

Contract No.

Funding source: ☒ State
☐ Federal

STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS CONTRACT FOR ENGINEERING SERVICES is made by and between the State of Texas acting by and through the Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701, hereinafter called "State," and _____, Inc., having its principal business address at _____, hereinafter called "Engineer" for the purpose of contracting for engineering services.

W I T N E S S E T H

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

WHEREAS, 43 TAC §9.30-9.43 establishes the department's policies and procedures for contracting for engineering services; and

WHEREAS, the State desires to contract for engineering services described as follows:

Statewide Subsurface Utility Engineering.

A G R E E M E N T

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

ARTICLE 1

SCOPE OF SERVICES TO BE PROVIDED BY STATE

The State will furnish items and perform those services for fulfillment of the contract as identified in Attachment A - Services to be Provided by the State, attached hereto and made a part of this contract.

ARTICLE 2

SCOPE OF SERVICES TO BE PROVIDED BY ENGINEER

The Engineer shall perform those engineering services for fulfillment of the contract as identified in Attachment B - Services to be provided by the Engineer, attached hereto and made a part of this engineering contract.

ARTICLE 3

CONTRACT PERIOD

After execution of this contract, the Engineer shall not proceed with the work outlined under Article 2 until authorized in writing by the State to proceed as provided in Article 6. This contract shall terminate at the close of business on June 26, 2002 unless extended by written supplemental agreement duly executed by the Engineer and the State prior to the date of termination, as provided in Article 11 - Supplemental Agreements, or otherwise terminated as provided in Article 19 - Termination. Any work performed or cost incurred after the date of termination shall be ineligible for reimbursement.

The Engineer shall notify the State in writing as soon as possible if it determines, or reasonably anticipates, that the work under this contract cannot be completed before the termination date, and the State may, at its sole discretion, extend the contract period by timely supplemental agreement as provided in Article 11 - Supplemental Agreements. The Engineer shall allow adequate time for review and approval of the request for time extension by the State prior to expiration of this contract.

ARTICLE 4 COMPENSATION

The maximum amount payable under this contract is \$1,500,000.00, unless the parties execute a supplemental agreement pursuant to Article 11. All payments shall be made in accordance with the fee schedule attached hereto as Attachment D. It is distinctly understood and agreed that this contract **does not** guarantee a minimum amount of work or dollar amount will be issued by the State to the Engineer. The issuance of work order(s), if any, will be at the sole discretion of the State. The authorized costs that are reimbursable are those costs attributable to the specific work authorized herein and allowable under the provisions of 48 C.F.R. Part 31, Federal Acquisition Regulation (FAR 31).

The Engineer shall prepare and submit to the State, when requested, monthly progress reports in sufficient detail to support the progress of the work and in support of invoice requesting payment. Satisfactory progress of work shall be maintained as a condition of payment.

ARTICLE 5 METHOD OF PAYMENT

The State shall make payment to the Engineer based upon the Engineer's authorized cost of performing the required work of each work authorization. Each request for payment shall be made by submitting one original and one copy of an itemized and certified invoice submitted by the Engineer, together with any supporting documentation, for work completed in accordance with the work authorization at the rates established in Attachment D. A progress assessment report identified in Attachment H will also be required with each request for payment relating to a Disadvantaged Business Enterprise or Historically Underutilized Business Program Requirements. The State shall make payment to the Engineer in accordance with the provisions of the work authorization, provided that the request is properly prepared.

The invoice(s) shall show the total amount earned to the date of submission and the amount due and payable as of the date of the current statement. Final payment does not relieve the Engineer of the responsibility of correcting any errors and/or omissions resulting from its

negligence. For any individual work authorization, billings will be submitted no more than once per month.

ARTICLE 6 WORK AUTHORIZATIONS

The State will prepare and issue work authorizations, in the form identified and attached hereto as Attachment E, to authorize the Engineer to perform one or more work tasks. Each work authorization will include a work plan that includes a list of the task(s) to be performed, a stated maximum number of calendar days to complete the task(s) and an estimate. If requested by the State, the work plan will include the sequence in which the task(s) will be performed. Refer to Attachment C for additional terms and conditions related to the schedule. The estimate shall set forth in detail the computation of the estimated cost of each task, at the rates established under Article 4-Compensation and Attachment D-Fee Schedule For Subsurface Utility Engineering. The work authorization will not waive the State's and Engineer's responsibilities and obligations established in this contract. The executed work authorization(s) shall become part of this contract.

