

**SAMPLE
CONTRACT**

STATE OF TEXAS

COUNTY OF TARRANT

The **NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS**, acting through R. Michael Eastland, its duly authorized Executive Director, the foregoing party being hereinafter referred to as **NCTCOG**, and <<<insert company name>>> , the latter party being referred to hereinafter as **CONSULTANT**, hereby make and enter the following Contract.

ARTICLE I

COVENANT

The **CONSULTANT** covenants and agrees to perform the technical and professional work for <<<insert project name>>> as a part of the <<<insert UPWP task year>>> Unified Planning Work Program for Regional Transportation Planning in North Central Texas. The work to be performed under this Contract is described in detail in the Scope of Services in Appendix A, of this Contract. Such work shall be performed in accordance with the terms of this Contract and for the consideration stated herein. The **CONSULTANT** covenants and agrees to perform this work and assures that the work will be accurate and performed according to the schedule referenced in Article IV.

The **CONSULTANT** also agrees to submit the deliverables described in Appendix A. To conduct the work and prepare all of the various maps, reports, and data required as part of the work, the **CONSULTANT** agrees to furnish and supervise such personnel as are required to accomplish the work set forth in Appendix A.

ARTICLE II

SCOPE OF SERVICES

The **CONSULTANT** shall perform and carry out in a manner satisfactory to **NCTCOG** all services necessary to accomplish the work and provide the products described in the Scope of Services in Appendix A. The Scope of Services shall be performed by the **CONSULTANT** within the schedule defined by NCTCOG.

ARTICLE III

ADDITIONAL PROVISIONS

All maps, data, reports, research documentation, graphic presentation materials, etc., prepared by the **CONSULTANT** as part of the work under this Contract shall become the property of **NCTCOG** upon completion of this Contract or any phase thereof or, in the event of termination under Article X hereof, at the time of payment in accordance with Article X.

All reports published by the **CONSULTANT** shall contain a prominent credit reference and disclaimer:

“Prepared in cooperation with the Regional Transportation Council, **NCTCOG**, and <<<insert funding agency name(s)>>>.”

“The contents of this report reflect the views of the authors who are responsible for the opinions, findings, and conclusions presented herein. The contents do not necessarily reflect the views or policies of the Regional Transportation Council, **NCTCOG**, and <<<insert funding agency name(s)>>>.”

Upon completion or termination of this Contract, all deliverables prepared by the **CONSULTANT** shall be delivered to and become the property of **NCTCOG**. All such documents, photographs, calculations, programs, equipment, and other data prepared or used under this Contract shall be used by **NCTCOG** and NCTCOG’s funding partners without restriction or limitation of further use.

The **CONSULTANT** shall not assign any interest in this Contract nor delegate the performance of any of its duties hereunder without the prior written consent of **NCTCOG**, and any attempted assignment or delegation without prior written consent of **NCTCOG** shall be void.

The **CONSULTANT** shall provide to **NCTCOG** a monthly invoice including a written progress report for the preceding calendar month's work. Each Progress Report shall briefly describe the work accomplished, problems arising, proposed remedies for those problems, deliverables completed, the status of the budget for each task, the percent of project completion for each task, and the status of the schedule for the project.

The parties hereto may, as necessary, change the scope of services, time of performance, **CONSULTANT's** compensation, or any other provision of this Contract only by written amendment approved by **NCTCOG** and the **CONSULTANT**. The **CONSULTANT** shall notify **NCTCOG** verbally and in writing immediately when the **CONSULTANT** anticipates that 75 percent of the funds provided for this Contract have been expended.

A regular employee of the **CONSULTANT** shall be assigned the responsibility for the performance of work under this Contract and designated as **CONSULTANT'S** project manager. Consultant shall not change project managers or other key personnel without prior written consent of **NCTCOG**. Key personnel are to be defined solely within the discretion of **NCTCOG**.

ARTICLE IV

TIME OF PERFORMANCE

The **CONSULTANT** agrees to commence work on this project within fifteen (15) days after receipt of written Notice to Proceed from **NCTCOG**. All work under the Contract shall be completed on or by <<<insert date>>>, except as modified by subsequent Notices to Proceed from **NCTCOG**.

