide such other information as the GLO may request.

Grantee’s failure to submit reimbursement requests as instructed in this section may significantly delay reimbursement. Reimbursement requests must be supported by actual receipts, cancelled checks, and/or such other documentation that, in the judgment of the GLO, allows for full substantiation of the costs incurred. If no Contract expenses have been incurred in a given period, Grantee must submit a zero-dollar (\$0.00) invoice.

Grantee’s indirect costs may not exceed the amount for such costs set forth in **Attachment A**. Grantee may not charge “other operating costs” (including administrative costs, computer usage fees, etc.) in addition to indirect costs, if such costs are already included in the calculation to determine Grantee’s indirect cost rate.

Grantee must submit reimbursement requests no later than sixty (60) days from the date Grantee incurs the expenses listed therein. The GLO may deny reimbursement requests Grantee fails to submit in a timely manner.

The GLO may deny reimbursement requests if Grantee fails to submit Deliverables or Progress Reports by their due dates. If the GLO denies reimbursement, Grantee shall resubmit the invoice after the date the overdue Deliverable or Progress Report is submitted.

#### **4.05 TRAVEL EXPENSES**

The GLO will not reimburse Grantee for travel expenses of any kind that are not included in **Attachment A**. The GLO will only reimburse travel expenses directly attributable to Grantee's performance under this Contract at the rates established or adopted by the Comptroller, as outlined in the Travel Regulations.

**Grantee understands and acknowledges that any travel expense reimbursement by the GLO is not a per diem. The GLO will only reimburse actual, allowable expenses in accordance with the Travel Regulations. Grantee must submit itemized receipts to support any request for travel expense reimbursement.**

#### **4.06 BUDGET VARIANCE**

Grantee may request reallocations among direct cost Budget categories by submitting a **Budget Amendment Form** and written justification to the Grant Administrator. Such reallocations may not increase or decrease the total Budget amount and will be effective only upon GLO approval. The Grant Administrator will notify Grantee in writing if the request is approved.

To request any budget changes increasing or decreasing the total Budget amount, Grantee shall submit a Budget Amendment Form and a written justification to the Grant Administrator. If approved, the budget change shall be incorporated through a formal, written amendment to the Contract as mutually agreed to by the Parties.

**Grantee shall submit to the Grant Administrator a final, actual Budget no later than sixty (60) days following the expiration or termination date of the Contract.**

#### **4.07 WITHHOLDING**

To ensure full performance of the Project, the GLO may withhold an amount equal to five percent (5%) of the Budget until Grantee's submittal of all required Deliverables, and the GLO's approval, as necessary for the completion of the Project. The GLO shall make a final disbursement only upon receipt of documentation sufficient to demonstrate Grantee has completed the Project in accordance with the Work Plan in **Attachment A** and fulfilled all requirements of the Contract.

#### **4.08 EQUIPMENT**

Equipment or computer software purchases must be directly related to a GOMESA authorized use and must comply with all applicable laws, rules, and regulations. Grantee may not purchase any Equipment or computer software without the GLO's prior written approval. Grantee shall retain title to and possession of any Equipment or computer software unless and until transferred to the GLO, upon written request by the GLO. Grantee shall furnish, with its final reimbursement request, a list of all Equipment and software purchased with funds under the Contract, including the name of the manufacturer, model number, and serial number. The disposition of any Equipment shall be in accordance with UGMS.



**4.09 AUDIT COMPLIANCE**

If Grantee expends \$750,000.00 or more in state awards during each any of Grantee's fiscal years of funding, Grantee must have a single or program-specific audit conducted for that year in accordance with UGMS. If applicable, Grantee shall complete and return the Audit Reporting Form no later than September 1 of each year until the Contract is terminated. The Audit Reporting Form may be downloaded at: <http://www.glo.texas.gov/coast/coastal-management/forms/index.html>.

**4.10 REAL PROPERTY**

Acquisition of real property is not authorized under this Contract.

**ARTICLE V – STATE FUNDING****5.01 STATE FUNDING**

- (a) This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or the GLO in violation of Article III, Section 49, of the Texas Constitution. In compliance with Article VIII, Section 6 of the Texas Constitution, all obligations of the GLO hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated and the Parties discharged from further obligations, subject to the equitable settlement of their respective interests, accrued up to the date of termination.
- (b) Any claim by Grantee for damages under this Contract may not exceed the amount due and owing Grantee or the amount of funds appropriated for payment, but not yet paid to Grantee, under the annual budget in effect at the time of the breach. Nothing in this provision shall be construed as a waiver of sovereign immunity.

**5.02 GENERAL AFFIRMATIONS**

To the extent they apply, Grantee certifies it has reviewed the General Affirmations in **Attachment B** and that Grantee is in compliance with all the requirements set forth therein.

