

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

**CONTRACT FOR ENGINEERING SERVICES
Cost Plus Fixed Fee,
Unit Cost, Lump Sum, or Specified Rate
Indefinite Deliverable with Work Authorizations**

THIS CONTRACT FOR ENGINEERING SERVICES is made by and between the State of Texas acting by and through the Texas Department of Transportation, 125 E. 11th St., Austin, Texas 78701, hereinafter called "State," and T. Smith Inspection & Testing, LLC., having its principal business address at 7473 Airport Freeway, Richland Hills, Texas 76118, hereinafter called "Engineer," for the purpose of contracting for engineering services.

WITNESSETH

WHEREAS, Government Code, Chapter 2254, Subchapter A, "Professional Services Procurement Act," provides for the procurement of engineering services; and

WHEREAS, 43 Texas Administrative Code §9.30 et seq. establishes the Texas Department of Transportation's policies and procedures for contracting for engineering services; and,

WHEREAS, the State desires to contract for engineering services generally described as performance and supervision of all sampling, testing, inspection work, and related services for Asphaltic and Concrete construction for the State on the highway projects identified in the Work Authorizations executed under this contract; and,

WHEREAS, the State has selected the Engineer to provide the needed services and the Engineer has agreed to provide the services subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, the State and the Engineer, in consideration of the mutual covenants and agreements herein contained, do hereby mutually agree as follows.

AGREEMENT

ARTICLE 1. SCOPE OF SERVICES. The State and the Engineer will furnish items and perform those services for fulfillment of the contract as identified in Attachment B, Services to be Provided by the State and Attachment C, Services to be Provided by the Engineer. All services provided by the Engineer will conform to standard engineering practices and applicable rules and regulations of the Texas Engineering Practices Act and the rules of the Texas Board of Professional Engineers.

ARTICLE 2. CONTRACT PERIOD

A. Contract Effective Date. This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed.

B. Contract Termination Date. This contract terminates upon the earliest occurrence of the following:

1. May 31, 2022 at 11:59 PM in Austin, Texas,
2. Fifth anniversary of execution at 11:59 PM in Austin, Texas in accordance with 43 Tex. Admin. Code § 9.32(b)(1)(C),
3. Completion of all work authorized in the first two years of the contract, or
4. Termination in accordance with Article 15, Termination, of Attachment A, General Provisions, or other applicable contract provision.

C. Amendment of Contract Period. The parties may modify the contract termination date by written supplemental agreement prior to the date of termination as set forth in Article 6, Supplemental Agreements, of attachment A, General Provisions, provided, however, that the termination date may, in no event, be extended past the fifth anniversary of execution.

D. Work Performed Outside Contract Period. Engineer shall not invoice State and State will not reimburse Engineer for any work performed or cost incurred before or after the contract period.

ARTICLE 3. COMPENSATION.

A. Maximum Amount Payable. The maximum amount payable under this contract without modification is shown in Attachment E, Fee Schedule. Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.

B. Basis of Payment. The basis of payment is identified in Attachment E, Fee Schedule. Reimbursement of costs incurred under a work authorization shall be in accordance with Attachment E, Fee Schedule.

C. Reimbursement of Eligible Costs. To be eligible for reimbursement, the Engineer's costs must (1) be incurred in accordance with the terms of a valid work authorization; (2) be in accordance with Attachment E, Fee Schedule; and (3) comply with cost principles set forth at 48 CFR Part 31, Federal Acquisition Regulation (FAR 31). Satisfactory progress of work shall be maintained as a condition of payment.

D. Engineer Payment of Subproviders. No later than ten (10) days after receiving payment from the State, the Engineer shall pay all subproviders for work performed under a subcontract authorized hereunder. The State may withhold all payments that have or may become due if the Engineer fails to comply with the ten-day payment requirement. The State may also suspend the work under this contract or any work authorization until subproviders are paid. This requirement also applies to all lower tier subproviders, and this provision must be incorporated into all subcontracts.

ARTICLE 4. PAYMENT REQUIREMENTS

A. Monthly Billing Statements. The Engineer shall request reimbursement of costs incurred by submitting the original and one copy of an itemized billing statement in a form acceptable to the State. The Engineer is authorized to submit requests for reimbursement no more frequently than monthly and no later than ninety (90) days after costs are incurred.

B. Billing Statement. The billing statement shall show the work authorization number for each work authorization included in the billing, the total amount earned to the date of submission, and the amount due and payable as of the date of the current billing statement for each work authorization. The billing statement shall indicate if the work has been completed or if the billing is for partial completion of the work. The fixed fee will be paid in proportion to the percentage of work completed per work authorizations.

C. Overhead Rates. The Engineer shall use the provisional overhead rate indicated in Attachment E. If a periodic escalation of the provisional overhead rate is specified in Attachment E, the effective date of the revised provisional overhead rate must be included. For lump sum contracts, the overhead rate remains unchanged for the entire contract period.

D. Thirty Day Payments. Upon receipt of a billing statement that complies with all invoice requirements set forth in this Article, the State shall make a good faith effort to pay the amount which is due and payable within thirty (30) days.

E. Withholding Payments. The State reserves the right to withhold payment of the Engineer's billing statement in the event of any of the following: (1) If a dispute over the work or costs thereof is not resolved within a thirty day period; (2) pending verification of satisfactory work performed; (3) the Engineer becomes a delinquent obligor as set forth in Section 231.006 of the Family Code; (4) required reports are not received; or (5) the State Comptroller of Public Accounts will not issue a warrant to the Engineer. In the event that payment is withheld, the State shall notify the Engineer and give a remedy that would allow the State to release the payment.

F. Required Reports.

(1) As required in Attachment H, Disadvantaged Business Enterprise or Historically Underutilized Business Program Requirements, the Engineer shall submit Progress Assessment Reports to report actual payments made to Disadvantaged Business Enterprises or Historically Underutilized Businesses. One copy shall be submitted with each billing statement and one copy shall be submitted to the address included in Attachment H, Disadvantaged Business Enterprise or Historically Underutilized Business Program Requirements.

(2) Prior to contract closeout, the Engineer shall submit a Final Report (Exhibit H-4) to the address set forth in Attachment H.

(3) The Engineer shall submit a separate report with each billing statement showing the percent completion of the work accomplished during the billing period and the percent completion to date, and any additional written report requested by the State to document the progress of the work.

G. Subproviders and Suppliers List. Pursuant to requirements of 43 Texas Administrative Code §9.350 et seq., the Engineer must provide the State a list (Exhibit H-5/DBE or Exhibit H-6/HUB) of all Subproviders and suppliers that submitted quotes or proposals for subcontracts. This list shall include subproviders and suppliers names, addresses, telephone numbers, and type of work desired.

H. Debt to the State. If the State Comptroller of Public Accounts is prohibited from issuing a warrant or initiating an electronic funds transfer to the Engineer because of a debt owed to the State, the State shall apply all payment due the Engineer to the debt or delinquent tax until the debt or delinquent tax is paid in full.

I. Audit. 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 this 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. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

ARTICLE 5. WORK AUTHORIZATIONS. The State will issue work authorizations using the form included in Attachment D (Work Authorizations and Supplemental Work Authorizations) to authorize all work under this contract. The Engineer must sign and return a work authorization within seven (7) working days after receipt. Refusal to accept a work authorization may be grounds for termination of the contract. The State shall not be responsible for actions by the Engineer or any costs incurred by the Engineer relating to work not directly associated with or prior to the execution of a work authorization. Terms and conditions governing the use of work authorizations are set forth in Attachment A, General Provisions, Article 1.

ARTICLE 6. SIGNATORY WARRANTY. The undersigned signatory for the Engineer hereby represents and warrants that he or she is an officer of the organization for which he or she has executed this contract and that he or she has full and complete authority to enter into this contract on behalf of the firm. These representations and warranties are made for the purpose of inducing the State to enter into this contract.

ARTICLE 7. All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following addresses:


<p>Engineer:</p> <p>Chief Operating Officer T. Smith Inspection & Testing, LLC. 7473 Airport Freeway Richland Hills, Texas 76118</p>	<p>State:</p> <p>Director, Professional Engineering Procurement Services Texas Department of Transportation 125 E. 11th Street Austin, Texas 78701</p>
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All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

ARTICLE 8. INCORPORATION OF PROVISIONS. Attachments A through H are attached hereto and incorporated into this contract as if fully set forth herein.

IN WITNESS WHEREOF, the **State** and the **Engineer** have executed this contract.

THE ENGINEER

DocuSigned by:

2BEC7EGB182F452...


(Signature)
Arthur Etherly III

(Printed Name)
Chief Operating Officer

(Title)
5/4/2017

(Date)

THE STATE OF TEXAS

DocuSigned by:

B9775932E4FB44F...

(Signature)
William L. Hale, P.E.

(Printed Name)
Chief Engineer

(Title)
5/10/2017

(Date)

**Attachments to Contract for Engineering Services
 Incorporated into the Contract by Reference**

Attachments	Title
A	General Provisions
B	Services to Be Provided by the State
C	Services to Be Provided by the Engineer
D	Work Authorization and Supplemental Work Authorization
E	Fee Schedule
F	Not Applicable
G	Computer Graphics Files for Document and Information Exchange, if applicable Not Applicable
H-FG	Disadvantaged Business Enterprise (DBE) for Federal Funded Professional or Technical Services Contracts – See Attachment H Instructions Not Applicable
H – FN	Disadvantaged Business Enterprise (DBE) for Race-Neutral Professional or Technical Services Contracts – See Attachment H Instructions Not Applicable
H – SG	Historically Underutilized Business (HUB) Requirements for State Funded Professional or Technical Services Contracts – State of Texas HUB. Subcontracting plan required – See Attachment H Instructions
H – SN	Historically Underutilized Business (HUB) Requirements for State Funded Professional or Technical Services Contracts – No State of Texas HUB Not Applicable
Exhibits	Title
H – 1	Subprovider Monitoring System Commitment Worksheet
H – 2	Subprovider Monitoring System Commitment Agreement
H – 3	Monthly Progress Assessment Report - Not Applicable
H - 4	Subprovider Monitoring System Final Report
H - 5	Federal Subproviders and Supplier Information – Not Applicable
H - 6	HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report

ATTACHMENT A
GENERAL PROVISIONS
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ATTACHMENT A

GENERAL PROVISIONS

ARTICLE 1. WORK AUTHORIZATIONS

A. Use. The Engineer shall not begin any work until the State and the Engineer have signed a work authorization. Costs incurred by the Engineer before a work authorization is fully executed or after the completion date specified in the work authorization are not eligible for reimbursement. All work must be completed on or before the completion date specified in the work authorization, and no work authorization completion date shall extend beyond the contract period set forth in Article 2 of the contract (Contract Period).

The maximum contract time is the time needed to complete all work authorizations that will be issued in the first two years of the contract. All work authorizations must be issued within the initial two-year period, starting from the contract execution date.

B. Contents. Each work authorization will specify (1) the types of services to be performed; (2) a period of performance with a beginning and ending date; (3) a full description of the work to be performed; (4) a work schedule with milestones; (5) a cost not to exceed amount, (6) the basis of payment whether cost plus fixed fee, unit cost, lump sum, or specified rate; and (7) a work authorization budget calculated using fees set forth in Attachment E, Fee Schedule. The Engineer is not to include additional contract terms and conditions in the work authorization. In the event of any conflicting terms and conditions between the work authorization and the contract, the terms and conditions of the contract shall prevail and govern the work and costs incurred.