ARTICLE V

ALLOWABLE COST

The total cost to **NCTCOG** for performance of the work under this Contract shall not exceed <<<insert total contract amount>>> and the **CONSULTANT** agrees to perform the work specified in Appendix A and all other obligations under this Contract for no more than this cost. **NCTCOG** shall not be obligated to pay the **CONSULTANT** any costs in excess of this cost except as amended in accordance with Article III. Any compensation due to the **CONSULTANT** for performance of this Contract must be approved in accordance with Articles V and VI of this Contract and shall be payable only after approval of this project by **NCTCOG** and receipt of funds from its funding agencies if applicable. There shall be no obligation whatsoever to pay for performance of this Contract from the monies of **NCTCOG**, except funding specifically obligated for this Contract.

The **CONSULTANT** shall be paid allowable costs as outlined in the Contract Cost Estimate included in Appendix B, for the performance of work under this Contract. Allowable costs are the direct, indirect costs, and fixed fee/profit incurred in or allocable to the performance of the services under this Contract and are the type of charges that would be allowable under Federal Acquisition Regulation 31, Contract Cost Principles and Procedures.

1. Direct Costs

- a. Personnel. The **CONSULTANT** shall be reimbursed for the services of personnel working on this project for the time such personnel work on those projects. The reimbursement for personnel shall be the salary of record paid to said personnel by the **CONSULTANT** during the time of their performance on this Contract. Total reimbursement for personnel expenses may be limited to estimated direct labor budgets identified in Appendix B.

- b. Travel Expenses and Subsistence. The **CONSULTANT** shall be paid the actual cost incurred by personnel working on this project for travel expenses and subsistence that are certified as being correct and necessary for and directly associated with performance of this Contract not to exceed travel and subsistence rates published by the United States General Service Administration (GSA). Transportation costs shall be reimbursed at the lowest reasonable available fare, but in no case more than coach class or comparable fare. Transportation by private automobile shall be reimbursed at the rate determined by the Internal Revenue Service regulations. The actual costs for meals and lodging shall be reimbursed at a rate not to exceed the maximum GSA per diem rates for a specified duty point. Gratuities are not eligible for reimbursement. Rental car expenses shall be reimbursed at actual cost of compact car. Total reimbursement of travel expenses under this Contract may be limited to estimated travel budgets identified in Appendix B.

- c. Other Direct Costs. The **CONSULTANT** shall be reimbursed for the actual amount of other costs or expenses incurred and certified as directly related to and necessary for performance of this Contract. Total reimbursement for direct costs may be limited to

estimated direct cost budgets identified in Appendix B. The **CONSULTANT** shall notify **NCTCOG** in writing of any changes in auditable direct costs.

d. Subcontractors. The **CONSULTANT** shall be reimbursed for the costs and fee charged to the **CONSULTANT** by subcontractors for work on this project. Only costs for those subcontractors shown in Appendix B shall be eligible for reimbursement, and reimbursements for subcontractor costs shall not exceed the amounts shown in Appendix B. The subcontractors and associated costs in Appendix B may be amended if approved in advance in writing by **NCTCOG**. Subcontractor costs to be reimbursed are limited by the provisions in this Contract applying to allowable costs incurred by the **CONSULTANT**.

2. Indirect Costs/Overhead

The **CONSULTANT** shall be reimbursed for indirect expenses, overhead, and personnel benefits at the rates shown in Appendix B. The rates in Appendix B may be amended from time to time if approved in advance in writing by **NCTCOG**.

3. Fixed Fee/Profit

The **CONSULTANT** shall be reimbursed for the fixed fee or profit negotiated for the **CONSULTANT** and subcontractors not to exceed <<<insert amount of fixed fee/profit for Contract>>>. This profit is included in the total cost detailed above.

ARTICLE VI

PAYMENTS

For the performance of this Contract, **NCTCOG** shall pay the **CONSULTANT** allowable costs in accordance with the terms and conditions set forth in Article V above and as certified by the

CONSULTANT in monthly invoices. The **CONSULTANT** shall submit monthly invoices for all expenses incurred during the preceding month. Documentation for all claimed expenses shall accompany all invoices. Documentation includes, but is not limited to, labor summary reports, receipts, vendor invoices, expense reports, and other documentation deemed necessary by **NCTCOG**.

