

**Texas Department of Transportation
Aviation Division
Request for Qualifications for Professional Services**

The Texas Department of Transportation (TxDOT), Aviation Division, intends to enter into indefinite deliverable contracts with prime providers for professional obstruction and surveying services. This solicitation is subject to 49 U.S.C. §47107(a)(17) and will be administered in the same manner as a solicitation conducted under Chapter 2254, Subchapter A, of the Texas Government Code. The approximate amount of the contracts for each provider is \$750,000, which is included for informational purposes only and may be adjusted by TxDOT. TxDOT Aviation Division will solicit and receive responses from firms as described below.

Airport Sponsor: Various
TxDOT Solicitation ID: 4222AVOBS
TxDOT Project Manager: Sean Newton, Aviation Planner

This Request for Qualifications includes the following sections:

- Project Description and Work to be Performed
- Selection Requirements
- Response Procedure
- Selection Scoring Criteria
- Contract Terms
- TxDOT Contact
- Exhibits
 - Exhibit 1 – Professional Licenses
 - Exhibit 2 – Sample Contract and Work Authorization

Project Description and Work to be Performed:

TxDOT, acting as agent for various airport sponsors to be determined, intends to enter into contracts with up to three firms to perform obstruction and LiDAR site surveying services at various airport locations throughout the state of Texas.

The work to be performed consists of:

The general services sought by TxDOT include all necessary, surveying, planning and project management services related to the development and submission of the required aeronautical surveys into the Federal Aviation Administration (FAA) Airports Data and Information Portal (ADIP). Additional services may include the collection and analysis of LiDAR surveys in support of preliminary project development efforts and/or existing obstruction evaluation using the FAA's evaluation and design surfaces.

The selected providers will develop work plans, complete ground surveys, collect aerial imagery, perform obstruction analysis, and deliver acceptable and compliant data and all materials via the FAA ADIP. Surveys may include data needed for an Airport Layout Plan (ALP) or in support of new or improved instrument procedure development. LiDAR and all digital data collected and generated in support of preliminary project development and/or obstruction evaluation will be submitted to TxDOT, the FAA, and the sponsor as identified in

each work authorization.

Each obstruction and site survey and all submissions to FAA will be completed in a period of 120 days for each airport location, not inclusive of review times by the FAA, National Geodetic Survey, and TxDOT.

Selection Requirements:

1. The proposed teams must demonstrate that a Professional Land Surveyor registered or licensed in Texas will sign the work performed on the contract. For purposes of executing a contract and doing work with TxDOT, the prime provider must be registered with the Texas Board of Professional Land Surveying for surveying contracts. The proposing firm must demonstrate a familiarity with TxDOT's Surveying Manual and all Federal Aviation Administration requirements.

2. The proposed firms must demonstrate competency in all facets of obstruction and LiDAR site surveying projects. For purposes of executing a contract and doing work with TxDOT, the proposing firm must demonstrate project management competency. The proposing firm must also demonstrate a familiarity with the most current versions of Federal Aviation Administration Advisory Circulars, and any updates to them.

3. TxDOT Aviation Division manages contracts and grants through the eGrants system. Firms selected under this solicitation will be required to submit items including, but not limited to, contract documents, pay request forms, supplemental agreement requests, insurance forms, DBE/HUB reports, and contract deliverables through eGrants. Selected Firms must have the minimum system capabilities listed in the eGrants manual found here:

<http://www.txdot.gov/government/funding/egrants-2016/aviation.html>

4. The prime provider and all subproviders firms must be registered, as required, with the Texas Secretary of State's office to do business in the State of Texas with the legal firm name as indicated in the Response.

5. The selected firm must perform 30% of the actual contract work.

6. TxDOT requires that its prime providers and subproviders be able to work solely in a Sponsor's interest, without conflicting financial or personal incentives. TxDOT reserves the right to disqualify any prime provider or subprovider, or to place contractual limits on work or on personnel, if there is a conflict of interest that might affect or might be seen to affect the prime providers' or subproviders' duty to act solely in the interest of a Sponsor. A conflict of interest may involve conflicting incentives with regard to the firm as a whole, or any employee. The conflict may arise between the prime provider's or subprovider's work under a contract entered as a result of this solicitation and a relationship involving TxDOT, an airport sponsor, a construction contractor, another engineering firm, a material testing firm, a third party affected by the project, a subprovider for any other consultant or contractor, or any other entity with an interest in a project on which work is performed under a contract entered as a result of this solicitation.

7. The Texas Government Code, Section 2252.908 applies to contracts resulting from this solicitation. If required by Section 2252.908, a signed Form 1295 must be provided by the prime provider prior to contract execution.

8. The Texas Government Code, Section 2261.252(b) applies to contracts resulting from this solicitation. By submitting a response under this solicitation, the respondent certifies it is not prohibited from entering into a contract with TxDOT as a result of financial interests as defined under Section 2261.252(b).

9. 49 CFR part 30 - Restrictions on Federal Public Works Projects and 49 USC § 50104 - Restriction on airport projects using products or services of foreign countries denying fair market opportunities, apply to contracts resulting from this solicitation. By submitting a response under this solicitation, the respondent certifies it 1.) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR); 2.) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and 3.) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

10. 49 CFR Appendix A to Part 20 - Certification Regarding Lobbying Applies to contracts resulting from this solicitation. By submitting a response under this solicitation, the respondent certifies it 1.) will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or another award covered by 31 USC 1352 and 2.) will disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award by submitting Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

11. By submitting a response under this solicitation, the respondent certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction (2 CFR part 180 (Subpart C), 2 CFR part 1200, DOT Order 4200.5).

