THE STATE OF TEXAS

COUNTY OF TRAVIS

CONTRACT FOR SURVEYING SERVICES
Indefinite Deliverable Contract with Work Authorizations

THIS CONTRACT FOR SURVEYING SERVICES is made between the State of Texas, acting through the Texas Department of Transportation, 125 E. 11th St., Austin, Texas 78701-2483 (State), and ________________________________________, having a principal business address at __________________________________________ (Surveyor), for the purpose of contracting for surveying services.

BACKGROUND

As part of its responsibilities under Transportation Code, Chapter 202, the State requires land surveys to determine the location and design needs of roads, streets, and highways throughout the state. The State has determined that the services of professional land surveyors are sometimes necessary to carry out the required surveys. Under Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC §9.30 et seq., the State requested letters of interest from professional land surveyors to assist the State by providing surveying services. The State has selected the Surveyor and desires to contract for surveying, described in more detail as follows:

The State and the Surveyor agree as follows.

AGREEMENT

SECTION 1. SCOPE OF SERVICES. The State and the Surveyor will furnish items and perform services as identified in Attachment B (Services To Be Provided by the State), and Attachment C (Services To Be Provided by the Surveyor). All services provided by the Surveyor will conform to standard surveying practices, to the Texas Department of Transportation’s Right of Way Manuals, to the Survey Manual, to the GPS Manual of Practice, to the Professional Land Surveying Practices Act, to the General Rules of Procedures and Practices promulgated by the Texas Board of Professional Land Surveying, to the Texas Society of Professional Surveyors’ Manual of Practice for Land Surveying in Texas, and to all other applicable rules and regulations.

SECTION 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) ______________________, 20___ 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 three years of the contract, or
(4) Termination in accordance with Article 26, Termination and Remedies, 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 4, 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. Surveyor shall not invoice State and State will not reimburse Surveyor for any work performed or cost incurred before or after the contract period.

SECTION 3. COMPENSATION

A. Maximum Amount Payable. The maximum amount payable under this contract is shown in Attachment E (Schedule of Rates). 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 and reimbursement of costs is set forth in Attachment E (Schedule of Rates). Satisfactory work progress is a condition of payment.

C. Reimbursement of Eligible Costs. To be eligible for reimbursement, the Surveyor's costs must

1. be incurred in accordance with the terms of a valid work authorization;
2. be in accordance with Attachment E (Schedule of Rates); and

D. Surveyor Payment of Subproviders. No later than ten days after receiving payment from the State, the Surveyor shall pay all subproviders for work performed under a subcontract. The State may withhold all payments that have or may become due if the Surveyor 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.

SECTION 4. PAYMENT REQUIREMENTS

A. Invoices. The Surveyor shall request payment by submitting the original of an itemized invoice in a form acceptable to the State. The Surveyor may submit an invoice no more frequently than monthly and no later than ninety days after performing the work or incurring the cost. For each work authorization, an invoice shall show the contract number, the work authorization number, the total amount earned to the date of submission, the amount due as of the date of the invoice, and whether the invoice is for the completion of all work under the work authorization or for less than all work.

B. Withholding Payments. If payment is withheld, the State shall notify the Surveyor and specify conditions that would allow the State to release the payment. The State reserves the right to withhold payment:

1. If a dispute over the work or costs is not resolved within thirty (30) days;
2. pending verification that work is satisfactory;
3. if the Surveyor becomes a delinquent obligor under Family Code, §231.006;
4. if required work product is not received; or
5. if the State Comptroller of Public Accounts will not issue a warrant to the Surveyor.

C. Required Reports.

1. As required in Attachment H, the Surveyor shall submit Progress Assessment Reports on Exhibit H-3 to report payments made to Disadvantaged Business Enterprises or Historically Underutilized Businesses. One copy shall be submitted with each invoice.
2. Before contract closeout, the Surveyor shall submit a Final Report on Exhibit H-4 to the address set forth in Attachment H.
3. With each invoice, the Surveyor shall submit a separate progress report showing, for each work authorization, the percentage of work that was completed during the billing period and the percentage of work completed to date. The Surveyor shall also submit any written report requested by the State to document the progress of the work.
D. Subproviders and Suppliers List. The Surveyor must provide the State a list, compiled on 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, and telephone numbers.

E. 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 Surveyor because of a debt owed to the State, the State shall apply all payment due the Surveyor to the debt or delinquent tax until the debt or delinquent tax is paid in full.

SECTION 5. WORK AUTHORIZATIONS. To authorize all work under this contract, the State will issue work authorizations using form D-1 in Attachment D (Work Authorizations). The Surveyor must sign and return a work authorization within seven working days after receipt. The Surveyor's failure to accept a work authorization in a timely manner is grounds for termination of this contract. The State is not responsible for actions by the Surveyor or costs incurred by the Surveyor except to the extent that the actions or costs are directly associated with a valid work authorization. Terms and conditions governing the use of work authorizations are set forth in Attachment A (General Provisions), Article 1 (Work Authorizations).

SECTION 6. SIGNATORY WARRANTY. The undersigned signatory for the Surveyor warrants that the signatory is an officer of the organization for which this contract is executed and has the authority to execute this contract on behalf of the Surveyor. This warranty is made to induce the State to enter into this contract.

SECTION 7. NOTICES. All notices to either party by the other party will be delivered personally or sent by U.S. Mail, postage prepaid, to the following respective addresses:

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<tr>
<th>Surveyor:</th>
<th>The State of Texas:</th>
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The notice shall be received by the addressee on the date delivered or deposited in the mail, unless otherwise provided. Either party may change the above address by sending written notice of such change to the other in the manner provided.

SECTION 8. INCORPORATION OF PROVISIONS. Attachments A through H are made part of this contract. The parties shall comply with the provisions of Attachments A through H as if they were set forth in full within the body of this contract.

THE SURVEYOR

(Signature)

(Printed Name)

(Title)

(Date)

THE STATE OF TEXAS

(Signature)

(Printed Name)

(Title)

(Date)
## Attachments to Contract for Surveying Services
Incorporated into the Contract by Reference

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ATTACHMENT A

GENERAL PROVISIONS

ARTICLE 1. WORK AUTHORIZATIONS

A. Use. The Surveyor shall not begin any work until the State and the Surveyor have signed a work authorization for the work. The State will make no payment for any work performed or cost incurred before a work authorization is fully executed or after the completion date specified in the work authorization. The completion date for a work authorization may not extend beyond the Contract Period. All work authorizations must be issued within three years after this contract is fully executed.

B. Contents. Each work authorization shall specify (1) the scope of work 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 maximum cost; (6) whether the basis of payment is lump sum, unit cost, or specified rate; and (7) a work authorization budget calculated using rates set forth in Attachment E (Schedule of Rates). Additional contract terms and conditions may not be included in a work authorization. A work authorization may not waive any responsibilities or obligations contained in this contract. In the event of any conflict in terms and conditions between a work authorization and this contract, the terms and conditions of this contract shall prevail. Each work authorization shall be signed by both parties and become a part of this contract.

