



REQUEST FOR QUALIFICATIONS
FOR
CONSTRUCTION MATERIALS
TESTING CONSULTANT

For

City of Arlington
Department of Public Works and
Transportation
&
Water Utilities Department

February 16, 2020

REQUEST FOR QUALIFICATIONS ANNOUNCEMENT

The City of Arlington ("City") is seeking a response to this Request for Qualifications (RFQ) from consultants interested in providing professional services needed to perform construction materials testing and related activities. This Contract is for a term of one (1) year with option for extension of four (4) additional one (1) year terms by the City.

Submittals shall be received no later than **4:00 p.m., March 3, 2020.**

Submittals received after the stated time and date shall be rejected as non-responsive. Submittals that do not meet the requirements outlined in this Request for Qualification (RFQ) may, at the City's discretion, be deemed non-responsive.

Any questions related to the proposal should be submitted by e-mail to Clark George at Clark.George@arlingtontx.gov no later than **noon, February 25, 2020.**

SUBMISSION OF QUALIFICATIONS

Submit qualifications (1) original, six (6) copies and one portable USB drive containing a single .pdf file of the proposal to the address below:

**City of Arlington
Department of Public Works & Transportation
City Hall - Second Floor
101 West Abram Street
Arlington, Texas 76010
Attn: Clark George**

NOTE: Absolutely no faxed or e-mailed qualifications will be accepted. The City of Arlington shall not consider any request for extension of the deadline for qualifications.

GENERAL INFORMATION

The City of Arlington reserves the right to accept or reject any or all qualifications and to accept only those qualifications that are in the best interest of the City.

There is no expressed or implied obligation for the City to reimburse responding firms for any expenses incurred in preparing responses to this request.

To be considered, one (1) original (so marked), six (6) copies and one portable USB drive containing a single .pdf file of the proposal of the response must be received by prior to the due date and time.

A staff committee will evaluate the responses. During the evaluation process, the committee reserves the right, where it may serve the City's best interest, to request additional information or clarification from responders, or to allow corrections of errors or omissions. At the discretion of the committee, firms submitting responses may be requested to make oral presentations as part of the evaluation process.

The City reserves the right to retain all responses and to use any ideas included in a response regardless of whether that response is selected. Submission of a response indicates acceptance by the firm of the conditions contained in this request for qualifications (RFQ), unless clearly and specifically noted in the response and confirmed in the contract between the City and the firm selected.

Each responding firm certifies by submission of their qualifications that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal, state, or local department or agency.

PROJECT OVERVIEW

The City of Arlington uses its Public Works Construction Inspection staff to enforce the plans and specifications in regard to materials and workmanship on street, drainage, water, sanitary sewer and other construction projects in public right-of-way and easements and on public property throughout the city. These inspection duties involve the testing of various construction materials through the use of an outside consultant to provide testing services. The Inspection staff schedules the testing lab to perform a variety of tasks, including but not limited to:

Identification and Classification Tests

- Atterburg Limits, Soil and Soil with Additive
- Grain Size Analysis; Mechanical and Hydrometer or Mechanical Only
- Material Finer Than No. 200 Sieve
- Shrinkage Limit Test; Volumetric or Bar Linear
- Dispersion Test; Crumb, Pinhole, or Hydrometer
- Ph Determination
- Sample Preparation

Physical Tests

- Moisture Content Determination
- Density and Moisture Content
- Specific Gravity
- Permeability Test; Falling Head or Constant Head
- Organic Content
- Electric Resistivity
- Ph Lime Determination (5pt.)
- Soil Conductivity

Strength and Compressibility Tests

- Unconfined Compressive Strength; Soil or Rock
- Rock Triaxial or Unconsolidated-Undrained
- Multiple Stage Consolidated-Undrained
- Multiple Stage Triaxial Shear Curves
- Stress Path and Other Curves with Pore Pressure Measurements
- Pore Pressure Measurements per Specimen or Per Stage Direct Shear
- Consolidated-Drained Per Point
- Residual Strength
- Consolidation Test
- Consolidation Test with Hysteresis
- Percent Swell
- Brazilian Tensile