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

Work included in a work authorization shall not begin until the State and the Engineer have signed the work authorization. All work must be completed on or before the completion date specified in the work authorization. The Engineer shall promptly notify the State of any event which will affect completion of the work authorization.

Any changes in the work authorization shall be enacted by a written supplemental work authorization, in the form identified and attached hereto as Attachment F, before additional work may be performed or additional costs incurred. Any supplemental work authorization must be executed by both parties within the period specified in the work authorization. The Engineer shall not perform any proposed work or incur any additional costs prior to the execution, by both parties, of a supplemental work authorization. The State shall not be responsible for actions by the Engineer or any costs incurred by the Engineer relating to additional work not directly associated with the performance of the work authorization. The Engineer shall allow adequate time for review and approval of the supplemental work authorization by the State prior to expiration of the work authorization. Any supplemental work authorization must be executed by both parties within the contract period specified in Article 3 - Contract Period.

ARTICLE 7 PROGRESS

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

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

If federal funds are to be used on this contract, the work will be subject to periodic review by the United States Department of Transportation.

Should the State determine that the progress in production of work does not satisfy the Work Schedule, the State shall review the work schedule with the engineer to determine corrective action needed.

The Engineer shall promptly advise the State in writing of events which have a significant impact upon the progress of the work, including:

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

ARTICLE 8 SUSPENSION

Should the State desire to suspend the work, but not terminate the contract, this may be done by thirty (30) calendar days verbal notification followed by written confirmation from the State to that effect. The thirty day notice may be waived in writing by both parties. The work may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from the State to resume the work. The sixty day notice may be waived in writing by both parties.

If the State suspends the work, the contract period as determined in Article 3 is not affected and the contract will terminate on the date specified unless the contract is amended.

The State assumes no liability for work performed or costs incurred prior to the date authorized by the State to begin work, during periods when work is suspended, or subsequent to the contract completion date.

ARTICLE 9 ADDITIONAL WORK

If the Engineer is of the opinion that any work it has been directed to perform is beyond the scope of this agreement and constitutes extra work, it shall promptly notify the State in writing. In the event the State finds that such work does constitute extra work and exceeds the maximum amount payable, the State shall so advise the Engineer and a written supplemental agreement will be executed between the parties as provided in Article 11. The Engineer shall not perform any proposed additional work or incur any additional costs prior to the execution, by both parties, of a supplemental agreement. The State shall not be responsible for actions by the Engineer or any costs incurred by the Engineer relating to additional work not directly associated with the performance of the work authorized in this contract or as amended.

ARTICLE 10 CHANGES IN WORK

If the State finds it necessary to request changes to previously satisfactorily completed work or parts thereof which involve changes to the original scope of services or character of work under the contract, the Engineer shall make such revisions if requested and as directed by the State. This will be considered as additional work and paid for as specified under Article 9 - Additional Work.

The Engineer shall make such revisions to the work authorized in this contract which has been completed as are necessary to correct errors appearing therein, when required to do so by the State. No additional compensation shall be paid for this work.

ARTICLE 11 SUPPLEMENTAL AGREEMENTS

The terms of this contract may be modified by supplemental agreement if the State determines that there has been a significant change in (1) the scope, complexity or character of the service to be performed; or (2) the duration of the work. Additional compensation, if appropriate, shall be identified as provided in Article 4.

Any supplemental agreement must be executed by both parties within the contract period specified in Article 3 - Contract Period.

It is distinctly understood and agreed that no claim for extra work done or materials furnished shall be made by the Engineer until full execution of the supplemental agreement and authorization to proceed is granted by the State. The State reserves the right to withhold payment pending verification of satisfactory work performed.