**5.03 RECAPTURE OF FUNDS**

The discretionary right of the GLO to terminate for convenience under **Section 3.02** notwithstanding, the GLO may terminate the Contract and recapture, and Grantee must reimburse, any payments made by the GLO that (i) exceed the maximum allowable rates; (ii) are not allowed under applicable laws, rules, and regulations; (iii) are otherwise inconsistent with the terms and conditions of this Contract, including any unapproved expenditures. **This recapture provision applies to any expenditures by Grantee that are not consistent with one of the authorized uses of GOMESA funds set forth in Section 2.03.**

**5.04 OVERPAYMENT**

Grantee shall be liable to the GLO for any costs disallowed pursuant to any financial or compliance audits of funds received under this Contract. Grantee shall reimburse such disallowed costs from funds which were not provided or otherwise made available to Grantee under this Contract.



## **ARTICLE VI – INTELLECTUAL PROPERTY**

### **6.01 OWNERSHIP AND USE**

- (a) The GLO shall own, and Grantee hereby irrevocably assigns to the GLO, all ownership right, title, and interest in and to all Intellectual Property acquired or developed by Grantee pursuant to this Contract, including, without limitation, all Intellectual Property in and to reports, drafts of reports, data, drawings, computer programs and codes, and/or any other information or materials acquired or developed by Grantee under this Contract. The GLO shall have the right to obtain and to hold in its name any and all patents, copyrights, trademarks, service marks, registrations, or such other protections, including extensions and renewals thereof, as may be appropriate to the subject matter.
- (b) Grantee must give the GLO and the State of Texas, as well as any person designated by the GLO or the State of Texas, all assistance and execute such documents, as required to perfect the rights granted to the GLO herein without any charge or expense beyond the stated amount payable to Grantee for the implementation of the Project funded under this Contract.

### **6.02 COPYRIGHT**

- (a) Grantee agrees and acknowledges that all expressive content subject to copyright protection, including without limitation all reports, drafts of reports, drawings, artwork, photographs, video, computer programs and codes, and/or any other expressive content acquired or developed by Grantee pursuant to this Contract (individually, a “Work,” and collectively the “Works”), will be made the exclusive property of the GLO. Grantee acknowledges that each Work is a “work made for hire” under the United States Copyright Act of 1976. All rights in and to each Work, including the copyright to the Work, shall be and remain the sole and exclusive property of the GLO.
- (b) If, for any reason, any Work or any portion of a Work is not a work made for hire, Grantee hereby irrevocably assigns to the GLO ownership of all right, title and interest in and to the Works or such portion of any Work, including without limitation the entire and exclusive copyright in the Works and all rights associated with the copyright, including but not limited to reproduction rights, distribution rights, the right to prepare translations and other derivative works, and the right to display the Works in all formats and media now known or developed in the future.
- (c) Grantee must give the GLO and the State of Texas, as well as any person designated by the GLO or the State of Texas, all assistance required to perfect the rights granted to the GLO defined herein without any charge or expense beyond the stated amount payable to Grantee for the implementation of the Project funded under this Contract.

### **6.03 NON-ENDORSEMENT**

Grantee shall not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts, or other publications) that states or implies State of Texas or

government employee endorsement of a product, service, or position that Grantee represents. No release of information relating to this Project may state or imply that the GLO or the State of Texas approves of Grantee's work products, or considers Grantee's work product to be superior to other products or services.

## **ARTICLE VII – ACKNOWLEDGMENTS, PUBLICATIONS, AND SIGNAGE**

### **7.01 ACKNOWLEDGEMENT**

Grantee is required to inform the public that the Project is funded, in whole or in part, by a state grant of Gulf of Mexico Energy Security Act of 2006 funding awarded under the Texas Coastal Management Program. Acknowledgement of the source of funding may take many forms (e.g., signage or written acknowledgement in a Project publication or website) as set forth herein, or as otherwise approved in writing by the Grant Administrator.

### **7.02 PUBLICATIONS**

If Grantee publishes any reports, papers, products in electronic format, or other materials based on or developed in whole or in part as a result of this Contract, Grantee shall ensure that such documents, products, and other materials bear the following statement, as well as the GLO and CMP logos, on the cover or first page:

“This (publication/report/paper/website) was funded in part through a grant from the Texas General Land Office (GLO) providing Gulf of Mexico Energy Security Act of 2006 funding made available to the State of Texas and awarded under the Texas Coastal Management Program. The views contained herein are those of the authors and should not be interpreted as representing the views of the GLO or the State of Texas.”

### **7.03 SIGNAGE**

If the Project funded under this Contract includes the construction of facilities or other permanent improvements, Grantee shall erect temporary signs during the construction phase of such facilities or improvements. Signs must include the GLO and CMP logos and contain the following language:

“This project was funded in part through a grant from the Texas General Land Office providing Gulf of Mexico Energy Security Act of 2006 funding made available to the State of Texas and awarded under the Texas Coastal Management Program.”

At the completion of construction, Grantee shall replace the temporary signs with permanent signs approved by the GLO. Grantee must erect permanent signs for projects that include land acquisition.

## **ARTICLE VIII – RECORDS, AUDIT, RETENTION, AND DISCLOSURE**

### **8.01 BOOKS AND RECORDS**

Grantee shall keep and maintain, or cause to be kept or maintained, under GAAP or GASB (as applicable) full, true, and complete records necessary for fully disclosing to the GLO, the Texas State Auditor's Office, and/or their authorized representatives sufficient

information to determine Grantee's compliance with this Contract and all applicable laws, rules, and regulations.