Compaction, Control Strength and Durability Tests

- Relative Density; Sand or Coarse Aggregate
- Moisture Density Relationship (ASTM D698 or TEX-113-E)
- Compaction Ratio (THD)
- Bearing Ratio (CBR), Per Point Triaxial Test
- THD Series, Including Moisture Density

THD Series, Stabilized Soil Including Moisture Density
Compressive Strength
Freeze-Thaw
Wet-Dry
TEX-145 and 146 (TxDOT Certification Required)

Field Compaction Inspection and Tests
Subgrade Stabilization Gradation
In-Place Density
In-Place Sand Cone Lab Portion
Nuclear Density

Aggregate Tests
Sieve Analysis
Specific Gravity
Decantation
Unit Weight
La Abrasion
Sulfate Soundness (5 Cycles)
Sand Equivalent
TxDOT Wet Ball

Concrete Tests
Compressive Strength (Sampling, Preparation and Test)
Flexural Strength Test (Sampling, Preparation and Test)
Air Content
Slump
Batch Plant Observation and Mix Design Verification
Initial Concrete Mix Observation
Initial concrete mix observation at batch plant followed by continuous observation at point of deposit.
Proportioning Concrete Mix Designs and Confirmatory Cylinders and Beams
Review of concrete mix designs furnished by others

Asphaltic Concrete Mixes
Molding Specimens
Asphalt Density or Percent Voids
Marshall Stability
Hveem Stability
Swell Value
Flow Value
Cohesionmeter
Extraction
Liquid Asphalt
Maximum Theoretical Specific Gravity TEX 227-F
Index Retained Strength ASTM D 1075
Stripping Test TEX 531-C, Field and Laboratory Mixed
Asphalt plant observation and materials testing
Field density using nuclear thin lift gauge

Coring Services
2 inch core

4 inch core
6 inch core
Core Compressive Strength
Plugging core holes

Observation

Full time observation service
Hourly observation service

PROJECT SCOPE

As part of the response to this RFQ, the consultant must include a portion that outlines their approach and proposed method of providing adequate service. This section shall identify the resources, and how these resources are to be utilized to accomplish this goal.

The following list identifies other factors that should be considered prior to submittal:

- The consultant will perform all the tests listed above in a timely and professional manner.
- Testing will generally occur during the hours of 6 a.m. and 7 p.m. but will also be required during times outside of this time frame.
- Testing will typically be requested same day, but could occasionally be required with one hours advance notice.
- The consultant will perform all tests in-house, no outsourcing and no subcontractors will be allowed.
- TxDOT certification to perform HMAC testing must be maintained throughout the duration of the contract.
- TxDOT certification to perform sulfate testing must be maintained throughout the duration of the contract.
- Full time observation services will be required on an occasional basis.
- Notification of deficient work must be reported immediately
- Several technicians performing tests simultaneously in several different locations will be required often.
- On-site test reports and documentation will be required as well as delivery of reports and documentation via email to the Construction Services Manager's office within 24 hours.
- Monthly invoicing will be required.
- Payment of invoices will occur monthly upon receiving invoices and corresponding test reports.
- Personal interviews and additional information may be required after the initial statement is submitted.

ROLE OF CONSULTANT

The consultant will furnish all required labor, materials, supplies, and travel required in connection with the requests for service. The City expects that the laboratory staff will include individuals with expertise in construction materials testing.

The consultant will agree to the terms contained in the City's standard professional service contract, a copy of which is attached. The consultant will need to take special note of the Insurance Requirements in the Professional Services Contract. It is highly recommended that the consultant review the Professional Services Contract prior to submittal of the RFQ.

ROLE OF THE CITY

The City will make requests for service through a variety of staff including Public Works Inspectors, Engineers, and Field Operations personal. Invoices will be processed by administrative staff.

The City's Contract Administrator will be Clark George, Construction Services Manager, or a designated representative.

Any questions related to technical information regarding the provision of laboratory and technician service should be directed to the City's Contract Administrator.