12. The requirements of 49 CFR part 26 apply to contracts resulting from this solicitation. It is the policy of TxDOT to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of contracts. TxDOT encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

13. TxDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that for any contracts entered into pursuant to this advertisement, disadvantaged business enterprises (DBE) will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

14. It is anticipated this contract will include federal funds. The assigned DBE goal for participation in the work to be performed under a contract resulting from this solicitation is 5% of the contract amount. Prior to contract execution the prime provider must furnish evidence of compliance with the assigned DBE goal or evidence of a good faith effort acceptable to TxDOT to meet the assigned goal.

Response Procedure:

The successful firms will be selected on the basis of a Response. The Response shall address the data and criteria listed below and will be scored accordingly.

The Response must contain the following:

1. Qualifications Statement (QS)
 - a. QS Format:
 - i. Readability - It is TxDOT's intent to allow the provider latitude in the formatting of the QS so that the provider may enhance the visual effectiveness of the QS. The QS may include graphics, tables, and photos within the written narrative. This latitude should not be abused (e.g., shrinking the margins and font sizes for the sole purpose of including as much content as possible) because selection members may consider how well the information is presented when scoring. TxDOT is generally interested in quality not quantity.
 - ii. The QS must:
 1. Be no more than 8 pages, 8.5x11-inch single sided (11-point font is recommended, unreadable text and external links will be ignored);
 2. Include adequate margins (0.5in is recommended);
 - b. QS Content - QS must include:
 - i. The RFQ Solicitation No. and the Respondents legal company name, address, email address, telephone number, and contact information for key personnel.
 - ii. Information showing the firm's project understanding and approach, the project manager's experience with similar projects, similar project-related experience of the team members and subproviders responsible for the major work categories and other pertinent information addressed in this notice. For each similar project referenced, identify either the project manager's, team member's, or subprovider's role and work contributed.
 - iii. List no more than ten relevant projects within the last 10 years.
2. Professional licenses: Include a completed Exhibit-1 – Professional Licenses. A blank Exhibit-1 is attached. Exhibit-1 is not included in the 8-page limit of the Qualification Statement.
3. Example deliverables that include a Final Surveyor's Report & Imagery Report, AGIS data file for completion of safety critical AGIS projects, and Orthophotography. The example deliverables can be redacted if they contain sensitive information. These items are not included in the 8-page limit of the Qualification Statement.

The Response must be submitted as follows:

Five unfolded hardcopies, staple bound without cover pages or tabs, and one PDF electronic copy (CD, flash drive, etc.) of the firm's Response must be received by TxDOT Aviation Division no later than **4:00 PM (CST) on July 21, 2022**, using one of the delivery methods below:

Overnight Delivery:	Hand Delivery or Courier:
TxDOT Aviation Division Attn: Annette Trevino 6230 E. Stassney Ln. Austin, TX 78744	TxDOT Aviation Division Attn: Annette Trevino 6230 E. Stassney Ln. Austin, TX 78744

Electronic facsimiles or forms sent by email will not be accepted.

Selection Scoring Criteria:

TxDOT will evaluate proposals using the following criteria:

1. The general qualifications of the firm including years of operation, types of surveys successfully complete, evidence of timely completion of projects, and other data pertinent to the company in general. 25 points
2. The qualifications, certifications and experience of staff who will be utilized under this contract. 25 points
3. Equipment owned or controlled (leased) by the firm for use under this contract. 10 points
4. Processes and methods proposed to conduct the surveys and analysis under this contract. Uses of innovative approaches and technologies to fulfill the requirements of this contract are encouraged but must adhere to TxDOT and FAA requirements. 40 points

The selection committee will be composed of TxDOT Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of qualifications. The committee will review all qualifications and rate and rank each. The selection committee may conduct interviews for the top scoring firms. If interviews are conducted, selection will be made following interviews.

Contract Terms:

The successful firm(s) will be offered an indefinite deliverable contract with work authorizations for the solicited services. The contract term will not exceed 5 years, and all work authorizations will be issued in the first 3 years of the contract. The TxDOT Project Manager will negotiate a fee schedule that will be used as a basis for work authorizations issued for each individual airport project.

For each individual airport project, the TxDOT Project Manager will assign and negotiate the work schedule and fee with the firm for services based on the scope provided by the TxDOT Project Manager for approval. The TxDOT Project Manager may include or remove specific scope elements based on the complexity or budget constraints of each individual project. Compensation for individual projects will be Specified Rate, Lump Sum, Unit Cost, Cost Plus Fixed Fee, or a combination of payment types based on costs deemed appropriate by the TxDOT Project Manager. Each airport project may be funded by a separate grant.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of
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Disadvantaged Business Enterprises (DBE). The DBE goal for this contract will be 0%.

TxDOT Contact:

The TxDOT Aviation Division contact for this solicitation is Annette Trevino, Contract Specialist.

Questions regarding this solicitation must be submitted only via email to AVNRFQ@txdot.gov no later than 2:00 P.M. (CST), on June 22, 2022. Email Subject should list "4222AVOBS Questions". Significant and relevant Solicitation Questions and Answers will be posted via addenda to this RFQ by June 24, 2022. Contacting Aviation Division employees about this solicitation, other than via email as noted above, is prohibited, and may result in disqualification.

Exhibit 1

Professional Licenses

RFQ-4222AVOBS

File out the table below with the Professional Licensing information for the proposed team. Items 1-2 are required. The same professional can be listed for multiple required items. Additional pages can be added if needed.

RFQ Section "Selection Requirements":	Project Role	Name	License Type	Texas Registration No.
1. The proposed teams must demonstrate that a Professional Land Surveyor registered or licensed in Texas will sign and seal the work performed on the contract. For purposes of executing a contract and doing work with TxDOT, the prime provider must be registered with the Texas Board of Professional Land Surveying for surveying contracts.				
Additional Professionally Licensed Personnel, if any:				

Exhibit 2

SAMPLE for Contract and Work
Authorization

For Information Use Only

SAMPLE Contract

**INDEFINITE DELIVERABLE
PROFESSIONAL SERVICES AGREEMENT**

TxDOT Contract No.: ID-4222AVOBS-0000#

STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS AGREEMENT is made, entered into and executed by and between the Texas Department of Transportation, 125 E. 11th St, Austin Texas 78701, agent for various Sponsors, hereinafter called the "Agent", and **CONSULTANT Legal Name**, having its principal address at **Consultant's Address**, hereinafter called the "Consultant".