ARTICLE 12 PUBLIC INFORMATION ACT

All data, basic sketches, charts, calculations, plans, specifications, and other documents created or collected under the terms of this contract are the exclusive property of the State and shall be furnished to the State upon request. All documents prepared by the Engineer and all documents furnished to the Engineer by the State shall be delivered to the State upon completion or termination of this contract. The Engineer, at its own expense, may retain copies of such documents or any other data which it has furnished the State under this Contract. Release of information will be in accordance with the Public Information Act.

ARTICLE 13 PERSONNEL, EQUIPMENT AND MATERIAL

The Engineer shall furnish and maintain, at its own expense, quarters for the performance of all services, and adequate and sufficient personnel and equipment to perform the services as

required. All employees of the Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of the Engineer who, in the opinion of the State, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the project when so instructed by the State. The Engineer certifies that it presently has adequate qualified personnel in its employment for performance of the services required under this contract, or will be able to obtain such personnel from sources other than the State.

The Provider may not change the Project Manager without prior consent of the State.

ARTICLE 14 BUY TEXAS

The Engineer shall buy Texas products and materials for use in providing the services authorized in this contract when said products and materials are available at a comparable price and in a comparable period of time. When requested by the State, the Engineer shall furnish documentation of said purchases or a description of good faith efforts to do so.

ARTICLE 15 SUBCONTRACTING

The Engineer shall not assign, subcontract or transfer any portion of the work under this contract without prior written approval from the State. All subcontracts shall include the provisions required in this contract and shall be approved as to form, in writing, by the State prior to work being performed under the subcontract.

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

ARTICLE 16 EVALUATION OF WORK

The State and, when federal funds are involved, the United States Department of Transportation and any authorized representatives, shall have the right at all reasonable times to review or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any review or evaluation is made on the premises of the Engineer or a subprovider, the Engineer shall provide and require its subproviders to provide all reasonable facilities and assistance for the safety and convenience of the State or United States Department of Transportation representatives in the performance of their duties.

ARTICLE 17 SUBMISSION OF REPORTS

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

ARTICLE 18

VIOLATION OF CONTRACT TERMS/BREACH OF CONTRACT

Violation of contract terms or breach of contract by the Engineer shall be grounds for termination of the contract and any increased cost arising from the Engineer's default, breach of contract or violation of contract terms shall be paid by the Engineer. This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

ARTICLE 19

TERMINATION

The contract may be terminated before the stated termination date by any of the following conditions.

- (1) By mutual agreement and consent, in writing of both parties.
- (2) By the State by notice in writing to the Engineer as a consequence of failure by the Engineer to perform the services set forth herein in a satisfactory manner.
- (3) By either party, upon the failure of the other party to fulfill its obligations as set forth herein.
- (4) By the State for reasons of its own and not subject to the mutual consent of the Engineer upon not less than thirty (30) days written notice to the Engineer.
- (5) By satisfactory completion of all services and obligations described herein.

Should the State terminate this contract as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the Engineer. In determining the value of the work performed by the Engineer prior to termination, the State shall be the sole judge. Compensation for work at termination will be based on a percentage of the work completed at that time. Should the State terminate this contract under (4) of the paragraph identified above, the amount charged during the thirty (30) day notice period shall not exceed the amount charged during the preceding thirty (30) days.

If the Engineer defaults in the performance of this contract or if the State terminates this contract for fault on the part of the Engineer, the State will give consideration to the actual costs incurred by the Engineer in performing the work to the date of default, the amount of work required which was satisfactorily completed to date of default, the value of the work which is usable to the State, the cost to the State of employing another firm to complete the work required and the time required to do so, and other factors which affect the value to the State of the work performed at the time of default.

The termination of this contract and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of the State and the Engineer under this contract, except the obligations set forth in Articles 12, 16, 20, 21, 22, 28, 33, 35 and 37 of this contract. If the termination of this contract is due to the failure of the Engineer to fulfill its

contract obligations, the State may take over the project and prosecute the work to completion. In such case, the Engineer shall be liable to the State for any additional cost occasioned the State.