REQUEST FOR QUALIFICATIONS

Responses to this RFQ should be provided in the following numbered format as listed below.

1. Provide a brief description of the firm, including the number of years the firm has been in existence, range of professional services, office location(s), and staff size.
2. The City is interested in the experience of the firm in providing this type of service and the magnitude of the representative project. Please provide information regarding three (3) similar projects and include the following items in the narrative:
 - name of municipality
 - brief description of scope of service
 - year completed
 - references from these projects
 - projects must have been completed within the last five (5) years
3. Please include an organizational chart that indicates the key personnel and their responsibilities. **NO SUB CONSULTANTS OR SUBCONTRACTORS WILL BE ALLOWED.**
4. Provide for each of the key personnel related work experience, education, training, and any other pertinent data that would demonstrate competence and experience in this type of work. This portion of the submittal shall include a resume for each proposed individual. No change in the proposed key personnel will be permitted without express written consent of the City.
5. Identify the project's principal contacts for testing service, invoicing, and technical service.
6. Describe the general project approach that will be employed to complete the project. Within this section of the document, please include information on the following:
 - Identify both the number and nature of the resources (personnel, equipment) that are intended to be utilized to complete this project
 - Identify where technicians will initiate their trips to provide service
 - Typical response time for service requests on asphalt, concrete and density testing
 - Desired scheduling lead time
 - Availability of full-time observations
 - Turn-around time on proctor analysis
 - Turn-around time on TEX-113-E analysis on modified soils (cement and lime)
 - Certification status from TxDOT on performing TEX-145 and 146.
 - Availability of same day service
 - Ability to perform coring
 - Laboratory Certifications (TxDOT, Corps of Engineers, etc.)
 - Personal Certifications (TxDOT, NICET, ACI, etc.),
 - Availability of senior staff for consultations

7. The firm should list and describe any prior or ongoing engagements or professional relationships that would constitute a potential conflict of interest, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the proposed project. The firm covenants and agrees that the firm and its officers and employees will have no interest, including personal financial interest, and will acquire no interest, either directly or indirectly, that will conflict in any manner with the performance of the services called for under this RFQ.
8. One of the key personnel must be a Registered Professional Engineer with expertise in geotechnical engineering. An affirmative statement should be included indicating that the firm and key professional staff are properly registered/licensed to practice in the State of Texas.
9. The response should identify and describe any potential problems, the firm's approach to resolving these problems, and any special assistance that will be requested from the City.

CRITERIA FOR EVALUATION OF QUALIFICATIONS

- Complete and thorough submission of qualifications
- Capability to meet all deadlines and schedules (25 pts)
- Capability to perform all aspects of the project (20 pts)
- References of clients (15 pts)
- Description of methodology to be used in completing the required work (15 pts)
- Reputation for personal and professional integrity and competence (10 pts)
- Quality and completeness of prior work (10 pts)
- Professional background and qualifications of key personnel (5 pts)

CONSULTANT SELECTION PROCESS

Qualifications will be evaluated by Public Works & Transportation staff. This committee will select the prospective consultant or firm using the above criteria whose responses best demonstrate the competence and qualifications needed to perform the service.

Upon selection, the consultant will participate in the final development of the project's structure, scope, sequence, timeline for completion, and other performance measures required to meet the indicated contractual responsibilities. A formal contract for professional services will be submitted to the City Council for approval.

DEADLINE FOR SUBMISSION

The deadline for receipt of written proposals is **4:00 p.m. on March 3, 2020**. Submittals received after the stated time and date shall be rejected as non-responsive. Exceptions will not be made for proposals mailed, but not received by the deadline.

QUESTIONS RELATED TO PROPOSAL

In order to address concerns or questions that might arise from consultants in an open manner, all prospective respondents are encouraged to state their intent to respond in an e-mail to Clark George at clark.george@arlingtontx.gov. Any questions related to the proposal should be submitted by e-mail no later than noon, February 18, 2020. A response to all questions submitted by the deadline will be emailed to consultants that have indicated their intent to respond to the RFQ.

