

**A G R E E M E N T**

**BETWEEN**

**THOMPSON ENGINEERING, INC.**

**AND**

**THE CITY OF FOLEY**

**CONSTRUCTION ENGINEERING AND INSPECTION SERVICES**

**Project Number(s): HRRR-0219 (250)**

## **AGREEMENT**

### **CONSTRUCTION ENGINEERING AND INSPECTION SERVICES**

This AGREEMENT is made and entered into by and between The City of Foley, and Thompson Engineering, Inc., which is qualified to do business in the State of Alabama, and has its principal Alabama office at 2970 Cottage Hill Road, Suite 190, Mobile, AL 36606, Party of the Second Part, hereinafter referred to as the "CONSULTANT". As used herein "State" shall refer to the Alabama Department of Transportation.

WHEREAS, the CONSULTANT has agreed and by these present does agree with the STATE for the consideration hereinafter mentioned to provide construction engineering and inspection, materials sampling and testing and contract administration for The City of Foley on a Project as hereinafter as described.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter stipulated, it is hereby agreed between the parties as follows:

The CONSULTANT shall meet the requirements for conformance with the Standards adopted by AASHTO and approved by the Secretary of Transportation in cooperation with the STATE and shall ascertain the written practices of the STATE prior to beginning any work on this project. All work required under this AGREEMENT will be performed in accordance with these standard practices and any special requirements hereinafter set forth. All work performed by the CONSULTANT under this AGREEMENT shall be subject to the Review, Approval and Acceptance of the STATE and Federal Highway Administration, where applicable, before CONSULTANT will be paid by The City of Foley for said work.

"As a part of obligations of the CONSULTANT to The City of Foley under this AGREEMENT, the CONSULTANT does hereby certify that CONSULTANT has no financial or other interest in the outcome of project proposed under this AGREEMENT".

The CONSULTANT shall provide construction engineering and inspection, materials sampling and testing and contract administration on the project.

The CONSULTANT shall provide services, personnel and equipment as required by The City of Foley.

## **ARTICLE I - SCOPE OF WORK**

The CONSULTANT will perform CEI services for project HRRR-0219 (250) (hereinafter references as “Project” or “the Project”). Thompson Engineering will perform inspection services, office work, and provide project management.

The work to be performed by the CONSULTANT will be as follows:

### **SECTION 1 - CONSTRUCTION ENGINEERING AND INSPECTION SERVICES**

#### **1.0 PURPOSE:**

This statement of work describes and defines services which are required for construction engineering, inspection, materials sampling and testing and contract administration for the Project.

#### **SCOPE:**

The CONSULTANT shall be responsible for all construction engineering and administrative functions as defined in this Scope of Work and referenced manuals and procedures. The CONSULTANT shall utilize effective control procedures to assure the construction of said project is performed in reasonable conformity with plans, specifications and contract provisions for assigned project.

The CONSULTANT shall provide professional, technical and administrative personnel, meeting requirements of the STATE and The City of Foley in appropriate numbers at proper times to ensure that responsibilities assigned under this AGREEMENT are effectively fulfilled. All services shall be performed in accordance with established standard procedures and practices of the STATE. Prior to furnishing any services, the CONSULTANT shall be familiar with ALDOT procedures, standard and informal, and practices, standard and informal, for construction, engineering and contract administration used by the STATE.

#### **DEFINITIONS:**

A. Transportation Director: The chief executive officer of ALDOT.

- B. Chief Engineer: The individual appointed by the Transportation Director to administer technical phases of ALDOT.
- C. Bureau of Construction: One of the Bureaus of ALDOT charged with administering ALDOT'S construction program.
- D. State Construction Engineer: Administrative head of the Bureau of Construction of ALDOT.
- E. Project Manager, CONSULTANT: Qualified individual who has been assigned as the on-site person in charge of a construction contract.  
  
Project Manager, The City of Foley: Qualified individual assigned by The City of Foley to manage Construction Engineering and inspection contract formulated by this AGREEMENT and will be in responsible charge and direct control of project.
- F. FHWA: The Federal Highway Administration of the United States Department of Transportation.
- G. Construction Contract: Construction work let under separate contract(s) by ALDOT to contracting firm(s).
- H. Contractor: Contracting firm or its designated representatives awarded contract(s) to do construction work.
- I. Construction Contract Suspension: Cessation of construction activity on a construction contract.
- J. Division Engineer: Administrative head of ALDOT'S Division or their designated representative.
- K. District Engineer: Administrative head of one of ALDOT'S Districts or their designated representative.
- L. State Bridge Engineer: Administrative head of ALDOT'S Bureau of Bridge.
- M. State Design Engineer: Administrative head of ALDOT'S Bureau of Design.
- N. Consultant: Consultant firm(s) retained by ALDOT to perform all construction engineering and administrative functions as defined in this AGREEMENT.
- O. State Materials and Tests Engineer: Administrative head of ALDOT'S Bureau of Materials and Tests.

- P. Division Materials Engineer: Employee designated by ALDOT to administer policies on materials sampling and testing in ALDOT'S Division.
- Q. Consultant Design Engineer (when applicable): Consultant design engineer retained by ALDOT to design aforementioned project(s).
- R. Division Construction Engineer: Employee designated by ALDOT to administer policies and procedures of construction projects covered by this AGREEMENT in ALDOT'S Division.
- S. Division Consultant CE & I Engineer (when applicable): Employee of ALDOT designated by Division Construction Engineer to be in charge of project(s) covered by this AGREEMENT.
- T. County Engineer: Administrative head of the County Engineering Department or their designated representative.
- U. THE CITY OF FOLEY: Administrative head of The City of Foley or their designated representative.

2.0 ITEMS TO BE FURNISHED BY THE STATE/THE CITY OF FOLEY TO CONSULTANT:

- A. The minimum Contract documents for each project shall be distributed to the CONSULTANT, via Division Engineer or The City of Foley subsequent to award of construction contract for each project as follows:
  - 5 sets Construction Plans - Half scale
  - 3 sets Construction Plans - Full size (1 set to be used in preparation of as built plans)
  - 2 sets Standard Drawings
  - 1 copy of Executed Contract
- B. An adequate supply of all standard forms to be used in fulfilling technical services under this AGREEMENT, disposable type molds for casting concrete test cylinders, sample cartons, sample bags and other expendable-type testing supplies. The CONSULTANT may use computerized forms approved by ALDOT. Construction and Materials Management Software including SiteManager, Stormwater Tracking System and Concrete Management System will be used for contract administration on designated projects.