ARTICLE 20 COMPLIANCE WITH LAWS

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

ARTICLE 21 INDEMNIFICATION

The Engineer shall save harmless the State and its officers and employees from all claims and liability due to activities of itself, its agents, or employees, performed under this contract and which are caused by or result from error, omission, or negligent act of the Engineer or of any person employed by the Engineer. The Engineer shall also save harmless the State from any and all expense, including, but not limited to, attorney fees which may be incurred by the State in litigation or otherwise resisting said claim or liabilities which may be imposed on the State as a result of such activities by the Engineer, its agents, or employees.

ARTICLE 22 ENGINEER'S RESPONSIBILITY

The Engineer shall be responsible for the accuracy of its work and shall promptly make necessary revisions or corrections resulting from its errors, omissions, or negligent acts without compensation. The Engineer's responsibility for all questions arising from design errors and/or omissions will be determined by the State and all decisions shall be in accordance with the State's "Errors or Omissions Policy" in accordance with 43 TAC §9.38(e). The Engineer will not be relieved of the responsibility for subsequent correction of any such errors or omissions or for clarification of any ambiguities until after the construction phase of the project has been completed.

ARTICLE 23 ENGINEER'S SEAL

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

ARTICLE 24 NONCOLLUSION

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

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

ARTICLE 25 INSURANCE

The Engineer shall furnish the State a properly completed Certificate of Insurance (Texas Department of Transportation form 20.102 or form 1560) approved by the State prior to beginning work under this contract and shall maintain such insurance through the contract period. The completed Certificate of Insurance shall be attached hereto and identified as Attachment G.

ARTICLE 26 GRATUITIES

Texas Transportation Commission policy mandates that employees of the State shall not accept any benefits, gifts or favors from any person doing business or who reasonably speaking may do business with the State under this contract. The only exceptions allowed are ordinary business lunches and items that have received the advance written approval of the Texas Department of Transportation Executive Director. Any person doing business with or who may reasonably speaking do business with the State under this contract may not make any offer of benefits, gifts or favors to departmental employees, except as mentioned hereinabove. Failure on the part of the Engineer to adhere to this policy may result in the termination of this contract.

ARTICLE 27 DISADVANTAGED BUSINESS ENTERPRISE OR HISTORICALLY UNDERUTILIZED BUSINESS REQUIREMENT

The Engineer agrees to comply with the requirements set forth under the attached Attachment H - Disadvantaged Business Enterprise or Historically Underutilized Business Program Requirements.

ARTICLE 28 RETENTION, AVAILABILITY OF RECORDS AND AUDIT REQUIREMENTS

The State shall have the exclusive right to examine the books and records of the Engineer for the purpose of checking the amount of work performed by the Engineer at the time of contract termination. The Engineer shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and shall make such materials available at its office during the contract period and for four (4) years from the date of final payment under this contract or until pending litigation has been completely and fully resolved, whichever occurs last. The State or any of its duly authorized representatives, the Federal Highway Administration, the United States' Department of Transportation Office of Inspector General and the Comptroller General shall have access to any and all books, documents, papers and records of the Engineer which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts and transcriptions.

ARTICLE 29
PAYMENT OF FRANCHISE TAX

Pursuant to the Business Corporation Act, Texas Civil Statutes, Article 2.45 which prohibit the State from awarding a contract to a corporation that is delinquent in paying taxes under Tax Code, Chapter 171, the Engineer hereby certifies that it is not delinquent in its Texas franchise tax payments, or that it is exempt from, or not subject to, such a tax. A false statement concerning corporation's franchise tax status shall constitute grounds for termination of the contract at the sole option of the State.

ARTICLE 30
DEBARMENT, SUSPENSION AND DISCIPLINARY ACTION

The Engineer warrants that the representations included in the Debarment Certification and any Lower tier Participant Debarment Certification(s) submitted with the offer to provide services are current and still valid. A Lower Tier Participant Debarment Certification will be provided for a subcontractor that is approved pursuant to Article 15, if the certification was not submitted with the proposal.

ARTICLE 31
LOBBYING CERTIFICATION

The Engineer shall comply with "Lobbying Certification\Disclosure Form" in federal aid contracts in excess of \$100,000 or subcontracts in excess of \$100,000, identified and attached hereto as Attachment I.