C. Budget. A work authorization budget shall set forth in detail (1) a list of the work to be performed; (2) the computation of the cost of the work described in the work authorization; and (3) the maximum amount payable under the work authorization. The State will not pay items of cost that are not authorized under Attachment E (Schedule of Rates) and will not pay rates that exceed those authorized in Attachment E (Schedule of Rates).

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 under this contract, the Surveyor shall have no cause of action based on the State's failure to issue work authorizations under this contract or on the number of work authorizations issued.

E. Emergency Work Authorizations. The State, in its sole discretion, may accept the Surveyor's signature on a faxed copy of a work authorization as satisfying the Surveyor's obligation to execute the work authorization if the signed original is received by the State within five business days after the State's receipt of the fax.

ARTICLE 2. SUPPLEMENTAL TO A WORK AUTHORIZATION

A. Necessity of Supplemental to a Work Authorization. Work under a work authorization is limited to the work specified in the work authorization. Before any work may be performed that is not specified in a work authorization and before any additional costs are incurred, the parties shall execute a supplemental to a work authorization in the form set forth as Form D-2 in Attachment D (Work Authorizations). A supplemental to a work authorization may not be executed after the expiration of the work authorization it is supplementing or outside the Contract Period. Under no circumstances will the State pay more than the maximum amount payable set forth in Attachment E (Schedule of Rates), as it may be amended by supplemental agreement from time to time.

B. Extension of Time. If the Surveyor determines or reasonably anticipates that the work authorized in a work authorization cannot be completed before the specified completion date, the Surveyor shall promptly notify the State. In its sole discretion, the State may agree to extend the work authorization period by joint execution of a supplemental to a work authorization.

C. Change in Scope. The scope of work authorized in a work authorization may only be altered through execution of a supplemental to a work authorization. If the change in scope affects the amount payable under a work authorization, a revised work authorization budget shall be incorporated in the supplemental to a work authorization.
ARTICLE 3. SUSPENSION OF WORK AUTHORIZATIONS

A. Notice. The State may suspend a work authorization without terminating this contract by notifying the Surveyor orally. Oral notification must be followed by written confirmation.

B. Reinstatement. The State may reinstate a suspended work authorization by giving written notice. Unless waived in writing by the parties, the reinstatement will be effective sixty business days after the notice is provided.

C. Contract Period Not Affected. Suspension of a work authorization does not affect the Contract Period. The work authorization will terminate under its own provisions or at the end of the Contract Period, whichever occurs first, unless this contract, the work authorization, or both are amended to authorize additional time, as appropriate.

D. Limitation of Liability. The State is not liable for work performed or costs incurred before the date authorized by the State to begin work, during periods when work is suspended, or after the completion date of the work authorization, or after the Contract Period.

ARTICLE 4. SUPPLEMENTAL AGREEMENTS

The terms of this contract may be modified by Supplemental Agreement. A supplemental agreement must be fully executed within the Contract Period.

ARTICLE 5. ADDITIONAL WORK

A. Notice. If the Surveyor believes that any assigned work is beyond the scope of this contract or any work authorization issued under this contract, the Surveyor shall promptly notify the State in writing and demonstrate how the assigned work constitutes additional work.

B. Supplemental Agreement. If the State finds that the work does constitute additional work, the State shall so advise the Surveyor. The parties may then execute a supplemental agreement, a work authorization, or a supplemental to a work authorization, as appropriate.

C. Waiver of Rights. By failing to comply with this article, the Surveyor waives any right to compensation or reimbursement with regard to additional work.

ARTICLE 6. PROGRESS

A. Communications. From time to time during the progress of the work, the Surveyor shall confer with the State. The Surveyor shall prepare and present all information that is requested by the State or is necessary for the State to evaluate the work.

B. Reports. The Surveyor shall promptly advise the State in writing of events that may have a significant effect on the progress of a work authorization.

   (1) The Surveyor shall promptly advise the State in writing of any problems, delays, or adverse conditions that will materially affect the ability to meet goals on schedule. This disclosure will be accompanied by statement of the action taken or contemplated and any state or federal assistance needed to resolve the situation.

   (2) The Surveyor shall also promptly advise the State in writing of favorable developments or events that enable meeting goals sooner than anticipated.

ARTICLE 7. PERSONNEL, EQUIPMENT, AND MATERIAL

A. Surveyor Resources. The Surveyor shall maintain an office, employ sufficient personnel, and possess adequate equipment to perform the services required under this contract. The Surveyor certifies that it currently has adequate qualified personnel in its employment for performance of the services required under this contract or that it will be able to obtain adequate qualified personnel from sources other than the State.

B. Removal of Contractor Employee. All employees of the Surveyor assigned to this contract shall have sufficient knowledge and experience to enable them to perform the duties assigned to them. The State may require the Surveyor to remove any employee from work authorized in this contract if in the sole opinion of the State, the work of that employee does not comply with this contract or the conduct of that employee is detrimental to the work.
C. Removal of Project Manager. The Surveyor shall notify the State in writing as soon as possible after a project manager is removed from work on this contract and shall give the reason for the removal. In any event, this notice must be given no later than three business days after the removal.

D. State Approval of Replacement Project Manager. The Surveyor may not replace the project manager, temporarily or permanently, without the advance written approval of the State.

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 Surveyor 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.

ARTICLE 8. SUBCONTRACTING
A. Prior Approval. The Surveyor shall not assign, subcontract, or transfer any professional services related to the work under this contract without the advance written approval of the State.

B. Required Provisions. All subcontracts for professional services shall include the provisions contained in Attachment A (General Provisions) and any other provisions required by law.

C. Surveyor Responsibilities. A subcontract does not relieve the Surveyor of any responsibilities under this contract.

ARTICLE 9. SURVEYOR’S RESPONSIBILITIES
A. Accuracy. The Surveyor shall be responsible for the accuracy of work and shall promptly make any revisions or corrections made necessary by its errors, omissions, or negligent acts. The Surveyor’s responsibility for revisions and corrections under this article will be determined by the State. Errors made by the Surveyor will remain the Surveyor’s responsibility as long as allowed by applicable law. If the Surveyor submits work that does not comply with the terms of this contract, the State shall instruct the Surveyor to take actions necessary to bring the work into compliance with this contract. No additional compensation shall be paid for work performed under this paragraph.

B. Seal. The Surveyor shall sign, seal, and date all appropriate surveying submissions to the State in accordance with the Texas Surveying Practice Act and the rules of the Texas Board of Professional Land Surveying.

ARTICLE 10. INSPECTION OF WORK
A. Review Rights. Authorized representatives of the State and, when federal funds are used, the U.S. Department of Transportation shall have the right at all reasonable times to review the work performed under this contract and the premises in which work is being performed.

B. Reasonable Access. The Surveyor shall provide and require its subproviders to provide all reasonable facilities and assistance for the safety and convenience of state or federal representatives in the performance of their duties.