C. Work Authorization Budget. A work authorization budget shall set forth in detail (1) the computation of the estimated cost of the work as described in the work authorization, (2) the estimated time (hours/days) required to complete the work at the hourly rates established in Attachment E, Fee Schedule; (3) a work plan that includes a list of the work to be performed, (4) a stated maximum number of calendar days to complete the work, and (5) a cost-not-to-exceed-amount or unit or lump sum cost and the total cost or price of the work authorization. The State will not pay items of cost that are not included in or rates that exceed those approved in Attachment E.

D. No Guaranteed Work. Work authorizations are issued at the discretion of the State. While it is the State's intent to issue work authorizations hereunder, the Engineer shall have no cause of action conditioned upon the lack or number of work authorizations issued.

E. Incorporation into Contract. Each work authorization shall be signed by both parties and become a part of the contract. No work authorization will waive the State's or the Engineer's responsibilities and obligations established in this contract. The Engineer shall promptly notify the State of any event that will affect completion of the work authorization.

F. Supplemental Work Authorizations. Before additional work may be performed or additional costs incurred, a change in a work authorization shall be enacted by a written supplemental work authorization in the form identified and attached hereto as Attachment D. Both parties must execute a supplemental work authorization within the period of performance specified in the work authorization. The State shall not be responsible for actions by the Engineer or any costs incurred by the Engineer relating to additional work not directly associated with the performance or prior to the execution of the work authorization. The Engineer shall allow adequate time for review and approval of the supplemental work authorization by the State prior to expiration of the work authorization. Any supplemental work authorization must be executed by both parties within the time period established in Article 2 of the contract, (Contract Period). Under no circumstances will a work authorization be allowed to extend beyond the contract's expiration date or will the total amount of funds exceed the maximum amount payable set forth in Article 3A of the contract (Compensation).

F-1. More Time Needed. If the Engineer determines or reasonably anticipates that the work authorized in a work authorization cannot be completed before the specified completion date, the Engineer shall promptly notify the State. The State may, at its sole discretion, extend the work authorization period by execution of supplemental authorization, using the form attached hereto as Attachment D.

F-2. Changes in Scope. Changes that would modify the scope of the work authorized in a work authorization must be enacted by a written supplemental work authorization. The Engineer must allow adequate time for the State to review and approve any request for a time extension prior to expiration of the work authorization. If the change in scope affects the amount payable under the work authorization, the Engineer shall prepare a revised work authorization budget for the State's approval.

G. New Work Authorization. If the Engineer does not complete the services authorized in a work authorization before the specified completion date and has not requested a supplemental work authorization, the work authorization shall terminate on the completion date. At the sole discretion of the State, it may issue a new work authorization to the Engineer for the incomplete work using the unexpended balance of the preceding work authorization for the project. If approved by the State, the Engineer may calculate any additional cost for the incomplete work using the rates set forth in the preceding work authorization and in accordance with Attachment E, Fee Schedule.

H. Emergency Work Authorizations. The State, at its sole discretion, may accept the Engineer's signature on a faxed copy of the work authorization as satisfying the requirements for executing the work authorization, provided that the signed original is received by the State within five business days from the date on the faxed copy.

I. Proposal Work Authorizations. The State may issue a proposal work authorization under which the Engineer will submit a proposal for additional work. The proposal must be for additional work that is within the defined scope of work under this contract. The amount to be paid for a proposal work authorization will be a lump sum for each proposal. The lump sum payment will be no less than two percent (2%) and no more than four percent (4%) of the State's estimate of the cost of the additional work. The Engineer may elect without penalty not to submit a proposal in response to a proposal work authorization. Any proposal submitted in response to a proposal work authorization will be the sole property of the State. The State may, at its option, issue similar or identical proposal work authorizations under other contracts, and the proposals submitted in response to the various proposal work authorizations may be compared by the State for the purpose of determining the contract under which the work will be awarded. The determination of the contract under which the work will be awarded will be based on the design characteristics of the proposal and the Engineer's qualifications and will not consider the Engineer's rates.

J. Deliverables. Upon satisfactory completion of the work authorization, the Engineer shall submit the deliverables as specified in the executed work authorization to the State for review and acceptance.

ARTICLE 2. PROGRESS

A. Progress meetings. The Engineer shall from time to time during the progress of the work confer with the State. The Engineer shall prepare and present such information as may be pertinent and necessary or as may be requested by the State in order to evaluate features of the work.

B. Conferences. At the request of the State or the Engineer, conferences shall be provided at the Engineer's office, the office of the State, or at other locations designated by the State. These conferences shall also include evaluation of the Engineer's services and work when requested by the State.

C. Inspections. If federal funds are used to reimburse costs incurred under this contract, the work and all reimbursements will be subject to periodic review by the U. S. Department of Transportation.

D. Reports. The Engineer shall promptly advise the State in writing of events that have a significant impact upon the progress of a work authorization, including:

1. problems, delays, adverse conditions that will materially affect the ability to meet the time schedules and goals, or preclude the attainment of project work units by established time periods; this disclosure will be accompanied by statement of the action taken or contemplated, and any State or federal assistance needed to resolve the situation; and
2. favorable developments or events which enable meeting the work schedule goals sooner than anticipated.

E. Corrective Action. Should the State determine that the progress of work does not satisfy the milestone schedule set forth in a work authorization, the State shall review the work schedule with the Engineer to determine the nature of corrective action needed.

ARTICLE 3. SUSPENSION OF WORK AUTHORIZATION

A. Notice. Should the State desire to suspend a work authorization but not terminate the contract, the State may verbally notify the Engineer followed by written confirmation, giving (30) thirty days notice. Both parties may waive the thirty-day notice in writing.

B. Reinstatement. A work authorization may be reinstated and resumed in full force and effect within sixty (60) business days of receipt of written notice from the State to resume the work. Both parties may waive the sixty-day notice in writing.

C. Contract Period Not Affected. If the State suspends a work authorization, the contract period as determined in Article 2 of the contract (Contract Period) is not affected and the contract and the work authorization will terminate on the date specified unless the contract or work authorization is amended to authorize additional time.

D. Limitation of Liability. The State shall have no liability for work performed or costs incurred prior to the date authorized by the State to begin work, during periods when work is suspended, or after the completion date of the contract or work authorization.

ARTICLE 4. ADDITIONAL WORK

A. Notice. If the Engineer is of the opinion that any assigned work is beyond the scope of this contract and constitutes additional work, it shall promptly notify the State in writing, presenting the facts of the work authorization and showing how the work authorization constitutes additional work.

B. Supplemental Agreement. If the State finds that the work does constitute additional work, the State shall so advise the Engineer and a written supplemental agreement will be executed as provided in General Provisions, Article 6, Supplemental Agreements.

C. Limitation of Liability. The State shall not be responsible for actions by the Engineer or any costs incurred by the Engineer relating to additional work not directly associated with or prior to the execution of a supplemental agreement.

ARTICLE 5. CHANGES IN WORK

A. Work Previously Submitted as Satisfactory. If the Engineer has submitted work in accordance with the terms of this contract but the State requests changes to the completed work or parts thereof which involve changes to the original scope of services or character of work under the contract, the Engineer shall make such revisions as requested and as directed by the State. This will be considered as additional work and paid for as specified under Article 4, Additional Work.

B. Work Does Not Comply with Contract. If the Engineer submits work that does not comply with the terms of this contract, the State shall instruct the Engineer to make such revision as is necessary to bring the work into compliance with the contract. No additional compensation shall be paid for this work.

C. Errors/Omissions. The Engineer shall make revisions to the work authorized in this contract which are necessary to correct errors or omissions appearing therein, when required to do so by the State. No additional compensation shall be paid for this work.

ARTICLE 6. SUPPLEMENTAL AGREEMENTS

A. Need. The terms of this contract may be modified if the State determines that there has been a significant increase or decrease in the duration, scope, cost, complexity or character of the services to be performed. A supplemental agreement will be executed to authorize such significant increases or decreases. Significant is defined to mean a cost increase of any amount and a cost decrease of twenty percent (20%) or more of the original estimated project cost.

B. Compensation. Additional compensation, if appropriate, shall be calculated as set forth in Article 3 of the contract (Compensation). Significant changes affecting the cost or maximum amount payable shall be defined to include but not be limited to new work not previously authorized or previously authorized services that will not be performed. The parties may reevaluate and renegotiate costs at this time.

C. When to Execute. Both parties must execute a supplemental agreement within the contract period specified in Article 2 of the contract (Contract Period).

ARTICLE 7. OWNERSHIP OF DATA

A. Work for Hire. All services provided under this contract are considered work for hire and as such all data, basic sketches, charts, calculations, plans, specifications, and other documents created or collected under the terms of this contract are the property of the State.

B. Disposition of Documents. All documents prepared by the Engineer and all documents furnished to the Engineer by the State shall be delivered to the State upon request by the State. The Engineer, at its own expense, may retain copies of such documents or any other data which it has furnished the State under this contract, but further use of the data is subject to permission by the State.

C. Release of Design Plan. The Engineer (1) will not release any roadway design plan created or collected under this contract except to its subproviders as necessary to complete the contract; (2) shall include a provision in all subcontracts which acknowledges the State's ownership of the design plan and prohibits its use for any use other than the project identified in this contract; and (3) is responsible for any improper use of the design plan by its employees, officers, or subproviders, including costs, damages, or other liability resulting from improper use. Neither the Engineer nor any subprovider may charge a fee for the portion of the design plan created by the State.

ARTICLE 8. PUBLIC INFORMATION AND CONFIDENTIALITY

A. Public Information. The State will comply with Government Code, Chapter 552, the Public Information Act, and 43 Texas Administrative Code §3.10 et seq. in the release of information produced under this contract.

B. Confidentiality. The Engineer shall not disclose information obtained from the State under this contract without the express written consent of the State.

C. Access to Information. The Engineer is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.

ARTICLE 9. PERSONNEL, EQUIPMENT AND MATERIAL

A. Engineer Resources. The Engineer shall furnish and maintain quarters for the performance of all services, in addition to providing adequate and sufficient personnel and equipment to perform the services required under the contract. The Engineer certifies that it presently has adequate qualified personnel in its employment for performance of the services required under this contract, or it will be able to obtain such personnel from sources other than the State.

B. Removal of Contractor Employee. All employees of the Engineer assigned to this contract shall have such knowledge and experience as will enable them to perform the duties assigned to them. The State may instruct the Engineer to remove any employee from association with work authorized in this contract if, in the sole opinion of the State, the work of that employee does not comply with the terms of this contract or if the conduct of that employee becomes detrimental to the work.

C. Replacement of Key Personnel. The Engineer must notify the State in writing as soon as possible, but no later than three business days after a project manager or other key personnel is removed from association with this contract, giving the reason for removal.

D. State Approval of Replacement Personnel. The Engineer may not replace the project manager or key personnel without prior consent of the State. The State must be satisfied that the new project manager or

other key personnel is qualified to provide the authorized services. If the State determines that the new project manager or key personnel is not acceptable, the Engineer may not use that person in that capacity and shall replace him or her with one satisfactory to the State within forty-five (45) days.