NCTCOG shall pay the **CONSULTANT** the amount of costs claimed and certified on each invoice, subject to approval of claimed costs by NCTCOG less 10 percent retainage up to <<insert retainage amount>>. Unless there is a bona fide dispute, payment shall be made within forty-five (45) days of receipt of a complete invoice provided all deliverables are received and payment is received from **NCTCOG'S** funding agency within that specified period. In the event payment is not received from **NCTCOG's** funding agency within that specified period, payment shall be made to **CONSULTANT** within five (5) days of receipt of payment from the funding agency. **CONSULTANT** shall pay subcontractors the appropriate share of the payment no later than ten (10) days after receiving payment from **NCTCOG**. When the project has been completed to the satisfaction of **NCTCOG**, the **CONSULTANT** shall submit an invoice clearly labeled "Final Invoice" and claiming any remaining allowable costs and the retainage amount specified above. Retainage shall be paid at the conclusion of the Contract and is subject to conduct and completion of the project to the satisfaction of **NCTCOG**. Payment of the retainage shall not be unreasonably withheld.

ARTICLE VII

RECORDS

The **CONSULTANT** and its subcontractors shall maintain complete and accurate records of allowable costs incurred under this Contract and shall make such materials available at its office during the period covered and for five (5) years from the date of final payment under the Contract. Such materials shall be made available during the specified period for inspection by

NCTCOG, **NCTCOG's** funding partners, and any of their authorized representatives for the purpose of making audits, examinations, excerpts, and transcriptions. All such records shall be maintained on a generally accepted accounting basis and shall be clearly identified and readily accessible. **NCTCOG** may request **CONSULTANT** to maintain records for a period other than identified above.

ARTICLE VIII

FUNDING AGENCY REQUIREMENTS

- A. Audit and Inspection of Records. The **CONSULTANT** shall permit the authorized representatives of **NCTCOG**, **NCTCOG's** funding partners, and their designees to inspect and audit all data records of the **CONSULTANT** and its subcontractors relating to work performed under the Contract until the expiration of five (5) years after final payment and resolution of audit under this Contract. The **CONSULTANT** shall transmit this data to **NCTCOG** upon request. The **CONSULTANT** further agrees to include in all subcontracts hereunder a provision to the effect that the subcontractor agrees that **NCTCOG**, **NCTCOG's** funding partners or any of their duly authorized representatives shall, until the expiration of five (5) years after final payment and resolution of audit under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of subcontractor, involving transactions related to the subcontractor. The subcontractor shall transmit all data records to **NCTCOG** upon request. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

The **CONSULTANT** shall be responsible for any funds determined to be ineligible for reimbursement under this Contract, and shall reimburse **NCTCOG** the amount of such funds previously provided to it by **NCTCOG**.

- B. Inspection of Work. **NCTCOG**, **NCTCOG's** funding partners, and any authorized representative thereof, have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed.

If any inspection or evaluation is made on the premises of the **CONSULTANT** or its subcontractor, the **CONSULTANT** shall provide and require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

- C. Interest of Members of Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.
- D. Interest of Public Officials. No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.
- E. Noncollusion. The **CONSULTANT** warrants that it has not employed or retained any company or person, other than a bona fide employee working for it, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a

bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. If the **CONSULTANT** breaches or violates this warranty, **NCTCOG** shall have the right to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

- F. Gratuities. Any person doing business with or who, reasonably speaking, may do business with **NCTCOG** under this contract may not make any offer of benefits, gifts or favors to employees of **NCTCOG**, **NCTCOG's** funding partners or representatives of **NCTCOG's** committees or Boards. Failure on the part of the **CONSULTANT** to adhere to this policy may result in termination of this contract.
- G. Debarment/Suspension. **NCTCOG** is prohibited from making any award or permitting any award to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs. The **CONSULTANT** and its subcontractors shall comply with the special provision "Certification Requirements for Recipients of Grants and Cooperative Agreements Regarding Debarments and Suspensions," which is included as Appendix J of this agreement. The **CONSULTANT** is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. The **CONSULTANT** must notify **NCTCOG** if the **CONSULTANT**, or any of its subcontractors, become debarred or suspended during the performance of this Contract.