WITNESSETH

The Agent intends to contract for professional services for various airport locations throughout the state of Texas.

The scope of this Agreement is survey services to perform obstruction and LiDAR site surveying services at various airport locations throughout the state of Texas.

AGREEMENT

The Agent and the Consultant, in consideration of the mutual covenants and agreements herein continued, do mutually agree as follows:

The Consultant agrees to perform professional services as stated in the sections to follow and outlined hereinafter. Upon rendition of these services, the Agent agrees to pay to the Consultant compensation for these services as agreed herein. All services performed under this Agreement shall be performed under the direct supervision of the Agent. The Agent will act as referee in all questions arising under the terms of this Agreement between the parties, and the Agent's decisions shall be final and binding.

Section 1. **SCOPE OF SERVICES**

1.1. Services of the Agent

1.1.1. The Agent will furnish items as listed in Attachment A, "Services to be Provided by the Agent" attached hereto and made a part of this Agreement.

1.2. Services of the Consultant

1.2.1. The Consultant shall furnish services as set forth in Attachment B, "Services to be Provided by the Consultant", attached hereto and made a part of this Agreement.

1.2.2. The Consultant shall place the seal of a registered Texas Licensed Surveyor as endorsement on all

documents and engineering data furnished by the Consultant to the Agent when such seal is required under Texas law.

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

1.3. Work Authorizations

1.3.1. The Agent will issue work authorizations to authorize all work under this Agreement. The Consultant must sign and return a work authorization within 10 working days after receipt. Refusal to accept a work authorization may be grounds for termination of the Agreement. The Agent shall not be responsible for action by the Consultant or any cost incurred by the Consultant relating to work not directly associated with or prior to the execution of a work authorization. All work authorization must be issued within the initial three-year period, starting from the Agreement execution date.

1.3.2. The Consultant shall not begin any work until the Agent and the Consultant have signed a work authorization. Cost incurred by the Consultant before a work authorization is fully executed or after the completion date specified in the work authorization are not eligible for reimbursement. All work must be completed on or before the completion date specified in the work authorization, and no work authorization completion date shall extend beyond the Agreement termination date set forth in Section 2.1.

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

1.3.4. Work authorizations are issued at the discretion of the State. While it is the Agents intent to issue work authorizations under this Agreement, the Consultant shall have no cause of action based on the Agent's failure to issue work authorizations under this Agreement or on the number of work authorizations issued.

1.3.5. Each work authorization shall be signed by both parties and become a part of the Agreement. No work authorization will waive the Agent's or the Consultant's responsibilities and obligations established in this Agreement. The Consultant shall promptly notify the State of any event that will affect completion of the work authorization.

1.3.6. Before additional work may be performed or additional costs incurred, a change in a work authorization shall be enacted by a written supplemental work authorization executed within the period of performance specified in the work authorization. Under no circumstances will a work authorization be allowed to extend beyond the Agreements expiration date or will the total amount

of funds exceed the maximum amount payable set forth in Attachment D.

- 1.3.7. Upon satisfactory completion of the work authorization, the Consultant shall submit the deliverables as specified in the executed work authorization to the Agent for review and approval.

Section 2. PROGRESS

2.1. This Agreement becomes effective when fully executed by the Consultant and the Agent and it shall terminate at the fifth anniversary of execution at 11:59 PM in Austin, Texas unless the Agreement period is: (1) modified by written supplemental agreement prior to the date of termination as set forth in Section 6, (Supplemental Agreements); or (2) otherwise terminated in accordance with Section 11 (Termination of Agreement). Any work performed or cost incurred before or after the Agreement period shall be ineligible for reimbursement.

2.2. After execution of this Agreement, the Consultant shall not proceed with the work identified in each work authorization until authorized in writing by the Agent to proceed.

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

2.4. At the request of the Agent or the Consultant, conferences shall be conducted at locations designated by the Agent. When requested by the Agent, these conferences shall also include inspection of the Consultant's services and work.

2.5. The work will be subject to periodic review by the Agent and by the Federal Aviation Administration (FAA) when federal funds are involved.

2.6. It is of primary importance to the Sponsor and the Agent that the services within this Agreement be provided according to the agreed upon Work Schedule provided in each work authorization. Undue delays within the control of the Consultant may be considered as reason for termination of the Agreement as provided in Section 11. (Termination of Agreement).

2.7. Should the Agent desire to suspend a work authorization, but not terminate the Agreement, this may be done by thirty (30) days' notice of suspension of work given by the Agent in writing to that effect, and the work authorization may be reinstated by Agent and shall be resumed by Consultant in full force and effect upon receipt by the Consultant from the Agent of sixty (60) days' notice in writing to that effect.

2.8. If work is suspended for more than six months at the request of the Sponsor or the Agent, the Agreement may be renegotiated at the request of the Consultant or unilaterally terminated by the Consultant.

2.9. The Consultant shall prepare monthly progress reports in sufficient narrative detail to support the progress of the work and vouchers requesting monthly payments.

Section 3. PERSONNEL, EQUIPEMENT, AND MATERIAL

3.1. The Consultant shall furnish and maintain quarters for the performance of all services, in addition to providing adequate and sufficient personnel, equipment, and materials to perform the services required under the Agreement. The Consultant certifies that Consultant has adequate qualified personnel for

performance of the services required under this Agreement or will be able to obtain such personnel from sources other than the Agent or Sponsor.

3.2. All employees of the Consultant shall have such knowledge, licensure, and experience as will enable them to perform the duties assigned to them. Any employee of the Consultant, who, in the opinion of the Agent, is unable to perform the work, or whose conduct becomes detrimental to the work, shall immediately be removed by the Consultant from association with the Project when the Consultant is given written notice by the Agent.