SELECTION AND NEGOTIATION

Once a selection is made, the City will work in good faith with the successful consultant to negotiate an appropriate scope and fee for the work. The City will request that the successful

consultant submit a detailed estimate of the labor hours and expenses projected for each key task in the Project Overview. The fee negotiation will be based on review and discussion of the activities and level of effort associated with each item relative to this labor hour and expense summary.

If a satisfactory fee cannot be successfully negotiated with the selected consultant within twenty-one (21) calendar days of notice of selection, the City may move to another consultant and negotiate a contract to perform the work.

PROFESSIONAL SERVICES CONTRACT

If selected, the consultant shall agree with the terms set forth in the City's Professional Services Contract, which is appended at the end of this RFQ for reference. The consultant will need to take special note of the Insurance Requirements in the Professional Services Contract. It is highly recommended that the consultant review the Professional Services Contract prior to submittal of the RFQ.

RIGHT TO TERMINATE

The City of Arlington reserves the right to terminate this process at any time. No guarantee is expressed or implied that obligates the City to contract the construction materials testing services for the proposed project. The City will not be liable for any costs associated with responding to this RFQ, for the firm's participation in the presentation, or any costs associated with negotiations.

END OF RFQ

ATTACHMENT

STATE OF TEXAS §

PROFESSIONAL SERVICES CONTRACT

COUNTY OF TARRANT §

THIS CONTRACT is entered into on this _____ day of _____, 20__, by and between the CITY OF ARLINGTON, a municipal corporation located in Tarrant County Texas (hereinafter referred to as "CITY"), acting by and through its City Manager or his designee, and _____, whose address is _____ (hereinafter referred to as "CONSULTANT").

WHEREAS, CITY desires to contract with _____ for professional services for geotechnical testing for public projects including, without limitations, to field densities, moisture test, concrete test, asphalt test, various material tests, and consulting services, City of Arlington, Project No. PWST09005; and

WHEREAS, _____ is qualified to provide such services and is willing to undertake such services for CITY in exchange for fees hereinafter specified;

NOW, THEREFORE, IN CONSIDERATION of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the parties hereto do mutually agree as follows:

I.

EMPLOYMENT OF CONSULTANT

CONSULTANT will perform as an independent contractor all services under this Contract to the prevailing engineering professional standards consistent with the level of care and skill ordinarily exercised by members of the engineering profession, both public and private, currently practicing in the same locality under similar conditions, including reasonable, informed judgments and prompt, timely actions. If CONSULTANT is representing that it has special expertise in one or more areas to be utilized in this Contract, then CONSULTANT agrees to perform those special expertise services to the appropriate local, regional or national professional engineering standards.

II.

SCOPE OF SERVICES

The services to be performed by CONSULTANT under this Contract include but are not limited to the services described in Exhibit "A" (hereafter referred to as "Project"), incorporated herein by reference as if written word for word. In case of

conflict between the language in Exhibit "A" and this Contract, this Contract shall be binding on both parties.

III. COMPENSATION

For the satisfactory performance of the professional services described in Exhibit "A", the City agrees to compensate CONSULTANT on the basis set forth in Exhibit "B", Fee Estimate, which are attached hereto. It is mutually understood and agreed that compensation for the services will be an amount not to exceed \$ _____ for the specified services on various projects for the period beginning on the date first written above unless prior written approval has been obtained.

CONSULTANT shall submit monthly invoices for services rendered, based upon the actual services requested and performed each month at the unit fees listed. CITY shall make payments in the amount shown by CONSULTANT approved invoices and other documentation submitted within thirty (30) days of receiving such invoice. Nothing contained in this Contract shall require CITY to pay for any work that is unsatisfactory as determined by CITY or which is not submitted in compliance with the terms of this Contract. CITY will not be required to make any payments to CONSULTANT when CONSULTANT is in default under this Contract, nor shall this paragraph constitute a waiver of any right, at law or in equity, which CITY may have if CONSULTANT is in default, including the right to bring legal action for damages or for specific performance of this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default. CONSULTANT will fully comply with any and all applicable federal, state and local laws relating to income reporting, including but not limited to Internal Revenue Service Reports.