## **8.02 INSPECTION AND AUDIT**

- (a) All records related to this Contract (including records of Grantee and its Subcontractors) shall be subject to the Administrative and Audit Regulations.
- (b) The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Grantee shall ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Grantee and the requirement to cooperate is included in any subcontract it awards.
- (c) State agencies authorized to audit and inspect Grantee, its records, its Subcontractors, and its Subcontractors' records, include the GLO, the GLO's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, the Comptroller, and their authorized designees.

## **8.03 PERIOD OF RETENTION**

Each Party shall retain in its records this Contract and all documents related to this Contract. Unless a longer retention period is specified by applicable law or regulation, the Parties may destroy the Contract and related documents only after the seventh anniversary of the date: the Contract is completed or expires; or all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the Contract or related documents are resolved.

## **8.04 CONFIDENTIALITY**

To the extent permitted by law, Grantee and the GLO shall keep all information, in whatever form produced, prepared, observed, or received by Grantee or the GLO, confidential to the extent that such information is: (a) confidential by law; (b) marked or designated "confidential" (or words to that effect) by Grantee or the GLO; or (c) information that Grantee or the GLO is otherwise required to keep confidential by this Contract. Grantee must not advertise that it is doing business with the GLO, use this Contract as a marketing or sales tool, or make any communications or announcements relating to this Contract through press releases, social media, or other public relations efforts without the prior written consent of the GLO.

## **8.05 PUBLIC RECORDS**

The GLO shall post this Contract to the GLO's website. Grantee understands that the GLO will comply with the Texas Public Information Act (Texas Government Code Chapter 552, the "PIA"), as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas (the "Attorney General"). Information, documentation, and other material in

connection with this Contract may be subject to public disclosure pursuant to the PIA. In accordance with Section 2252.907 of the Texas Government Code, Grantee is required to make any information created or exchanged with the GLO or the State of Texas pursuant to the Contract, and not otherwise excepted from disclosure under the PIA, available to the GLO in portable document file (".pdf") format or any other format agreed upon between the Parties that is accessible by the public at no additional charge to the GLO or the State of Texas. By failing to mark any information that Grantee believes to be excepted from disclosure as "confidential" or a "trade secret," Grantee waives any and all claims it may make against the GLO for releasing such information without prior notice to Grantee. The Attorney General will ultimately determine whether any information may be withheld from release under the PIA. Grantee shall notify the GLO's Office of General Counsel within twenty-four (24) hours of receipt of any third-party written requests for information and forward a copy of said written requests to [PIALegal@glo.texas.gov](mailto:PIALegal@glo.texas.gov). If a request for information was not written, Grantee shall forward the third party's contact information to the above-designated e-mail address.

## **ARTICLE IX – MISCELLANEOUS PROVISIONS**

### **9.01 LEGAL OBLIGATIONS**

Grantee shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Grantee for the performance of this Contract. Grantee shall pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Grantee shall pay all such government obligations not paid by its Subcontractors during performance of this Contract. Grantee shall not commence construction of the Project until it has obtained the requisite licenses and/or permits. Grantee shall include copies of such licenses and permits as a part of the Progress Report, as defined in this Contract, for the period during which they are obtained.

### **9.02 TAXES, WORKERS COMPENSATION, UNEMPLOYMENT INSURANCE**

Grantee shall be solely liable and responsible for payment of Grantee's and Grantee's employees' taxes of whatever kind, arising out of the execution or performance of the Contract. Grantee shall comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. The GLO and the State of Texas shall not be liable to Grantee or its officers, agents, employees, representatives, contractors, assignees, designees, or others for the payment of taxes, or the provision of unemployment insurance, workers' compensation, or any benefit available to a state employee or employee of another governmental entity.

- (a) To the extent permitted by law, Grantee shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorney fees, and expenses arising out of, connected with, or resulting from tax liability, unemployment insurance, or workers' compensation in the execution or performance of the Contract. Grantee and the GLO shall furnish timely written notice to each other of any such claim. Grantee shall be liable to pay all costs of defense including attorneys' fees. Grantee shall

coordinate its defense with the Office of the Attorney General if the GLO or another Texas state agency is named defendants in any lawsuit and Grantee may not agree to any settlement without first obtaining the written consent of the Office of the Attorney General.

### **9.03 INDEMNITY**

**GRANTEE SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE STATE OF TEXAS, THE GLO, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, DAMAGES, PROCEEDINGS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF GRANTEE OR ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, SUPPLIERS, CONTRACTORS, SUBCONTRACTORS, ASSIGNEES, DESIGNEES, ORDER FULFILLERS, OR SUPPLIERS OF CONTRACTORS OR SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. GRANTEE AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. GRANTEE SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. GRANTEE SHALL COORDINATE ITS DEFENSE WITH THE GLO AND THE OFFICE OF THE ATTORNEY GENERAL IF THE GLO OR ANOTHER TEXAS STATE AGENCY IS A NAMED CO-DEFENDANT WITH GRANTEE IN ANY SUIT. GRANTEE MAY NOT AGREE TO SETTLE ANY SUCH LAWSUIT OR OTHER CLAIM WITHOUT FIRST OBTAINING THE WRITTEN CONSENT OF THE GLO AND, IF APPLICABLE, THE OFFICE OF THE ATTORNEY GENERAL.**