E. Ownership of Acquired Property. Except to the extent that a specific provision of this contract states to the contrary, the State shall own all intellectual property acquired or developed under this contract and all equipment purchased by the Engineer or its subcontractors under this contract. All intellectual property and equipment owned by the State shall be delivered to the State when the contract terminates, or when it is no longer needed for work performed under this contract, whichever occurs first.

ARTICLE 10. LICENSE FOR TxDOT LOGO USE

A. Grant of License; Limitations. The Engineer is granted a limited revocable non-exclusive license to use the registered TxDOT trademark logo (TxDOT Flying "T") on any deliverables prepared under this contract that are the property of the State. The Engineer may not make any use of the registered TxDOT trademark logo on any other materials or documents unless it first submits that request in writing to the State and receives approval for the proposed use. The Engineer agrees that it shall not alter, modify, dilute, or otherwise misuse the registered TxDOT trademark logo or bring it into disrepute.

B. Notice of Registration Required: The Engineer's use of the Flying 'T' under this article shall be followed by the capital letter R enclosed within a circle (®) that gives notice that the Flying 'T' is registered in the United States Patent and Trademark Office (USPTO).

C. No Assignment or Sublicense. The Engineer may not assign or sublicense the rights granted by this article without the prior written consent of the State.

D. Term of License. The license granted to the Engineer by this article shall terminate at the end of the term specified in Article 2 of this contract.

ARTICLE 11. SUBCONTRACTING

A. Prior Approval. The Engineer shall not assign, subcontract or transfer any portion of professional services related to the work under this contract without prior written approval from the State.

B. DBE/HUB Compliance. The Engineer's subcontracting program shall comply with the requirements of Attachment H of the contract (DBE/HUB Requirements).

C. Required Provisions. All subcontracts for professional services shall include the provisions included in Attachment A, General Provisions, and any provisions required by law. The Engineer is authorized to pay subproviders in accordance with the terms of the subcontract, and the basis of payment may differ from the basis of payment by the State to the Engineer.

D. Prior Review. Subcontracts for professional services in excess of \$25,000 may be reviewed by the State prior to performance of work thereunder.

E. Engineer Responsibilities. No subcontract relieves the Engineer of any responsibilities under this contract.

ARTICLE 12. INSPECTION OF WORK

A. Review Rights. The State and the U.S. Department of Transportation, when federal funds are involved, and any of their authorized representatives shall have the right at all reasonable times to review or otherwise evaluate the work performed hereunder and the premises in which it is being performed.

B. Reasonable Access. If any review or evaluation is made on the premises of the Engineer or a subprovider, the Engineer shall provide and require its subproviders to provide all reasonable facilities and assistance for the safety and convenience of the state or federal representatives in the performance of their duties.

ARTICLE 13. SUBMISSION OF REPORTS

All applicable study reports shall be submitted in preliminary form for approval by the State before a final report is issued. The State's comments on the Engineer's preliminary report must be addressed in the final report.

ARTICLE 14. VIOLATION OF CONTRACT TERMS

A. Increased Costs. Violation of contract terms, breach of contract, or default by the Engineer shall be grounds for termination of the contract, and any increased or additional cost incurred by the State arising from the Engineer's default, breach of contract or violation of contract terms shall be paid by the Engineer.

B. Remedies. This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

ARTICLE 15. TERMINATION

A. Causes. The contract may be terminated before the stated completion date by any of the following conditions.

1. By mutual agreement and consent, in writing from both parties.
2. By the State by notice in writing to the Engineer as a consequence of failure by the Engineer to perform the services set forth herein in a satisfactory manner.
3. By either party, upon the failure of the other party to fulfill its obligations as set forth herein.
4. By the State for reasons of its own, not subject to the mutual consent of the Engineer, by giving thirty business days notice of termination in writing to the Engineer.
5. By the State, if the Engineer violates the provisions of Attachment A, General Provisions Article 21, Gratuities, or Attachment H, Disadvantaged Business Enterprise/Historically Underutilized Business Requirements.
6. By satisfactory completion of all services and obligations described herein.

B. Measurement. Should the State terminate this contract as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the Engineer. In determining the value of the work performed by the Engineer prior to termination, the State shall be the sole judge. Compensation for work at termination will be based on a percentage of the work completed at that time. Should the State terminate this contract under paragraph (4) or (5) above, the Engineer shall not incur costs during the thirty-day notice period in excess of the amount incurred during the preceding thirty days.

C. Value of Completed Work. If the Engineer defaults in the performance of this contract or if the State terminates this contract for fault on the part of the Engineer, the State will give consideration to the following when calculating the value of the completed work: (1) the actual costs incurred (not to exceed the rates set forth in Attachment E, Fee Schedule) by the Engineer in performing the work to the date of default; (2) the amount of work required which was satisfactorily completed to date of default; (3) the value of the work which is usable to the State; (4) the cost to the State of employing another firm to complete the required work; (5) the time required to employ another firm to complete the work; and (6) other factors which affect the value to the State of the work performed.

D. Calculation of Payments. The State shall use the fee schedule set forth in Attachment E to the contract (Fee Schedule) in determining the value of the work performed up to the time of termination. In the case of partially completed engineering services, eligible costs will be calculated as set forth in Attachment E, Fee Schedule. The sum of the provisional overhead percentage rate for payroll additives and for general and administrative overhead costs during the years in which work was performed shall be used to calculate partial payments. Any portion of the fixed fee not previously paid in the partial payments shall not be included in the final payment.

E. Excusable Delays. Except with respect to defaults of subproviders, the Engineer shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure to progress in the performance of the work) if such failure arises out of causes beyond the control and without the default or negligence of the Engineer. Such causes may include, but are not restricted to, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

F. Surviving Requirements. The termination of this contract and payment of an amount in settlement as

prescribed above shall extinguish the rights, duties, and obligations of the State and the Engineer under this contract, except for those provisions that establish responsibilities that extend beyond the contract period.

G. Payment of Additional Costs. If termination of this contract is due to the failure of the Engineer to fulfill its contract obligations, the State may take over the project and prosecute the work to completion, and the Engineer shall be liable to the State for any additional cost to the State.

ARTICLE 16. COMPLIANCE WITH LAWS

The Engineer shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this contract, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination, and licensing laws and regulations. When required, the Engineer shall furnish the State with satisfactory proof of its compliance therewith.

ARTICLE 17. INDEMNIFICATION

A. Errors, Omissions, Negligent Acts. The Engineer shall save harmless the State and its officers and employees from all claims and liability due to activities of itself, its agents, or employees, performed under this contract and which are caused by or result from error, omission, or negligent act of the Engineer or of any person employed by the Engineer.

B. Attorney Fees. The Engineer shall also save harmless the State from any and all expense, including, but not limited to, attorney fees which may be incurred by the State in litigation or otherwise resisting said claim or liabilities which may be imposed on the State as a result of such activities by the Engineer, its agents, or employees.

ARTICLE 18. ENGINEER'S RESPONSIBILITY

A. Accuracy. The Engineer shall be responsible for the accuracy of work and shall promptly make necessary revisions or corrections resulting from its errors, omissions, or negligent acts without compensation.

B. Errors and Omissions. The Engineer's Responsibility for all questions arising from design errors or omissions will be determined by the State. All decisions shall be in accordance with the State's "Consultant Errors & Omissions Correction and Collection Procedures" and Texas Government Code §2252.905. The Engineer will not be relieved of the responsibility for subsequent correction of any such errors or omissions or for clarification of any ambiguities until after the construction phase of the project has been completed.

C. Seal. The responsible Engineer shall sign, seal and date all appropriate engineering submissions to the State in accordance with the Texas Engineering Practice Act and the rules of the Texas Board of Professional Engineers.

D. Resealing of Documents. Once the work has been sealed and accepted by the State, the State, as the owner, will notify the party to this contract, in writing, of the possibility that a State engineer, as a second engineer, may find it necessary to alter, complete, correct, revise or add to the work. If necessary, the second engineer will affix his seal to any work altered, completed, corrected, revised or added. The second engineer will then become responsible for any alterations, additions or deletions to the original design including any effect or impacts of those changes on the original engineer's design.

ARTICLE 19. NONCOLLUSION

A. Warranty. The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this contract and that it has not paid or agreed to pay any company or engineer any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract.

B. Liability. For breach or violation of this warranty, the State shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or compensation, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

ARTICLE 20. INSURANCE

The Engineer certifies that it has insurance on file with Contract Services of the Texas Department of Transportation in the amount specified on Texas Department of Transportation Form 1560-CS Certificate of Insurance, as required by the State. No other proof of insurance is acceptable to the State. The Engineer certifies that it will keep current insurance on file with that office for the duration of the contract period. If insurance lapses during the contract period, the Engineer must stop work until a new certificate of insurance is provided.

ARTICLE 21. GRATUITIES

A. Employees Not to Benefit. Texas Transportation Commission policy mandates that employees of the Texas Department of Transportation shall not accept any benefit, gift or favor from any person doing business with or who reasonably speaking may do business with the State under this contract. The only exceptions allowed are ordinary business lunches and items that have received the advance written approval of the Executive Director of the Texas Department of Transportation.

B. Liability. Any person doing business with or who reasonably speaking may do business with the State under this contract may not make any offer of benefits, gifts or favors to department employees, except as mentioned above. Failure on the part of the Engineer to adhere to this policy may result in the termination of this contract.

ARTICLE 22. DISADVANTAGED BUSINESS ENTERPRISE OR HISTORICALLY UNDERUTILIZED BUSINESS REQUIREMENTS

The Engineer agrees to comply with the requirements set forth in Attachment H, Disadvantaged Business Enterprise or Historically Underutilized Business Subcontracting Plan Requirements with an assigned goal or a zero goal, as determined by the State.

ARTICLE 23. MAINTENANCE, RETENTION AND AUDIT OF RECORDS

A. Retention Period. The Engineer shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and services provided (hereinafter called the Records). The Engineer shall make the records available at its office during the contract period and for seven (7) years from the date of final payment under this contract, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last.

B. Availability. The State or any of its duly authorized representatives, the Federal Highway Administration, the United States Department of Transportation, Office of Inspector General, and the Comptroller General shall have access to the Engineer's Records which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts and transcriptions.

ARTICLE 24. NEPOTISM DISCLOSURE

A. In this section the term "relative" means:

- (1) a person's great grandparent, grandparent, parent, aunt or uncle, sibling, niece or nephew, spouse, child, grandchild, or great grandchild, or
- (2) the grandparent, parent, sibling, child, or grandchild of the person's spouse.

B. A notification required by this section shall be submitted in writing to the person designated to receive official notices under this contract and by first-class mail addressed to Contract Services, Texas Department of Transportation, 125 East 11th Street, Austin Texas 78701. The notice shall specify the Engineer's firm name, the name of the person who submitted the notification, the contract number, the district, division, or office of TxDOT that is principally responsible for the contract, the name of the relevant Engineer employee, the expected role of the Engineer employee on the project, the name of the TxDOT employee who is a relative of the Engineer employee, the title of the TxDOT employee, the work location of the TxDOT employee, and the nature of the relationship.

C. By executing this contract, the Engineer is certifying that the Engineer does not have any knowledge that any of its employees or of any employees of a subcontractor who are expected to work under this contract

have a relative that is employed by TxDOT unless the Engineer has notified TxDOT of each instance as required by subsection (b).