- H. Restrictions on Lobbying. Pursuant to Section 319 of Public Law 101-121, which generally prohibits recipients of federal funds from using those monies for lobbying purposes, the **CONSULTANT** and its subcontractors shall comply with the special provision "Restrictions on Lobbying," which is included as Appendix K of this agreement.
- I. Environmental Protection and Energy Efficiency. The **CONSULTANT** agrees to comply with all applicable standards, orders or requirements issued under the Clean Air Act (42 USC 85); the Clean Water Act (33 USC 1251 et seq.); Executive Order 11738 and Environmental Protection Agency regulations (40 CFR, Part 15). The **CONSULTANT** further agrees to report violations to **NCTCOG**.
- J. Nondiscrimination on the Basis of Disability. The **CONSULTANT** agrees that no otherwise qualified disabled person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under the project. The **CONSULTANT** shall insure that all fixed facility construction or alteration and all new equipment included in the project comply with applicable regulations regarding Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, set forth in 49 Code of Federal Regulations (CFR), Part 27 and any amendments thereto.
- K. Control of Drug Use. **CONSULTANT** agrees to comply with the terms of the Federal Transit Administration regulation, "Control of Drug Use in Mass Transportation Operations," set forth in 49 CFR, Part 653. The **CONSULTANT** agrees to maintain a drug free workplace and ensure all subcontractors comply with the terms set forth in the previous regulation. At a minimum the drug-free workplace policy shall include notification

of prohibited activities relating to drugs, notification of requirement to abide by policy as a condition of employment, and drug disclosure requirements.

L. Equal Employment Opportunity. As required by 41 CFR, Part 60, the **CONSULTANT** shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The **CONSULTANT** shall take affirmative actions to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, or national origin. Such actions 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** further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

M. Disadvantaged Business Enterprise. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises as defined in 49 CFR, Part 26, Subpart A, shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds under this agreement. Consequently the DBE requirements of 49 CFR, Part 26, exclusive of Subpart D, apply to this agreement. **NCTCOG** and its subcontractors agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR, Part 26, Subpart A, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, **NCTCOG** and its subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR, Part 26, exclusive of Subpart D, to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform

contracts. **NCTCOG** and its subcontractors shall not discriminate on the basis of race, creed, color, national origin, sex, or disability, in the award and performance of contracts funded in whole or in part with federal funds.

The **CONSULTANT** agrees to maintain, a DBE commitment throughout the term of this Contract, at a minimum as identified in Appendix D.1. These DBE requirements shall be physically included in any subcontract entered into by the **CONSULTANT**. The **CONSULTANT** shall coordinate DBE commitments and work with **NCTCOG** on an annual basis to determine if there are any necessary revisions. Failure to carry out the requirements set forth shall constitute a breach of Contract and may result in termination of the Contract by **NCTCOG** or other such remedy as **NCTCOG** deems appropriate.

N. Compliance with Regulations. During the performance of this Contract, the **CONSULTANT**, for itself, its assignees, and successors agrees to comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, CFR, Part 21 and Title 23, CFR, Part 420.121(m), 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. Compliance with these Regulations shall be accomplished in the manner more particularly set out hereinafter in Appendix C of this Contract.

O. Substitution of Subcontractors. **NCTCOG** must approve all substitutions of subcontracts and will determine if the disadvantaged business enterprise percentage goal will be decreased by substituting a majority contractor for a disadvantaged business contractor. Contractors added after the initial execution of this Contract shall be procured in a fair and competitive manner.

- P. Disputes and Remedies. Should disputes arise concerning the Scope of Services or additional work to be performed under this Contract, the **CONSULTANT** and **NCTCOG** shall negotiate in good faith toward resolving such disputes. **NCTCOG** shall be responsible to its funding agencies for the settlement of all contractual and administrative issues arising out of procurement entered into in support of the Unified Planning Work Program. Violation or breach of Contract terms by the **CONSULTANT** may be grounds for termination, and should said disputes be irreconcilable, **NCTCOG** shall terminate the agreement by default. Any increased costs arising from the termination shall be paid by the **CONSULTANT**.
- Q. Property Management and Procurement Procedures. **CONSULTANT** shall comply with procurement standards for federal programs contained in 49 CFR 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments," as may be revised or superseded.
- R. Copyrights. Except as otherwise provided in the terms and conditions of the Contract, **NCTCOG** is free to copyright any books, publications, or other copyrightable materials developed in the course of or under a federal agreement. Except as otherwise provided in the terms and conditions of the Contract, the funding agency shall reserve a royalty-free nonexclusive and irrevocable right to produce, publish, or otherwise use, and to authorize others to use, the work for government purposes.
- S. Subcontracts. The **CONSULTANT** is required to perform all work except specialized services or other tasks specifically exempted in the Contract, except that governmental recipients of 23 U.S.C. 104(f) or 402 funds may subcontract as necessary to accomplish

approved work program activities. All subcontracts exceeding \$10,000 in cost shall contain all required provisions of the prime contract.