ARTICLE 11. SUBMISSION OF WORK PRODUCT
At the State’s request, all work product shall be submitted in preliminary form for approval by the State before the final work product is issued. The State’s comments on the Surveyor’s preliminary work product shall be addressed in the final work product.

ARTICLE 12. MAINTENANCE, RETENTION, AND AUDIT OF RECORDS
A. Retention Period. The Surveyor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and services provided (Records). The Surveyor shall make the Records available at its office during the Contract Period and for seven 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, the Federal Highway Administration, the United States Department of Transportation, its Office of Inspector General, the State Auditor’s Office, and the United States
Comptroller General shall have access to the Records for the purpose of making audits, examinations, excerpts, and transcriptions.

C. State Auditor. The State Auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this 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 subject to 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 12. LICENSE FOR TxDOT LOGO USE
A. Grant of License; Limitations. The Surveyor 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 Surveyor 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 Surveyor 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 Surveyor’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 Surveyor 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 Surveyor by this article shall terminate at the end of the term specified in Article 2 of this contract.

ARTICLE 13. CIVIL RIGHTS COMPLIANCE
A. Compliance with Regulations: The Surveyor 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 Surveyor, 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 Surveyor 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 Surveyor 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 Surveyor of the Surveyor’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 Surveyor 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 Surveyor is in the exclusive possession of another who fails or refuses to furnish this information, the Surveyor 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 Surveyor'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 Surveyor under the contract until the Surveyor complies and/or
2. cancelling, terminating, or suspending of the contract, in whole or in part.

F. Incorporation of Provisions: The Surveyor 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 Surveyor 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 Surveyor becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Surveyor may request the State to enter into such litigation to protect the interests of the State. In addition, the Surveyor may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 14. INSURANCE
The Surveyor certifies that it has insurance on file with the Contract Services, of the Texas Department of Transportation in the amount specified on Texas Department of Transportation Form 1560-CS. The Surveyor 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 Surveyor shall cease work until a new certificate of insurance is provided.

ARTICLE 15. CHILD SUPPORT CERTIFICATION
Under Section 231.006, Texas Family Code, the Surveyor 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 Surveyor 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 16. OWNERSHIP OF DATA
A. Work for Hire. All services provided under this contract are considered work for hire, and 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 and data prepared by the Surveyor and all documents and data furnished to the Surveyor by the State shall be delivered to the State at its request. The Surveyor, at its own expense, may retain copies of documents or any other data that have been furnished the State under this contract, but use of the documents or data is subject to permission by the State.

C. Release of Survey Data and Documents. The Surveyor will not release any survey data or documents created or collected under this contract except to its subproviders and to the extent necessary to complete this contract. All subcontracts shall include a provision that acknowledges the State’s ownership of the survey data and documents and prohibits its use except to the extent necessary to complete this contract. The Surveyor is responsible for any improper use of survey data or documents by its employees, officers, or subproviders, including costs, damages, or other liability.
resulting from improper use. Neither the Surveyor nor any subprovider may charge a fee for survey data or documents.

ARTICLE 17. 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 Surveyor under this contract.

ARTICLE 18. COMPLIANCE WITH LAWS
The Surveyor shall comply with all applicable federal, state, and local laws, statutes, codes, ordinances, rules, and regulations and with the orders and decrees of any court and of any administrative body or tribunal in any manner affecting the performance of this contract, including worker's compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination laws, and licensing laws and regulations. At the request of the State, the Surveyor shall furnish satisfactory proof of its compliance with this article.

ARTICLE 19. NONCOLLUSION
A. Warranty. The Surveyor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Surveyor, to solicit or secure this contract and that it has not paid or agreed to pay any company or Surveyor any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent on 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 incurring any liability or in its discretion, to deduct from the contract price or compensation or otherwise to recover the full amount of the fee, commission, percentage, brokerage fee, gifts, or other consideration.

ARTICLE 20. 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 Surveyor 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 21. LOBBYING CERTIFICATION
In executing this contract, the signatories certify to the best of his or her knowledge and belief, that:
A. Payment of Funds. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
B. Certification Status. The Surveyor 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. Disclosure Form. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress
in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Funding Agency shall complete and submit the federal Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

D. **Subawards.** The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

E. **Penalties.** Submission of this certification is a prerequisite imposed by Title 31 U.S.C. §1352 for making or entering into this transaction. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**ARTICLE 22. GRATUITIES**

A. **Employees Not To Benefit.** Employees of the Texas Department of Transportation may not accept any benefit, gift, or favor from any person who is doing business with or who reasonably speaking may do business with the State under this contract.

B. **Liability.** The State may terminate this contract if the Surveyor or any other person who is doing business with or who reasonably speaking may do business with the State under this contract offers benefits, gifts, or favors to State employees in violation of this policy.

**ARTICLE 23. CONFLICT OF INTEREST**

The Surveyor represents that the 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 Surveyor 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 Surveyor 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 firm: 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.

**ARTICLE 24. INDEMNIFICATION**

A. **Errors, Omissions, Negligent Acts.** The Surveyor shall indemnify the State and its officers and employees from all claims and liability that result from any error, omission, or negligent act of the Surveyor or of any person employed by the Surveyor under this contract.

B. **Attorney Fees.** The Surveyor shall also indemnify the State from any and all expense, including attorney fees that may be incurred by the State in litigation or otherwise, to the extent that the expense results from any error, omission, or negligent act of the Surveyor or of any person employed by the Surveyor under this contract.

**ARTICLE 25. DISPUTES**

A. **Procurements by the Surveyor.** The Surveyor shall be responsible for the resolution of any claim arising out of any procurement made by the Surveyor in support of the services authorized by this contract.

B. **Disputes Concerning Work or Cost.** Any dispute concerning this contract or work or rates under this contract shall be resolved under 43 TAC §9.2.

**ARTICLE 26. TERMINATION AND REMEDIES**

A. **Causes.** This contract may be terminated by:

   1. Written agreement of the parties;
2. Written notice from either party because the other party did not fulfill its contractual obligations; or
3. Thirty days’ written notice from the State, with or without cause.

B. Payments Due After Termination. If the State terminates this contract, the State will not be liable for any fees other than those that are due at the time of termination. If this contract is terminated under Article 26(A)(3), the Surveyor shall not incur costs during the thirty days after notice is given if those costs are more than the costs incurred during the immediately preceding thirty days.

C. Value of Completed Work. The State shall determine the value of any work that has been done at the time of termination. Compensation for partial work shall be calculated on the basis of the percentage of work completed at the time of termination. In making that calculation, the State will consider
1. Actual costs incurred, not to exceed the rates set forth in Attachment E (Schedule of Rates), in performing the work to the date of termination;
2. The amount of work that was satisfactorily completed as of the date of termination;
3. The value of the work that 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;
6. Other factors that affect the value to the State of the work performed.

D. Payment of Additional Costs. If this contract is terminated under Article 26(A)(2), the State may take over the project and prosecute the work to completion. The Surveyor shall be liable to the State for any additional cost to the State caused by the termination.