### **9.04 ASSIGNMENT AND SUBCONTRACTS**

- (a) Grantee shall not assign, transfer, or delegate any rights, obligations, or duties under this Contract without the prior written consent of the GLO, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void. Notwithstanding this provision, it is mutually understood and agreed that Grantee may subcontract with others for some or all of the work to be performed. In no event may Grantee delegate or transfer its responsibility for use of the funds under this Contract.
- (b) Grantee is responsible for upholding the integrity of the procurement process and must comply with the organizational conflicts of interest and/or noncompetitive procurement practices as required by UGMS and applicable state law.
- (c) In any approved subcontracts, Grantee shall legally bind any such Subcontractors to perform, and make such Subcontractors subject to, all the duties, requirements, and obligations of Grantee as specified in this Contract. Nothing in this Contract shall be construed to relieve Grantee of the responsibility for ensuring that the work performed by Grantee and/or any of its Subcontractors comply with all terms and conditions of this Contract. **Grantee must submit a copy of each subcontract to the GLO within ten (10) business days after execution.**

### **9.05 RELATIONSHIP OF THE PARTIES**

Grantee is associated with the GLO only for the purposes and to the extent specified in this Contract. Grantee is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control,

and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract creates a partnership or joint venture, employer-employee or principal-agent relationships, or any liability whatsoever with respect to the indebtedness, liabilities, and obligations of Grantee or any other party. Grantee shall be solely responsible for, and the GLO shall have no obligation with respect to: withholding of income taxes, FICA, or any other taxes or fees; industrial or workers' compensation insurance coverage; participation in any group insurance plans available to State of Texas employees; participation or contributions by the State to the State Employees Retirement System; accumulation of vacation leave or sick leave; or unemployment compensation coverage provided by the State.

#### **9.06 COMPLIANCE WITH CMP RULES**

If the Project is located within the coastal zone established under Texas Natural Resources Code, Chapter 33, Grantee shall implement the Project in compliance with the CMP Rules and shall ensure that the performance of all Subcontractors is in compliance therewith.

#### **9.07 COMPLIANCE WITH OTHER LAWS**

In its performance under this Contract, Grantee shall comply with all applicable federal, state, county, and city laws, statutes, ordinances, and regulations. Grantee is deemed to know of and understand all applicable laws, statutes, ordinances, and regulations.

#### **9.08 HISTORICALLY UNDERUTILIZED BUSINESSES**

In accordance with State law, it is the GLO's policy to assist Historically Underutilized Businesses ("HUBs") whenever possible, to participate in providing goods and services to the GLO. The GLO encourages Grantee to adhere to this same philosophy in selecting Subcontractors to assist in fulfilling Grantee's performance under the Contract. The GLO encourages Grantees to partner with certified HUBs that participate in the Comptroller's Mentor Protégé Program. More information on this program is available on the Comptroller's website.

#### **9.09 NOTICES**

Any notices required under this Contract shall be deemed delivered when deposited either in the U.S. mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

**GLO:**

Texas General Land Office  
1700 N. Congress Avenue, Mail Code 158  
Austin, TX 78701  
Attention: Contract Management Division

With a copy to:

Texas General Land Office  
1700 N. Congress Avenue, Room 330  
Austin, TX 78701  
Attention: CMP Grant Administrator

**Grantee:**

Ducks Unlimited, Inc.  
915 Richmond Parkway  
Richmond, Texas 78744  
Attention: Chief Conservation Officer

Notice given in any other manner shall be deemed effective only if and when received by the Party to be notified. Either Party may change its address for notice by written notice to the other Party as herein provided.

**9.10 GOVERNING LAW AND VENUE**

This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Grantee irrevocably waives any objection, including any objection to personal jurisdiction, the laying of venue, or based on forum non conveniens, which it has or may have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any related document. **NOTHING IN THIS CONTRACT SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO OR THE STATE OF TEXAS.**

**9.11 SEVERABILITY**

If a court of competent jurisdiction determines any provision of this Contract is invalid, void, or unenforceable, the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

**9.12 DISPUTE RESOLUTION**

Except as otherwise provided by statute, rule or regulation, Grantee shall use the dispute resolution process established in Chapter 2260 of the Texas Government Code and related rules to attempt to resolve any dispute under this Contract, including a claim for breach of contract by the GLO, that the Parties cannot resolve in the ordinary course of business. Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of such a claim constitutes grounds for Grantee to suspend performance of this Contract. Notwithstanding this provision, the GLO reserves all legal and equitable rights and remedies available to it. **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.**

**9.13 INFRINGEMENT**

- (a) To the extent allowed by law, Grantee shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorney fees, and expenses arising out of, connected with, or resulting from infringement of any United States patent, copyright, trade or service mark, or any other intellectual or intangible property right that occurs in the performances or actions of Grantee pursuant to this Contract. Grantee and the GLO shall furnish timely written notice to each other of any such claim. Grantee



shall be liable to pay all costs of defense including attorneys' fees. Grantee shall coordinate its defense with the Office of the Attorney General (OAG) when Texas state agencies are named defendants in any lawsuit and Grantee may not agree to any settlement without first obtaining the written consent of the OAG.