T. Title VI.

(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, CFR, 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, national origin, sex, age, religion, or disability 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 Subcontractors, 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 **CONSULTANTS** obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, religion, or disability.

(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 **NCTCOG** or **NCTCOG's** funding partners to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a **CONSULTANT** is in the exclusive possession of another who fails or refuses to furnish this information, the **CONSULTANT** shall so certify to **NCTCOG** or **NCTCOG's** funding partners 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, **NCTCOG** shall impose such contract sanctions as it or **NCTCOG's** funding partners 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 the above paragraphs of this section 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 **NCTCOG** or **NCTCOG's** funding partners may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a **CONSULTANT** becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the **CONSULTANT** may request **NCTCOG** to enter into such litigation to protect the interests of **NCTCOG**, and, in addition, the **CONSULTANT** may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE IX

INDEMNIFICATION

The **CONSULTANT** covenants and agrees to indemnify and hold harmless and defend and does hereby indemnify, hold harmless, and defend **NCTCOG**, its officers and employees, from and against any and all suits or claims for damages or injuries, including death, to persons or property, whether real or asserted, arising out of any negligent act or omission on the part of the **CONSULTANT**, its officers, agents, servants, employees, or subcontractors, and the **CONSULTANT** does hereby assume all liability for injuries, claims or suits for damages to persons, property, or whatever kind of character, whether real or asserted, occurring during or arising out of the performance of this Contract as a result of any negligent act or omission on the part of the **CONSULTANT**, its officers, agents, servants, employees, or subcontractors to the extent permitted by law.

ARTICLE X

TERMINATION OF CONTRACT

NCTCOG may terminate this Contract, or any portion of it, by serving a notice of termination on the **CONSULTANT** which shall be effective on the date of the receipt of the notice of termination. The notice shall state whether the termination is for convenience of **NCTCOG** or for default of the **CONSULTANT**. If the termination is for default, the notice shall state the manner in which the **CONSULTANT** has failed to perform the requirements of the Contract. The **CONSULTANT** shall account for and return to **NCTCOG** any property in its possession paid for from funds received from **NCTCOG**, or property supplied to the **CONSULTANT** by **NCTCOG**. The **CONSULTANT** shall promptly submit its termination claim for reimbursement to **NCTCOG**, and the parties shall negotiate the termination settlement to be paid. If the termination is for the convenience of **NCTCOG**, the **CONSULTANT** shall be paid its costs up to the time of notice to stop work, reasonable Contract close-out costs, and a pro rata portion of the fee which reasonably reflects the quantity and quality of work performed up to the time of

termination. If, after serving a notice of termination for default, **NCTCOG** determines that the **CONSULTANT** has an excusable reason for not performing, such as a strike, fire, flood, events which are not the fault of and are beyond the control of the **CONSULTANT, NCTCOG**, after setting up a new work schedule, may allow the **CONSULTANT** to work, or treat the termination as a termination for convenience.

ARTICLE XI

LEGAL CONSTRUCTION

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

ARTICLE XII

VENUE

Venue and jurisdiction of any suit, right, or cause of action arising under or in connection with this Contract shall lie exclusively in Tarrant County, Texas.

IN WITNESS HEREOF, the parties hereto have executed this Contract in duplicate original at
Arlington, Tarrant County, Texas, the _____ day of _____, 20__.

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

Michael Eastland, Executive Director

CONSULTANT

President

APPENDIX A

SCOPE OF SERVICES

APPENDIX B

This Appendix Purposefully Excluded from this Contract

APPENDIX C

COMPLIANCE DOCUMENTATION

APPENDIX C

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 U.S. department of Transportation (hereinafter, "DOT"), Title 49, Code of Federal Regulations Part 21 and Title 23, Code of Federal Regulations Part 710.405(b), 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, sex, 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 and Part 710.405(b) of the Regulations.
3. Solicitations for Subcontracts, Including Procurement 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 procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
4. Information-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 NCTCOG or DOT to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to NCTCOG or the Texas Department of Transportation, or DOT as appropriate and shall set forth the efforts it has made to obtain this information.
5. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, NCTCOG and the Texas Department of Transportation shall impose such contract sanctions as they or DOT 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 provision of paragraphs 1 through 6 in every subcontract, including procurement 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 NCTCOG and the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request NCTCOG to enter into such litigation to protect the interest of NCTCOG and, in addition, the Consultant may request the United States to enter into such litigation to protect the interest of the United States.