E. Excusable Delays. Except with respect to defaults by subproviders, the Surveyor will not be considered in default for any failure that arises out of causes beyond the control and without the negligence of the Surveyor. These include acts of God or the public enemy, acts of the Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

F. Surviving Requirements. Except for provisions that specifically establish responsibilities that extend beyond the Contract Period, termination and payment under this article extinguish the rights, duties, and obligations of the State and the Surveyor under this contract.

G. Remedies. This contract shall not be considered as specifying the exclusive remedy for any default. All legal remedies may be pursued by either party and shall be cumulative.

ARTICLE 27. SEVERABILITY
If any provision in this contract is for any reason held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision of this contract. In that case, this contract shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

ARTICLE 28. SUCCESSORS AND ASSIGNS
The Surveyor and the State bind themselves and their successors, executors, administrators, and assigns to each other party of this contract and to the successors, executors, administrators, and assigns of each other party with regard to all covenants of this contract. The Surveyor shall not assign, subcontract, or transfer its interest in this contract without the written approval of the State.

ARTICLE 29. PRIOR CONTRACTS SUPERSEDED
This contract constitutes the sole agreement of the parties for the services authorized in it and supersedes any prior understandings or written or oral contracts between the parties respecting its subject matter.

ARTICLE 30. 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 Surveyor'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 Surveyor employee, the expected role of the Surveyor employee on the project, the name of the TxDOT employee who is a relative of the Surveyor 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 Surveyor is certifying that the Surveyor 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 Surveyor has notified TxDOT of each instance as required by subsection (b).

D. If the Surveyor 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 Surveyor shall notify TxDOT under subsection (b) of each instance within thirty days of obtaining that knowledge.

E. If the Surveyor 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 31. OFFICE OF MANAGEMENT AND BUDGET AUDIT REQUIREMENTS
The parties shall comply with the requirement of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

ARTICLE 32. PUBLIC INFORMATION AND CONFIDENTIALITY
The Surveyor 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 33. E-VERIFY CERTIFICATION
Pursuant to Executive Order RP-80, the Surveyor certifies and ensures that for all contracts for services, the surveyor 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 the surveyor during the term of this agreement to perform duties within the State of Texas; and
2. All persons, including subcontractors, assigned by the surveyor to perform work pursuant to this agreement.

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

ARTICLE 34. RESTRICTIONS ON EMPLOYMENT OF FORMER STATE OFFICER OR EMPLOYEE
The Surveyor 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 the contract is signed or the procurement is terminated or withdrawn.

ARTICLE 35. PERTINENT NON-DISCRIMINATION AUTHORITIES
During the performance of this contract, the Surveyor, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

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).
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.).

ARTICLE 36. BOYCOTT ISRAEL
A. Meaning: “Boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

B. Certification and Prohibition: The Surveyor hereby certifies it does not boycott Israel and shall not boycott Israel during the term of the contract.
ATTACHMENT C

SERVICES TO BE PROVIDED BY THE SURVEYOR
ATTACHMENT D
D-1
WORK AUTHORIZATION NO. _____
CONTRACT FOR SURVEYING SERVICES

THIS WORK AUTHORIZATION is made under Surveying Contract No. _________________ (Contract) between the State of Texas, acting through the Texas Department of Transportation (State), and ________________________________ (Surveyor).

PART I. The Surveyor shall perform surveying services generally described as ______________________. The responsibilities of the State and the Surveyor as well as the work schedule are further detailed in Exhibits A (Responsibilities of the State), B (Responsibilities of the Surveyor), and C (Work Schedule) to this 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 on the rates set forth in Attachment E (Schedule of Rates) to the Contract and the costs set forth in Exhibit D (Budget) to this Work Authorization.

PART III. Payment to the Surveyor under this Work Authorization shall be made in accordance with Exhibit D.

PART IV. This Work Authorization is effective when executed by both parties and terminates on ___________ or when the contract terminates, whichever occurs first.

PART V. This Work Authorization does not waive the parties' responsibilities and obligations as established by the Contract.

PART VI. Exhibits A, B, C, D, and H-2 are made part of this Work Authorization.

THE SURVEYOR
________________________________________
(Business name)

______________________________________
(Signature)

______________________________________
(Printed Name and Title)

__________
(Date)

THE STATE OF TEXAS
TEXAS DEPARTMENT OF TRANSPORTATION

______________________________________
(Signature)

______________________________________
(Printed Name and Title)

__________
(Date)

List of Exhibits:
Exhibit A – Responsibilities of the State
Exhibit B – Responsibilities of the Surveyor
Exhibit C – Work Schedule
Exhibit D – Budget
Exhibit H-2 – Subprovider Monitoring System Commitment Agreement
ATTACHMENT D
D-2
SUPPLEMENTAL WORK AUTHORIZATION NO. ____
TO WORK AUTHORIZATION NO. ____
CONTRACT FOR SURVEYING SERVICES

THIS SUPPLEMENTAL is made under Surveying Contract No. __________________ (Contract) between the State of Texas, acting through the Texas Department of Transportation (State), and _________________________________ (Surveyor).

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

This supplemental is effective when executed by both parties. All other terms and conditions of Work Authorization No. ____ remain in full force and effect.

THE SURVEYOR

______________________________  ______________________________
(Business name)  (Signature)

______________________________  ______________________________
(Printed Name and Title)  (Printed Name and Title)

______________________________  ______________________________
(Date)  (Date)

THE STATE OF TEXAS
TEXAS DEPARTMENT OF TRANSPORTATION

______________________________  ______________________________
(Signature)  (Signature)

______________________________  ______________________________
(Printed Name and Title)  (Printed Name and Title)

______________________________  ______________________________
(Date)  (Date)
ATTACHMENT E

SCHEDULE OF RATES

This attachment provides the basis of payment, which is indicated by an “X” in the applicable space on one or more of the following pages.

The basis of payment shall be accompanied by a Final Cost Proposal (FCP), which is included in this Attachment.

If more than one basis of payment is used, each one must be supported by a separate FCP.
## LUMP SUM

### Definition
A lump sum is a single dollar figure paid for one or more deliverables. There may be multiple lump sums if each is associated with a distinct deliverable or group of deliverables.

### Components
A lump sum includes labor rates, overhead, fee, and direct costs. Therefore, no additional payment will be made for labor rates, overhead, fee, or direct costs.

### Required Documentation
Each invoice shall itemize charges by listing the deliverable or deliverables associated with the lump sum for which payment is requested. The Surveyor is not required to submit evidence of actual labor rates, hours worked, travel, overhead rates, or any other cost.

### Audit Adjustment
Lump sums are not subject to change as the result of an audit.

### Basis of Payment
Payment may be made at the time of completion for one or more interim or final deliverables. Pro rata payments may be made based on the percentage of work on a deliverable that has been completed.

### Final Cost Proposal
The contract FCP must contain rates that are established at the time of the contract. One or more of the following methods must be used. First, the contract FCP may identify specified rates and direct costs that will be used later to build lump sums. Second, the contract FCP may identify unit costs and direct costs that will be used later to build lump sums. Third, the contract FCP may identify future work authorizations and corresponding lump sums.