3.0 ITEMS FURNISHED BY THE CONSULTANT:

A. Document Compliance

The requirements outlined within printed documents listed below are a condition of this contract.

The CONSULTANT shall obtain, without cost to The City of Foley, at least one copy of each document. One copy of each document shall be available at project office at all times.

Compliance with these guides, manuals, procedures, and advisories shall be a requirement of this AGREEMENT.

1. All active Construction Information Memorandums issued, prior to or after execution of this AGREEMENT, by ALDOT'S State Construction Engineer. These procedures convey certain practices and procedures of ALDOT relating to construction supervision and administration of contracts. A copy of each Memorandum issued on or subsequent to execution of this AGREEMENT shall be furnished to the CONSULTANT in a timely manner by ALDOT'S Division Construction Engineer.
2. Guidelines for Operations issued by ALDOT.
3. All Technical Advisories and Memorandums issued, prior to or after execution of this AGREEMENT, by ALDOT'S State Materials and Tests Engineer. The advisories convey certain practices and procedures of ALDOT relating to sampling and testing of materials used in construction projects. A copy of each advisory issued on or subsequent to execution of this AGREEMENT shall be furnished to the CONSULTANT in a timely manner by ALDOT'S Division Materials and Tests Engineer.
4. ALDOT'S Testing Manual as issued by ALDOT'S State Materials and Tests Engineer. This manual sets out test frequency of acceptance samples and tests, sampling point, sample size, sampling and test methods and appropriate report forms for materials to be incorporated into construction projects. This Manual also contains Bureau of Materials and Tests (ALDOT) procedures referenced in the Manual and/or specifications and BMT worksheets and test report forms. (Said manual is available on ALDOT'S website)
5. ALDOT'S Construction Manual. This manual describes in detail many of the procedures and practices of ALDOT relating to construction engineering and inspection. (Said manual is available on ALDOT'S website)

6. A tabulation of required ALDOT'S technician certifications relating to construction engineering and inspection.
  7. Applicable ALDOT Standard Specifications for Highway Construction. One copy for each of the CONSULTANT'S personnel.
  8. The applicable Roadway and Traffic Design Standards.
  9. The applicable Alabama Regulations for Control of Radiation Chapter 420-3-26 Radiation Control as issued by the State of Alabama Health Department.
  10. ALDOT'S manual of Materials, Sources and Devices with Special Acceptance Requirements as issued by the State Materials and Tests Engineer. (Said manual is available on ALDOT'S website)
  11. FHWA Manual on Uniform Traffic Control Devices.
  12. One copy of the Radiological Safety Manual for use of Nuclear Moisture/Density and Asphalt Content Gauges as issued by ALDOT'S State Materials and Tests Engineer for each project on which there is a nuclear testing device.
  13. The AASHTO Standard Specifications for Transportation Materials and Methods of Sampling and Testing.
  14. Copies of all applicable ASTM Standards.
- B. The CONSULTANT shall provide all surveying equipment and it must be the latest technical equipment such as electronic total stations, data collection, hand-held computers, automatic levels, hand-held two-way radios, electronic pipe and cable locators and complete safety equipment.

#### 4.0 LIAISON:

The CONSULTANT shall be fully responsible for fulfilling all functions assigned to it by this AGREEMENT. The CONSULTANT shall provide coordination of all activities, correspondence, reports, and other communications related to its responsibilities under this AGREEMENT. Construction engineering and inspection forces shall be required of the CONSULTANT at all times when required by The City of Foley/STATE. If construction contract is suspended, the

CONSULTANT'S forces shall be adjusted at the direction of The City of Foley to correspond with type of suspension, either complete suspension or partial suspension.

5.0 COOPERATION AND PERFORMANCE OF THE CONSULTANT:

During the period of this AGREEMENT, The City of Foley may conduct reviews of various phases of the CONSULTANT'S operations, such as construction inspection, materials sampling and testing and administrative activities. Reviews shall be conducted to determine compliance with this AGREEMENT and sufficiency with which procedures are being effectively applied. These reviews are to assure that construction work and administrative activities are performed in reasonable conformity with the STATE policies, plans, specifications and contract provisions. The City of Foley shall have complete access, at all times, to project site, project office, all project records and any other CONSULTANT items associated with said project or this AGREEMENT. The CONSULTANT shall cooperate and assist The City of Foley representatives in conducting said reviews. When deficiencies are indicated in a review, immediate remedial action shall be implemented by the CONSULTANT in conformance with The City of Foley's recommendations. The City of Foley's remedial recommendations and the CONSULTANT'S actions are to be properly documented by The City of Foley. The CONSULTANT shall be responsible for accuracy of its work and shall promptly implement policies and procedures reasonably necessary to prevent errors, omissions, or noncompliance with said contract terms. If the CONSULTANT'S services hereunder contain errors, omissions, or are not compliant with terms of said contract, the CONSULTANT, upon receipt of written notice of such defects from The City of Foley, shall correct such errors, omissions or noncompliance at its own expense.

6.0 REQUIREMENTS:

A. General:

It shall be the responsibility of the CONSULTANT to provide services as necessary for contract administration to produce construction in reasonable conformity with plans, specifications and contract provisions. The CONSULTANT shall advise The City of Foley and shall document any omissions, substitutions, defects, and deficiencies noted in the work of Contractor and the corrective action taken.

B. Survey Control:

The CONSULTANT may be requested to reestablish project survey controls. The CONSULTANT may be requested to provide project surveying to fulfill project requirements.

- C. Project Inspection: The CONSULTANT shall provide services to monitor and document Contractor's construction operations. The CONSULTANT shall test, inspect and document all construction material as required to assure quality of workmanship and materials are in reasonable conformity with plans, specifications and other contract provisions. The CONSULTANT may be responsible for monitoring and approving asphalt production. The CONSULTANT shall keep detailed, accurate records of Contractor's daily operations and significant events that may affect the work. The standard procedures and practices of the STATE for inspections of construction projects are set out in the STATE'S Construction Manual. The CONSULTANT shall have appropriate certifications for inspection of work being performed. The CONSULTANT shall in general, perform inspection services in accordance with these standard procedures and practices and other accepted practices as may be appropriate.