- (b) Grantee shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Grantee's written approval, (iii) any modifications made to the product by Grantee pursuant to the GLO's specific instructions, or (iv) any use of the product or service by the GLO that is not in conformity with the terms of any applicable license agreement.
- (c) If Grantee becomes aware of an actual or potential claim, or the GLO provides Grantee with notice of an actual or potential claim, Grantee may (or in the case of an injunction against the GLO, shall), at Grantee's sole option and expense: (i) procure for the GLO the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with a functionally equivalent or superior product or service so that the GLO's use is non-infringing.

#### **9.14 FORCE MAJEURE**

Except with respect to the obligation of payments under this Contract, if either Party, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a "Force Majeure"), then, while so prevented, the affected Party's obligation to comply with such covenant shall be suspended, and the affected Party shall not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure shall promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The Party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and shall resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, the GLO may, at its sole discretion, terminate this Contract immediately upon written notification to Grantee.

#### **9.15 ENTIRE CONTRACT AND MODIFICATIONS**

This Contract and its Attachments constitute the entire agreement of the Parties and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in such Attachments shall be harmonized with this Contract to the extent possible. Unless an Attachment specifically displays a mutual intent to amend part of this Contract, conflicts in language shall be construed consistently with the terms of this Contract. Except as otherwise provided herein, this Contract may only be amended by a mutual, written agreement executed by the Parties' authorized representatives.

**9.16 PROPER AUTHORITY**

Each party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to legally bind its respective entity.

**9.17 COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one and the same Contract.

**9.18 OFFER SUBJECT TO CANCELLATION**

If Grantee does not return the original signed Contract to the GLO within thirty (30) days of transmittal of the Contract to Grantee, the GLO may cancel grant funding for the Project.

**9.19 SURVIVAL OF TERMS AND CONDITIONS**

The terms and conditions of this Contract relating to the following subjects shall survive the termination of this Contract: definitions; interpretive provisions; project grant; authorized uses of GOMESA funds; state funding; general affirmations; recapture; overpayment; intellectual property; ownership and use; copyright; non-endorsement; grant acknowledgment; publications; signage; books and records; inspection and audit; records retention; confidentiality; public records; indemnification; infringement; independent contractor relationship; compliance with laws; notices; choice of law and venue; severability; merger and integration. Terms and conditions that, explicitly or by their nature, evidence the Parties' intent that they should survive the termination or expiration of this Contract shall so survive.

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR GLO CONTRACT NO. 21-155-005-C877**

**GENERAL LAND OFFICE**

**Ducks Unlimited, Inc.**

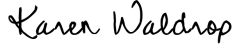
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Mark A. Havens, Chief Clerk/  
Deputy Land Commissioner

Date of execution: 3/30/2021

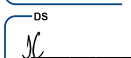
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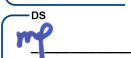
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By: Karen Waldrop  
Title: Chief conservation officer

Date of execution: 3/28/2021

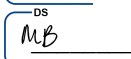
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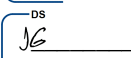
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**ATTACHMENTS TO THIS CONTRACT:**

**ATTACHMENT A: BUDGET AND WORK PLAN**

**ATTACHMENT B: GENERAL AFFIRMATIONS**

**ATTACHMENTS FOLLOW**

**Project Name:** Beneficial Use Master Plan -- Texas GLO Regions 3 and 4**Grantee:** Ducks Unlimited, Inc.**Contact:** Todd Merendino**Reporting Frequency:** Monthly**Project Description:**

Frequent dredging is needed to develop and maintain Texas ship channels. The dredged material must be deposited in placement areas (PAs), and many of the existing PAs along the Texas coast are nearing capacity. Resource agencies and stakeholders have long advocated using dredged material beneficially to create and restore wetlands, nourish beaches, and counteract land loss. Historically, Beneficial Use of Dredged Material (BU) projects are difficult to manage because they are multi-year, multifaceted undertakings in which different organizations manage dredging schedules, funding, project design, permitting, and construction activities.

Ducks Unlimited, Inc. (DU) will use Coastal Management Program Cycle 26 Gulf of Mexico Energy Security Act (GOMESA) funds to work with stakeholders in Regions 3 and 4 to identify and prioritize potential BU restoration sites. Identified sites will be evaluated for further engineer/design and permitting efforts. DU will partner with TxDOT to provide data and guidance for the Gulf Intracoastal Water Way and associated PAs. Within Region 3, the Port of Corpus Christi Authority will partner with DU to provide the support of their Environmental and Channel Development Teams to facilitate the success of this planning effort. This engineering effort will help tee-up the highest priority sites for subsequent BU implementation via funding from various other funding programs.

This effort will allow one entity to coordinate engineering, design, and permitting of the highest priority sites and will complement an ongoing coastwide BU planning effort led by DU. The project will also facilitate BU restoration projects in Regions 3 and 4. With the acceleration of BU projects along the Texas coast, there has never been a better time to strategically plan these projects.