APPENDIX D

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

APPENDIX D

INSTRUCTIONS TO PROPOSERS REGARDING THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

The North Central Texas Council of Governments (NCTCOG) has established a Transportation Department-Wide overall Disadvantaged Business Enterprise (DBE) goal of 25 percent of the final negotiated contract amount for participation on the part of socially and economically disadvantaged individuals in DOT-assisted projects. Specific DBE goals are established for each procurement, dependent upon the type of services being procured. The specific goal identified for this procurement is 31.26 percent of the contract amount. Failure to carry out the requirements set forth in this program shall constitute a breach of contract and after notification of the Department of Transportation, may result in termination of the agreement or contract by NCTCOG or other such remedy as NCTCOG deems appropriate.

NCTCOG defines “socially and economically disadvantaged” as persons who are citizens or lawful permanent residents of the United States and who are:

1. Women
2. Black Americans (includes persons having origins in any of the Black racial groups of Africa);
3. Hispanic Americans (includes persons of Mexican, Puerto Rican, Cuban, Central, or South American, or other Spanish or Portuguese culture or origin, regardless of race);
4. Native Americans (includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians);
5. Asian-Pacific Americans (includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas);
6. Asian-Indian Americans (includes persons whose origins are from India, Pakistan, and Bangladesh); or
7. Any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

A “Disadvantaged Business” means a small business concern

1. which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
2. whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

A “Small Business Concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. If a business is not a small business according to these standards, it is not eligible to participate as a disadvantaged business under 49 CFR Part 26.

In order to receive favorable consideration for this project, proposers are expected to provide assurances, in writing, that at least 31.26 percent of the contract amount will go to disadvantaged businesses. This can be done by completing Attachment D.1 of this Appendix and supplying whatever other supplemental information is necessary.

To comply with NCTCOG's DBE requirements, it will be necessary to supply the following:

1. A copy of the DBE's certification from the Small Business Administration (SBA) or the North Central Texas Regional Certification Agency (NCTRCA)

and

2. Attachment D.4 - Affidavit of Intended Entrepreneurship

ATTACHMENT D.1

COMPLIANCE ASSURANCE

The undersigned proposer hereby assures that his/her firm is in compliance with the North Central Texas Council of Governments' Disadvantaged Business Enterprise Program and has a goal of _____ percent of the dollar value of this project for disadvantaged business enterprises.

Name of Company

Date

Signature

Title

ATTACHMENT D.2

**INFORMATION FOR DETERMINING
DISADVANTAGED BUSINESS ENTERPRISE ELIGIBILITY**

PURPOSEFULLY OMITTED

ATTACHMENT D.3

INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY

PURPOSEFULLY OMITTED

APPENDIX D.4

AFFIDAVIT OF INTENDED ENTREPRENEURSHIP

State of _____

County of _____

Comes now _____ of lawful age and being duly sworn upon
(Name of Individual)

his/her oath states as follows:

1. This affidavit is made for the purpose of complying with the part of the specifications of the North Central Texas Council of Governments' Affirmative Action Assurance Plan which requires that, (Name of Bidder), _____ as a contractor/ vendor bidding on the projects, sets forth the names of disadvantaged contractors, subcontractors, and suppliers with whom it will contract if awarded a contract for this project, the area(s) and percent of anticipated work on each listed item; and that it provide a detailed narrative of efforts made to involve disadvantaged contractors, subcontractors, and suppliers which should answer, but not be limited to, the following specific affirmative action steps:
2. That the following list is true and accurate to the best of my knowledge:

Contractor	Area/Scope of Work	Percent of Work
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. I certify that _____ is ___ is not ___ a disadvantaged owned business as defined in Executive Order 11625.
4. That I am authorized to make this affidavit in my capacity as _____ of this bidder.

Dated this _____ day of _____, 200__.

Name of Company

Affiant

Title

Subscribed and sworn to before me this _____ day of _____, 200__.