D. If the Engineer learns at any time that any of its employees or that any of the employees of a subcontractor who are performing work under this contract have a relative who is employed by TxDOT, the Engineer shall notify TxDOT under subsection (b) of each instance within thirty days of obtaining that knowledge.

E. If the Engineer violates this section, TxDOT may terminate the contract immediately for cause, may impose any sanction permitted by law, and may pursue any other remedy permitted by law.

ARTICLE 25. CIVIL RIGHTS COMPLIANCE

A. Compliance with Regulations: The Engineer will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this agreement.

B. Nondiscrimination: The Engineer, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Engineer will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Engineer of the Engineer's obligations under this contract and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

D. Information and Reports: The Engineer will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Engineer is in the exclusive possession of another who fails or refuses to furnish this information, the Engineer will so certify to the State or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of the Engineer's noncompliance with the Nondiscrimination provisions of this contract, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- (1) withholding of payments to the Engineer under the contract until the Engineer complies and/or
- (2) cancelling, terminating, or suspending of the contract, in whole or in part.

F. Incorporation of Provisions: The Engineer will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Engineer will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Engineer becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Engineer may request the State to enter into such litigation to protect the interests of the State. In addition, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 26. PATENT RIGHTS

The State and the U. S. Department of Transportation shall have the royalty free, nonexclusive and irrevocable right to use and to authorize others to use any patents developed by the Engineer under this contract.

ARTICLE 27. COMPUTER GRAPHICS FILES

The Engineer agrees to comply with Attachment G, Computer Graphics Files for Document and Information Exchange, if determined by the State to be applicable to this contract.

ARTICLE 28. CHILD SUPPORT CERTIFICATION

Under Section 231.006, Texas Family Code, the Engineer 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. If the above certification is shown to be false, the Engineer is liable to the state for attorney's fees, the cost necessary to complete the contract, including the cost of advertising and awarding a second contract, and any other damages provided by law or the contract. A child support obligor or business entity ineligible to receive payments because of a payment delinquency of more than thirty (30) days remains ineligible until: all arrearages have been paid; the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency; or the court of continuing jurisdiction over the child support order has granted the obligor an exemption from Subsection (a) of Section 231.006, Texas Family Code, as part of a court-supervised effort to improve earnings and child support payments.

ARTICLE 29. DISPUTES

A. Disputes Not Related to Contract Services. The Engineer shall be responsible for the settlement of all contractual and administrative issues arising out of any procurement made by the Engineer in support of the services authorized herein.

B. Disputes Concerning Work or Cost. Any dispute concerning the work hereunder or additional costs, or any non-procurement issues shall be settled in accordance with 43 Texas Administrative Code §9.2.

ARTICLE 30. SUCCESSORS AND ASSIGNS

The Engineer and the State do each hereby bind themselves, their successors, executors, administrators and assigns to each other party of this agreement and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this contract. The Engineer shall not assign, subcontract or transfer its interest in this contract without the prior written consent of the State.

ARTICLE 31. SEVERABILITY

In the event any one or more of the provisions contained in this contract shall for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE 32. PRIOR CONTRACTS SUPERSEDED

This contract constitutes the sole agreement of the parties hereto for the services authorized herein and supersedes any prior understandings or written or oral contracts between the parties respecting the subject matter defined herein.

ARTICLE 33. CONFLICT OF INTEREST

A. Representation by Engineer.

The Engineer represents that its firm has no conflict of interest that would in any way interfere with its or its employees' performance of services for the department or which in any way conflicts with the interests of the department. The Engineer further certifies that this agreement is not barred because of a conflict of interest pursuant to Texas Government Code, Section 2261.252, between it and the State. Specifically, the Engineer certifies that none of the following individuals, nor any or their family members within the second degree of affinity or consanguinity, owns 1% or more interest, or has a financial interest as defined under Texas Government Code, Section 2261.252(b), in the Engineer: any member of the Texas Transportation Commission, TxDOT's Executive Director, General Counsel, Chief of Procurement and Field Support Operations, Director of Procurement, or Director of Contract Services. The firm shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the department's interests.

B. Certification Status. The Engineer certifies that it is not:

1. a person required to register as a lobbyist under Chapter 305, Government Code;
2. a public relations firm; or
3. a government consultant.

C. Environmental Disclosure. If the Engineer will prepare an environmental impact statement or an environmental assessment under this contract, the Engineer certifies by executing this contract that it has no financial or other interest in the outcome of the project on which the environmental impact statement or environmental assessment is prepared.

D. Commencement of Final Design. This contract does not obligate the State to proceed with final design for any alternative. On completion of environmental documentation, the State will consider all reasonable alternatives in a fair and objective manner. Notwithstanding anything contained elsewhere in the contract or in any work authorization, the Engineer may not proceed with final design until after all relevant environmental decision documents have been issued.

E. Restrictions on Testing. If the Engineer will perform commercial laboratory testing under this contract, on any project the Engineer may not perform more than one of the following types of testing:

1. verification testing;
2. quality control testing; or
3. independent assurance testing

ARTICLE 34. OFFICE OF MANAGEMENT AND BUDGET (OMB) AUDIT REQUIREMENTS

The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR 200.

ARTICLE 35. DEBARMENT CERTIFICATIONS

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Engineer certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

ARTICLE 36. E-VERIFY CERTIFICATION

Pursuant to Executive Order RP-80, Engineer certifies and ensures that for all contracts for services, Engineer shall, to the extent permitted by law, utilize the United States Department of Homeland Security's E-Verify system during the term of this agreement to determine the eligibility of:

1. All persons employed by Engineer during the term of this agreement to perform duties within the State of Texas; and
2. All persons, including subcontractors, assigned by Engineer to perform work pursuant to this agreement.

Violation of this provision constitutes a material breach of this agreement.

ARTICLE 37. RESTRICTIONS ON EMPLOYMENT OF FORMER STATE OFFICER OR EMPLOYEE

The Engineer shall not hire a former state officer or employee of a state agency who, during the period of state service or employment, participated on behalf of the state agency in this agreement's procurement or its negotiation until after the second anniversary of the date of the officer's or employee's service or employment with the state agency ceased.

ARTICLE 38. PERTINENT NON-DISCRIMINATION AUTHORITIES

During the performance of this contract, the Engineer, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

- B.** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- C.** Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D.** Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E.** The Age Discrimination Act of 1975, as amended, (49 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F.** Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G.** The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not).
- H.** Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I.** The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J.** Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K.** Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L.** Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

ATTACHMENT B

SERVICES TO BE PROVIDED BY THE STATE

Subject to availability, the services to be provided or performed by the State will include, but not be limited to, the following items:

- A. The State will provide the specification requirements for all material tested.
- B. The State will provide all test report templates. These will be given to the Engineer on a CD or by email that contains Excel templates to be used in the State's Site Manager construction documentation program. There will be no exceptions to the use of these forms.
- C. The State will furnish all necessary laboratory equipment for tests performed at hot mix plants.
- D. The State will verify technician certification and equipment in all State Test Procedures as required per State requirements and the Quality Assurance Program for the State.
- E. The State reserves the right to require replacement of technicians during this contract if performance is determined to be unsatisfactory.
- F. The State will direct the work and plant assigned to the Engineer.
- G. The State will periodically inspect equipment and procedures of the Engineer.
- H. State personnel will maintain oversight of all contract services provided by the Engineer through periodic laboratory, plant and construction site inspections.
- I. The State will provide a Sample Identification or Control Section Job (CSJ) for each sample or project which will be used by the Engineer when reporting test results. The Number will be provided on the Work Authorization or Request for Services when submitted to the Engineer.
- J. The State will supply daily activity forms used for travel and work time records.
- K. The State will perform evaluation on consultant and project manager performance.
- L. The State retains the right to reject materials, interpret specifications, modify the mixture design and be the final authority in all matters concerning project inspection, sampling and testing.

ATTACHMENT C

SERVICES TO BE PROVIDED BY THE ENGINEER

The Engineer shall perform and supervise all sampling, testing, inspection work, and related services for Asphaltic and Concrete construction for the State on the highway projects identified in the Work Authorizations executed under this contract. The Engineer shall be responsible for all individual and component materials for sampling, testing, plant inspections, cleanup of State equipment, maintenance of State equipment, and issuing reports in a timely and thorough manner.

FUNCTION CODE 102 (110) – FEASIBILITY STUDIES

- A. The Engineer shall perform testing and inspection for the State's District, which will be specified in the work authorization. In addition, the Engineer shall charge travel time based on the type of service provided and in accordance with the Attachment E - Fee Schedule.
- B. The Engineer shall perform all tests and services at the Engineer's facility as shown on the contract, except tests performed at the plant or on the roadway. The laboratory shall be accredited by the American Association of State Highway Transportation Officials (AASHTO) through the AASHTO Material Reference Laboratory (AMRL).
- C. Upon execution of the contract, the Engineer shall be able to meet the requirements for certification and accreditation according to the department's quality assurance program. If the Engineer is unable to meet the requirements, *within 60 days of execution of the contract*, the contract is subject to termination.
- D. Under the guidance of a Professional Engineer registered or licensed in Texas, the Engineer shall perform all testing, inspecting, and monitoring all aspects of the production process to assure that all requirements of the plans and specifications are met.

The Engineer shall perform all testing, inspection, and related services, in accordance with the State's Test Procedures; the latest version of the Texas Department of Transportation (TxDOT) Standard Specifications for Construction of Highways, Streets, and Bridges; the Texas Manual on Uniform Traffic Control Devices for Streets and Highways (TxMUTCD); and all other specifications and provisions applicable to the services under this contract.

- E. Traffic Control. Unless provided by the State, Engineer shall prepare and implement a Traffic Control Plan (TCP) for operations on or near the roadway.
 - 1. Engineer shall submit the TCP to State's Area Engineer for approval prior to commencing drilling operations.
 - 2. Engineer shall use only individuals that have completed one or more of the following courses specific to the type of traffic control related work that the individual is performing.