**Project Budget:**

	<b>GOMESA</b>
Salaries	\$223,775.00
Fringe	\$74,098.00
Travel	\$30,000.00
Supplies	\$0.00
Equipment	\$0.00
Contractual	\$399,350.00
Other	\$0.00
<b>Subtotal:</b>	<b>\$727,223.00</b>
Indirect	\$69,433.00
<b>Total:</b>	<b>\$796,656.00</b>

**Special Award Conditions:**

1. This project must be completed as described in this work plan.
2. The GLO must approve any changes in the scope of work or budget requests that change the total project cost.
3. The CMP logo, including appropriate acknowledgment statement, must be printed on education/outreach materials, signs, final reports and/or publications.
4. Data must be shared in the appropriate manner as specified in the contract.
5. The grantee must coordinate with the GLO prior to issuing press releases, conducting media events, or otherwise engaging in media related communications for this project.

**Task 1: Coordination and Stakeholder Outreach**

DU will solicit state and federal agencies, local government entities, non-governmental organizations, port authorities, and other relevant entities to participate in three stakeholder meetings for each of the Regions. In the first meeting, DU will introduce the project, review a list of existing efforts in the Region, present suggested evaluation criteria for sites, facilitate stakeholder involvement to identify an initial list of sites, and solicit data useful in identifying suitable sites. DU will communicate with stakeholders and gather available information about the suitability of the suggested sites, scoring them based on the evaluation criteria. The second stakeholder meeting will involve a selection of up to 16 sites across Regions 3 and 4 for 10% planning and cost estimates, as well as up to 8 of those sites for 30% designs, and 5 sites for up to 60% designs and U.S. Army Corps of Engineers (USACE) permit application packages. Following site selection, DU would work on site evaluation and designs, and would report to the stakeholders on its progress. This will be the subject of the third stakeholder meeting. Finally, DU will present the stakeholders with the final report.

**Task 1 Deliverables:**

1. Identification of stakeholders and establishment of stakeholder meeting dates  
**Due Date: 5/30/2021**
2. Notes from first stakeholder meetings  
**Due Date: 6/30/2021**
3. Notes from second stakeholder meetings  
**Due Date: 8/31/2021**
4. Notes from third stakeholder meetings  
**Due Date: 6/30/2022**
5. Final Report delivered to stakeholders  
**Due Date: 12/31/2022**

*Travel: Six trips (four people) of two days each for stakeholder meetings.*

**Task 2: Evaluation Criteria and Site Selection**

DU will combine GIS-based mapping data with evaluation criteria based on environmental, logistical, and economic factors for each potential BU site. DU will obtain data from resource agencies and from other existing sources. As needed, DU will review data for quality assurance and quality control and standardize data to consistent geodetic datums, projections, and units. Evaluation criteria will vary by BU project and will be based on existing conditions and site potential.

DU will develop initial evaluation criteria to use in comparing sites. These criteria will be discussed at the stakeholder meetings and may include factors such as land ownership, proximity to available sediment, resource concerns, etc. Input from the stakeholders will shape the criteria based on local needs and concerns. Once the criteria are finalized, DU will use the criteria to rank suggested sites. The sites will be presented to the stakeholders, and up to 16 sites across Regions 3 and 4 will be selected for 10% designs using the rankings as an important evaluative factor. Of the 16 sites, up to 8 will be selected for 30%

designs and cost estimates, with 5 of those highest ranking 16 sites being carried to 60% project design and the development of USACE permit application packages.

**Task 2 Deliverables:**

1. Evaluation criteria  
**Due Date: 7/1/2021**
2. Site ranking  
**Due Date: 9/30/2021**
3. List of selected sites  
**Due Date: 10/31/2021**

*Travel: No travel requested for this task*

**Task 3: Site Surveys, Design Work, and Cost Estimates**

DU will perform a desktop survey of up to 16 sites across Regions 3 and 4 using available data. Following the initial conceptual work, DU will produce a 10% design for each site. Stakeholders will serve as resources for design recommendations. For 8 of the highest priority sites, DU will provide 30% project designs and cost estimates. For those 8 sites DU will conduct an intensive field based topographic and bathymetric survey of the identified project sites, conducted via airboat. Field topographic and bathymetric elevational survey methodology will follow standardized DU field engineering procedures. Following completion of the 30% engineering designs, DU will then provide up to 60% engineered project designs for the 5 highest ranking sites, along with development/preparation of COE permit application packages for each of those 5 highest ranking sites. The 30% and 60% design effort will facilitate the eventual implementation of BU restoration projects on these sites.