Notary Public

APPENDIX E

SELECTION CRITERIA

APPENDIX E

SELECTION CRITERIA TO INSURE THAT PRIME CONTRACTS AWARDED TO COMPETITORS MEET DBE GOALS

- A. If any competitor offering an acceptable work program meets the DBE contract goal, NCTCOG shall presume conclusively that all competitors that failed to meet the goals have failed to exert sufficient reasonable efforts and consequently are ineligible to be awarded the contract.

- B. To demonstrate sufficient reasonable efforts to meet the DBE contract goal, the competitors shall document the steps it has taken to obtain DBE participation, including but not limited to, the following:
 - 1. Attendance at a prebid conference, if any scheduled by NCTCOG, to inform DBEs of contracting opportunities under a given solicitation;
 - 2. Advertisement in general circulation media, trade association publication, and minority-focus media for at least 20 days before proposals are due. If 20 days are not available, publication for a shorter reasonable time is acceptable.
 - 3. Written notification to DBEs that their interest in the contract is solicited;
 - 4. Efforts made to select portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goals;
 - 5. Efforts to negotiate with DBEs for specific subbids including at a minimum:
 - a. The names, addresses, and telephone numbers of DBEs that were contacted;
 - b. A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed; and
 - c. A statement of why additional agreements with DBEs were not reached.
 - 6. Concerning each DBE the competitor contacted but rejected as unqualified, the reasons for the competitor's conclusion;
 - 7. Effort made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the competitor or NCTCOG.

- C. Competitors that fail to meet DBE goals and fail to demonstrate sufficient reasonable efforts shall not be eligible to be awarded the contract.

- D. To insure that all obligations under contracts awarded to DBEs are met, NCTCOG shall review the consultants' DBE involvement during the performance of the contract. The consultant shall bring to the attention of NCTCOG any situation in which regularly scheduled progress payments are not made to DBE subcontractors.

APPENDIX F

COUNTING DBE PARTICIPATION TOWARD GOAL

APPENDIX F

COUNTING DBE PARTICIPATION TOWARD MEETING DBE GOALS

DBE participation shall be counted toward meeting DBE goals as follows:

- A. Once a firm is determined to be an eligible DBE, the total dollar value of the contract awarded to the DBE is counted toward the applicable goals.
- B. The total dollar value of a contract to a DBE owned and controlled by both minority males and nonminority females is counted toward the goals for minorities and women, respectively, in proportion to the percentage of ownership and control of each group in the business. The total dollar value of a contract with a DBE owned and controlled by minority women is counted toward either the minority goal or the goal for women, but not to both. NCTCOG or the consultant employing the firm may choose the goal to which the contract value is applied.
- C. NCTCOG or the consultant may count toward its DBE goals a portion of the total dollar value of a contract with a joint venture eligible under the standards equal to the percentage of the ownership and controls of the DBE partner in the joint venture.
- D. NCTCOG or the consultant may count toward its DBE goals only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a DBE is performing a commercially useful function, NCTCOG or the consultant shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.
- E. Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. The DBE may present evidence to rebut this presumption to NCTCOG. NCTCOG's decision on the rebuttal of this presumption is subject to review by the federal funding agency.
- F. NCTCOG or the consultant may count toward its DBE goals expenditures for materials and supplies obtained from DBE suppliers and manufacturers, provided that the DBEs assume the actual and contractual responsibility for the provision of materials and supplies.
 1. NCTCOG or the consultant may count its entire expenditure to a DBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale.)
 2. NCTCOG or the consultant may count 20 percent of its expenditures to DBE suppliers that are not manufacturers, provided that the DBE supplier performs a commercially useful function in the supply process. Exemptions from the 20 percent rule may be requested from DOT's office of Civil Rights.