D. Testing:

The CONSULTANT shall perform sampling and testing of component materials and completed work items to the extent that will assure materials and workmanship incorporated in each project is in reasonable conformity with plans, specifications and contract provisions. The CONSULTANT shall meet minimum sampling frequencies set out in the STATE'S Testing Manual. The City of Foley reserves the right to require additional sampling and testing. The CONSULTANT shall be specifically responsible for securing job control samples and utilizing test results to determine acceptability of all materials and completed work items. The CONSULTANT shall be responsible for verification of a certified test report as determined by the Bureau of Materials and Tests, DOT label, DOT stamp, etc., as appropriate. The CONSULTANT shall be responsible for progress record sampling of reinforcing steel. The STATE/THE CITY OF FOLEY may monitor the effectiveness of the CONSULTANT'S testing procedures through surveillance and obtaining testing progress record samples and final record

samples. Progress record sampling and testing is necessary to verify job control sampling frequencies and test procedures are adequate. The CONSULTANT shall inform The City of Foley/STATE of schedules for sampling and testing as work progresses on each construction contract so sampling can be accomplished by the STATE at the proper time. Sampling and testing shall be as required by the aforementioned ALDOT Testing Manual or as modified by contract provisions. The CONSULTANT shall be responsible for transporting samples to be tested to the appropriate State laboratory. Any testing performed at a laboratory other than the State laboratory shall be handled in a separate AGREEMENT. The CONSULTANT shall perform all required and necessary surveillance, inspection and documentation of project hot-mix asphalt operations.

E. Management Engineering Services:

The CONSULTANT shall perform all management engineering services necessary to: assure proper coordination of activities of all parties involved in accomplishing completion of projects; maintain complete, accurate records of all activities and events relating to projects; properly document all significant changes to projects; provide interpretations of plans, specifications and contract provisions; make recommendations to The City of Foley/STATE to resolve disputes that may arise in relation to construction contracts; and to maintain an adequate level of surveillance of Contractor's activities. The CONSULTANT shall perform any other management engineering services normally assigned to a project that are required to fulfill the CONSULTANT'S responsibilities under this AGREEMENT. All recordation and documentation shall be in accordance with standard ALDOT procedures, formats and content. CONSULTANT services include, but are not limited to the following:

1. Attending and participating in a pre-construction conference for each project. Record significant information revealed and decisions made at conference and if requested by The City of Foley/STATE, distribute copies of said minutes to appropriate parties. The CONSULTANT may be required to conduct the pre-construction conference.
2. Complete and maintain a full and accurate daily record of all activities and events relating to project. Record all work completed by Contractor, including quantities of pay items in

conformity with Final Estimates preparation procedures and specifications. The CONSULTANT shall immediately report to The City of Foley changes in pay items, project time or cost as soon as they become known to the CONSULTANT.

3. Complete and maintain Project Diaries and Inspector's Daily Reports as requested by the STATE. Said diaries and reports shall be kept up-to-date on a daily basis.
4. Maintain a project log of all materials entering into work with proper indication of basis of acceptance for each shipment of material.
5. Maintain project records of all sampling and testing accomplished. Analyze such records to ascertain acceptability of materials and completed work items. The field reports shall be recorded in project records within three days. The CONSULTANT shall verify, certify and document work items requiring performance periods (curing period, operational period, etc.).
6. Prepare and submit monthly to The City of Foley/STATE a comprehensive tabulation of the quantity of each pay item satisfactorily completed that includes appropriate test reports and/or materials certifications or materials stored to date. Quantities shall be based on daily records and calculations. Calculations shall be properly recorded. The tabulations shall be used for preparation of the Monthly Progress Estimate.
7. Provide interpretations of plans, specifications and contract provisions. The CONSULTANT shall consult with The City of Foley/STATE when an interpretation involves complex issues or may have an impact on cost or quality of performing said work.
8. Field problems are difficulties encountered during construction through circumstance, which may or may not be under the control of Contractor, requiring a degree of engineering evaluation and decision. Field problems might involve situations such as: out-of-place piling, out of tolerance work, out of specification materials, structural defects, accidental damage, underground obstructions, etc. These problems may have a significant impact upon the execution, progress, cost or quality of said project. Therefore, it is of paramount importance that problems be resolved expeditiously. The

CONSULTANT shall ensure solutions are pursued and implemented as expeditiously as possible. Where a difficulty, problem, or defect of any nature is encountered during construction, the CONSULTANT shall assemble all relevant information to include any proposals from Contractor. The CONSULTANT shall document and evaluate the same in a concise and orderly manner, by reviewing all information and circumstances. The CONSULTANT shall make recommendations to The City of Foley/STATE for the most expeditious course of action to minimize delays and costs while achieving a structurally acceptable result.

The Engineer of Record (Design Engineer), depending on the nature of proposal are responsible for structural engineering analysis of Contractor's proposals, determining acceptability of proposals and meeting the requirements of said design. However, the CONSULTANT shall be responsible for ensuring that The City of Foley is provided with all relevant information and, in addition, shall appraise and make recommendations to The City of Foley/STATE of all project(s) related circumstances that may have an influence upon the solution.

In particular, the CONSULTANT shall first utilize his own personnel and resources in order to assess the problem and its likely impacts on said project(s). By utilizing CONSULTANT personnel and resources, the CONSULTANT shall assess both technical and contractual implications upon said project(s) of any proposals presented by Contractor. The CONSULTANT shall consider all likely impacts upon the Project as regards to costs, delays, potential claims, contract administration, management, any justifiable financial adjustments (increases or decreases, including penalties) to be applied to Construction Contract, and feasibility of the Contractor successfully and expeditiously fulfilling his technical proposals. The CONSULTANT shall make these assessments in order to formulate his recommendations. The CONSULTANT shall then forward the said assessments and recommendations to The City of Foley, together with any proposals from Contractor. The CONSULTANT shall be a liaison and cooperate with The City of Foley in resolution of any problems. Upon resolution and approval of

technical solution, the CONSULTANT shall ensure all approved remedial measures are completed in a technically competent and satisfactory manner. The CONSULTANT shall be responsible for any contract administration and management normally associated with implementing remedial measures. In situations where the CONSULTANT does not have direct responsibility for engineering inspection of the item that caused said problem, but where that item is now under his area of control, (example: defective precast components or fabricated steelwork made at a facility under engineering inspection of a different party and later delivered to site), the CONSULTANT shall formulate his assessment and recommendations and cooperate in resolving the problem.

In all situations, the CONSULTANT shall ensure all proposals, reviews, assessments, studies, recommendations and decisions are executed expeditiously in order to minimize any delays and costs.