### Work Authorizations
A work authorization may have more than one lump sum if each is associated with a distinct deliverable or group of deliverables. If lump sum work authorizations will be used, the contract FCP must contain detailed and negotiated unit costs or specified rates so that the lump sum for future work authorizations can be calculated with certainty on the basis of cost figures contained in the contract FCP, or it must contain a schedule of future work authorizations with their associated lump sums. Lump sum work authorizations may not be calculated on the basis of actual labor rates, overhead rates, fee, or direct costs because actual costs are not audited or adjusted under a lump sum contract. The basis for lump sums may not be left for negotiation at the time work authorizations are issued.
UNIT COST

<table>
<thead>
<tr>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>A unit cost is a dollar figure paid for a unit of production. A different dollar figure may be associated with each unit of production.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Components</th>
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</thead>
<tbody>
<tr>
<td>The unit cost includes labor rates, overhead, and fee. Therefore, no additional payment will be made for labor rates, overhead, or fee.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Required Documentation</th>
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</thead>
<tbody>
<tr>
<td>Each invoice shall itemize charges by unit of production and unit cost and any direct costs. The Surveyor may be required to provide additional evidence of units of production and direct costs. The Surveyor is not required to provide evidence of actual labor rates, hours worked, overhead rates, or any other cost, except direct costs.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Audit Adjustment</th>
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</thead>
<tbody>
<tr>
<td>Unit costs are not subject to change as the result of an audit. Direct costs are subject to change as the result of an audit.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Basis of Payment</th>
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</thead>
<tbody>
<tr>
<td>Payment may be made at the time of completion for one or more units of production. Pro rata payments may not be made based on the percentage of work on a unit of production that has been completed.</td>
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</table>

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<tr>
<th>Final Cost Proposal</th>
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<tbody>
<tr>
<td>The contract FCP must contain a schedule of all unit costs with their associated units of production and any direct costs. It must also clearly identify the circumstance that will cause a payment to become due.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Work Authorizations</th>
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<tbody>
<tr>
<td>Different units of production may be included in a work authorization in any combination. If unit cost work authorizations will be used, the contract FCP must contain unit costs for each unit of production that will be included in any work authorization as well as any direct costs. Unit costs may not be left for negotiation at the time work authorizations are issued.</td>
</tr>
</tbody>
</table>
# SPECIFIED RATE

<table>
<thead>
<tr>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>A specified rate is an overall hourly rate that includes almost all cost elements. A different specified rate may be associated with each type of labor.</td>
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</table>

<table>
<thead>
<tr>
<th>Components</th>
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</thead>
<tbody>
<tr>
<td>The specified rate includes labor rates, overhead, and fee. Therefore, no additional payment will be made for labor rates, overhead, or fee.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Required Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Each invoice shall itemize charges by name of worker, type of labor and specified rate, shall list any direct costs, and shall include copies of time sheets supporting the requested payment. The Surveyor may be required to provide additional evidence of hours worked and direct costs. The Surveyor is not required to provide evidence of actual labor costs, overhead rates, or any other cost, except direct costs.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Audit Adjustment</th>
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</thead>
<tbody>
<tr>
<td>Specified rates are not subject to change as the result of an audit. Direct costs are subject to change as the result of an audit.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Basis of Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment may be made at the time of completion for one or more interim or final deliverables or on a periodic basis that is clearly identified. Pro rata payments may not otherwise be made.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Final Cost Proposal</th>
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</thead>
<tbody>
<tr>
<td>The contract FCP must contain a schedule of all specified rates with their associated types of labor and any direct costs. It must also clearly identify the circumstance that will cause a payment to become due.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Work Authorizations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Different types of labor may be included in a work authorization in any combination. If specified rate work authorizations will be used, the contract FCP must contain specified rates for each type of labor that will be included in any work authorization as well as any direct costs. Specified rates may not be left for negotiation at the time work authorizations are issued.</td>
</tr>
</tbody>
</table>
FINAL COST PROPOSAL (FCP)

MAXIMUM AMOUNT PAYABLE $_____________________________.

Detailed data and calculations:
ATTACHMENT F

Not Applicable
ATTACHMENT G

Computer Graphics Files

Data (original and processed) shall be provided to the State on a compact disk or other approved medium and shall be fully compatible with the State's computer system and with programs in use by the State at the time of submission without further modification or conversion. The program formats used by the State are: Microsoft® Word for word processing; MicroStation® for graphics applications; and CAiCE™ Visual® Transportation, GEOPAK®, and AASHTOWare® SDMS® for survey data.
**Attachment H Instructions**

The following pages contain six (6) different Exhibits to Attachment H covering participation of HUB and DBE providers and subproviders. The correct form to use is determined by whether the contract is funded in whole or part by federal funds or state funds, and whether or not a HUB/DBE goal has been set for the contract. The following pages contain separate reporting forms for federally funded DBE participation and state funded HUB participation. **Select the forms that are appropriate for your contract and delete the rest along with these instructions from the final contract.**

<table>
<thead>
<tr>
<th>Federally Funded Contracts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attachment H-FG, Disadvantaged Business Enterprise (DBE) for Federal Funded Professional or Technical Services Contracts</td>
</tr>
<tr>
<td>♦ This provision is applicable to federally funded contracts with assigned DBE goals.</td>
</tr>
<tr>
<td>♦ The appropriate forms for this provision are Exhibits H-1, H-2, H-3 and H-4 and H-5. A copy of each form is required in the contract.</td>
</tr>
<tr>
<td>♦ Note: if the contract requires work authorizations, a completed Exhibit H-2 will be required with each Work Authorization, if a DBE will be performing work. If a non-DBE subprovider is used, insert N/A (not applicable) on the line provided on the H-2 form.</td>
</tr>
<tr>
<td>♦ Exhibit H-3 must be submitted monthly to the Business Opportunity Programs Office at (512) 486-5519 (fax number) even if there is no invoice being submitted or subcontracting to report.</td>
</tr>
<tr>
<td>♦ Exhibit H-3 must be submitted with each invoice to the appropriate agency contact for payment.</td>
</tr>
</tbody>
</table>

| Attachment H-FN, Disadvantaged Business Enterprise (DBE) for Race Neutral Professional or Technical Services Contracts |
| ♦ This provision is applicable to federally funded contracts with no DBE goal assigned. |
| ♦ If no subcontractors will be used, the appropriate forms for this provision are Exhibits H-3 and H-5. A copy of each form is required in the contract. |
| ♦ Note: If subcontractors are used, the required forms would be Exhibits H-1, H-2, H-3, H-4 and H-5. A copy of each form is required in the contract. |
| ♦ Exhibit H-3 must be submitted monthly to the Business Opportunity Programs Office at (512) 486-5519 (fax number) even if there is no invoice being submitted or subcontracting to report. |
| ♦ Exhibit H-3 must be submitted with each invoice to the appropriate agency contact for payment. |

| Exhibit H-3, Texas Department of Transportation Subprovider Monitoring System for Federally Funded Contracts. This is a Monthly Progress Assessment Report. |
| ♦ Required for all federally funded contracts. |
| ♦ This form is required monthly and must be submitted to the Business Opportunity Programs Office at (512) 486-5519 (fax number) even if there is no invoice being submitted or subcontracting to report. |
| ♦ This form must be submitted with each invoice to the appropriate agency contact for payment. |

| Exhibit H-5, Federal Subprovider and Supplier Information |
| Required for all federally funded contracts. |
### State Funded Contracts