3.3. The Consultant must notify the Agent in writing as soon as possible, but no later than three business days after project manager or other key personnel is removed from association with this Agreement, giving the reason for removal.

3.4. The Consultant may not replace the project manager or key personnel without prior consent of the Agent. The Agent must be satisfied that the new project manager or other key personnel is qualified to provide the authorized services. If the Agent determines that the new project manager or key personnel is not acceptable, the Consultant may not use that person in that capacity and shall replace him or her with one satisfactory to the Agent within thirty (30) days.

Section 4. CHANGES OF WORK

4.1. If the Consultant has submitted work in accordance with the terms of this Agreement but the Agent requests changes to the completed work or parts thereof which involve changes to the original scope of services or character of work under the Agreement, the Consultant shall make such revisions as requested and as directed by the Agent. This will be considered as additional work and paid for as specified under Section 5 (Additional Services).

4.2. If the Consultant submits work that does not comply with the terms of this Agreement, the Agent shall instruct the Consultant to make such revision as is necessary to bring the work into compliance with the Agreement. No additional compensation shall be paid for this work.

4.3. When required to do so by the Agent, the Consultant shall make such revisions as are necessary to correct Consultant's errors or omissions in the work. No additional compensation shall be paid for this work.

Section 5. ADDITIONAL SERVICES

5.1. If the Consultant is of the opinion that any work Consultant has been directed to perform is beyond the scope of this Agreement and constitutes extra work, Consultant shall promptly notify the Agent in writing prior to performing the extra work.

5.2. In the event the Agent finds that such work does constitute extra work, the Agent shall so advise the Consultant, and a written supplemental agreement will be executed as provided in Section 6 (Supplemental Agreements).

Section 6. SUPPLEMENTAL AGREEMENTS

6.1. The terms of this Agreement may be modified if the Agent determines that changes and alterations are necessary or desirable. A supplemental agreement will be executed to authorize such changes.

6.2. Additional compensation, if appropriate, shall be calculated as set forth in Section 7 (Payment to the Consultant). Changes affecting the cost or maximum amount payable shall be defined to include but not be limited to new work not previously authorized or previously authorized services that will not be performed. The parties may reevaluate and renegotiate costs at this time.

Section 7. PAYMENTS TO THE CONSULTANT

7.1. Compensation for Services

7.1.1. The maximum amount payable under this Agreement without modification is shown in Attachment D, "Fee Schedule".

7.1.2. The basis of payment is identified in Attachment D. Reimbursement of costs incurred shall be in accordance with Attachment D.

7.1.3. To be eligible for reimbursement, the Consultant's costs must (1) be incurred in accordance with the terms of a valid work authorization; (2) be in accordance with Attachment D, and (3) comply with cost principles set forth at 48 CFR Part 31 § 200 Subpart E, and FAA Order 5100.38. Satisfactory progress of work shall be maintained as a condition of payment.

7.2. Times of Payments

7.2.1. The Consultant shall request reimbursement of costs incurred by submitting an itemized billing statement in a form acceptable to the Agent. The Consultant is authorized to submit requests for reimbursement no more frequently than monthly and no later than ninety (90) days after costs are incurred.

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

7.2.3. Upon receipt of a billing statement that complies with all invoice requirements set forth in this Agreement, the Agent shall make a good faith effort to pay the amount that is due and payable within thirty (30) days.

7.2.4. Final payment of any money due under a work authorization will be made to the Consultant after satisfactory completion of all services and obligations covered in the work authorization and acceptance of the work by the Agent.

Section 8. SUBCONTRACTORS

8.1. The Consultant shall not sublet or transfer any portion of the work under this Agreement unless approved by the Agent. Subcontractors shall comply with the provisions of this Agreement and all state and federal regulations as applicable. Subcontracts, may at the option of the Agent, require approval of content. The Consultant shall provide to the Agent a list of all subcontractors that will perform the work and the contract amount of each subcontract on forms provided by the Agent. The Consultant shall provide a copy of the executed Agreement between the Consultant and each subcontractor when requested by the Agent.

8.2. In the event the Consultant provides any of the services set out in this Agreement by subcontracting

the same with a subcontractor, the Consultant shall take all steps necessary and appropriate to ensure that said subcontractor indemnifies the Sponsor identified in each work authorization, the Agent, and at the option of the Consultant, the Consultant for liability arising from any acts or omissions of said subcontractor, it being the express intention of the parties hereto that any liability for said acts or omissions shall be the responsibility of said subcontractor. *In the event that Consultant does not take such appropriate and necessary steps to ensure the indemnification described in this provision, Consultant shall assume such liability as is described in this provision, and hereby agrees to so indemnify the Sponsor, as identified in each work authorization, and the Agent for such acts or omissions of said subcontractor as are described herein.*

8.3. Texas Administrative Code, Title 43, Subchapter J, Rule 9.208 requires payment of all subcontractors within 10 days after the date that the Consultant receives payment for work performed by a subcontractor. In order to enforce Rule 9.208, the Consultant shall provide the name and amount of each subcontract including DBE or HUB subcontractors that are proposed to meet the DBE or HUB goal, if any. The Consultant will report payments to each subcontractor on a monthly basis and list reasons for nonpayment. The Agent may withhold all payments that have or may become due if the Consultant fails to comply with the 10-day payment requirement. The Agent may also suspend the work under this Agreement until subcontractors are paid. This requirement also applies to all lower-tier subcontractors, and this provision must be incorporated into all subcontracts. Completion of the subcontractor's work shall include test, maintenance and other similar periods that are the responsibility of the subcontractor.

8.4. No subcontract relieves the Consultant of any responsibilities under this Agreement.

Section 9. AIRPORT IMPROVEMENT PROGRAM CONTRACT PROVISIONS

The Consultant shall comply with the provisions of Attachment E, "Airport Improvement Program Contract Provisions", attached hereto and made a part of this Agreement.