9. The CONSULTANT shall analyze changes to plans, specifications or contract provisions and extra work that appear to be necessary to fulfill the intent of said contract. The CONSULTANT shall provide recommended changes to The City of Foley/STATE for approval. Approval of The City of Foley/STATE must be obtained prior to initiating any change or extra work.
10. When a modification to the original contract for a project is required, due to a necessary change in character of work, the CONSULTANT, in conjunction with The City of Foley/STATE Project manager, shall negotiate prices with Contractor and prepare and submit a recommendation to The City of Foley/STATE for approval.
11. In the case where Contractor gives notice, either written or verbal, that certain work to be performed is beyond the scope of construction contract and intends to claim additional compensation, the CONSULTANT shall maintain accurate documentation in accordance with project contract requirements, of the costs involved in such work.
12. In the case where Contractor for a project submits a claim for additional compensation, the CONSULTANT shall analyze submittal in conjunction with The City of Foley/STATE. The CONSULTANT may be required to provide recommendation on

validity and reasonableness of the requested additional compensation and/or contract time extension. The CONSULTANT shall maintain complete and accurate documentation of work involved in claims.

13. In the case where Contractor for a project submits a request for extension of allowable contract time, the CONSULTANT shall analyze request and prepare a recommendation to The City of Foley/STATE covering accuracy of statements and actual effect of delaying factors on completion of controlling work items. The CONSULTANT shall make recommendations weekly, or other times as necessary, to The City of Foley/STATE on all delays. This recommendation is needed to justify a time extension.
14. The CONSULTANT shall prepare and submit to The City of Foley a final estimate with documentation and one (1) set of record as-built plans for each contract. All changes made to plans, which involve CONSULTANT, shall be signed and sealed by the CONSULTANT and The City of Foley. This task must be completed within a timely manner or in accordance with current ALDOT Standard Specifications from the earliest project acceptance date.
15. At request of The City of Foley, the CONSULTANT shall assist appropriate The City of Foley officers in preparing for hearings or litigation that may occur during the term of this AGREEMENT in connection with a project covered by this AGREEMENT.
16. The CONSULTANT shall monitor and document Contractor's compliance with contract provisions in regard to payment of predetermined wage rates in accordance with State procedures. This includes sub-contractor compliance.
17. The CONSULTANT shall review and document Contractor's compliance with contract requirements concerning Equal Employment Opportunity and Affirmative Action; assist the STATE'S Equal Employment Opportunity Specialist as requested; and, review and document D.B.E. (Disadvantaged Business Enterprises) activities to ensure compliance of contract goals.
18. The CONSULTANT shall review and document the Project to the extent necessary to determine whether construction activities violate requirements of any permits. The

Project Manager shall notify Contractor, in writing, of any violations or potential violations and require his immediate resolution of said problem. Violations shall be reported to The City of Foley immediately.

19. Shop drawing/sample submittal and approvals shall be logged by the STATE. Tracking shall include maintaining a log book of the status of each submittal as it progresses through review and approval. The CONSULTANT shall actively encourage all reviewers to accomplish reviews promptly.
20. The CONSULTANT shall assist Contractor and utility companies in resolving conflicts so that any conflicting utilities are timely removed, adjusted or protected to minimize delays to construction operations. Documentation shall be maintained in accordance with the STATE'S procedures.
21. The Project Manager and the CONSULTANT for each particular project shall conduct meetings as required with respective Contractor, sub-contractor and/or utility companies to review plans, schedules, problems or other areas of concern. The results of these meetings shall be recorded in project diary.
22. The CONSULTANT may be required to conduct and document field reviews of maintenance of traffic operations after normal working hours, weekends and holidays.
23. The CONSULTANT may be required to respond to inquiries from various persons, i.e., public, media, property owners, local agencies, State agencies, Federal agencies, etc., and inform The City of Foley of these inquiries.
24. The CONSULTANT may be required to provide field construction activities in areas of design engineering, vertical and horizontal control, typical sections, cross-sections for monthly estimates and other engineering required to complete construction project.

## 7.0 PERSONNEL:

### A. General Requirements:

The CONSULTANT shall provide a sufficient number of qualified personnel as directed by The City of Foley to effectively carry out its responsibilities under this AGREEMENT.

### B. Personnel Qualifications:

The CONSULTANT shall utilize only competent personnel who are qualified by experience and education. The CONSULTANT shall submit, in writing, to The City of Foley the name of all personnel to be considered for assignment to said construction projects, together with a detailed resume of each person's qualifications and copies of current certifications with respect to salary, education and experience. The CONSULTANT'S personnel approval request shall be submitted at least two weeks prior to and approved by The City of Foley prior to the date an individual is to report to work. Listed below are minimum qualifications and job descriptions for the CONSULTANT'S personnel that may be working on various projects under this AGREEMENT.

PROJECT MANAGER:

Minimum Qualifications:

- Ten years of experience in construction inspection, surveying or highway materials testing and inspection or a Bachelor of Science degree in Civil Engineering or Registered Professional Engineer with five years of experience in construction inspection, surveying or highway materials testing and inspection. One or more of the following certifications may be required as approved by The City of Foley.
- Certified Asphalt Technician Level I – Field Tester
- Certified Level II – Quality Management Technician
- Certified Asphalt Roadway Technician
- Work Zone Safety Certification
- Certified Concrete Technician (ACI and ALDOT certification)
- Radiological Safety Course Certification
- Qualified Credentialed Inspector (QCI)

Job Description:

This is administrative and technical work in Civil Engineering. Employees in said class shall act as the first contact between contractor and The City of Foley. The Project Manager shall be responsible for supervision of all employees assigned to said project. The Project Manager shall ensure that a project is built in accordance with project plans

and specifications under which contract was awarded. The Project Manager shall report directly to District Engineer's or The City of Foley's designated representative.

**SENIOR INSPECTOR:**

**Minimum Qualifications:**

- Eight years of experience in construction inspection, surveying or highway materials testing and inspection or a Bachelor of Science degree in Civil Engineering or Registered Professional Engineer with two years of experience in construction inspection, surveying or highway materials testing and inspection. One or more of the following certifications as necessary and approved by The City of Foley. Inspectors who are to perform a specific task shall be certified in said field.
- Certified Asphalt Technician Level I – Field Tester
- Certified Level II – Quality Management Technician
- Certified Concrete Technician (ACI and ALDOT Certification)
- Certified Asphalt Roadway Technician
- Work Zone Safety Certification
- Radiological Safety Course Certification
- Qualified Credentialed Inspector (QCI)

**Job Description:**

This is skilled sub-professional engineering work in the field or office. Employees in said class shall act as the Assistant Project Manager and be responsible for reviewing and directing inspection duties of all project inspectors. The Senior Inspector shall be capable of surveying and drafting, as they apply to documenting and inspection, of a construction project. The Senior Inspector shall report directly to Project Manager.

**LEVEL II INSPECTOR:**

**Minimum Qualifications:**

- Five years of experience in construction inspection, surveying or highway materials testing and inspection or a Bachelor of Science degree in Civil Engineering with one year of experience in construction inspection, surveying or materials testing and inspection. One or

more of the following certifications as necessary and approved by The City of Foley.