IV. OWNERSHIP OF DOCUMENTS

All information prepared or assembled by CONSULTANT under this Contract shall become the sole property of CITY and shall be delivered to CITY, without restriction on future use. CONSULTANT may retain in its files copies of all information and all other pertinent information for the work. Copies may be used for promotional purposes. Concepts and ideas embodied in the information may be freely used by CONSULTANT without restriction. CONSULTANT shall have no liability for changes made to the information and other documents by others subsequent to the completion of the Contract.

V. TERM

This Contract is granted for a term of one (1) year, unless terminated sooner according to other terms and provisions of this contract. The CITY may, at its sole discretion extend the one (1) year term for four (4) additional one (1) year terms by

giving the CONSULTANT three (3) month's notice of the CITY's intention to extend for one (1) year period.

VI. TERMINATION

CITY may terminate this Contract without cause and without any penalty or liability upon written notice to CONSULTANT. Upon receipt of termination notice, CONSULTANT shall stop all work in progress. All finished or unfinished documents, data, test results, reports, photographs, etc. prepared by CONSULTANT and all subcontractors will, upon final payment to CONSULTANT, be delivered to CITY and shall become the property of CITY. CITY shall pay CONSULTANT for all work performed in accordance with the provisions of this Contract prior to the date of termination. CONSULTANT shall invoice CITY for all work performed within thirty (30) days of termination notice. CITY shall not be responsible for payment of any invoices received after the expiration of thirty (30) days from notice of termination.

VII. INSURANCE

CONSULTANT shall, at its own expense, purchase, maintain and keep in force during the term of this Contract such insurance as set forth below. CONSULTANT shall not commence work under this Contract until it has obtained all the insurance required under the Contract and such insurance has been approved by CITY; nor shall CONSULTANT allow any subcontractor to commence work on a subcontract until all similar insurance of the subcontractor has been obtained and approved. All insurance policies provided under this Contract shall be written on an "occurrence" basis, except for Professional Liability. The insurance requirements shall remain in effect throughout the term of this contract. The policy limits stated below are a minimum.

1. Workers' Compensation, as required by law, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease – each employee and \$1,000,000 disease – policy limit.
2. Commercial General Liability Insurance, including Independent Contractor's Liability, Completed Operations and Contractual Liability, covering but not limited to the indemnification provisions of this contract, fully insuring CONSULTANT's liability for injury to or death of employees of CITY and third parties, extended to include personal injury liability coverage, and for damage to property of third parties, with a combined bodily injury and property damage minimum limit of \$1,000,000 per occurrence.
3. Commercial Automobile and Truck Liability Insurance, covering any auto or hired and non-owned vehicles, with a combined bodily injury and property damage limit of \$1,000,000 per occurrence.

4. Professional Liability Insurance, CONSULTANT shall obtain and maintain at all times during the prosecution of the work under this Contract professional liability insurance. Limits of liability shall be \$1,000,000 per claim and \$2,000,000.00 aggregate. Any such policy of insurance and the Declarations Page therefore shall identify if coverage is being provided on an “occurrence” or “claims-made” basis. If this coverage is being provided on a “claims-made” basis, CONSULTANT must maintain this policy for a period of four (4) years after completion of project, or shall purchase the extended reporting period or “tail coverage” insurance providing equivalent coverage for same period of time.
5. Umbrella Liability Insurance of not less than \$2,000,000.00 per occurrence, following form and drop down provisions included.

Other Insurance Provisions

It is agreed by all parties to this Contract that the insurance policies required under this Contract shall be endorsed to provide:

- (a) The CITY as an additional insured on all applicable policies or coverages with the exception of Professional Liability and Workers’ Compensation, and that the policy phrase “other insurance” shall not apply to CITY where CITY is an additional insured on the policy.
- (b) Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to City by certified mail to:

City of Arlington
Human Resources - Mail Stop 63-0790
PO Box 90231
Arlington, Texas 76004-3231

If the policy is canceled for nonpayment of premium, only ten (10) days advance written notice to City is required. Consultant shall also notify CITY within twenty-four (24) hours after receipt of any notices of expiration, cancellation, nonrenewal or any material change in coverage it receives from its insurer(s).