Section 10. DBE/HUB COMPLIANCE

The Consultant shall comply with the provisions of Attachment F, "DBE/HUB Commitments", attached hereto and made a part of this Agreement.

Section 11. TERMINATION OF AGREEMENT

11.1. The Agreement may be terminated upon the occurrence of any of the following conditions:

11.1.1. By mutual Agreement and consent of both parties in writing.

11.1.2. By the Agent by notice in writing to the Consultant as consequence of failure by the Consultant to perform the services herein set forth in a satisfactory manner and within the limits provided, with proper allowances being made for circumstances beyond the control of the Consultant.

11.1.3. By either party, upon the failure of the other party to fulfill its obligations as set forth herein.

11.1.4. By the Agent for reasons of its own and not subject to the mutual consent of the Consultant by delivering a written Notice of Termination to the Consultant, which shall take effect on the tenth (10th) day following receipt.

11.1.5. By the Agent, after receipt by the Consultant of a written notification of violation of Subchapter J

of the Public Information Act according to and in compliance with Government Code §552.373.

11.1.6. By the condition stipulated in Section 1.3.1.

11.1.7. By the condition stipulated in Section 2.8.

11.1.8. By the conditions stipulated in Section 18.

11.1.9. By the condition stipulated in Section 20.1.

11.1.10. By the situation stipulated in Attachment F.

11.1.11. By satisfactory completion of all services and obligations described herein.

11.2. Should the Agent terminate this Agreement, no fees other than fees due and payable at the effective date of termination, shall be paid to the Consultant. In determining the value of the work performed by the Consultant prior to termination, the Agent shall be the sole judge. Payment for work at termination will be based on work completed at that time.

11.3. If the Consultant defaults in performance of this Agreement or the Agent terminates the Agreement for fault on the part of the Consultant, the Agent will give consideration to the actual costs incurred by the Consultant in performing work to date of default, the amount of work required which was satisfactorily complete to date of default, the value of the work which is usable to the Agent, the cost to the Agent 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 Sponsor of the work performed at time of default.

11.4. The termination of this Agreement and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, obligations and liabilities of the Sponsor(s) identified in each work authorization, the Agent, and the Consultant under this Agreement with regard to payment only. If the termination of this Agreement is due to the failure of the Consultant to fulfill Agreement obligations, the Agent may take over the project and prosecute the work to completion by Agreement or otherwise. In such case, the Consultant shall be liable for any additional costs for professional services resulting from the Consultant's default.

Section 12. DISPUTES

12.1. The Consultant shall be responsible for the settlement of all contractual and administrative issues arising out of procurements made by the Consultant in support of the work authorized herein.

12.2. Any dispute concerning the work performed hereunder, the cost of work performed hereunder, or any non-procurement issue shall be settled in accordance with Title 43, Texas Administrative Code, Section 9.2, "Contract Claim Procedure".

Section 13. OWNERSHIP OF DOCUMENTS

13.1. Work for Hire. All services provided under this Agreement are considered work for hire and as such all work products, including, if applicable, final plans and specifications, created or collected under the terms of this Agreement are the property of the Agent and Sponsor as identified in each work authorization.

13.2. Disposition of Documents. All documents prepared by the Consultant and all documents furnished

to Consultant by the Agent shall be delivered to the Agent upon request by the Agent. The Consultant, at its own expense, may retain copies of such documents or any other data which it has furnished the Agent under this Agreement, but further use of the data will be at the Consultant's own risk and without liability or legal exposure to the Agent or Sponsor, as identified in each work authorization.

13.3. Release of Design Plan. The Consultant (1) will not release any design plan created or collected under this Agreement except to its subproviders as necessary to complete the Agreement; (2) shall include a provision in all subcontracts which acknowledges the Agent's and the Sponsor's, as identified in each work authorization, ownership of the plan and prohibits its use for any use other than the project identified in this Agreement; and (3) is responsible for improper use of the design plan by its employees, officers, or subproviders, including costs, damages, or other liability resulting from improper use.

13.4. Any reuse without the written verification or adaptation by the Consultant of the plans and specifications by the Agent for purposes other than those directly associated with this specific Agreement and project are at the Agent's own risk and without liability or legal exposure to the Consultant.

Section 14. INDEMNITY

14.1. *The Consultant shall indemnify the Agent and the Sponsor, as identified in each work authorization, and their officers and employees against liability for damage to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Consultant, the Consultant's agent, or another entity over which the Consultant exercises control. The Consultant shall reimburse, in proportion to Consultant's liability, the reasonable attorney's fees incurred defending against a claim based wholly or partly on the negligence of, fault of, or breach of contract by Consultant, Consultant's agent, or another entity over which Consultant exercises control.*

14.2. *Section 14.1 above is expressly applicable to all items, clauses, codicils, and addenda of this Agreement.*

Section 15. INSURANCE

The Consultant shall procure and maintain insurance for protection from claims under worker's compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any other person and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom. The Consultant shall furnish the Agent a completed Certificate of Insurance provided and approved by the Agent prior to beginning work under this Agreement.

Section 16. COMPLIANCE WITH LAWS

The Consultant shall comply with applicable federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of courts, or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination, and licensing laws and regulations. When required, the Consultant shall furnish the Agent with satisfactory proof of Consultant's compliance.

Section 17. INSPECTION OF CONSULTANT'S BOOKS AND RECORDS

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

17.2. The Agent or any of its duly authorized representatives, the Federal Aviation Administration, the United States Department of Transportation, Office of Inspector General, and the Comptroller General shall have access to the Consultant's Records which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions.