**Task 3 Deliverables:**

1. 10% designs and cost estimates for selected sites  
**Due Date: 1/31/2022**
2. Field Topographic and bathymetric surveys  
**Due Date: 3/31/2022**
3. 30% designs and cost estimates for selected sites  
**Due Date: 6/30/2022**
4. 60% designs and cost estimates for selected sites  
**Due Date: 9/30/2022**
5. COE permit application packages  
**Due Date: 12/31/2022**

*Travel: One trip (three people) per eight sites to conduct field visits. Each trip will be for five days.*

**Task 4: Project Monitoring & Reporting**

DU will prepare and submit all reports, deliverables, and requests for reimbursement as required in the contract, to CMPReceipts@GLO.TEXAS.GOV. Monthly progress reports are due to CMPReceipts@GLO.TEXAS.GOV on the 10th day of every month starting with May 10, 2021. Requests for reimbursement are to be submitted at the same time as the progress reports to CMPReceipts@GLO.TEXAS.GOV, as specified in the contract.

DU will provide a final report describing work completed under each task, all data analysis and discussion, conclusions, and include photos of outreach efforts. The document will include discussions of the following milestones and activities: (1) Stakeholder meetings; (2) Evaluation criteria and site

selection; and (3) Site surveys, design work, and cost estimates. DU will also fill out and submit a GOMESA Performance Measures Report at the end of the project.

**Task 4 Deliverables:**

1. Monthly progress reports and requests for reimbursement  
**Due Date: Ongoing until 3/31/2023**
2. Draft final report  
**Due Date: 3/1/2023**
3. Final report  
**Due Date: 3/31/2023**
4. GOMESA Performance Measures Report  
**Due Date: 3/31/2023**

*Travel: No travel requested for this task*



**General Affirmations**

To the extent they apply, Grantee affirms and agrees to the following, without exception:

1. Grantee represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Grantee nor the firm, corporation, partnership, or institution represented by Grantee, or anyone acting for such a firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Contract or any solicitation response upon which this Contract is based to any competitor or any other person engaged in the same line of business as Grantee.
2. If the Contract is for services, Grantee shall comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
3. Under Section 231.006 of the Family Code, the Grantee certifies that the individual or business entity named in this Contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
4. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. Grantee certifies it has submitted this information to the GLO.
5. If the Contract is for the purchase or lease of computer equipment, as defined by Texas Health and Safety Code Section 361.952(2), Grantee certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code, related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in Title 30 Texas Administrative Code Chapter 328.
6. Pursuant to Section 2155.003 of the Texas Government Code, Grantee represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
7. Payments due under the Contract shall be directly applied towards eliminating any debt or delinquency Grantee owes to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, regardless of when the debt or delinquency arises.
8. Upon request of the GLO, Grantee shall provide copies of its most recent business continuity and disaster recovery plans.

9. If the Contract is for consulting services governed by Texas Government Code Chapter 2254, Subchapter B, in accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Grantee certifies that it does not employ an individual who has been employed by The GLO or another agency at any time during the two years preceding the Grantee's submission of its offer to provide consulting services to the GLO or, in the alternative, Grantee, in its offer to provide consulting services to the GLO, disclosed the following: (i) the nature of the previous employment with the GLO or other state agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.
10. If the Contract is not for architecture, engineering, or construction services, except as otherwise provided by statute, rule, or regulation, Grantee must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve any dispute arising under the Contract. **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.**
11. If the Contract is for architecture, engineering, or construction services, subject to Texas Government Code, Section 2260.002 and Texas Civil Practice and Remedies Code Chapter 114, and except as otherwise provided by statute, rule, or regulation, Grantee shall use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve all disputes arising under this Contract. Except as otherwise provided by statute, rule, or regulation, in accordance with the Texas Civil Practice and Remedies Code, Section 114.005, claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d). **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.**
  - a. Notwithstanding Texas Government Code, Chapter 2260.002(3) and Chapter 114.012 and any other statute or applicable law, if the Grantee's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Grantee may make a claim against the GLO for breach of contract and the GLO may assert a counterclaim against the Grantee as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, Grantee must provide written notice to the GLO of a claim for breach of the Contract not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity: (1) the nature of the alleged breach; (2) the amount the Grantee seeks as damages; and (3) the legal theory of recovery.
  - b. The chief administrative officer, or if designated in the Contract, another officer of the GLO, shall examine the claim and any counterclaim and negotiate with the Grantee in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052.
  - c. If the negotiation under paragraph (b) above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or

settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a party's rights under this Contract as to the parts of the claim that are not resolved.

- d. If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with the GLO, unless the parties agree in writing to an extension of time, the parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is the Grantee's sole and exclusive process for seeking a remedy for an alleged breach of contract by the GLO if the parties are unable to resolve their disputes as described in this section.
  - e. Nothing in the Contract shall be construed as a waiver of the state's or the GLO's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. The GLO does not waive any privileges, rights, defenses, or immunities available to it by entering into this Contract or by its conduct, or by the conduct of any representative of the GLO, prior to or subsequent to entering into this Contract.
  - f. Except as otherwise provided by statute, rule, or regulation, compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the Grantee: (1) filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code; or (2) initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Government Code.
12. If Chapter 2271 of the Texas Government Code applies to this Contract, Grantee verifies that it does not boycott Israel and will not boycott Israel during the term of the Contract.
13. This Contract is contingent upon the continued availability of lawful appropriations by the Texas Legislature. Grantee understands that all obligations of the GLO under this Contract are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the GLO may terminate the Contract. The Contract shall not be construed as creating a debt on behalf of the GLO in violation of Article III, Section 49a of the Texas Constitution.
14. Grantee certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
15. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Grantee certifies that it is not (1) the executive head of the GLO, (2) a person who at any time during the four years before the effective date

of the Contract was the executive head of the GLO, or (3) a person who employs a current or former executive head of the GLO.