APPENDIX G

This Appendix Purposefully Excluded from this Agreement

APPENDIX H

This Appendix Purposefully Excluded from this Agreement

APPENDIX I

This Appendix Purposefully Excluded from this Agreement

APPENDIX J

DEBARMENT & SUSPENSION

APPENDIX J

CERTIFICATION REQUIREMENTS FOR RECIPIENTS OF GRANTS AND COOPERATIVE AGREEMENTS REGARDING DEBARMENT AND SUSPENSIONS

Department of Transportation (DOT) Circular 2015.1 excludes entities and individuals that the federal government has either debarred or suspended from obtaining federal assistance funds through grants, cooperative agreements, or third-party contracts. NCTCOG has elected to include the requirements of the DOT Circular 2015.1 in all third-party contracts for federal funds. A certification process has been established by 49 C.F.R. Part 29 as a means to ensure that debarred, suspended, or voluntarily excluded persons do not participate in a federally assisted project. The inability of a person to provide the required certification will not necessarily result in a denial of participation in a covered transaction. A person that is unable to provide a positive certification as set forth in the Circular may submit a complete explanation attached to the certification. DOT will consider the certification and any accompanying explanation in determining whether or not to provide assistance for the project. **Failure to furnish a certification or any explanation may disqualify that person from participating in the project.**

Each potential third-party contractor, subcontractor under a third-party contract, subgrantee, or subrecipient must provide to the grantee or recipient of a cooperative agreement, as appropriate, a certification for a lower tier participant. In general, lower-level employees or procurements of less than \$25,000 will not be covered by the certification process procedures, except in the case of procurements with individuals that would have a critical influence on or substantive control over the project; nevertheless, a participant is not authorized to involve a lower-level employee or enter into a contract of less than \$25,000 with a person actually known by the participant to be debarred, suspended or voluntarily excluded.

NCTCOG requires each potential contractor subgrantee, or subrecipient for a third-party contract to complete the certification in Attachment J.1 for itself and its principals.

If an applicant for a grant or cooperative agreement or a potential contractor for a third-party contract knowingly enters into a lower-tier covered transaction such as a third-party contract or subcontract under a major third-party contract or subgrant with a person that is suspended, debarred, ineligible, or voluntarily excluded from participation in the project, in addition to other remedies available to the federal government, DOT may terminate the grant or subcontract, the underlying grant or cooperative agreement for cause or default.

CERTIFICATION INFORMATION

This certification is to be used by contractors pursuant to 49 CFR 29 when any of the following occur:

- any transaction between the contractor and a person (other than a procurement contract for goods and services), regardless of type, under a primary covered transaction
- any procurement contract for goods or services when the estimated cost is \$25,000 or more
- any procurement contract for goods or services between the contractor and a person, regardless of the amount, under which the person will have a critical influence on or substantive control over that covered transaction. Such persons include principal investigators and providers of federally required audit services.

A *procurement* transaction is the process of acquiring goods and services.

A *nonprocurement* transaction is the granting of financial assistance to entities to assist the grantor in meeting objectives that are mutually beneficial to the grantee and grantor.

A COPY OF THIS CERTIFICATION IS TO BE FURNISHED TO AUTHORIZED REPRESENTATIVES OF THE STATE OR THE U.S. DEPARTMENT OF TRANSPORTATION UPON REQUEST.

APPENDIX K

LOBBYING

APPENDIX K

RESTRICTIONS ON LOBBYING

Section 319 of Public Law 101-121 prohibits recipients of federal contracts, grants, and loans exceeding \$100,000 at any tier under a federal contract from using appropriated funds for lobbying the Executive or Legislative Branches of the federal government in connection with a specific contract, grant, or loan. Section 319 also requires each person who requests or receives a federal contract or grant in excess of \$100,000 to disclose lobbying.

No appropriated funds may be expended by the recipient of a federal contract, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any federal executive department or agency as well as any independent regulatory commission or government corporation, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

As a recipient of a federal grant exceeding \$100,000, NCTCOG requires its subcontractors of that grant to file a certification, set for in Appendix K.1, that neither the agency nor its employees have made, or will make, any payment prohibited by the preceding paragraph.

Subcontractors are also required to file with NCTCOG a disclosure form, set forth in Appendix K.2, if the subcontractor or its employees have made or have agreed to make any payment using nonappropriated funds (to include profits from any federal action), which would be prohibited if paid for with appropriated funds.

APPENDIX K.1

**LOBBYING CERTIFICATION
FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

The undersigned certifies to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension continuation, renewal amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(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 this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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.

Signature

Title

Agency

Date

INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name address city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1.) If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; invitation for Bid (B) number, grant announcement number; the contract grant, or loan award number; the application/proposal control number assigned by the Federal agency.) Include prefixes, e.g. "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate boxes(s). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contract with Federal officials. Identify the Federal official(s) or employee(s) contracted or the officer(s), employees, or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and the telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

Reporting Entity: _____ Page _____ of _____