**Attachment H-SG, Historically Underutilized Business (HUB) for State Funded Professional or Technical Services Contracts, State of Texas HUB Subcontracting Plan Required**

- This provision is applicable to state funded contracts with a HUB goal assigned.
- The appropriate reporting forms for this provision are Exhibits H-1, H-2, H-4, and H-6 (Texas Facilities Commission [TFC] State of Texas HUB Subcontracting Plan (HSP), Prime Contractor Assessment Report). A copy of each form is required in the contract.
- Note: if the contract requires work authorizations, a completed Exhibit H-2 will be required with each Work Authorization, if a HUB will be performing work. If a non-HUB subprovider is used, insert N/A (not applicable) on the line provided on the H-2 form.
- Exhibit H-6 will be required monthly and must be submitted to the Business Opportunity Programs Office at (512) 486-5519 (fax number) even if there is no invoice being submitted or subcontracting to report.
- Exhibit H-6 must be submitted with each invoice to the appropriate agency contact for payment.

**Attachment H-SN, Historically Underutilized Business (HUB) Participation for State Funded Professional or Technical Services Contracts, No State of Texas HUB Subcontracting Plan Required**

- This provision is applicable to state funded contracts with no HUB subcontracting plan required and no HUB goal assigned. If no subcontractors are used, the appropriate forms for this provision are Exhibits H-1 and H-6.
- Note: If subcontractors are used, the required forms would be Exhibits H-1, H-2, H-4 and H-6. A copy of each form is required in the contract.
- Exhibit H-6 must be submitted monthly to the Business Opportunity Programs Office at (512) 486-5519 (fax number) even though there is no invoice being submitted or subcontracting to report.
- Exhibit H-6 must be submitted with each invoice to the appropriate agency contact for payment.

**Exhibit H-6, HUB Subcontracting Plan (HSP) Prime Contractor Professional Assessment Report. This is a Monthly Progress Assessment Report. This is a Texas Facilities Commission (TFC) form and cannot be altered.**

- Required for all State funded contracts.
- Exhibit H-6 is required monthly and should be submitted to the Business Opportunity Programs Office through a fax to (512) 486-5519. This is a requirement even though there is no invoice being submitted or subcontracting to report.
- A copy of Exhibit H-6 must be submitted when supplying an invoice to the appropriate agency contact for payment.
- The “Object Code” section(s) on this form should remain blank.
ATTACHMENT H-FG
Disadvantaged Business Enterprise (DBE) for Federal-Aid Professional or Technical Services Contracts

1) PURPOSE. The purpose of this attachment is to carry out the U.S. Department of Transportation’s (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by minority or socially and economically disadvantaged individuals can compete fairly for DOT assisted contracts.

2) POLICY. It is the policy of the DOT and the Texas Department of Transportation (henceforth the “Department”) that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26, Subpart A and the Department’s Disadvantaged Business Enterprise Program, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the Disadvantaged Business Enterprise requirements of 49 CFR Part 26, and the Department’s Disadvantaged Business Enterprise Program, apply to this contract as follows.

a. The Provider will offer Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, Subpart A and the Department’s Disadvantaged Business Enterprise Program, the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds. In this regard, the Provider shall make a good faith effort to meet the Disadvantaged Business Enterprise goal for this contract.

b. The Provider and any subprovider(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Provider shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. The requirements of this Special Provision shall be physically included in any subcontract.

c. When submitting the contract for execution by the Department, the Provider must complete and furnish Exhibit H-1 which lists the commitments made to certified DBE 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 the proposed DBE(s). 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 attached with each work authorization number that is submitted for execution, if the DBE will be performing work. Any substitutions or changes to the DBE subcontract amount shall be subject to prior written approval by the Department. If non-DBE subprovider is performing work, insert N/A (not applicable) on the line provided.

d. Failure to carry out the requirements set forth above shall constitute a material breach of this contract and may result; in termination of the contract by the Department; in a deduction of the amount of DBE goal not accomplished by DBEs from the money due or to become due to the Provider, not as a penalty but as liquidated damages to the Department; or such other remedy or remedies as the Department deems appropriate.

3) DEFINITIONS.

a. “Department” means the Texas Department of Transportation (TxDOT).

b. “Federal-Aid Contract” is any contract between the Texas Department of Transportation and a Provider which is paid for in whole or in part with U.S. Department of Transportation (DOT) financial assistance.

c. “Provider” is any individual or company that provides professional or technical services.

d. “DBE Joint Venture” means an association a DBE firm and one (1) or more other firm(s) to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture are commensurate with its ownership interest.

e. “Disadvantaged Business Enterprise (DBE)” means a firm certified as such by the Department in accordance with 49 CFR Part 26.

f. “Good Faith Effort” means efforts to achieve a DBE goal or other requirement of this Special Provision which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

g. “Race-neutral DBE Participation” means any participation by a DBE through customary competitive procurement procedures.
4) **PERCENTAGE GOAL.** The goal for Disadvantaged Business Enterprise (DBE) participation in the work to be performed under this contract is ________% of the contract amount.

5) **PROVIDER’S RESPONSIBILITIES.** A DBE prime may receive credit toward the DBE goal for work performed by his-her own forces and work subcontracted to DBEs. A DBE prime must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported to the Department.

   a. A Provider who cannot meet the contract goal, in whole or in part, shall document the “Good Faith Efforts” taken to obtain DBE participation. The following is a list of the types of actions that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

   1. Soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the work of the contract. The solicitation must be done within sufficient time to allow the DBEs to respond to it. Appropriate steps must be taken to follow up initial solicitations to determine, with certainty, if the DBEs are interested.

   2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Provider might otherwise prefer to perform the work items with its own forces.

   3. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

   4. Negotiating in good faith with interested DBEs by making a portion of the work available to DBE subproviders and suppliers and selecting those portions of the work or material needs consistent with the available DBE subproviders and suppliers.

   5. The ability or desire of the Provider to perform the work of a contract with its own organization does not relieve the Provider’s responsibility to make a good faith effort. Additional costs involved in finding and using DBEs is not in itself sufficient reason for a Provider’s failure to meet the contract DBE goal, as long as such costs are reasonable. Providers are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

   6. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.

   7. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Provider.

   8. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.

   9. Effectively using the services of available minority/women community organizations; minority/women contractors’ groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

   10. If the Department’s Director of the Business Opportunity Programs Office determines that the Provider has failed to meet the good faith effort requirements, the Provider will be given an opportunity for reconsideration by the Director of the appropriate Division.

