

**EXAMPLE MPO / CONSULTANT CONTRACT**

THE STATE OF TEXAS    )(

COUNTY OF \*\*\*\*\*    )(                    KNOW ALL MEN BY THESE PRESENTS

This contract is made, entered and executed between the \_\_\_\_\_  
which is the designated Metropolitan Planning Organization (MPO)of the \_\_\_\_\_  
\_\_\_\_\_urbanized area(& hereinafter called the MPO, and  
\_\_\_\_\_, hereinafter  
called the Consultant.

W I T N E S S E T H

WHEREAS, pursuant to provisions of 23 USC 134, the Governor of the State of Texas has designated the MPO to be the single-focus planning organization for the \_\_\_\_\_ urbanized area(s) and has executed an agreement to effectuate the designation; and,

WHEREAS, pursuant to the Governor’s designation and in compliance with applicable federal, state, and local laws, regulations, and ordinances, the MPO has developed and maintains a current Unified Planning Work Program which outlines work tasks and estimated expenditures; and,

WHEREAS, the current Unified Planning Work Program has been approved by the State of Texas, acting by and through the State Department of Highways and Public Transportation, and the U.S. Department of Transportation, acting by and through the Federal Highway Administration; and,

WHEREAS, the current Unified Planning Work Program authorizes the MPO to engage a consultant to \_\_\_\_\_ and the Consultant has proposed a plan to complete the task, and the *MPO* has accepted the proposal;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, the MPO and the Consultant do mutually agree as follows.

## A G R E E M E N T

### Article 1. Contract Period

This contract becomes effective when fully executed by all parties hereto or on \_\_\_\_\_, whichever occurs later, and shall terminate upon the MPO's final approval of work completed by the Consultant or on \_\_\_\_\_, whichever occurs earlier, unless otherwise terminated or modified as hereinafter provided.

### Article 2. Responsibilities of the Parties

The Consultant shall undertake and complete the task as described in Attachment A, Approved Project Description, and in accordance with all terms and conditions included hereinafter.

The MPO shall provide assistance as appropriate and as specified in said Attachment A, including approval of all work.

### Article 3. Compensation

The maximum amount payable under this contract shall not exceed the amount of \$ \_\_\_\_\_, which includes estimated costs in the approximate amount of \_\_\_\_\_ as well as a fixed fee of \$ \_\_\_\_\_

The MPO may make partial proportionate payments of the fixed fee based on the amount of work completed by the MPO.

All payments made hereunder will be made on the basis of reimbursement of actual costs incurred, not to exceed the limits authorized in Attachment B, Approved Project Budget, and the fixed fee specified above.

To be eligible for reimbursement, a cost must be incurred within the contract period specified in Article 1 above and be authorized or not prohibited in Attachment B, Approved Project Budget. All costs must be supported by source documents which comply with generally accepted accounting practices.

Payment of costs incurred is further governed by cost principles outlined in the Federal Acquisition Regulation, Part 31, Subpart 31.2, Contracts with Commercial Organizations.

### Article 4. Contract Amendments

Significant changes in the terms and conditions of this contract can be made only by written amendment executed by the parties hereto prior to the changes being made. Any such amendment must be approved by the U.S. Department of Transportation before the changes are made.

#### Article 5. Additional Work

If the Consultant is of the opinion that any work it has been directed to perform is beyond the scope of this contract and constitutes additional work, the Consultant shall promptly notify the MPO in writing. In the event that the MPO finds that such work does constitute additional work, the MPO shall so advise the Consultant and provide compensation for doing the work on the same basis as the original work *or* the MPO shall advise the Consultant not to perform the work. If the compensation for the additional work will cause the maximum amount payable to be exceeded, a written amendment will be executed. Any amendment so executed must be approved within the contract period specified in Article 1.

#### Article 6. Changes in Work

When the approved project description requires a completed work product, the MPO will review the work as specified in the approved project description. If the MPO finds it necessary to request changes in previously satisfactorily completed work or parts thereof, the Consultant will make such revisions as requested and directed by the MPO. Such work will be considered as additional work and subject to the requirements established in Article 5.

If the MPO finds it necessary to require the Consultant to revise completed work to correct errors appearing therein, the Consultant will make such corrections, and no compensation will be paid for the corrections.

#### Article 7. Indemnification

The Consultant shall save harmless the MPO from all claims and liability due to the acts or omissions of the Consultant, its agents or employees. The Consultant also agrees to save harmless the MPO from any and all expenses, including attorney fees, all court costs and awards for damages, incurred by the MPO in litigation or otherwise resisting such claims or liabilities as a result of any activities of the Consultant, its agents or employees.

Further, the Consultant agrees to protect, indemnify, and save harmless the MPO from and against all claims, demands and causes of action of every kind and character brought by any employee of the Consultant against the MPO due to personal injuries and for death to such employee resulting from any alleged negligent act, by either commission or omission on the part of the Consultant or the MPO.

#### Article 8. Inspection of Work

The MPO, the State of Texas, and the U.S. Department of Transportation, 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 on which it is being performed.

Article 8. Inspection of Work (cont.)

If any inspection or evaluation is made on the premises of a subcontractor, the Consultant shall provide and require his 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.

Article 9. Disputes

The Consultant shall be responsible for the settlement of all contractual and administrative issues arising out of procurements entered into in support of contract work.

The MPO shall act as referee in all disputes regarding nonprocurement issues, and the MPO's decision shall be final and binding.