17.3. The State Auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Section 18. CONSULTANT'S WARRANT

The Consultant warrants that Consultant has not employed or retained any company or persons, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Agent shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or compensation, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

Section 19. CONSULTANT'S EMPLOYEES

By executing this Agreement, the Consultant is certifying that the Consultant does not have any knowledge that any of its employees or any employees of a subprovider who are expected to work under this Agreement have a relative that is employed by the Texas Department of Transportation unless the Consultant has notified the Agent of each instance. The term "relative" refers to a person's great grandparent, grandparent, parent, aunt or uncle, sibling, niece or nephew, spouse, child, grandchild, or great grandchild, or the grandparent, parent, sibling, child, or grandchild of the person's spouse.

Section 20. CHILD SUPPORT CERTIFICATION

20.1. The Consultant certifies that the individual or business entity named in this Agreement is not ineligible, Under Section 231.006, Texas Family Code, to receive payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate. If the above certification is shown to be false, the Consultant is liable to the state for attorney's fees, the cost necessary to complete the Agreement, including the cost of advertising and awarding a second Agreement, and any other damages provided by law or the Agreement.

20.2. 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.

Section 21. ISRAEL BOYCOTT CERTIFICATION AND PROHIBITION:

21.1. Pursuant to Texas Govt. Code Chap. 808 (HB89) and Chap. 2270 (SB253): “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.

21.2. Consultant hereby certifies that (1) it does not boycott Israel, and (2) shall not boycott Israel during the term of this Agreement.

Section 22. DEBT TO THE STATE

If the Comptroller is currently prohibited from issuing a warrant to the Consultant because of a debt owed to the state, then the Consultant agrees that any payments owing under the Agreement will be applied towards the debt or delinquent taxes until the debt or delinquent taxes are paid in full.

Section 23. VIOLATION OF CONTRACT TERMS

23.1. Violation of the terms of this Agreement, breach of this Agreement, or default by the Consultant shall be grounds for termination of the Agreement, and any increased or additional cost incurred by the Agent arising from the Consultant's default, breach of this Agreement or violation of the terms of this Agreement shall be paid by the Consultant.

23.2. 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.

Section 24. FIREARM ENTITIES AND TRADE ASSOCIATIONS DISCRIMINATION

24.1. The Consultant verifies that:

24.1.1. It does not, and will not for the duration of this Agreement, have a practice, policy, guidance, or directive that discriminated against a firearm entity or firearm trade association; or

24.1.2. The verification required by Section 2274.002 of the Texas Government Code does not apply to this Agreement.

24.2. If circumstances relevant to this provision change during the course of the Agreement, Consultant shall promptly notify the Agent.

Section 25. ENERGY COMPANY BOYCOTT

25.1. The Consultant verifies that:

25.1.1. It does not, and will not for the duration of the contract, boycott energy companies; or

25.1.2. The verification required by Section 2274.002 of the Texas Government Code does not apply to this Agreement.

25.2. If circumstances relevant to this provision change during the course of the Agreement, Consultant shall promptly notify the Agent.

Section 26. VENUE

Venue for resolution by a court of competent jurisdiction of any dispute arising under the terms of this Agreement, or for enforcement of any of the provisions of this Agreement, is specifically set by Agreement of the parties hereto in Travis County, Texas.

Section 27. ENTIRE AGREEMENT

This Agreement together with the Attachments, Exhibits and Special Provisions identified herein constitutes the entire Agreement between the Sponsor and the Consultant and supersedes all prior written or oral understandings. This Agreement and Attachments, Exhibits, and Special Provisions may only be amended, supplemented, modified or canceled by a duly executed written instrument.

Section 28. SUCCESSORS AND ASSIGNS

The Agent and the Consultant each binds itself, its successors, executors, administrators and assigns to the other party to this Agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement. Neither the Agent nor the Consultant shall assign, sublet, or transfer its interest in this Agreement without written consent of the other.

Section 29. APPLICABLE LAW

Under Section 22.055 (b), Transportation Code, Chapter 22, this Agreement is made pursuant to the law governing the making of Agreements by or on behalf of the State of Texas.

Section 30. WARRANTIES OF SIGNATORY

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

IN WITNESS WHEREOF, the parties to this Agreement for Professional Services have signed, or caused their respective names to be signed, hereof on the date under that party's signature. This Agreement becomes effective when fully executed by all parties hereto.

CONSULTANT

AGENT

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)

Sample

**ATTACHMENT A
SERVICES TO BE PROVIDED BY THE AGENT
TxDOT CONTRACT NO.: ID-4222AVOBS-0000#**

A scope of work must be provided in this attachment in sufficient detail to identify all major components or stages of work and their component parts. Scopes will be included with each work authorization to focus on a particular tasks and deliverables.

Sample

**ATTACHMENT B
SERVICES TO BE PROVIDED BY THE CONSULTANT
TxDOT CONTRACT NO.: ID-4222AVOBS-0000#**

A scope of work must be provided in this attachment in sufficient detail to identify all major components or stages of work and their component parts. Scopes will be included with each work authorization to focus on a particular tasks and deliverables.

Sample

**ATTACHMENT C
WORK SCHEDULE
TxDOT CONTRACT NO.: ID-4222AVOBS-0000#**

A work schedule will be negotiated upon issuance of each work authorization.