ARTICLE 32
CIVIL RIGHTS COMPLIANCE

The Engineer shall comply with the regulations of the Department of Transportation, 49 C.F.R. Part 21 and 23 C.F.R. §710.405(b), as they relate to nondiscrimination; also, Executive Order 11246 titled Equal Employment Opportunity as amended by Executive Order 11375 and as supplemented in Department of Labor Regulation, 41 C.F.R. Part 60. See "Civil Rights Compliance," attached hereto and identified as Attachment J.

ARTICLE 33
PATENT RIGHTS AND COPYRIGHTS

"Not Applicable"

ARTICLE 34
PROPERTY MANAGEMENT AND PROCUREMENT STANDARDS

"Not Applicable"

ARTICLE 35
COMPUTER GRAPHICS FILES

"Not Applicable"

ARTICLE 36
CHILD SUPPORT STATEMENT

Under Section 231.006 of the Family Code, the Engineer certifies that the individuals or business entity named in this contract is eligible to receive the specified grant or payment and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. The Engineer further acknowledges that he or she has read Attachment K and has provided the names and social security numbers required therein.

ARTICLE 37
DISPUTES

The Engineer shall be responsible for the settlement of all contractual and administrative issues arising out of any procurement made by the Engineer in support of this contract's work. Any disputes concerning the work hereunder or additional costs, or any non-procurement issues shall be settled in accordance with Title 43, Texas Administrative Code, §9.2.

ARTICLE 38
SUCCESSORS AND ASSIGNS

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

ARTICLE 39
SEVERABILITY

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

ARTICLE 40
PRIOR CONTRACT SUPERSEDED

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

ARTICLE 41
NOTICES

All notices to either party by the other required under this contract shall be personally delivered or mailed to such party at the following respective address:

STATE

ENGINEER

Texas Department of Transportation
Attention: Right of Way Division
Mapping, Survey, and Utilities Section
118 East Riverside Drive
Austin, Texas 78704

ARTICLE 42
SIGNATORY WARRANTY

The undersigned signatory or signatories for the Engineer hereby represent and warrant that the signatory is an officer of the organization for which he or she has executed this contract and that he or she has full and complete authority to enter into this contract on behalf of the firm. The above-stated representations and warranties are made for the purpose of inducing the State to enter into this contract.

IN WITNESS HEREOF, the State and the Engineer have executed these presents in duplicate.

STATE OF TEXAS

<hr/>	
THE ENGINEER	
By: <hr/>	Executed for the Executive Director and
Signature	Approved for the Texas Transportation
<hr/>	Commission for the purpose and effect of
Printed Name	Activating and/or carrying out the orders,
<hr/>	Established policies or work programs
Title	Heretofore approved and authorized by the
<hr/>	Texas Transportation Commission under the
Date	Authority of Minute Order Number 100002.
	By: <hr/>
	Robert L. Wilson, P.E.
	Director, Design Division
	<hr/>
	Date

LIST OF ATTACHMENTS

- | | |
|----------------|---|
| Attachment A | - Services to be Provided by the State |
| Attachment B | - Services to be Provided by the Engineer |
| Attachment C | - Work Schedule |
| Attachment D | - Fee Schedule |
| Attachment E | - Work Authorization Form |
| Attachment F | - Supplemental Work Authorization Form |
| Attachment G | - Certificate of Insurance |
| Attachment H | - Disadvantaged Business Enterprise or Historically Underutilized Business Program Requirements with an Assigned Goal |
| Attachment H-1 | - TxDOT Subprovider Monitoring System Commitment Worksheet |
| Attachment H-2 | - TxDOT Subprovider Monitoring System Commitment Agreement |
| Attachment H-3 | - TxDOT Subprovider Progress Assessment Report |
| Attachment H-4 | - TxDOT Subprovider Monitoring System – Final Report |
| Attachment I | - Lobbying Certification/Disclosure Form, if applicable |
| Attachment J | - Civil Rights Compliance |
| Attachment K | - Child Support Statement |