Inspectors who are to perform a specific task shall be certified in said field.

- Certified Asphalt Technician Level I – Field Tester
- Certified Concrete Technician (ACI and ALDOT Certification)
- Certified Asphalt Roadway Technician
- Work Zone Safety Certification
- Radiological Safety Course Certification
- Qualified Credentialed Inspector (QCI)

**Job Description:**

This is skilled sub-professional engineering work in the field or office. Employees in said class shall follow standard procedures in documenting construction projects and inspecting job activities to verify they are in compliance with project plans and specifications. The inspector shall be responsible for completing a daily report documenting labor and equipment used by contractor to include a description of work performed and any pertinent conversations with the contractor. The inspector will assist with office work such as plotting cross-sections and computing earthwork quantities.

The inspector shall report directly to Senior Inspector and/or Project Manager.

**LEVEL I INSPECTOR:**

**Minimum Qualifications:**

- Some experience in construction inspection, surveying or highway materials testing and inspection is preferred. One or more of the following certifications as necessary and approved by The City of Foley. Inspectors who are to perform a specific task shall be certified in that particular field.
- Certified Asphalt Technician Level I – Field Tester
- Certified Concrete Technician (ACI and ALDOT Certification)
- Certified Asphalt Roadway Technician
- Work Zone Safety Certification

- Radiological Safety Course Certification
- Qualified Credentialed Inspector (QCI)

Job Description:

This is sub-professional engineering work in the field or office. Employees in said class shall follow standard procedures in documenting construction projects and inspecting job activities to verify they are in compliance with project plans and specifications. The inspector shall be responsible for completing a daily report documenting labor and equipment used by contractor to include a description of work performed and any pertinent conversations with contractor. The inspector shall assist with office work such as plotting cross-sections and computing earthwork quantities.

The inspector shall report directly to Senior Inspector and/or Project Manager.

ADMINISTRATIVE ASSISTANT

Minimum Qualifications:

- A high school diploma or a GED certificate.

Job Description:

Employees in this class may perform a variety of clerical duties. These duties may include data entry, filing documents, sorting mail, typing documents, taking dictation, proofreading documents, making copies, greeting and directing the public, taking telephone messages, posting records, or making simple calculations.

PROFESSIONAL CIVIL ENGINEER

Minimum Qualifications:

- Must possess a Professional Engineer's License as issued by the Alabama State Board of Licensure for Professional Engineers and Land Surveyors and must have at least one year of professional civil engineering experience.
- Qualified Credentialed Inspector (QCI)

Job Description:

This is advanced professional work in the field of civil engineering. Employees in said class perform a variety of complex engineering duties associated with planning, geodetic surveys, location, design, construction or maintenance of roads, bridges, buildings, or other civil engineering projects.

#### TARGET PERSON

##### Minimum Qualifications:

- Six months experience in surveying.

##### Job Description:

This is sub-professional work in the field or office. Employees in said class follow standard procedures in carrying out field or office assignments related to surveying for construction projects. Limited instrument use for construction and right-of-way stakeout, obtaining quantity cross-sections, spot checking location and elevation of different construction activities such as form work, setting of girders, pipe grades and blue top elevations as well as cutting line constitute the main activities.

#### INSTRUMENT PERSON

##### Minimum Qualifications:

- Two years' experience in surveying.

##### Job Description:

This is skilled sub-professional surveying work in the field or office. Employees in said class follow standard procedures in carrying out field or office assignments related to surveying for construction projects. Employees in said class may be in charge of checking of contractor's work, obtaining quantity cross-sections, and staking right-of-way. Said employee must be able to operate several types of surveying equipment. The ability to read/comprehend contract plans, take and reduce field notes and complete daily reports is essential. The position shall report directly to Field Supervisor or Project Manager.

#### FIELD SUPERVISOR

##### Minimum Qualifications:

- Four years experience in surveying with at least one year of experience as a construction survey party chief.

**Job Description:**

This is supervisory and technical surveying work in the field or office. Employees in said class are in charge of making daily work assignments, interpreting and reading construction plans, and directing surveying activities involved with checking contractor's work, obtaining quantity cross-sections, and staking right-of-way. Work is performed with considerable independence, but is reviewed for conformance with established policies, procedures, and applicable State laws. The ability to calculate horizontal and vertical positions as well as quantities for payment, communicate in writing and orally, and instruct personnel in the use of equipment is essential. Said position shall report directly to Project Manager or Professional Land Surveyor

**PROFESSIONAL LAND SURVEYOR**

**Minimum Qualifications:**

- Must possess a Professional Land Surveyor's License as issued by the Alabama State Board of Licensure for Professional Engineers and Land Surveyors and have at least one year of experience as a Professional Land Surveyor.

**Job Description:**

This is supervisory professional surveying work in the field or office as required by Alabama State Law. Employees in said class shall insure compliance to standards of practice for surveying in the State of Alabama and conformance with established policies and procedures for surveys which involve the staking of right-of-way.

**C. STAFFING:**

The City of Foley shall determine number and type of personnel needed to adequately staff and carry out responsibilities of said scope of service. The qualifications of each person proposed for assignment must be reviewed and approved in writing by The City of Foley. An individual previously approved whose performance is later determined by The City of Foley to be unsatisfactory shall be immediately removed and replaced by the CONSULTANT within one

week after notification. The CONSULTANT shall maintain an appropriate staff, as approved by The City of Foley, after completion of construction to complete the final estimate. Qualified personnel, thoroughly familiar with all aspects of construction and final measurements of various pay items, shall be available to resolve disputed final pay quantities until appropriate contract is finalized.

As Contractor's operations on a contract diminish, the CONSULTANT shall reduce number of personnel assigned to said project as appropriate. Any adjustment of the CONSULTANT forces as directed by The City of Foley shall be accomplished within one week after notification. The CONSULTANT shall, at all times, provide project personnel to ensure proper staffing is maintained. Personnel on a specific project shall be rotated to keep overtime to a minimum. The Project Manager shall be responsible to schedule the CONSULTANT employee work hours to avoid overtime. This shall include varying employee work hours, or the use of shift work, or rescheduling employee normal work hours in advance of expected overtime. The method of schedule modification shall be approved by The City of Foley. If overtime is not held to a minimum, then SECTION 1, 7.0 (Cooperation and Performance of the CONSULTANT) of this AGREEMENT shall be enforced to replace personnel. If construction contract is suspended, the CONSULTANT'S forces shall be adjusted at the direction of The City of Foley to correspond with type of suspension. In the event of a construction contract suspension which requires the removal of CONSULTANT forces from project, the CONSULTANT shall be allowed up to a maximum of five (5) days to demobilize, relocate or terminate such forces.