- (c) Be written through companies duly authorized to transact that class of insurance in the State of Texas. Insurance is to be placed with insurers with an A.M. Best rating of no less than A:VII.

- (d) Waive subrogation rights for loss or damage on all policies or coverages so that insurers have no right to recovery or subrogation against CITY, it being the intention that the required insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies.
- (e) Provide one (1) copy of a Certificate of Insurance completed on an Acord form or other State-approved form evidencing the required coverages to:

City of Arlington
Public Works and Transportation, Mail Stop 01-0220
Attn: Stefanie Spivey, Contract Administrator
P.O. Box 90231
Arlington, Texas 76004-3231

CITY reserves the right to review the insurance requirements of this section during the effective period of the Contract and to adjust insurance coverages and their limits when deemed necessary by the CITY based upon changes in statutory law, court decisions or the claims history of the industry as well as CONSULTANT. Notwithstanding any provisions to the contrary, any adjustments to the insurance coverages and their limits will be based upon the reasonable commercial availability of those coverages and will only be required after the CITY reimburses CONSULTANT for the additional costs of obtaining said changed coverages or limits.

VIII. RIGHT TO INSPECT RECORDS

CONSULTANT agrees that CITY shall have access to and the right to examine any directly pertinent books, documents, papers and records of CONSULTANT involving transactions relating to this Contract. CONSULTANT agrees that CITY shall have access during normal working hours to all necessary CONSULTANT facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provision of this section. CITY shall give CONSULTANT reasonable advance notice of intended audits.

CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subcontractor or consultant agrees that CITY shall have access to and the right to examine any directly pertinent books, documents, papers and records of such consultant or subcontractor involving transaction to the subcontract, and further, that CITY shall have access during normal working hours to all consultant or subcontractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this paragraph. CITY shall give CONSULTANT or subcontractor reasonable advance notice of intended audits.

IX.
CONSULTANT'S LIABILITY

Acceptance of the project by CITY shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by CITY for any defect in the designs, working drawings, specifications or other documents and work, nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the designs, working drawings, specific actions or other documents prepared by CONSULTANT, its employees, subcontractors, agents and consultants.

X.
INDEMNIFICATION

CONSULTANT shall and does hereby agree to indemnify and hold harmless CITY, its officers, agents and employees from any and all damages, loss or liability of any kind whatsoever, by reason of death or injury to property or third persons caused by the omission or negligent act of CONSULTANT, its officers, agents, employees, invitees or other persons for whom it is legally liable, with regard to the performance of this Contract; and CONSULTANT will, at its own cost and expense, defend, pay on behalf of and protect CITY and its officers, agents and employees against any and all such claims and demands.

CONSULTANT warrants that no music, literary or artistic work or other property protected by copyright will be reproduced or used, nor will the name of any entity protected by trademark be reproduced or used by CONSULTANT unless CONSULTANT has obtained written permission from the copyright or trademark holder as required by law, subject also to CITY's consent. CONSULTANT covenants to comply strictly with all laws respecting copyrights, royalties and trademarks and warrants that it will not infringe any related statutory, common law or other right of any person or entity in performing this Contract. CONSULTANT will indemnify and hold CITY and its officers, agents and employees harmless from all claims, losses and damages (including court costs and attorneys fees) with respect to such copyright, royalty or trademark rights.

XI.
INDEPENDENT CONTRACTOR

CONSULTANT status shall be that of an Independent Contractor and not an agent, servant, employee or representative of CITY in the performance of this Contract. No term or provision of or act of CONSULTANT or CITY under this Contract shall be construed as changing that status. CONSULTANT will have exclusive control of and the exclusive right to control the details of the work performed hereunder and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors

and consultants, and the doctrine of respondent superior shall not apply between CITY and CONSULTANT, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between CITY and CONSULTANT.

XII.
SUCCESSORS AND ASSIGNS

CITY and CONSULTANT each binds itself and its successors, executors, administrators and assigns to the other party of this Contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Contract. Neither CITY nor CONSULTANT shall assign or transfer its interest herein without the prior written consent of the other.