Traffic Control	
Course Title	Course Provider
Traffic Control Supervisor	American Traffic Safety Services Association (ATTSA)
Design and Operation of Work Zone Traffic Control	National Highway Institute (NHI)
Work Zone Traffic Control for Maintenance Operations	National Highway Institute (NHI)
Work Zone Traffic Control for CRPs	Texas Engineering Extension Service (TEEX)
Traffic Control Supervisor	University of Texas at Arlington (UTA), Division for Enterprise Development

Flagger Instructor	
Course Title	Course Provider
Flagger Instructor Training	American Traffic Safety Services Association (ATTSA)
Train-the-Trainer Flaggers	Texas Engineering Extension Service (TEEX)
Flagger Instructor Training	National Safety Council (NSC)
Certified Instructor: Qualified Flagger Training	University of Texas at Arlington (UTA), Division for Enterprise Development

- F. The Engineer shall provide the State with a list of certified personnel and copies of their current certificates prior to beginning the work and when personnel changes are made.
- G. Technicians used by Engineer to provide these services shall be qualified and certified in accordance with TxDOT Quality Assurance Programs (QAP) or by other Department-approved programs, such as the Texas Asphalt Pavement Association (TxAPA) Hot Mix Certification Program, the TxAPA Soils and Base Certification Program, and the American Concrete Institute (ACI) Concrete Certification Program, as listed below. Technicians shall hold the appropriate level of certification for the testing to be performed. Including, but not limited to, the following:
1. Asphaltic Testing
 - a. TxAPA Level 1A - Plant Production Specialist
 - b. TxAPA Level 1B - Roadway Specialist
 - c. TxAPA Level 2 - Mix Design Specialist
 - d. Nuclear Gauge Certification for Radiation Safety and Operation
 2. Soils/Flexible Base Testing
 - a. TxAPA Level SB 101 – Properties Specialist

- b. TxAPA Level SB 102 – Field Specialist
 - c. TxAPA Level SB 103 – Material Analyst Specialist
 - d. TxAPA Level SB 201 – Strength Specialist
 - e. TxAPA Level SB 201 – Compressive Strength Specialist
3. Concrete Testing
- a. ACI Concrete Field Testing Technician – Grade 1
 - b. ACI Concrete Strength Testing Technician
- H. Technicians used by Engineer shall hold the appropriate level of certification for performing testing. The State will perform technician certifications for all other required tests not covered by TxAPA certifications. Certification of technicians, by the STATE or other Department approved agency under QAP, does not relieve the Engineer from the responsibility of ensuring technicians are fully qualified to correctly perform the testing and inspection services, in accordance to State's procedures.
- I. The Engineer shall be responsible for all daily quality assurance (QA) testing performed for State's projects at hot mix asphalt and concrete plants assigned by the State. The Engineer shall not change the personnel designated for each assigned plant without prior notice to the State's District Laboratory.
- J. The Engineer shall start tests immediately after the material samples come into the Engineer's possession. Tests must be completed within the deadline established by the State.
- K. The Engineer shall possess a computer that supports the latest version of the Site Manager template for reporting test results and includes the ability to email results.
- L. The Engineer shall email reports of all tests and inspections to the State's District Laboratory within 12 hours upon completion of the work, unless directed otherwise. Test reports must be reported on the most current Site Manager template and transmitted by email in the format specified by the State's District Laboratory. Test reports and emails shall use the naming convention directed by the State's District Laboratory.
- M. Completion of testing must include completion of daily production testing, completion of field testing, pay information, and submittal of test reports with all project information. All test reports must include all pertinent project information. A test report shall not be considered complete unless the proper information is supplied in the correct format. Test reports without proper information shall not be accepted and payment shall be withheld until this information is supplied.
- N. For all tests performed, the Engineer shall submit the following documents electronically to the State's Project Manager and the State's District Laboratory:
- signed and sealed reports if required by the State.
 - completed electronic test worksheets (of the same format provided by the State); and

- State supplied time sheets substantiating the services provided (sampling, testing, travel time).
- O. The Engineer shall immediately inform the State's Project Manager and the State's District Laboratory of failing test results that do not meet specification requirements or any discrepancies with plant or construction operations.
- P. Neither the Engineer nor any personnel working for the Engineer has any authority to reject material, to stop or modify plant production or construction, or to direct a Contractor to change or modify plant production or construction, when test results fail.
- Q. The Engineer shall be able to troubleshoot material, construction, and plant issues. The State may request the Engineer to provide consultation on material, construction, pavement, or plant production issues, as needed. The State may require the Engineer to provide a formal report of the Engineer's recommendations. The Engineer, at the approval of the State, may perform additional laboratory or field testing to formulate recommendations.
- R. The Engineer shall provide hot mix asphalt Level 1B Roadway Specialist(s) to provide field testing support to the State, as needed. The Engineer shall provide field testing equipment as necessary.
- S. The Engineer shall provide all equipment when testing is conducted at the Engineer's facility and on the roadway.
- T. The Engineer's laboratory equipment used to provide testing services must be certified and approved by the State before testing. The Engineer shall calibrate all equipment in accordance to the State's QAP. The Engineer shall provide copies of all calibration records to the State on an annual basis, or as requested. Defective equipment must be immediately removed from use by the Engineer.
- U. The Engineer shall supply all non-laboratory machinery, tools, and equipment necessary to perform services, such as shovels, rakes, buckets, bags, hand tools, etc.
- V. The Engineer shall comply with all State safety regulations in accordance with the TxDOT Occupational Safety Manual. The Engineer shall provide personal safety equipment for all personnel providing services under this contract.
- W. The Engineer shall submit daily activity forms with travel and work time records on a weekly basis. All daily activity forms shall be submitted with each invoice. The State will review all submissions and will approve and sign the reports if they meet requirements.
- X. The State will pay QA testing service at the plant or on the roadway by the hour which includes all equipment and labor costs.
- Y. The Engineer shall provide itemized charges for work performed under miscellaneous testing at the request of the State.

FUNCTION CODE 145 (145) – MANAGING CONTRACTED/DONATED PE:**A. Project Management and Administration**

The Engineer, in association with the State's Project Manager shall be responsible for directing and coordinating all activities associated with the project to comply with State policies and procedures, and to deliver that work on time.

1. PROJECT COORDINATION

The Engineer shall coordinate all subconsultant activity to include quality and consistency of deliverables and administration of the invoices and monthly progress reports. The Engineer shall coordinate with necessary local entities.

2. PROJECT MANAGEMENT

The Engineer shall manage activities including preparing correspondence, invoicing and progress reports; and reviewing schedules.

The Engineer shall:

- a. Prepare monthly written progress reports for each project.
- b. Develop and maintain a detailed project schedule to track project conformance to Exhibit C, Work Schedule, for each work authorization. The schedule submittals shall be hard copy and electronic format.
- c. Meet on a scheduled basis with the State to review project progress.
- d. Prepare, distribute, and file both written and electronic correspondence.
- e. Prepare and distribute meeting minutes.
- b. Document phone calls and conference calls as required during the project to coordinate the work for various team members.

Note: No overtime will be paid without prior approval from the State.

ATTACHMENT D
D-1
WORK AUTHORIZATION NO. _____
CONTRACT FOR ENGINEERING SERVICES

THIS WORK AUTHORIZATION is made pursuant to the terms and conditions of Article 5 of Engineering Contract No. _____ (the Contract) entered into by and between the State of Texas, acting by and through the Texas Department of Transportation (the State), and _____ (the Engineer).

PART I. The Engineer will perform engineering services generally described as _____ in accordance with the project description attached hereto and made a part of this Work Authorization. The responsibilities of the State and the Engineer as well as the work schedule are further detailed in exhibits A, B and C which are attached hereto and made a part of the Work Authorization.

PART II. The maximum amount payable under this Work Authorization is \$_____ and the method of payment is _____ as set forth in Attachment E of the Contract. This amount is based upon fees set forth in Attachment E, Fee Schedule, of the Contract and the Engineer's estimated Work Authorization costs included in Exhibit D, Fee Schedule, which is attached and made a part of this Work Authorization.

PART III. Payment to the Engineer for the services established under this Work Authorization shall be made in accordance with Articles 3 thru 5 of the contract, and Attachment A, Article 1.

PART IV. This Work Authorization shall become effective on the date of final acceptance of the parties hereto and shall terminate on _____, unless extended by a supplemental Work Authorization as provided in Attachment A, Article 1.

The maximum contract time is the time needed to complete all work authorizations that will be issued in the first two years of the contract. All work authorizations must be issued within the initial two-year period, starting from the contract execution date.

PART V. This Work Authorization does not waive the parties' responsibilities and obligations provided under the Contract.

IN WITNESS WHEREOF, this Work Authorization is executed in duplicate counterparts and hereby accepted and acknowledged below.

THE ENGINEER

THE STATE OF TEXAS

(Signature)

(Printed Name)

(Title)

(Date)

(Signature)

(Printed Name)

(Title)

(Date)

LIST OF EXHIBITS

- Exhibit A Services to be provided by the State
- Exhibit B Services to be provided by the Engineer
- Exhibit C Work Schedule
- Exhibit D Fee Schedule/Budget
- Exhibit H-2 Subprovider Monitoring System Commitment Agreement

ATTACHMENT D
D-2
SUPPLEMENTAL WORK AUTHORIZATION NO. _____
WORK AUTHORIZATION NO. _____
CONTRACT FOR ENGINEERING SERVICES

THIS SUPPLEMENTAL WORK AUTHORIZATION is made pursuant to the terms and conditions of Article 5 Contract No. _____ hereinafter identified as the "Contract," entered into by and between the State of Texas, acting by and through the Texas Department of Transportation (the State), and _____ (the Engineer).

The following terms and conditions of Work Authorization No. _____ are hereby amended as follows:

This Supplemental Work Authorization shall become effective on the date of final execution of the parties hereto. All other terms and conditions of Work Authorization No. _____ not hereby amended are to remain in full force and effect.

IN WITNESS WHEREOF, this Supplemental Work Authorization is executed in duplicate counterparts and hereby accepted and acknowledged below.

THE ENGINEER

THE STATE OF TEXAS

(Signature)

(Printed Name)

(Title)

(Date)

(Signature)

(Printed Name)

(Title)

(Date)

ATTACHMENT E**FEE SCHEDULE
(Final Cost Proposal)**

This attachment provides the basis of payment and fee schedule. **The basis of payment for this contract is indicated by an “X” in the applicable box.** The basis shall be supported by the Final Cost Proposal (FCP) shown below. If more than one basis of payment is used, each one must be supported by a separate FCP.

“X”	Basis	
<u>X</u>	Lump Sum	The lump sum shall be equal to the maximum amount payable. The lump sum includes all direct and indirect costs and profit. The Engineer shall be paid pro rata based on the percentage of work completed. For payment the Engineer is not required to provide evidence of actual hours worked, travel, overhead rates or other evidence of cost.
<u>X</u>	Unit Cost	The unit cost(s) for each type of unit and number of units are shown in the FCP. The unit cost includes all direct and indirect costs and profit. The Engineer shall be paid based on the type and number of units fully completed and the respective unit cost. For payment, the Engineer is not required to provide evidence of actual hours worked, travel, overhead rates or any other cost data. The FCP may include special items, such as equipment which are not included in the unit costs. Documentation of these special costs may be required. The maximum amount payable equals the total of all units times their respective unit cost plus any special direct items shown.
<u>X</u>	Specified Rate Basis	The specified rates for each type of labor are shown in the FCP below. The FCP may include special items, such as equipment which are not included in the specified rates. Payment shall be based on the actual hours worked multiplied by the specified rate for each type of labor plus other agreed to special direct cost items. The specified rate includes direct labor and indirect cost and profit. The State may request documentation of reimbursable direct costs including hours worked. Documentation of special item costs may be required. The specified rate is not subject to audit.
_____	Cost Plus Fixed Fee	<p>Payment shall be based on direct and indirect costs incurred <u>plus</u> a pro rata share of the fixed fee based on the ratio of <u>labor and overhead cost incurred to total estimated labor and overhead cost in the FCP</u> or the percentage of work completed. The invoice must itemize labor rates, hours worked, other direct costs and indirect costs. The Engineer may be required to provide documentation of hours worked and any eligible direct costs claimed. The provisional overhead rate charged is subject to audit and adjustment to actual rates incurred. The FCP below shows the hourly rates for labor, other direct expenses including but not limited to travel and allowable materials, provisional overhead rate and the fixed fee.</p> <p>___A. Actual Cost Plus Fixed Fee - Actual wages are paid (no minimum, no maximum. This option does not apply to Indefinite Deliverable Contracts.)</p> <p>___B. Range of Cost Plus Fixed Fee – Actual wages <u>must</u> be within the allowable range shown on the Final Cost Proposal.</p>

ATTACHMENT E – FEE SCHEDULE

Final Cost Proposal (FCP) Supporting Basis of Payment

* The **MAXIMUM AMOUNT PAYABLE** is **\$2,000,000.00**

The maximum amount payable is based on the following data and calculations:

* Maximum amount payable must be negotiated for each work authorization.