16. Grantee represents and warrants that all statements and information prepared and submitted in connection with this Contract are current, complete, true, and accurate. Submitting a false statement or making a material misrepresentation during the performance of this Contract is a material breach of contract and may void the Contract or be grounds for its termination.
17. Pursuant to Section 2155.004(a) of the Texas Government Code, Grantee certifies that neither Grantee nor any person or entity represented by Grantee has received compensation from the GLO to participate in the preparation of the specifications or solicitation on which this Contract is based. Under Section 2155.004(b) of the Texas Government Code, Grantee certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate. This Section does not prohibit Grantee from providing free technical assistance.
18. Grantee represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
19. In accordance with Section 2252.901 of the Texas Government Code, for the categories of contracts listed in that section, Grantee represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were employees of the GLO during the twelve (12) month period immediately prior to the date of execution of the contract. Solely for professional services contracts as described by Chapter 2254 of the Texas Government Code, Grantee further represents and warrants that if a former employee of the GLO was employed by Grantee within one year of the employee's leaving the GLO, then such employee will not perform services on projects with Grantee that the employee worked on while employed by the GLO.
20. The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the GLO.
21. IF THE CONTRACT IS NOT FOR ARCHITECTURE OR ENGINEERING SERVICES GOVERNED BY TEXAS GOVERNMENT CODE CHAPTER 2254, GRANTEE, TO THE EXTENT ALLOWED BY LAW, SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE GLO, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF GRANTEE OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER

FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY GRANTEE WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND GRANTEE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. GRANTEE AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

22. IF THE CONTRACT IS FOR ARCHITECTURE OR ENGINEERING SERVICES GOVERNED BY TEXAS GOVERNMENT CODE CHAPTER 2254, GRANTEE, TO THE EXTENT ALLOWED BY LAW, SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE GLO, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO GRANTEE'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE GRANTEE OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO GRANTEE, OR ANY OTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY GRANTEE WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND GRANTEE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. GRANTEE AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

23. TO THE EXTENT ALLOWED BY LAW, GRANTEE SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE GLO AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF GRANTEE PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) THE GLO'S AND/OR GRANTEE'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO THE GLO BY GRANTEE OR OTHERWISE TO WHICH THE GLO HAS ACCESS AS A RESULT OF GRANTEE'S PERFORMANCE UNDER THE CONTRACT. GRANTEE AND THE GLO SHALL

FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. GRANTEE SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY GRANTEE WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND GRANTEE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, GRANTEE WILL REIMBURSE THE GLO AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE GLO DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF GRANTEE OR IF THE GLO IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, THE GLO WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND GRANTEE WILL PAY ALL REASONABLE COSTS OF THE GLO'S COUNSEL.

24. Grantee has disclosed in writing to the GLO all existing or potential conflicts of interest relative to the performance of the Contract.
25. Sections 2155.006 and 2261.053 of the Texas Government Code prohibit state agencies from accepting a solicitation response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Grantee certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
26. Grantee understands that the GLO will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material related to this Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Grantee shall make any information created or exchanged with the State/GLO pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State or the GLO.
27. The person executing this Contract certifies that he/she is duly authorized to execute this Contract on his/her own behalf or on behalf of Grantee and legally empowered to contractually bind Grantee to the terms and conditions of the Contract and related documents.
28. If the Contract is for architectural or engineering services, pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the

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

29. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Grantee shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Contract and the requirement to cooperate is included in any subcontract it awards. The GLO may unilaterally amend the Contract to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.
30. Grantee certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency.
31. Grantee expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Grantee represents and warrants to the GLO that any technology provided to the GLO for purchase pursuant to this Contract is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: providing equivalent access for effective use by both visual and non-visual means; presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this Section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.
32. If the Contract is for the purchase or lease of covered television equipment, as defined by Section 361.971(3) of the Texas Health and Safety Code, Grantee certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.



33. Pursuant to Section 572.069 of the Texas Government Code, Grantee certifies it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for the GLO involving Grantee within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.
34. The GLO does not tolerate any type of fraud. GLO policy promotes consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Grantee shall report any possible fraud, waste, or abuse that occurs in connection with the Contract to the GLO's Fraud Reporting hotline at (877) 888-0002.
35. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and Grantee agrees that the Contract can be terminated if Grantee knowingly or intentionally fails to comply with a requirement of that subchapter.
36. If Grantee, in its performance of the Contract, has access to a state computer system or database, Grantee must complete a cybersecurity training program certified under Texas Government Code Section 2054.519, as selected by the GLO. Grantee must complete the cybersecurity training program during the initial term of the Contract and during any renewal period. Grantee must verify in writing to the GLO its completion of the cybersecurity training program.
37. Under Section 2155.0061, Texas Government Code, Grantee certifies that the entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.