XIII.
APPLICABLE LAW

This Contract is entered into subject to the Charter and ordinances of CITY, as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable state and federal laws. CONSULTANT will make any and all reports required per federal, state or local law, including but not limited to proper reporting to the Internal Revenue Service, as required in accordance with CONSULTANT income. Situs of this Contract is agreed to be Tarrant County, Texas for all purposes including performance and execution.

XIV.
SEVERABILITY

If any of the terms, provisions, covenants, conditions or any other part of this Contract are held for any reason to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XV.
DEFAULT

If at any time during the term of this Contract, CONSULTANT shall fail to commence the work in accordance with the provisions of this Contract, or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Contract, or fail to use an adequate number or quality of personnel to complete the work or fail to perform any of its obligations under this Contract, then CITY shall have the right, if CONSULTANT shall not cure any such default within thirty (30) days written notice thereof, to terminate this Contract and complete the work in any manner it deems desirable, including engaging the services of other parties therefore. Any such act by CITY shall not be deemed a waiver of any other right or remedy of CITY. If, after exercising any such remedy due to CONSULTANT

nonperformance under this Contract, the reasonable cost to CITY of the performance of the balance of the work is in excess of that part of the Contract sum which has not theretofore been paid to CONSULTANT hereunder, CONSULTANT shall be liable for and shall reimburse CITY for such excess.

XVI.
REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XVII.
ENTIRE AGREEMENT

This Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein, cannot be modified without written agreement of the parties.

XVIII.
NON-WAIVER

It is further agreed that one (1) or more instance of forbearance by CITY or CONSULTANT in the exercise of either of their respective rights herein shall in no way constitute a waiver thereof.

IX.
HEADINGS

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XX.
CHANGES

CITY may, from time to time, require changes in the scope of the services to be performed under this Contract. Such changes as are mutually agreed upon by and between CITY and CONSULTANT shall be incorporated by written modification to this Contract.

XXI.
CONFLICT OF INTEREST

CONSULTANT covenants and agrees that CONSULTANT and its associates and employees will have no interest and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract. All activities, investigations and other efforts made by CONSULTANT pursuant to this Contract will be conducted by employees, associates or subcontractors of CONSULTANT.

XXII.
NO DAMAGES FOR DELAYS

Notwithstanding any other provisions of this Contract, CONSULTANT shall not be entitled to claim or receive any compensation as a result of or arising out of any delay, hindrance, disruption, force majeure, impact or interference, foreseen or unforeseen. CONSULTANT assumes the risk of all suspensions of or delays in performance of this Contract, regardless of length thereof, arising from all causes whatsoever, whether or not relating to the Contract, including wrongful acts or omissions of CITY or its contractors or subcontractors except only to the extent, if any, that compensation or any extension of time may be due as expressly provided for elsewhere in this Contract for such suspension or delays and subject only to such exception. CONSULTANT shall bear the burden of all costs, expenses and liabilities which it may incur in connection with such suspensions or delays, and all such suspensions, delays, costs, expenses and liabilities of any nature whatsoever, whether or not provided for in this Contract, shall conclusively be deemed to have been within the contemplation of the parties.

Whenever in connection with this Contract it is required, expressly or otherwise, that CITY shall perform any act relating to the Contract, including making available any materials or other things, no guarantee is made by CITY as to the time of such performance and the delay of CITY in fulfilling such requirement shall not result in liability of any kind on the part of CITY except only to the extent, if any, that an extension of time or compensation may be due as expressly provided for in this Contract.

XXIII.
VENUE

The parties to this Contract agree and covenant that this Contract will be enforceable in Arlington, Texas, and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Tarrant County, Texas.

XXIV.
EQUAL EMPLOYMENT OPPORTUNITY

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, ancestry, national origin, place of

birth or disability. CONSULTANT shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, age, color, religion, sex, ancestry, national origin, place of birth or disability. This 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 of training, including apprenticeship.

XXV.