ATTACHMENT E - FEE SCHEDULE**SPECIFIED RATE AND LUMP SUM PAYMENT BASIS****PRIME PROVIDER NAME:****T. Smith Inspection & Testing, LLC****DIRECT LABOR**

LABOR/STAFF CLASSIFICATION	YEARS OF EXPERIENCE		HOURLY CONTRACT RATE
Project Manager	10 to 20		\$113.85
Senior Engineer	15+		\$60.00
Engineer-In-Training	1 to 5		\$65.78
Senior Engineer Tech	15+		\$28.00
Engineer Tech	5 to 15		\$26.50
Junior Engineer Tech	1 to 5		\$18.00
Engineer Tech: TX APA HMA Level 1-A Cert			\$24.00
Engineer Tech: TX APA HMA Level 1-B Cert			\$50.60
Engineer Tech: TX APA HMA Level 2 Cert			\$28.00
Engineer Tech: TX APA SB 101 Cert			\$24.00
Engineer Tech: TX APA SB 102 Cert			\$24.00
Engineer Tech: TX APA SB 103 Cert			\$24.00
Engineer Tech: TX APA SB 201 Cert			\$60.72
Engineer Tech: TX APA SB 202 Cert			\$60.72
Engineer Tech: ACI Field Testing Grade 1 Cert			\$45.54
Engineer Tech: ACI Concrete Strength Testing Cert			\$24.00
Engineer Tech: ACI Concrete Lab Testing Level 1 Cert			\$24.00
Field Tech: Collect Samples at Field and TxDOT Labs			\$40.48
Field Tech: Collect Haul Tickets			\$40.48
Admin/Clerical			\$66.95

Contract rates include labor, overhead, and profit.

All rates are negotiated rates and are not subject to change or adjustment.

Lump Sum Payment Basis - Invoice by deliverable, according to the table of deliverables. Documentation of hours worked not required.

Note: Any direct labor, unit cost, or other direct expense classification included in the contract, but not in a work authorization, is not eligible for payment under that work authorization.

ATTACHMENT E- FEE SCHEDULE			
SPECIFIED RATE AND LUMP SUM PAYMENT BASIS			
SUBPROVIDER NAME:		AMEC Foster Wheeler Environment & Infrastructure, Inc.	
DIRECT LABOR			
LABOR/STAFF CLASSIFICATION	YEARS OF EXPERIENCE	HOURLY BASE RATE	HOURLY CONTRACT RATE
Project Manager	10 to 20	\$77.49	\$211.03
Senior Engineer	15+	\$68.00	\$185.18
Project Engineer	10 to 15	\$53.00	\$144.33
Engineer-In-Training	1 to 5	\$34.40	\$93.68
Senior Engineer Tech	15+	\$40.17	\$109.39
Engineer Tech	5 to 15	\$28.00	\$76.25
Junior Engineer Tech	1 to 5	\$22.00	\$59.91
Senior Geologist	15+	\$44.29	\$120.61
Geologist	5 to 15	\$34.09	\$92.84
Geologist-In-Training	1 to 5	\$28.00	\$76.25
Engineer Tech: TX APA HMA Level 1-A Cert		\$28.00	\$76.25
Engineer Tech: TX APA HMA Level 1-B Cert		\$31.40	\$85.51
Engineer Tech: TX APA SB 101 Cert		\$23.20	\$63.18
Engineer Tech: TX APA SB 102 Cert		\$23.20	\$63.18
Engineer Tech: TX APA SB 103 Cert		\$23.20	\$63.18
Engineer Tech: TX APA SB 201 Cert		\$28.00	\$76.25
Engineer Tech: TX APA SB 202 Cert		\$28.00	\$76.25
Engineer Tech: ACI Field Testing Grade 1 Cert		\$23.20	\$63.18
Engineer Tech: ACI Concrete Strength Testing Cert		\$23.20	\$63.18
Engineer Tech: ACI Concrete Lab Testing Level 1 Cert		\$23.20	\$63.18
Field Tech: Collect Samples at Field and TxDOT Labs		\$25.00	\$68.08
Field Tech: Collect Haul Tickets		\$25.00	\$68.08
Admin/Clerical		\$24.00	\$65.36
INDIRECT COST RATE:	147.57%		
PROFIT RATE:	10.0%		
Contract rates include labor, overhead, and profit.			
All rates are negotiated rates and are not subject to change or adjustment.			
Specified Rate Payment Basis - Contract rates to be billed. Documentation of hours must be maintained and is subject to audit.			
Lump Sum Payment Basis - Invoice by deliverable, according to the table of deliverables. Documentation of hours worked not required.			
Note: Any direct labor, unit cost, or other direct expense classification included in the contract, but not in a work authorization, is not eligible for payment under that work authorization.			

ATTACHMENT E- FEE SCHEDULE**SPECIFIED RATE AND LUMP SUM PAYMENT BASIS****SUBPROVIDER NAME:****D&S Engineering Labs, LLC****DIRECT LABOR**

LABOR/STAFF CLASSIFICATION	YEARS OF EXPERIENCE	HOURLY BASE RATE	HOURLY CONTRACT RATE
Project Manager	10 to 20	\$72.00	\$212.98
Senior Engineer	15+	\$65.00	\$192.28
Project Engineer	10 to 15	\$48.00	\$141.99
Engineer-In-Training	1 to 5	\$34.40	\$101.76
Senior Engineer Tech	15+	\$37.00	\$109.45
Engineer Tech	5 to 15	\$28.00	\$82.83
Junior Engineer Tech	1 to 5	\$22.00	\$65.08
Senior Geologist	15+	\$44.29	\$131.02
Geologist	5 to 15	\$34.09	\$100.84
Geologist-In-Training	1 to 5	\$27.30	\$80.76
Admin/Clerical		\$23.00	\$68.04
INDIRECT COST RATE:	168.92%		
PROFIT RATE:	10.0%		

Contract rates include labor, overhead, and profit.

All rates are negotiated rates and are not subject to change or adjustment.

Specified Rate Payment Basis - Contract rates to be billed. Documentation of hours must be maintained and is subject to audit.

Lump Sum Payment Basis - Invoice by deliverable, according to the table of deliverables. Documentation of hours worked not required.

Note: Any direct labor, unit cost, or other direct expense classification included in the contract, but not in a work authorization, is not eligible for payment under that work authorization.

ATTACHMENT E- FEE SCHEDULE**SPECIFIED RATE AND LUMP SUM PAYMENT BASIS****SUBPROVIDER NAME:** HAYDEN CONSULTANTS, INCORPORATED**DIRECT LABOR**

LABOR/STAFF CLASSIFICATION	YEARS OF EXPERIENCE	HOURLY BASE RATE	HOURLY CONTRACT RATE
Project Manager	10 to 20	\$66.00	\$185.85
Senior Engineer	15+	\$62.00	\$174.59
Project Engineer	10 to 15	\$53.00	\$149.24
Design Engineer	5 to 10	\$40.00	\$112.64
Engineer-In-Training	1 to 5	\$34.40	\$96.87
Senior Engineer Tech	15+	\$40.00	\$112.64
Engineer Tech	5 to 15	\$31.00	\$87.29
Admin/Clerical		\$24.00	\$67.58
INDIRECT COST RATE:	155.99%		
PROFIT RATE:	10.0%		

Contract rates include labor, overhead, and profit.

All rates are negotiated rates and are not subject to change or adjustment.

Specified Rate Payment Basis - Contract rates to be billed. Documentation of hours must be maintained and is subject to audit.

Lump Sum Payment Basis - Invoice by deliverable, according to the table of deliverables. Documentation of hours worked not required.

Note: Any direct labor, unit cost, or other direct expense classification included in the contract, but not in a work authorization, is not eligible for payment under that work authorization.

ATTACHMENT E- FEE SCHEDULE**UNIT COST PAYMENT BASIS****RATES SHOWN APPLY TO PRIME PROVIDER AND ALL SUBPROVIDERS**

SERVICES TO BE PROVIDED	Test Code/Method	UNIT	COST
Surveying and Sampling Soils for Highways	Tex-100-E	hour	\$60.00
Preparing Soil and Flexible Base Materials for Testing	Tex-101-E	each	\$50.00
Determining Moisture Content in Soil Materials	Tex-103-E	each	\$15.00
Determining Liquid Limits of Soils, Plastic Limits, and Plasticity Index	Tex-104-E, Tex-105-E, Tex-106-E	each	\$75.00
Determining the Bar Linear Shrinkage of Soils	Tex-107-E	each	\$45.00
Determining the Specific Gravity of Soils	Tex-108-E	each	\$60.00
Particle Size Analysis of Soils	Tex-110-E	each	\$55.00
Determining the Amount of Material in Soils Finer than the 75 micrometer (No. 200) Sieve	Tex-111-E	each	\$35.00
Admixing Lime to Reduce Plasticity Index of Soils	Tex-112-E	each	\$75.00
Laboratory Compaction Characteristics and Moisture-Density Relationship of Base Materials	Tex-113-E	each	\$225.00
Laboratory Compaction Characteristics and Moisture-Density Relationship of Subgrade, Embankment Soils, and Backfill Material	Tex-114-E	each	\$200.00
Field Method for Determining In-Place Density of Soils and Base Materials	Tex-115-E	each	\$35.00
Ball Mill Method for Determining the Disintegration of Flexible Base Material	Tex-116-E	each	\$205.00
Triaxial Compression Test for Disturbed Soils and Base Materials	Tex-117-E	each	\$1,600.00
Triaxial Compression Test for Undisturbed Soils	Tex-118-E	each	\$145.00
Soil-Cement Testing- Part 1	Tex-120-E	each	\$560.00
Soil-Cement Testing- Part 2	Tex-120-E	each	\$250.00
Soil-Lime Testing- Part 1	Tex-121-E	each	\$550.00
Soil-Lime Testing- Part 2	Tex-121-E	each	\$375.00
Determining Potential Vertical Rise	Tex-124-E	each	\$140.00
Determining Modulus of Sub-grade Reaction (K Value)	Tex-125-E	each	\$750.00
Molding, Testing, and Evaluating Bituminous Black Base Materials	Tex-126-E	each	\$500.00
Lime Fly-Ash Compressive Strength Test Methods- Part 1	Tex-127-E	each	\$600.00
Lime Fly-Ash Compressive Strength Test Methods- Part 2	Tex-127-E	each	\$750.00
Determining Soil pH	Tex-128-E	each	\$40.00
Measuring the Resistivity of Soil Materials	Tex-129-E	each	\$60.00
Freezing and Thawing Tests of Compacted Soil-Cement Mixture	Tex-135-E	each	\$2,400.00
Measuring Thickness of Pavement Layer	Tex-140-E	each	\$35.00
Manual Procedure for Description and Identification of Soils	Tex-141-E	each	\$20.00
Laboratory Classification of Soils for Engineering Purposes	Tex-142-E	each	\$20.00
Determining Sulfate Content in Soils - Colorimetric Method	Tex-145-E	each	\$45.00
Conductivity Test for Field Detection of Sulfates in Soil	Tex-146-E	each	\$50.00
Sieve Analysis for Fine and Coarse Aggregate	Tex-200-F	each	\$50.00
Bulk Specific Gravity and Water Absorption of Aggregate	Tex-201-F	each	\$60.00
Apparent Specific Gravity of Material Finer than No. 50 Sieve	Tex-202-F	each	\$75.00
Sand Equivalent	Tex-203-F	each	\$150.00
Design of Bituminous Mixtures	Tex-204-F	each	\$1,600.00
Laboratory Method of Mixing Bituminous Mixtures	Tex-205-F	set of 3	\$150.00
Compacting Specimens Using the Texas Gyrotory Compactor (TGC)	Tex-206-F	set of 3	\$100.00
Determining Density of Compacted Bituminous Mixtures	Tex-207-F (Part I)	each	\$20.00
Determining In-Place Density of Compacted Bituminous Mixtures (Nuclear Method)	Tex-207-F (Part III)	each	\$38.50
Determining Mat Segregation Using a Density-Testing Gauge	Tex-207-F (Part V)	each	\$100.00