   **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 project.

   c. The Provider shall make all reasonable efforts to honor commitments to DBE subproviders named in the commitment submitted under Section 2.c. of this attachment. Where the Provider terminates or removes a DBE 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 DBE was not able or willing to perform.

   d. The Provider shall make a good faith effort to replace a DBE subprovider that is unable or unwilling to perform successfully with another DBE, to the extent needed to meet the contract goal. The Provider shall submit a completed Exhibit H-2 Form for the substitute firm(s). Any substitution of DBEs shall be subject to prior written approval by the Department. The Department may request a statement from the firm being replaced concerning its replacement prior to approving the substitution.
e. The Provider shall designate a DBE liaison officer who will administer the DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs.

f. Providers are encouraged to investigate the services offered by banks owned and controlled by disadvantaged individuals and to make use of these banks where feasible.

6) **ELIGIBILITY OF DBEs.**

a. The Department certifies the eligibility of DBEs, DBE joint ventures and DBE truck-owner operators to perform DBE subcontract work on DOT financially assisted contracts.

b. This certification will be accomplished through the use of the appropriate certification schedule contained in this Department’s DBE program.

c. The Department publishes a Directory of Disadvantaged Business Enterprises containing the names of firms that have been certified to be eligible to participate as DBEs on DOT financially assisted contracts. The directory is available from the Department’s Business Opportunity Programs Office. The Texas Unified Certification Program DBE Directory can be found on the Internet at: [http://www.dot.state.tx.us/services/business_opportunity_programs/tucp_dbe_directory.htm](http://www.dot.state.tx.us/services/business_opportunity_programs/tucp_dbe_directory.htm).

d. Only DBE firms certified 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. and 5.d. above. For purposes of the DBE goal on this contract, DBEs will only be allowed to perform work in the categories of work for which they were certified.

7) **DETERMINATION OF DBE PARTICIPATION.**

A firm must be an eligible DBE and perform a professional or technical function relating to the project. Once a firm is determined to be an eligible DBE, the total amount paid to the DBE for work performed with his/her own forces is counted toward the DBE goal. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subprovider is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

A DBE subprovider may subcontract no more than 70% of a federal aid contract. The DBE subprovider shall perform not less than 30% of the value of the contract work with assistance of employees employed and paid directly by the DBE; and equipment owned or rented directly by the DBE. DBE subproviders must perform a commercially useful function required in the contract in order for payments to be credited toward meeting the contract goal. A DBE performs a commercially useful function when it is responsible for executing the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption.

A Provider may count toward its DBE goal a portion of the total value of the contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the DBE.

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.

8) **RECORDS AND REPORTS.**

a. After submission of the initial commitment reported (Exhibit H-1), required by Section 2.c. of this attachment, the Provider shall submit Monthly Progress Assessment Reports (Exhibit H-3), after contract work begins, on DBE involvement to meet the goal and for race-neutral participation. One copy of each report is to be sent to the Department’s Business Opportunity Programs Office monthly, in addition one copy is to be submitted with the Provider’s invoice. Only actual payments made to subproviders are to be reported. These reports will be required until all subprovider activity is completed. The Department may verify the amounts being reported as paid to DBEs by requesting copies of canceled checks paid to DBEs on a random basis.

b. DBE subproviders should be identified on the report by name, type of work being performed, the amount of actual payment made to each during the billing period, cumulative payment amount and percentage of the total contract amount. These reports will be due within fifteen (15) days after the end of a calendar month. Reports are required even when no DBE activity has occurred in a billing period.
c. All such records must be retained for a period of seven (7) years following final payment or until any 
   investigation, audit, examination, or other review undertaken during the seven (7) years is completed, and 
   shall be available at reasonable times and places for inspection by authorized representatives of the 
   Department or the DOT.

d. Prior to receiving final payment, the Provider shall submit a Final Report (Exhibit H-4), detailing the DBE 
   payments. The Final Report is to be sent to the Department’s Business Opportunity Programs Office and one 
   (1) copy to be submitted with the Provider’s final invoice. If the DBE goal requirement is not met, 
   documentation of the good faith efforts made to meet the goal must be submitted with the Final Report.

9) **COMPLIANCE OF PROVIDER.** To ensure that DBE requirements of this DOT-assisted contract are 
   complied with, the Department will monitor the Provider’s efforts to involve DBEs during the performance of 
   this contract. This will be accomplished by a review of Monthly Progress Assessment Reports (Exhibit H-3), 
   submitted to the Department’s Business Opportunity Programs Office by the Provider indicating his progress in 
   achieving the DBE contract goal, and by compliance reviews conducted by the Department. The Monthly 
   Progress Assessment Report (Exhibit H-3) 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 DBE goal based on actual payments to the DBE subproviders with 
the following exceptions and only if the arrangement is consistent with standard industry practice. The Provider 
shall contact the Department if he/she withholds or reduces payment to any DBE subprovider.

1. A DBE firm is paid but does not assume contractual responsibility for performing the service;
2. A DBE firm does not perform a commercially useful function;
3. Payment is made to a DBE that cannot be linked by an invoice or canceled check to the contract under 
   which credit is claimed;
4. Payment is made to a broker or a firm with a brokering-type operation;
5. Partial credit is allowed, in the amount of the fee or commission provided the fee or commission does not 
   exceed that customarily allowed for similar services, for a bona fide service, such as professional, 
   technical, consultant, or managerial services, and assistance in the procurement of essential personnel, 
   facilities, equipment, materials, or supplies required for performance of the contract.

A Provider’s failure to comply with the requirements of this Special Provision shall constitute a material breach 
of this contract. In such a case, the Department reserves the right to terminate the contract; to deduct the amount 
of DBE goal not accomplished by DBEs from the money due or to become due the Provider, not as a penalty but 
as liquidated damages to the Department; or such other remedy or remedies as the Department deems 
appropriate.

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Disadvantaged Business Enterprise (DBE) for Race-Neutral Professional or Technical Services Contracts

It is the policy of the U. S. Department of Transportation (DOT) that DBEs as defined in 49 CFR Part 26, Subpart A, be given the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department’s overall DBE goal be met using race-neutral means. Consequently, if there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this contract as follows:

The Provider will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with federal funds. Race-Neutral DBE participation on projects with no DBE goal should be reported on the Exhibit H-3 Form. Payments to DBEs reported on Exhibit H-3 are subject to the following requirements:

DETERMINATION OF DBE PARTICIPATION.

A firm must be an eligible DBE and perform a professional or technical function relating to the project. Once a firm is determined to be an eligible DBE, the total amount paid to the DBE for work performed with his/her own forces must be reported as race-neutral DBE participation. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work should not be reported unless the subcontractor is itself a DBE.

A DBE subprovider may subcontract no more than 70% of a federal aid contract. The DBE subprovider shall perform not less than 30% of the value of the contract work with assistance of employees employed and paid directly by the DBE; and equipment owned or rented directly by the DBE. DBE subproviders must perform a commercially useful function required in the contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption.