PROCUREMENT OF GOODS AND SERVICES FROM ARLINGTON
BUSINESSES AND/OR HISTORICALLY UNDERUTILIZED BUSINESSES

In performing this contract, CONSULTANT agrees to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, quality and price.

As a matter of policy with respect to CITY projects and procurements, CITY also encourages the use, if applicable, of qualified contractors, subcontractors and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor or supplier is vested in racial or ethnic minorities or women. In the selection of subcontractors, suppliers or other persons in organizations proposed for work on this Contract, the CONSULTANT agrees to consider this policy and to use its reasonable and best efforts to select and employ such company and persons for work on this Contract.

The CONSULTANT agrees to provide information about its minority status at time of contract execution. City will provide a Data Gathering Form with the award letter. CONSULTANT will also be required to submit cost information towards minority/woman owned businesses. The information submitted is for reporting purposes only and shall include the consultant and any other firms performing work as a part of this contract such as surveying services. See attached Prime and Subs Report form. Consultant will be required to submit this form with anticipated dollar amounts (if applicable) upon execution of the contract for this project and to resubmit the same form with actual cost spent prior to final payment of this contract.

XXVI.

NO THIRD-PARTY BENEFICIARY

For purposes of this Contract, including its intended operation and effect, the Parties (CITY and CONSULTANT) specifically agree that: (1) the Contract only affects matters/disputes between the parties to this Contract and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY or CONSULTANT or both; and (2) the terms of this Contract are not intended to release, either by Contract or operation of law, any third person or entity from obligations owing by them to either CITY or CONSULTANT.

XXVII.
NOTICES

All notices and communications under this Contract to be mailed or delivered to CITY shall be sent to the address of CITY's agent as follows, unless and until CONSULTANT is otherwise notified:

Keith Brooks, P.E. CFM
Assistant Director of Public Works and Transportation
City of Arlington
Mail Stop 01-0220
Post Office Box 90231
Arlington, Texas 76004-3231

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted by the sending party.

XXVIII
TITLE VI

The City of Arlington, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all vendors that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award. Vendor will abide and ensure compliance with all terms of Appendix A of the USDOT Standard Title VI Assurances as listed below.

Appendix A of the USDOT Standard Title VI Assurances

During the performance of this contract, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

(1) Compliance with Regulations: The Consultant shall comply with the Regulations relative to nondiscrimination in Federally-Assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The Consultant, with regard to the work performed by it during the contract, shall 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 shall not participate either directly or indirectly in the

discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(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 shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Arlington or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of an Consultant is in the exclusive possession of another who fails or refuses to furnish this information the Consultant shall so certify to the City of Arlington, or the Texas Department of Transportation as appropriate, and shall 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 nondiscrimination provisions of this contract, the City of Arlington shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:

(a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or

(b) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The Consultant shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The Consultant shall take such action with respect to any subcontract or procurement as the City of Arlington or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event an Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the City of Arlington to enter into such litigation to protect the interests of the City of Arlington, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

IN WITNESS WHEREOF, the parties have hereunto set their hands by their representatives duly authorized on the day and year first written above.

CONSULTANT:
ENGINEERING/CONSULTING FIRM

BY: _____
Engineer/Consultant Name
Title

CITY OF ARLINGTON, TEXAS:

BY: _____
Director of Public Works and Transportation

APPROVED AS TO FORM:
Teris Solis, City Attorney

ATTEST:

BY: _____

Alex Busken, City Secretary

SAMPLE

THE STATE OF TEXAS §

Consultant Acknowledgment

COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, who is known to me or who was proved to me on the oath of _____ (name of person identifying the acknowledging person) or who was proved to me through _____ (description of identity card or other document issued by the federal or state government containing the picture and signature of the acknowledging person) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 20__.

Notary Public In and For The State of Texas

Notary's Printed Name

THE STATE OF TEXAS §

City Acknowledgement

COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me to be a person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act of the City of Arlington, Texas, a Texas municipal corporation, and as Director of Public Works and Transportation thereof, and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 20__.

Notary Public In and For The State of Texas

Notary's Printed Name