ATTACHMENT E- FEE SCHEDULE**UNIT COST PAYMENT BASIS****RATES SHOWN APPLY TO PRIME PROVIDER AND ALL
SUBPROVIDERS**

SERVICES TO BE PROVIDED	Test Code/Method	UNIT	COST
Determining Density of Compacted Bituminous Mixtures (Vacuum Method)	Tex-207-F (Part VI)	each	\$50.00
Determining Longitudinal Joint Density Using a Density Testing Gauge	Tex-207-F (Part VII)	each	\$38.00
Determining Density of Permeable Friction Course (PFC) Mixtures	Tex-207-F (Part VIII)	each	\$25.00
Test of Stabilometer Value of Bituminous Mixtures	Tex-208-F	set of 3	\$75.00
Determining Asphalt Content of Bituminous by Extraction	Tex-210-F	each	\$190.00
Determining Deleterious Material and Decantation Test for Coarse Aggregates	Tex-217-F	each	\$50.00
Sampling Aggregate for Bituminous Mixtures, Surface Treatments and Limestone Rock Asphalt	Tex-221-F	each	\$105.00
Sampling Bituminous Mixtures	Tex-222-F	each	\$63.00
Determining Flakiness Index	Tex-224-F	each	\$45.00
Indirect Tensile Strength Test	Tex-226-F	set of 3	\$205.00
Theoretical Maximum Specific Gravity of Bituminous Mixtures	Tex-227-F	each	\$90.00
Determining Asphalt Content of Bituminous Mixtures by the Nuclear Method	Tex-228-F	each	\$25.00
Combined HMAC Cold-Belt Sampling and Testing Procedure	Tex-229-F	each	\$60.00
Determining Asphalt Content from Asphalt Paving Mixtures by the Ignition Method	Tex-236-F	each	\$175.00
Superpave Gyrotory Compacting of Test Specimens of Bituminous Mixtures	Tex-241-F	set of 2	\$100.00
Hamburg Wheel-Tracking Test	Tex-242-F	each	\$500.00
Thermal Profile	Tex-244-F	each	\$25.00
Cantabro Loss	Tex-245-F	each	\$100.00
Permeability or Water Flow of Hot Mix Asphalt	Tex-246-F	each	\$55.00
Determining Flat and Elongated Particles	Tex-280-F	each	\$50.00
Effect of Water on Bituminous Paving Mixtures	Tex-530-C	each	\$45.00
Compressive Strength of Cement Mortars	ASTM C109	set of 3	\$60.00
Sampling Flexible Base, Stone, Gravel, Sand, and Mineral Aggregates	Tex-400-A	hour	\$50.00
Sieve Analysis of Fine and Coarse Aggregate	Tex-401-A	each	\$55.00
Fineness Modulus of Fine Aggregate	Tex-402-A	each	\$10.00
Saturated Surface-Dry Specific Gravity and Absorption of Aggregates	Tex-403-A	each	\$35.00
Determining Unit Mass (Weight) of Aggregates	Tex-404-A	each	\$35.00
Material Finer than 75 micrometer (No. 200) Sieve in Mineral Aggregates (Decantation Test for Concrete Aggregates)	Tex-406-A	each	\$45.00
Sampling of Freshly Mixed Concrete	Tex-407-A	each	\$45.00
Organic Impurities in Fine Aggregate for Concrete	Tex-408-A	each	\$40.00
Free Moisture and Water Absorption in Aggregate for Concrete	Tex-409-A	each	\$45.00
Abrasion of Coarse Aggregate Using the Los Angeles Machine	Tex-410-A	each	\$235.00
Soundness of Aggregate Using Sodium Sulfate or Magnesium Sulfate	Tex-411-A	each	\$250.00
Determining Deleterious Material In Mineral Aggregate	Tex-413-A	each	\$45.00
Air Content of Freshly Mixed Concrete by the Volumetric Method	Tex-414-A	each	\$25.00
Slump of Hydraulic Cement Concrete	Tex-415-A	each	\$20.00
Air Content of Freshly Mixed Concrete by the Pressure Method	Tex-416-A	each	\$25.00
Unit Weight, Yield, and Air Content (Gravimetric) of Concrete	Tex-417-A	each	\$15.00
Compressive Strength of Cylindrical Concrete Specimens	Tex-418-A	each	\$20.00
Compressive Strength of Concrete Using Portions of Beams Broken in Flexure	Tex-419-A	each	\$35.00
Measuring Temperature of Freshly Mixed Portland Cement Concrete	Tex-422-A	hour	\$15.00
Determining Pavement Thickness by Direct Measurement	Tex-423-A	each	\$25.00

ATTACHMENT E- FEE SCHEDULE**UNIT COST PAYMENT BASIS****RATES SHOWN APPLY TO PRIME PROVIDER AND ALL
SUBPROVIDERS**

SERVICES TO BE PROVIDED	Test Code/Method	UNIT	COST
Obtaining and Testing Drilled Cores of Concrete	Tex-424-A	each	\$75.00
Absorption and Dry Bulk Specific Gravity of Lightweight Coarse Aggregate	Tex-433-A	each	\$70.00
Test Flow of Grout Mixtures (Flow Cone Method)	Tex-437-A	each	\$45.00
Making and Curing Concrete Test Specimens	Tex-447-A	each	\$20.00
Flexural Strength of Concrete Using Simple Beam Third-Point Loading	Tex-448-A	each	\$34.00
Capping Cylindrical Concrete Specimens	Tex-450-A	each	\$15.00
Determining Crushed Face Particle Count	Tex-460-A	each	\$50.00
Acid Insoluble Residue for Fine Aggregate	Tex-612-J	each	\$100.00

The unit costs shown include labor, overhead, and profit. Payment based on units completed. No partial payments.

All unit costs are negotiated costs and are not subject to change or adjustment.

Unit Cost Payment Basis: If unit costs by year are included, unit costs billed should correspond to the fiscal or calendar year, if applicable, in which the work was done.

Note: Any direct labor, unit cost, or other direct expense classification included in the contract, but not in a work authorization, is not eligible for payment under that work authorization.

ATTACHMENT E- FEE SCHEDULE

OTHER DIRECT EXPENSES

RATES SHOWN APPLY TO PRIME PROVIDER AND ALL SUBPROVIDERS

SERVICES TO BE PROVIDED	UNIT	FIXED COST	MAXIMUM COST
Patching hot mix or concrete pavement (includes material)	each		\$25.00
Law Enforcement/Uniform Officer (including vehicle)	hour		\$75.00
Traffic Control one lane	day		\$1,600.00
Traffic Control two lanes	day		\$2,400.00
Flashing Arrow Board (applies if more than 2 are required)	day		\$500.00
Portable Message Board	day		\$200.00

Profit not allowed on Other Direct Expenses.

For Cost Plus Fixed Fee, Specified Rate, and Unit Cost - Fixed cost items to be billed at the fixed cost rate. Documentation, such as a usage log, must be maintained for audit purposes, and may be required to be submitted as a basis for reimbursement. For items with a maximum cost, actual cost to be billed not to exceed the maximum shown. Itemized receipts must be maintained for audit purposes, and may be required to be submitted as a basis for reimbursement. **For Lump Sum** - No documentation required. Invoicing by physical percent complete includes combination of direct labor and other direct expenses.

NOTE: For Cost Plus Fixed Fee, Specified Rate, and Unit Cost - Miscellaneous other direct expenses up to \$100 per unit will be reimbursed at cost if approved and documented in advance by the State's Project Manager. Miscellaneous other direct expenses of \$100 per unit or more will not be reimbursed unless a supplemental agreement to the contract and work authorization (if WAs are used) has been executed in advance authorizing the miscellaneous other direct expenses. No more than \$2,500 in miscellaneous other direct expenses may be approved by the State's Project Manager over the life of this contract including prime provider and subproviders. **For Lump Sum** - This statement does not apply.

ATTACHMENT F

Not Applicable

ATTACHMENT G

Computer Graphics Files for Document and Information Exchange

Not Applicable

ATTACHMENT H-SG

Historically Underutilized Business for State Funded Professional or Technical Services Contracts HUB Goal Assigned-State of Texas Subcontracting Plan Required

- 1) **POLICY.** It is the policy of the Department to ensure that HUBs shall have an equal opportunity to participate in the performance of contracts; to create a level playing field on which HUBs can compete fairly for contracts and subcontracts; to ensure nondiscrimination on the basis of race, color, national origin, or gender in the award and administration of contracts; to help remove barriers to the participation of HUBs in department contracts; and, to assist in the development of firms that can compete successfully in the market place outside the HUB program. Consequently, the HUB requirements of the Department's HUB Program apply to this contract as follows:
- (1) The Provider agrees to insure that they shall take all necessary and reasonable steps to meet the HUB goal for this contract.
- a. The Provider and any subprovider(s) shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts.
 - b. When submitting the contract for execution by the Department, the Provider must complete and furnish Exhibit H-1 which lists the commitments made to all subproviders, including certified HUB subprovider(s) that are to meet the contract goal, and Exhibit H-2 which is a commitment agreement(s) containing the original signatures of the Provider and HUB(s) that were indicated in the original submitted State of Texas HUB Subcontracting Plan (HSP) in Section 8. For Work Authorization Contracts, Exhibit H-1 is required at the time of submitting the contract for execution by the Department. Exhibit H-2 will be required to be completed and attach with each work authorization number that is submitted for execution, if the HUB will be performing work. If non-HUB subprovider is performing work, insert N/A (not applicable) on the line provided. A prime must allow a HUB maximum opportunity to perform the work by not creating unnecessary barriers or artificial requirements for the purpose of hindering a HUB's performance under the contract. Any substitutions or changes to the HSP, in addition to any changes to the original contract award, shall be subject to prior written approval by the Department. If there are any changes to the subproviders during the contract term, the Provider must furnish a Revised Exhibit H-1 showing the revised commitment of all subproviders.
 - c. Failure to carry out the requirements set forth above shall constitute a breach of contract and may result in a letter of reprimand; in termination of the contract by the Department; in a deduction from money due or to become due to the Provider, not as a penalty but as damages to the Department's HUB Program; or such other remedy or remedies as the Department deems appropriate.
- 2) **DEFINITIONS.**
- a. "Department" means the Texas Department of Transportation (TxDOT).
 - b. "Contract" is the agreement between the Texas Department of Transportation and a Provider.
 - c. "Provider" is any individual or company that provides professional or technical services.
 - d. "Joint Venture" means an association of two or more businesses to carry out a single business enterprise for profit which combines their property, capital, efforts, skills and knowledge.
 - e. "Historically Underutilized Business (HUB)" means any business so certified by the Texas Facilities Commission.
- 3) **PERCENTAGE GOAL.** The goal for Historically Underutilized Business (HUB) participation in the work to be performed under this contract is 23.7 % of the contract amount.
- 4) **PROVIDER'S RESPONSIBILITIES.** A Provider (HUB or non-HUB) must perform a minimum of 30% of the contract with its employees (as defined by the Internal Revenue Service). The contract is subject to the HSP Good Faith Effort Requirements.
- a. A Provider who cannot meet the contract goal, in whole or in part, should have documented any of the following and other efforts made as a "Good Faith Effort" to obtain HUB participation.
 - (1) Whether the prime advertised in general circulation, trade association, and/or minority/women focus media concerning subcontracting opportunities.