Should The City of Foley determine a need for additional classifications not set forth in this AGREEMENT, the classifications and hourly pay ranges shall be established based on mutual AGREEMENT with the CONSULTANT.

D. CERTIFICATION - Licensing for Equipment and Personnel:

The CONSULTANT shall be responsible for obtaining proper certification and licenses for equipment and personnel used on any project. Licensing of nuclear testing devices shall be obtained through the appropriate agencies. Only technicians approved by the STATE shall be authorized to operate nuclear testing devices. The CONSULTANT shall be responsible for

monitoring activity (i.e. film badges/radiation levels) of their technicians who operate nuclear testing devices. Other certifications for technicians such as concrete, Asphalt Roadway, Asphalt Plant, American Traffic Safety Services Association (ATSSA) Worksite Supervisors and others if applicable shall be required. Construction Inspectors work qualifications shall be as shown in SECTION 1, Paragraph 9.0 B of this AGREEMENT.

8.0 SUBCONSULTANT SERVICES:

Upon written approval of The City of Foley and prior to performance of work, the CONSULTANT may subcontract for engineering surveys, materials testing, or specialized professional services. The City of Foley shall verify qualifications of personnel used by sub-consultant.

9.0 OTHER SERVICES:

The CONSULTANT shall, upon written authorization by The City of Foley, perform any additional services not otherwise identified in this AGREEMENT as may be required by The City of Foley in connection with said Project(s).

10.0 CLAIMS REVIEW:

In the event Contractor for said project submits a claim for additional compensation and/or time after the CONSULTANT has completed this AGREEMENT, the CONSULTANT shall, by written request from The City of Foley, analyze the claim, prepare a recommendation to The City of Foley covering validity and reasonableness of charges and/or assist in negotiations leading to settlement of said claim. Compensation for these services shall be mutually agreed between The City of Foley and the CONSULTANT prior to performance of said Services.

A. The CONSULTANT shall, upon written request by The City of Foley, assist appropriate The City of Foley Officers in preparing for arbitration hearings or litigation that occur after the CONSULTANT'S contract time in connection with the project covered by this AGREEMENT.

The CONSULTANT shall, upon written request by The City of Foley, provide qualified Engineers and/or Engineering Technicians to serve as engineering witnesses, provide exhibits, and otherwise assist The City of Foley in any litigation or hearings in connection with said construction contract(s).

### ARTICLE III – PAYMENT

#### SECTION 1

Overhead shall be limited to the actual audited overhead rates. Increases in billable overhead and labor additives shall be limited to a maximum of five (5) percentage points. Profit shall be maintained at ten (10) percent of these costs. When The City of Foley requires the CONSULTANT to stay overnight at a project, the CONSULTANT shall be reimbursed for actual expenses up to the maximum allowable by State Law. Employees whose vehicles are used for work-related mileage (excluding mileage for commuting) shall be compensated at the prevailing Federal mileage rate as approved by the General Services Administration. Out-of-pocket expenses, not to exceed \$100.00, shall be paid as direct cost plus ten (10) percent. Purchases over \$100.00 shall require written authorization from appropriate Division.

For performance by the CONSULTANT of services provided for in this AGREEMENT, and as full and complete compensation therefore, including all approved expenditures and expenses incurred by the CONSULTANT in connection with this AGREEMENT, and subject to conformity with all provisions of this AGREEMENT, The City of Foley shall pay the CONSULTANT as follows:

- A. The total compensation to the CONSULTANT for work provided for when performed under this AGREEMENT will be as follows:
1. Direct salary and wages – Actual salary and wages paid personnel while actually engaged in performance of work, all as determined by Finance Director of the Alabama Department of Transportation. Listed below are labor rate ranges for the CONSULTANT’S personnel that may be working on various projects under this AGREEMENT.

<u>CLASSIFICATION</u>	<u>HOURLY PAY RANGES</u>
Professional Civil Engineer	\$28.00 to \$43.00
Project Manager	\$21.00 to \$37.00
Senior Inspector	\$17.00 to \$29.00
Level II Inspector	\$13.00 to \$24.00
Level I Inspector	\$12.00 to \$19.00

Professional Land Surveyor	\$20.00 to \$37.00
Field Supervisor	\$17.00 to \$29.00
Instrument Person	\$13.00 to \$23.00
Target Person	\$12.00 to \$19.00
Administrative Assistant	\$10.00 to \$19.00

2. All other related direct actual costs paid by the CONSULTANT, applicable to this AGREEMENT, such as printing and reproduction, and subsistence of personnel engaged on project at rates payable under state law, and for those supplies, communication equipment, etc. not included in the overhead rate. Vehicles reimbursed for work-related mileage (excluding mileage for commuting) at the prevailing Federal mileage rate as approved by the General Services Administration.
3. The CONSULTANT'S fees charged for this Project shall be based on field office overhead and labor additive rate, which is 156.22% as determined by the STATE'S Bureau of Finance and Audits, External Audit Section, shall be applied to direct salary and wages (See attached Audit Letter – attached as Exhibit L). Any sub-consultant's overhead and labor additive rate shall not exceed prime consultant's rate. The CONSULTANT'S billable overhead and labor additive rate can only increase to a maximum of five (5) percentage points per year during the life of this AGREEMENT.
4. The STATE'S Bureau of Finance and Audits, External Audit Section shall be furnished a Financial Statement Audit that is in compliance with Generally Accepted Accounting Principles and an audited Statement of Indirect Cost developed in compliance with the Contract Cost Principles and Procedures stated in Volume 1, Federal Acquisition Regulations, Part 31, and the audit standards contained in the Government Auditing Standards issued by the Comptroller General of the United States by the end of the fifth month after the closing of the CONSULTANT'S fiscal year.
5. Any paid overtime shall require prior authorization from The City of Foley. Billable overtime is all time worked over Forty Hours each week or holidays observed by the CONSULTANT.
  - a. The hourly overtime rate shall be 1.5 times the hourly billable rate.

- b. Hours worked on holidays observed by the CONSULTANT shall be billable at an hourly rate of 2 times the hourly billable rate. Billable holiday work shall require prior approval by The City of Foley.
- 6. The estimated amount payable, to the CONSULTANT for work provided for under this AGREEMENT, is **\$47,791.43** for this Project.