Sample

ATTACHMENT D - FEE SCHEDULE
TxDOT CONTRACT NO.: ID-4222AVOBS-0000#

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

“X”	Basis	
<input type="checkbox"/>	Lump Sum	The lump sum for each Phase is shown in the FCP below. The lump sum includes all direct and indirect costs and profit. The Consultant shall be paid pro rata based on the percentage of work completed. For payment, the Consultant is not required to provide evidence of actual hours worked, travel, overhead rates or other evidence of cost, but must submit billing information in a form acceptable to the Agent.
<input type="checkbox"/>	Unit Cost*	The unit cost(s) for each type of unit and number of units are shown in the FCP. The unit cost includes all direct and indirect costs and profit. The FCP may include special items, such as equipment which are not included in the unit costs. The Consultant shall be paid based on the type and number of units fully completed and the respective unit cost plus other agreed to special direct cost items. For payment of unit costs, the Consultant is not required to provide evidence of actual hours worked, travel, overhead rates or any other cost data. Documentation of special costs may be required.
<input type="checkbox"/>	Specified Rate Basis*	The specified rates for each type of labor are shown in the FCP below. The specified rate includes direct labor and indirect cost and profit. The FCP may include special items, such as equipment which are not included in the specified rates. Payment shall be based on the actual hours worked multiplied by the specified rate for each type of labor plus other agreed to special direct cost items. The Agent may request documentation of reimbursable costs including hours worked. Documentation of special item costs may be required.
<input type="checkbox"/>	Cost Plus Fixed Fee*	<p>The cost-plus fixed fee rates are shown in the FCP below. The cost-plus fixed fee included direct and indirect costs plus a fixed fee. Payment shall be based on direct and indirect costs incurred plus a pro rata share of the fixed fee based on the ratio of cost incurred to total estimated cost in the FCP or the percentage of work completed. The Agent may request documentation of reimbursable costs claimed.</p> <p><input type="checkbox"/> A. Actual Cost-Plus Fixed Fee - Actual cost are paid (no minimum, no maximum. This option does not apply to Indefinite Deliverable Contracts.)</p> <p><input type="checkbox"/> B. Range of Cost Plus Fixed Fee – Actual cost must be within the allowable range shown on the Final Cost Proposal.</p>

*If it becomes apparent to the Consultant at any time before for services to be rendered have been about eighty percent complete, that the total amount of compensation to be paid to the Consultant will exceed the total amount for this basis of payment, the Consultant shall give the Agent written notice thereof.

Final Cost Proposal (FCP) Supporting Basis of Payment

* The MAXIMUM AMOUNT PAYABLE is **\$750,000.00**

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

Attach negotiated fee schedule after this page

Sample

* The maximum amount payable must be based on the contract scope. The fee schedules will be derived from this attachment.

ATTACHMENT E
AIRPORT IMPROVEMENT PROGRAM CONTRACT PROVISIONS
TxDOT CONTRACT NO.: ID-4222AVOBS-0000#

Attachment E – Sections:	
A.	Access to Records and Reports - See Agreement Section 17
B.	Affirmative Action Requirement – Not Applicable
C.	Breach of Contract - See Agreement Section 23
D.	Buy America Statement - Not Applicable
E.	Civil Rights – General
F.	Civil Right - Title VI Assurances
G.	Clean Air/Water Pollution Control
H.	Contract Work Hours and Safety Standards
I.	Copeland Anti-Kickback - Not Applicable
J.	Davis Bacon Requirements - Not Applicable
K.	Debarment and Suspension
L.	Disadvantage Business Enterprise - See Attachment F and Agreement Section 8, Section 2-3
M.	Distracted Driving
N.	Energy Conservation Requirements
O.	Equal Employment Opportunity
P.	Federal Fair Labor Standards
Q.	Foreign Trade Restriction
R.	Lobbying Federal Employee
S.	Occupational Safety and Health Act
T.	Prohibition of Segregated Facilities - Not Applicable
U.	Recovered Materials - Not Applicable
V.	Rights to Inventions - Not Applicable
W.	Seismic Safety - Not Applicable
X.	Tax Delinquency and Felony Convictions
Y.	Termination of Contract - See Agreement Section 11
Z.	Veteran’s Preference

A. ACCESS TO RECORDS AND REPORTS – See Agreement Section 17

B. AFFIRMATIVE ACTION REQUIREMENT – Not Applicable.

C. BREACH OF CONTRACT – See Agreement Section 23

D. BUY AMERICA STATEMENT – Not Applicable.

E. CIVIL RIGHTS – GENERAL CIVIL RIGHTS PROVISION

The Consultant assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

F. CIVIL RIGHTS – TITLE VI ASSURANCES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this Agreement, the Consultant agrees as follows:

1. **Compliance with Regulations:** The Consultant will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

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

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Consultant of the Consultant's obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The Consultant 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 its facilities as may be determined by the Agent or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the Agent or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the Non-discrimination provisions of this Agreement, the Agent will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Consultant under the Agreement until the Consultant complies; and/or
- b. Cancelling, terminating, or suspending the Agreement, in whole or in part.

6. **Incorporation of Provisions:** The Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the Agent or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Consultant may request the Agent or Sponsor, as identified in each work authorization,

to enter into any litigation to protect the interests of the Agent or Sponsor. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.

7. Title VI List of Pertinent Nondiscrimination Acts and Authorities:

During the performance of this Agreement, the Consultant agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- 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);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- 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, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit 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 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination 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;
- 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, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

G. CLEAN AIR AND WATER POLLUTION CONTROL

If, by acceptance of this Agreement or by acceptance of a Supplemental Agreement, the maximum amount payable of this Agreement exceeds \$150,000 then the Consultant agrees as follows:

The Consultant agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Consultant agrees to report any violation to the Agent and Sponsor immediately upon discovery. The Agent assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

The Consultant must include this requirement in all subcontracts that exceeds \$150,000.

H. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT REQUIREMENTS

If, by acceptance of this Agreement or by acceptance of a Supplemental Agreement, the maximum amount payable of this Agreement exceeds \$100,000 **and** the Consultant employs laborers, mechanics, watchmen, or guards (including members of survey crews or exploratory drilling operations) then the Consultant agrees as follows:

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA), the Agent, or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other

federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

4. Subcontractors.

The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

I. COPELAND ANTI-KICKBACK – Not Applicable

J. DAVIS BACON REQUIREMENTS – Not Applicable

K. DEBARMENT AND SUSPENSION CERTIFICATION

If, by acceptance of this Agreement or by acceptance of a Supplemental Agreement, the maximum amount payable of this Agreement equals or exceeds \$25,000 then the Consultant agrees as follows:

The Consultant agrees that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The Consultant further agrees that by accepting this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, the Consultant shall notify the Agent immediately in writing.