Article 10. Noncollusion

The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working for him, to solicit or secure this contract, and that he 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, the MPO 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.

Article 11. Reporting

The Consultant shall submit quarterly performance reports that provide as a minimum (1) a comparison of actual accomplishments to the goals established for the period, (2) reasons why established goals were not met, if appropriate, and (3) other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

The Consultant shall submit a final report within 90 days after completion of the contract.

The Consultant shall promptly advise the MPO in writing of events which have a significant impact upon the contract, including:

(1) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

Article 11. Reporting (cont.)

2. Favorable developments or events that enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

Article 12. Records

The Consultant agrees to maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and work performed hereunder and shall make such materials available at its office during the contract period and for three years from the date of final payment under the contract. Such materials shall be made available during the specified period for inspection by the authorized representatives of the MPO, the State of Texas, the U.S. Department of Transportation and the Office of the Inspector General, for the purpose of making audits, examinations, excerpts, and transcriptions.

Article 13. Subcontracts

Any subcontract for professional services rendered by individuals or organizations not a part of the Consultant's organization shall not be executed without prior authorization and approval of the subcontract by the MPO.

Subcontracts in excess of \$25,000 shall contain all required provisions of this contract.

No subcontract will relieve the Consultant of his responsibility under this contract.

Article 14. Termination

The MPO may terminate this contract in part or in whole at any time before the date of completion whenever it is determined that the Consultant has failed to comply with the conditions of the contract. The MPO shall give written notice to the Consultant at least seven days prior to the effective date of termination and specify the effective date of termination and the reason for termination.

If both parties to this contract agree that the continuation of the contract in whole or in part would not produce beneficial results commensurate with the further expenditure of funds, the parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated.

Upon termination of this contract, whether for cause or at the convenience of the parties hereto, all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, etc., prepared by the Consultant shall, at the option of the MPO, be delivered to the MPO with no restriction on future use.

Article 14. Termination (cont.)

The MPO shall compensate the Consultant for those eligible expenses incurred during the contract period which are directly attributable to the completed portion of the work covered by this contract, provided that the work has been completed in a manner satisfactory and acceptable to the MPO. The Consultant shall not incur new obligations for the terminated portion after the effective date of termination.

Except with respect to defaults of subcontractors, the Consultant shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Consultant to progress in the performance of the work) if such failure arises out of causes beyond the control and without the default or negligence of the Consultant. Such causes may include but are not limited to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In every case, however, the failure to perform must be beyond the control and without the fault or negligence of the Consultant.

Article 15. Remedies

Violation or breach of contract terms by the Consultant shall be grounds for termination of the contract, and any increased cost arising from Consultant's default, breach of contract, or violation of terms shall be paid by the Consultant.

This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

Article 16. Compliance With Laws

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

Article 17. Successors and Assigns

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

Article 18. Ownership of Documents

Upon completion or termination of this contract, all documents prepared by the consultant or furnished to the consultant by the MPO shall be delivered to and become the property of the MPO. All sketches, photographs, calculations, and other data prepared under this contract shall be made available, upon request, to the MPO without restriction or limitation of further use.

Article 19. Signatory Warranty

The undersigned signatory for the Consultant hereby represents and warrants that he is an officer of the organization for which he has executed this contract and that he has full and complete authority to enter into this contract on behalf of his firm.

Article 20. Consultant Resources

The Consultant warrants that it presently has adequate qualified personnel in its employment for performance of services required under this contract, or will be able to obtain such personnel from sources other than the MPO.

Unless otherwise specified, the Consultant shall furnish all equipment, materials, and supplies required to perform the work authorized herein.

All employees of the Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of the Consultant who, in the opinion of the MPO, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the project.

Article 21. Equal Employment Opportunity

The Consultant agrees to comply with Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor Regulations (41 CFR 60).

Article 22. Nondiscrimination

During the performance of this contract, the Consultant, its assigns and successors in interest, 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, 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.

Article 22. Nondiscrimination (cont.)

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, 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, sex, 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 State Department of Highways and Public Transportation or the U.S. Department of Transportation 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 the State Department of Highways and Public Transportation or the U.S. 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 State Department of Highways and Public Transportation shall impose such contract sanctions as it or the U.S. Department of Transportation may determine to be appropriate, including but not limited to:

- withholding of payments to the Consultant under the contract until the Consultant complies, and/or
- 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 MPO 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 the MPO to enter into such litigation to protect the interests of the MPO; in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

## Article 23. Minority Business Enterprises

It is the policy of the U.S. Department of Transportation that Minority Business Enterprises as defined in 49 CFR 23, Subpart A, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently the Minority Business Enterprise requirements of 49 CFR 23, exclusive of Subpart D, apply to this contract as follows:

- The Consultant agrees to insure that Minority Business Enterprises as defined in 49 CFR 23, Subpart A, have the maximum opportunity in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, the Consultant shall take all necessary and reasonable steps in accordance with 49 CFR 23, exclusive of Subpart D, to insure that Minority Business Enterprises have the maximum opportunity to compete for and perform contracts.
- The Consultant and any subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts funded in whole or in part with Federal funds.

These requirements shall be physically included in any subcontract. Failure to carry out the requirements set forth above shall constitute a breach of contract and, after the notification of the MPO, may result in termination of the contract by the MPO or other such remedy as the MPO deems appropriate.

## Article 24. Delinquent Tax Certification

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

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED  
DUPLICATE COUNTERPARTS TO EFFECTUATE THIS AGREEMENT.

MPO

CONSULTANT