## **SECTION 2**

- A. Certified copies of daily payrolls for personnel actively engaged on work included in this specific Rate of Pay AGREEMENT shall be furnished monthly.
- B. Payments to the CONSULTANT shall be made not more often than monthly. Payment shall be subject to submission by the CONSULTANT of such vouchers or invoices, daily progress reports and such evidence of performance The City of Foley may deem necessary. The original invoice and (3) three copies shall be submitted by the CONSULTANT to The City of Foley for review, approval and for payment.
- C. The CONSULTANT shall correlate and coordinate accounting of CONSULTANT to comply with current audit system of the STATE and applicable Federal Acquisition Regulations. Since this is a cost reimbursable type of AGREEMENT, all direct job costs, and labor costs charged to said project shall be the actual rate of pay at the time work is performed and shall be subjected to audit by the STATE.

## **SECTION 3**

The acceptance by the CONSULTANT of the final payment shall constitute and operate as a release to The City of Foley of all claims and of any and all liability of The City of Foley to the CONSULTANT, its representatives and/or assigns for payment for all things done, furnished or relating to services rendered by the CONSULTANT under, or in connection with this AGREEMENT, or any part thereof, provided that no unpaid invoices exist because of extra work required at the request of The City of Foley.

## **SECTION 4**

During the period of this AGREEMENT, the CONSULTANT shall not be employed and CONSULTANT'S employees shall not be employed by construction contractors performing work on state or federal-aid projects on which the CONSULTANT is assigned without approval in writing by the STATE.

## **SECTION 5**

The work to be performed under this AGREEMENT shall not include any work payable to the CONSULTANT under any other AGREEMENT(S) with The City of Foley in effect at the time work is performed.

### **ARTICLE IV – MISCELLANEOUS PROVISIONS**

Exhibits A, C, D, E, F, G, H, H-1, I, K, L, M, and N attached hereto, are made a part of this AGREEMENT and the terms and provisions of such exhibits are binding on the parties respectively as fully and completely as they would bind the parties if such terms and provisions were set forth in writing in the AGREEMENT.

The CONSULTANT agrees to abide by the “ALDOT Principles of Business Conduct”.

In WITNESS WHEREOF, the Parties hereto have caused this AGREEMENT to be executed by those officers, officials and persons thereunto duly authorized, and this AGREEMENT is deemed to be effective on the date of approval by the Legislative Contract Review Oversight Committee and approval of the Governor of Alabama.

**ATTEST:**

**THOMPSON ENGINEERING, INC.**



By: \_\_\_\_\_

By: \_\_\_\_\_

**The City of Foley**

By: \_\_\_\_\_

CONSULTANT 4/14/81  
REVISED 3/9/01  
REVISED 3/21/07

EXHIBIT A

**Participation by Disadvantaged Business Enterprises in Federal-Aid Program**

Policy. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.

DBE Obligation. The recipient of funds under the terms of this AGREEMENT agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 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, such recipient shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. Department of Transportation assisted contracts.

Failure of the recipient of funds under the terms of this agreement, or failure of its subcontractor (if a subcontractor is authorized) to carry out the DBE requirements of this agreement shall constitute a breach of contract, and may result in termination of the contract by the STATE, or such other remedy may be undertaken by the STATE as it deems appropriate.

The parties agree to fully comply with the energy conservation plan of the State of Alabama issued in compliance with the Federal Energy Policy and Conservation Act (Public Law 94-163) where applicable to the parties and, in addition;

In the event the payment to CONSULTANT under the terms of this AGREEMENT exceeds the sum of \$100,000.00, the CONSULTANT agrees to comply fully and completely with the applicable standards, orders and requirements issued under the following laws, orders and regulations:

- a. Section 306 of the Federal Clean Air Act (42 U.S.C. 1857(h), as amended by 42 U.S.C. 7401 et seq.).
- b. Section 508 of the Federal Clean Water Act (33 U.S.C. 1368).
- c. Executive Order 11738 (Federal).
- d. Environmental Protection Agency Regulations (40 CFR Part 15).

It is understood and agreed that the STATE will report in writing to the Federal Highway Administration and to the Assistant Administrator for enforcement of the United States Environmental Protection Agency, violation on the part of the CONSULTANT, immediately upon concurrence of any such violation or any provision of the foregoing laws, orders and regulations applicable to CONSULTANT.

### **CHANGES OF WORK**

- a. If during the term of this AGREEMENT additional services are required other than those services specified in this AGREEMENT, or major changes in the work become necessary or desirable, the STATE may, in writing, order the CONSULTANT to perform such services or make such changes, or if the CONSULTANT is of the opinion that the work he was directed to perform is beyond the scope of this AGREEMENT and constitutes extra work, the CONSULTANT shall promptly notify the STATE in writing of such fact and receive written approval from the STATE prior to performing such work. The terms "in writing" and "written approval" may be in the form of normal correspondence such as letters, or written conference notes approved by the CONSULTANT and the STATE. In the event that the STATE determines that such work does constitute extra work, additional terms for completion of contract shall be given and payment for the extra work will be negotiated by supplemental AGREEMENT. Any extra work and/or payment for extra work must have the approval of the Federal Highway Administration before such work is undertaken if Federal funds are to be utilized in payment for such work.
- b. During the term of this AGREEMENT any service in the AGREEMENT may be deleted and reduced at the discretion of the STATE. If such deletion or reduction becomes desirable, the CONSULTANT will be given advance notice and an equitable reduction in the CONSULTANT'S fee will be made on a proportionate basis.

### **DELAYS AND EXTENSIONS - TIME PERIOD OF AGREEMENT**

In the event that additional work or unavoidable delays prevent completion of the services to be performed under this AGREEMENT in the time specified in this AGREEMENT, the STATE may grant a time extension to any or all phases of the work provided written application is made by the CONSULTANT within ten (10) days after the alleged delay has occurred. Any time extension for extra work authorized will be based on the ratio that the additional compensation bears to the original fee and time limit. In the event the STATE determines the time provided for in the AGREEMENT for the completion of work is not sufficient for completion of the work, in keeping with generally acceptable work practices for accomplishment of the work involved, the STATE may, at the sole option of the STATE, in writing directed to the CONSULTANT, extend the AGREEMENT for such time period, or periods of time from time to time thereafter as the STATE deems necessary for work completion. Writing directed from the STATE to the CONSULTANT extending the AGREEMENT will be conclusive of the fact that the STATE has made the determination of insufficiency of time as above provided.