A Provider must report a portion of the total value of the contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the DBE.

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.

The Provider and any subprovider shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts. These requirements shall be physically included in any subcontract.

Failure to carry out the requirements set forth above shall constitute a material breach of this contract and, may result in termination of the contract by the Department or other such remedy as the Department deems appropriate.
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 _______% 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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ATTACHMENT H-SN

Historically Underutilized Business (HUB) for State Funded Professional or Technical Services Contracts
No State of Texas HUB Subcontracting Plan Required

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.

Subcontracting participation on projects with no HUB Subcontracting Plan Required should be reported on the State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report, the Exhibit H-6 Form. Payment to non-HUBs subproviders must be reported on Exhibit H-6. Payments to HUBs reported on Exhibit H-6 are subject to the following requirements:

DETERMINATION OF HUB PARTICIPATION.
A firm must be an eligible HUB and perform a professional or technical function relating to the project. Once a firm is determined to be an eligible HUB, the total amount paid to the HUB should be reported as race-neutral HUB participation.

A HUB subprovider may subcontract no more than 70% of a contract. The HUB subprovider shall perform not less than 30% of the value of the contract work with assistance of employees employed and paid directly by the HUB; and equipment owned or rented directly by the HUB.

A provider must report a portion of the total value of the contract amount paid to a HUB joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the HUB.

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.

The provider and any subprovider shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts. These requirements shall be physically included in any subcontract.

REQUIRED FORMS.
If subcontractors are used under the contract that has no stated HUB goal, Exhibits H-1, H-2, H-4 and H-6 are required. Exhibits H-1 and H-6 are required if no subcontractors are being used to perform work under this contract.

State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report (Exhibit H-6) is required monthly even when no subcontracting activity has occurred. In addition, State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report (Exhibit H-6) should be submitted with the Provider’s invoice.

12/06 HU
**EXHIBIT H-1**

Texas Department of Transportation  
Subprovider Monitoring System  
Commitment Worksheet

Contract #: ___________ Assigned Goal: _____%  Federally Funded ________  State Funded ______

Prime Provider: __________________________________________ Total Contract Amount: ___________

Prime Provider Info: DBE ___ HUB ___ Both ___

Vendor ID #: _________________  DBE/HUB Expiration Date: ________________  
(First 11 Digits Only)

If no subproviders are used on this contract, please indicate by placing “N/A” on the 1st line under Subproviders.

<table>
<thead>
<tr>
<th>Subprovider(s) (List All)</th>
<th>Type of Work</th>
<th>Vendor ID # (First 11 Digits Only)</th>
<th>D=DBE</th>
<th>H=HUB</th>
<th>Expiration Date</th>
<th>$ Amount or % of Work *</th>
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Subprovider(s) Contract or % of Work* Totals

*For Work Authorization Contracts, indicate the % of work to be performed by each subprovider.

Total DBE or HUB Commitment Dollars $ ____________________

Total DBE or HUB Commitment Percentages of Contract ____________%

(Commitment Dollars and Percentages are for Subproviders only)

12/06 DBEH1.AT
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 with 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: __________________

<table>
<thead>
<tr>
<th>Description of Work</th>
<th>Dollar Amount</th>
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<tbody>
<tr>
<td>(List by category of work or task description. Attach additional pages, if necessary.)</td>
<td>(For each category of work or task description shown.)</td>
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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.

Provider Name: __________________________
Address: ___________________________________________
Phone # & Fax #: ___________________________________
Email: _____________________________________________

Name: __________________________ Title: ______________________
(Please Print)

Signature: ___________________ Date: __________

DBE/HUB Sub Provider

Name: __________________________ Title: ______________________
(Please Print)

Signature: ___________________ Date: __________

VID Number: __________________________
Address: ___________________________________________
Phone # & Fax #: ___________________________________
Email: _____________________________________________

Second Tier Sub Provider

Name: __________________________ Title: ______________________
(Please Print)

Signature: ___________________ Date: __________

VID Number: __________________________
Address: ___________________________________________
Phone # & Fax #: ___________________________________
Email: _____________________________________________

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).

4/06 DBE-H2, ATT
EXHIBIT H-3
Texas Department of Transportation Subprovider Monitoring System for Federally Funded Contracts
Progress Assessment Report for month of (Mo./Yr.) _____________/________

Contract #: ____________________________ Original Contract Amount: ____________________________
Date of Execution: ____________________________ Approved Supplemental Agreements: __
Prime Provider: ____________________________ Total Contract Amount: ____________________________

If no subproviders are used on this contract, please indicate by placing “N/A” on the 1st line under Subproviders.

<table>
<thead>
<tr>
<th>DBE</th>
<th>All Subproviders</th>
<th>Category of Work</th>
<th>Total Subprovider Amount</th>
<th>% Total Contract Amount</th>
<th>Amount Paid This Period</th>
<th>Amount Paid To Date</th>
<th>Subcontract Balance Remaining</th>
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Fill out Progress Assessment Report with each estimate/invoice submitted, for all subcontracts, and forward as follows:
1 Copy with Invoice - Contract Manager/Managing Office
1 Copy – TxDOT, BOP Office, 125 E. 11th, Austin, TX 78701, 512-486-5500, toll free 866-480-2518, or Fax to 512-486-5519

I hereby certify that the above is a true and correct statement of the amounts paid to the firms listed above.

Print Name - Company Official /DBE Liaison Officer ____________________________ Signature ____________________________ Phone ____________________________ Date ____________________________

Email __________________________________ Fax ____________________________

12/06 DBE-H3.ATT
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:

<table>
<thead>
<tr>
<th>Vendor ID #</th>
<th>Subprovider</th>
<th>Total $ Amt Paid to Date</th>
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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: ________________________________
EXHIBIT H-5

Federal Subprovider and Supplier Information

The Provider shall indicate below the name, address and phone number of all successful and unsuccessful subproviders and/or suppliers that provided proposals/quotes for this contract prior to execution. You may reproduce this form if additional space is needed.

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<tr>
<th>Name</th>
<th>Address</th>
<th>Phone Number</th>
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The information must be provided and returned with the contract.

__________________________________    __________________
Signature         Date

________________________
Printed Name

Email

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

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

**Contract/Requisition Number:**

**Date of Award:**

**Object Code:**

**Contracting Agency/University Name:**

**Contractor (Company) Name:**

**State of Texas VID #:**

**Point of Contact:**

**Phone #:**

**Reporting (Month) Period:**

**Total Amount Paid this Reporting Period to Contractor:** $  

---

### Report HUB and Non-HUB subcontractor information

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

**Signature:** _____________________________  **Title:** _____________________________  **Date:** _____________________

*Note: Prime contractors can verify subcontractor HUB certification status on-line at [http://www2.tbpc.state.tx.us/cmbl/cmblhub.html](http://www2.tbpc.state.tx.us/cmbl/cmblhub.html)