L. DISADVANTAGED BUSINESS ENTERPRISE – See Attachment F and Agreement Section 8

M. DISTRACTED DRIVING - TEXTING WHEN DRIVING

In accordance with Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving”, (10/1/2009) and DOT Order 3902.10, “Text Messaging While Driving”, (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Agent encourage the Consultant to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Consultant must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

N. ENERGY CONSERVATION REQUIREMENTS

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201 *et seq.*). The Consultant must include the substance of this clause in all sub-tier contracts associated with the project.

O. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, the Consultant agrees as follows:

- (1) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identify, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The Consultant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Consultant's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* that in the event an Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

P. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

This Agreement incorporates the following provisions by reference, with the same force and effect as if given in full text. The Consultant has full responsibility to monitor compliance to the referenced statute or regulation. The Consultant must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

Q. FOREIGN TRADE RESTRICTION

The Consultant certifies, by acceptance of this Agreement, the Consultant:

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC Section 1001.

The Consultant must provide immediate written notice to the Agent if the Consultant learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Consultant must require subcontractors provide immediate written notice to the Consultant if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Consultant agrees it will incorporate this provision for certification without modification in all lower tier subcontracts. The Consultant may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Consultant has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Consultant or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Agent or Sponsor cancellation of the Agreement or subcontract for default at no cost to the Sponsor or the FAA.

R. LOBBYING FEDERAL EMPLOYEES

If, by acceptance of this Agreement or by acceptance of a Supplemental Agreement, the maximum amount payable of this Agreement equals or exceeds \$100,000 then the Consultant agrees as follows:

The Consultant certifies, by acceptance of this Agreement, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds shall be paid, by or on behalf of the Consultant, 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 the making of any Federal grant and the amendment or modification of any Federal grant.

(2) 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 any Federal grant, the Consultant shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

(3) The Consultant shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. 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.

S. OCCUATIONAL SAFETY AND HEALTH

This Agreement incorporates the following provisions by reference, with the same force and effect as if given in full text. The Consultant has full responsibility to monitor compliance to the referenced statute or regulation. The Consultant must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

T. PROHIBITION OF SEGREGATED FACILITIES – Not Applicable

U. RECOVERED MATERIALS – Not Applicable

V. RIGHTS TO INVENTIONS – Not Applicable

W. SEISMIC SAFETY – Not Applicable

X. TAX DELINQUENCY AND FELONY CONVICTIONS

The Consultant certifies, by acceptance of this Agreement, that the Consultant:

- 1.) is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2.) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

If the Consultant cannot certify both of the above representations, the Consultant is ineligible to accept this Agreement unless the Agent has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The Consultant therefore must provide information to the Agent about its tax liability or conviction to the Agent, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made. The Consultant agrees that it will incorporate this provision for certification in all lower tier subcontracts.

Y. TERMINATION OF CONTRACT – See Agreement Section 11

Z. VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the Consultant and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

ATTACHMENT F
DBE/HUB COMMITMENTS
TxDOT CONTRACT NO.: ID-4222AVOBS-0000#

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 Agreement as follows:

The Consultant 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 DBE/HUB Tracking Form and DBE/HUB Monthly Reports in eGrants. Payments to DBEs reported 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. 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.

All DBEs must perform a commercially useful function required in the Agreement. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement 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 Agreement, 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.

The Consultant 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 Agent's project number may be required to substantiate the payment, as deemed necessary by the Agent.

The Consultant and any subprovider shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts. The Consultant shall carry out applicable

requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure to carry out the requirements set forth above shall constitute a material breach of this Agreement and, may result in termination or other such remedy as the Agent deems appropriate. These requirements shall be included in any subcontract.

Sample

EXHIBIT D-1

Commitment Worksheet

Agreement No.: **ID-4222AVOBS-0000#** Assigned DBE Goal: **0%**

Prime Provider Name: _____ Total Contract Amount: **\$750,000.00**

Is the Prime Provider a DBE: Yes, No

If Prime Provider is a DBE include Prime's Vendor ID#: _____
(First 11 Digits Only)

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

Subprovider (List All subproviders)	Type of Work	Vendor ID# (First 11 Digits Only)	DBE, Yes or No	Percent of Work
				%
				%
				%
				%
				%
				%
				%
				%
				%
				%
				%
				%
Total Subprovider(s) Percent of Work:				%
DBE Subprovider(s) Percent of Work:				%

**WORK AUTHORIZATION NO. _____
TO PROFESSIONAL SERVICES AGREEMENT**

THIS WORK AUTHORIZATION is made pursuant to the terms and conditions of Section 1.3 of Professional Services Agreement No. _____ (Agreement) entered into by and between the _____ (Sponsor), acting by and through the Texas Department of Transportation (Agent), and _____ (Consultant).

PART I. Pursuant to the terms of the Airport Project Participation Agreement entered into by and between Agent and Sponsor, Agent agrees to employ the Consultant on behalf of the Sponsor. The Consultant will perform professional services generally described as _____ in accordance with the project description attached hereto and made a part of this Work Authorization. The responsibilities of the Agent and the Consultant as well as the work schedule are further detailed in Exhibits A, B and C which are attached hereto and made a part of the Work Authorization.

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

PART III. Payment to the Consultant for the services established under this Work Authorization shall be made in accordance with terms and conditions of the Agreement.

PART IV. This Work Authorization shall become effective on the date of final acceptance of the parties hereto and shall terminate on _____, unless extended by a Supplemental Work Authorization as provided in Section 1.3 of the Agreement.

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

Each party is signing this work authorization on the date stated under that party's signature. This work authorization becomes effective when fully executed by all parties.

CONSULTANT

AGENT

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)

LIST OF EXHIBITS

- Exhibit A Services to be provided by the Agent
- Exhibit B Services to be provided by the Consultant
- Exhibit C Work Schedule
- Exhibit D Fee Schedule