- (2) Whether the prime provided written notice to at least three (3) qualified HUBs allowing sufficient time for HUBs to participate effectively.
- (3) Whether the prime documented reasons for rejection or met with the rejected HUB to discuss the rejection.
- (4) Whether the prime provided qualified HUBs with adequate information about bonding, insurance, the plans, the specifications, scope of work and requirements of the contract.
- (5) Whether the prime negotiated in good faith with qualified HUBs, not rejecting qualified HUBs who are also the lowest responsive bidder.
- (6) Whether the prime used the services of available minority and women community organizations, contractor's groups, local, state, and federal business assistance offices, and other organizations that provide support services to HUBs.

NOTE: The Provider must not cause or allow subproviders to bid their services.

- b. The preceding information shall be submitted directly to the Chair of the Consultant Selection Team responsible for the contract.
 - c. The Provider shall make all reasonable efforts to honor commitments to HUB subproviders named in the original HSP in Section 8. Where the Provider terminates or removes a HUB subprovider named in the initial commitment, the Provider must demonstrate on a case-by-case basis to the satisfaction of the Department that the originally designated HUB was not able or willing to perform. The term "unable" includes, but is not limited to, a firm that does not have the resources and expertise to finish the work and/or a firm that substantially increases the time to complete the project.
 - d. The Provider shall make all reasonable efforts to replace a HUB subprovider that is unable or unwilling to perform successfully with another HUB and must meet the HSP Good Faith Effort Requirements. Any substitution of HUBs shall be subject to prior written approval by the Department. The Department will request a statement from the firm being replaced concerning its replacement prior to approving the substitution. If there are any changes to the subproviders during the contract term, the Provider must furnish a Revised Exhibit H-1 showing the revised commitment of all subproviders.
 - e. The Provider shall designate a HUB liaison officer who will administer the Provider's HUB program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with HUBs.
- 5) **ELIGIBILITY OF HUBs.**
- a. The Texas Facilities Commission (TFC) certifies the eligibility of HUBs.
 - b. The TFC maintains a directory of certified HUBs. The HUB Directory is available through the Department's Business Opportunity Programs Office and through the Internet at the TFC's Website (<http://www.tfc.state.tx.us/divisions/commissionadmin/prog/HUB>).
 - c. Only HUB firms certified and identified in specific categories and classes at the time the contract is signed or at the time the commitments are submitted are eligible to be used in the information furnished by the Provider as required under Section 2.c. above.
 - d. If during the course of the contract it becomes necessary to substitute another HUB firm for a firm named in the information submitted by the Provider as required by Section 2.c. above, then only certified HUBs will be considered eligible as a substituted firm. The Provider's written request for substitutions of HUB subproviders shall be accompanied by a detailed explanation, which should substantiate the need for a substitution. The Department will verify the explanation with the HUB firm being replaced before giving approval of the substitution. If there are any changes to the subproviders during the contract term, the Provider must furnish a Revised Exhibit H-1 showing the revised commitment of all subproviders.
 - e. The 73rd Legislature passed Texas Civil Statutes, Article 601i, relative to contracts between governmental entities and certain disadvantaged businesses. The Statute provides for civil penalties for persons who falsely claim disadvantaged business status and for the general contractor who knowingly contracts with a person claiming to be a disadvantaged business.
- 6) **DETERMINATION OF HUB PARTICIPATION.**
- A firm must be an eligible HUB and perform a professional or technical function relating to the project. Proof of payment, such as copies of canceled checks, properly identifying the Department's contract number or project number may be required to substantiate the payment, as deemed necessary by the Department. A HUB subprovider, with prior written approval from the Department, may subcontract 70% of a contract as long as the

HUB subprovider performs a commercially useful function. All subcontracts shall include the provisions required in the subcontract and shall be approved as to form, in writing, by the Department prior to work being performed under the subcontract. A HUB performs a commercially useful function when it is responsible for a distinct element of the work of a contract; and actually manages, supervises, and controls the materials, equipment, employees, and all other business obligations attendant to the satisfactory completion of contracted work. If the subcontractor uses an employee leasing firm for the purpose of providing salary and benefit administration, the employees must in all other respects be supervised and perform on the job as if they were employees of the subcontractor.

7) **COMPLIANCE OF PROVIDER.**

- 8) To ensure that HUB requirements of this contract are complied with, the Department will monitor the Provider's efforts to involve HUBs during the performance of this contract. This will be accomplished by a review of the monthly State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report (Exhibit H-6) submitted to the Business Opportunity Programs Office by the Provider indicating his/her progress in achieving the HUB contract goal, and by compliance reviews conducted by the Department. The State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report (Exhibit H-6) must be submitted at a minimum monthly to the Business Opportunity Programs Office, in addition to with each invoice to the appropriate agency contact.

The Provider shall receive credit toward the HUB goal based on actual payments to the HUB subproviders with the following exceptions and only if the arrangement is consistent with standard industry practice.

- (1) Payments to brokers or firms with a brokering type operation will be credited only for the amount of the commission;
- (2) Payments to a joint venture will not be credited unless all partners in the joint venture are HUBs;
- (3) Payments to a HUB subprovider who has subcontracted a portion of the work required under the subcontract will not be credited unless the HUB performs a commercially useful function;
- (4) Payments to a HUB will not be credited if the firm does not provide the goods or perform the services paid for;
- (5) Payments made to a HUB that cannot be linked by an invoice or canceled check to the contract under which credit is claimed will not be credited.

A Provider must not withhold or reduce payments to any HUB without a reason that is accepted as standard industry practice. A HUB prime or subprovider must comply with the terms of the contract or subcontract. Work products, services, and commodities must meet contract specifications whether performed by a prime or subprovider.

A Provider's failure to meet the HUB goal and failure to demonstrate to the Department's satisfaction sufficient "Good Faith Effort" on his/her part to obtain HUB participation shall constitute a breach of contract. In such a case, the Department reserves the right to issue a letter of reprimand; to deduct the amount of HUB goal not accomplished by HUBs from the money due or to become due the Provider, not as a penalty but as damages to the Department's HUB program; or such other remedy or remedies as the Department deems appropriate.

9) **RECORDS AND REPORTS.**

- a. After submission of the initial commitment (Exhibit H-1), required by Section 2.c. of this attachment, the Provider shall submit State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report (Exhibit H-6) at a minimum monthly, after contract work begins, on subcontracting involvement. One copy of the State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report (Exhibit H-6) is to be sent to the Business Opportunity Programs Office of the Department monthly. In addition, the State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report (Exhibit H-6) must be submitted with the Provider's invoice. All payments made to subproviders are to be reported. **These State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Reports are required monthly even during months when no payments to subproviders have been made.** The State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report will be

required until all work on the contract has been completed. The Department may verify the amounts being reported as paid to HUBs by requesting copies of canceled checks paid to HUBs on a random basis.

- b. Subproviders should be identified on the State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report (Exhibit H-6) by name, the amount of actual payment made to each during the billing period, cumulative payment amount and percentage of the total contract amount.
- c. All such records must be retained for a period of seven years following final payment, or until an investigation, audit, examination, or other review undertaken during the seven years, and shall be available at reasonable times and places for inspection by authorized representatives of the Department and other agencies.
- d. Prior to receiving final payment, the Provider shall submit a Final Report (Exhibit H-4), detailing the subprovider payments to the Business Opportunity Programs Office of the Department, and one copy to the Department with the Provider's final invoice.

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EXHIBIT H-2

Texas Department of Transportation Subprovider Monitoring System Commitment Agreement

This commitment agreement is subject to the award and receipt of a signed contract from the Texas Department of Transportation (TxDOT). **NOTE: Exhibit H-2 is required to be attached to each contract that does not include work authorizations. Exhibit H-2 is required to be attached with each work authorization. Exhibit H-2 is also required to be attached to each supplemental work authorization. If DBE/HUB Subproviders are used, the form must be completed and signed. If no DBE/HUB Subproviders are used, indicate with "N/A" on this line: _____ and attach with the work authorization or supplemental work authorization.**

Contract #: _____ Assigned Goal: _____ % Prime Provider: _____

Work Authorization (WA)#: _____ WA Amount: _____ Date: _____

Supplemental Work Authorization (SWA) #: _____ to WA #: _____ SWA Amount: _____

Revised WA Amount: _____

Description of Work <i>(List by category of work or task description. Attach additional pages, if necessary.)</i>	Dollar Amount <i>(For each category of work or task description shown.)</i>
Total Commitment Amount (Including all additional pages.)	\$ _____

IMPORTANT: The signatures of the prime and the DBE/HUB and Second Tier Subprovider, if any (both DBE and Non-DBE) and the total commitment amount must always be on the same page.

<p>Provider Name: Address: Phone # & Fax #: Email:</p>	<p>Name: _____ <i>(Please Print)</i></p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">Signature Date</p>
<p>DBE/HUB Sub Provider Subprovider Name: VID Number: Address: Phone # & Fax #: Email:</p>	<p>Name: _____ <i>(Please Print)</i></p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">Signature Date</p>
<p>Second Tier Sub Provider Subprovider Name: VID Number: Address: Phone # & Fax #: Email:</p>	<p>Name: _____ <i>(Please Print)</i></p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">Signature Date</p>
<p>VID Number is the Vendor Identification Number issued by the Comptroller. If a firm does not have a VID Number, please enter the owner's Social Security or their Federal Employee Identification Number (if incorporated).</p>	

EXHIBIT H-4

Texas Department of Transportation Subprovider Monitoring System Final Report

The Final Report Form should be filled out by the Prime Provider and submitted to the Contract Manager and the Business Opportunity Programs Office for review upon completion of the contract. The report should reflect **all subcontract activity** on the project. The report will aid in expediting the final estimate for payment. If the HUB or DBE goal requirements were not met, documentation supporting good faith efforts must be submitted.

DBE Goal: _____%

OR

HUB Goal: _____%

Total Contract Amount: \$ _____

Total Contract Amount: \$ _____

Contract Number: _____

Vendor ID #	Subprovider	Total \$ Amt Paid to Date
TOTAL		

This is to certify that _____% of the work was completed by the HUB or DBE subproviders as stated above.

By: Prime Provider

Per: Signature

Subscribed and sworn to before me, this _____ day of _____, 20__

Notary Public _____ County

My Commission expires: _____