**CONFERENCES, VISITS TO SITE, INSPECTION OF WORK**

- a. The parties agree that conferences will be held at the request of STATE representatives, the Federal Highway Administration or the CONSULTANT to discuss matters pertinent to any phase of this project. STATE or FHWA representatives may visit the CONSULTANT'S office during normal working hours where the work is being performed at any time with or without advance notice to the CONSULTANT. The CONSULTANT agrees to coordinate the work with the STATE throughout all areas and stages of work as it progresses, assuring that it proceeds expeditiously and is accomplished in an orderly and timely fashion.
- b. The CONSULTANT, when so directed by the STATE, agrees to confer with local public agencies, including planning authorities, giving consideration to suggestions and plans of such agencies.

**TERMINATION OR ABANDONMENT**

- a. The STATE shall have the absolute right to abandon the work or to amend its project at any time, and such action on its part shall in no event be deemed a breach of contract.
- b. The STATE has the right to terminate this AGREEMENT at its sole discretion without cause and make settlement with the CONSULTANT upon an equitable basis. The value of the work performed by the CONSULTANT prior to the termination of this AGREEMENT shall be determined. In determining the value of the work performed, the STATE shall consider the following:
  - (1) The ratio of the amount of work performed by the CONSULTANT prior to the termination of the AGREEMENT to the total amount of work contemplated by this AGREEMENT less any payments previously made.
  - (2) The amount of the expense to which the CONSULTANT is put in performing the work to be terminated in proportion to the amount of expense to which the CONSULTANT would have been put had he been allowed to complete the total work contemplated by the AGREEMENT, less any payments previously made. In determining the value of the work performed by the CONSULTANT prior to the termination, no consideration will be given to profit, which the CONSULTANT might have made on the uncompleted portion of the work. If the termination is brought about as a result of unsatisfactory performance on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be fixed solely on the ratio of the amount of such work to the total amount of work contemplated by this AGREEMENT.

**CONTROVERSY**

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive of all parties.

**CONTRACT BINDING ON SUCCESSORS AND ASSIGNS**

- a. This contract shall be binding upon the successors and assigns of the respective parties hereto.
- b. Should the AGREEMENT be terminated due to default by CONSULTANT, such termination shall be accordance with Federal Acquisition Regulations applicable.

CONSULTANT 4/14/81  
REVISED 4/2/92  
REVISED 4/22/94  
REVISED 2/4/98  
REVISED 7/24/01  
REVISED 10/18/01  
REVISED 9/22/05

EXHIBIT F

**RESPONSIBILITY FOR CLAIMS AND LIABILITY**

The CONSULTANT shall be responsible for all damage to life and property due to activities of the CONSULTANT and the subconsultant, agents or employees of CONSULTANT in connection with their service under this AGREEMENT. The CONSULTANT specifically agrees that the subcontractors, agents, or employees of CONSULTANT shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform. Further, the CONSULTANT shall defend, indemnify and hold harmless the STATE of Alabama, the Alabama Department of Transportation, its officials and employees, both in their official and individual capacities, and their agents and servants from and against all claims, damages, losses and expenses or allegations thereof, including but not limited to reasonable attorneys' fees, arising out of or resulting from faults, errors, mistakes, omissions, malfeasance, misfeasance, misconduct or negligent acts or omissions of the CONSULTANT in connection with their service under this agreement. Such indemnity shall not be limited by reason of any insurance coverage provided.

**INSURANCE**

General Liability, public liability, professional liability and property damage insurance in the amount of \$1,000,000 shall be carried by the CONSULTANT in a policy, or policies, which shall specifically cover the above areas, as well as motor vehicle liability in the amount of \$250,000 without expense to the STATE. Proof of insurance coverage shall be provided annually in a form as required by the STATE. The STATE shall be made, and shown as, an additional insured on the face of the insurance.

**GENERAL COMPLIANCE WITH LAWS**

The CONSULTANT shall comply with the provisions of the labor law and state laws and federal and local statutes, ordinances and regulations that are applicable to the performance of this AGREEMENT, and procure all necessary licenses and permits.

**SUBLETTING, ASSIGNMENT, OR TRANSFER**

There shall be no assignment, subletting or transfer of the work or interests of the CONSULTANT in any of the work covered by this AGREEMENT without the written consent of the STATE. In the event the STATE gives such consent, the terms and conditions of this AGREEMENT shall apply to and bind the party or parties to whom such work or interest is assigned, sublet or transferred to as fully and completely as the CONSULTANT is hereby bound and obligated, and the CONSULTANT agrees to so bind any party or parties to which the work or interests of CONSULTANT are so assigned, sublet, or transferred.

CONSULTANT 4/14/81  
REVISED 7/14/81  
REVISED 8/5/81  
REVISED 7/24/01  
REVISED 10/18/01  
REVISED 6/13/07

EXHIBIT G  
Page 1

**EMPLOYMENT OF STATE, COUNTY, OR CITY WORKERS**

Unless specific written approval is granted by the STATE, the CONSULTANT agrees that CONSULTANT will not engage, on full or part-time or other basis during the period of the AGREEMENT, any professional or technical personnel, who are or have been at any time during the period of the AGREEMENT, in the employ of any highway organization in Alabama, either State, County, or City, except regularly retired employees.

**SOLICITING OF AGREEMENT**

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

**CONSULTANT'S RESPONSIBILITY**

The CONSULTANT agrees to endorse the original title or cover sheet or all sets of plans, estimates, reports and engineering data required to be furnished by CONSULTANT under the terms of this AGREEMENT. The CONSULTANT agrees to certify to the STATE as to the accuracy of the design and plans stating that checks of (1) design calculations and (2) details and drafting of plans have been made by competent engineers of CONSULTANT'S organization. The CONSULTANT hereby assumes responsibility for any design errors found during the preparation of contract plans, which are attributable to the work, called for by this AGREEMENT.

At all times from the execution of this AGREEMENT until its termination, CONSULTANT shall possess all appropriate professional or other required or necessary certifications for itself and/or all staff, as the case may be. If at any time during the term of this AGREEMENT, any said certification shall become inactive, expire, be suspended, or CONSULTANT become ineligible therefore, either through its corporate entity or entities, including parent(s) and subsidiary (ies), or through its employees, servants, or agents, CONSULTANT shall not be permitted to continue any work contemplated under this AGREEMENT and not be paid for work performed during said times while any certification was not active and current. In addition, CONSULTANT shall be liable in all respects for all matters required of CONSULTANT under the terms of this AGREEMENT regardless of whether or not ALDOT discovers or is aware of the same.

CONSULTANT 4/14/81  
REVISED 7/14/81  
REVISED 8/5/81  
REVISED 7/24/01  
REVISED 10/18/01  
REVISED 9/29/06

EXHIBIT G  
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All reports, drawings, studies, maps, or any other documents of any nature whatsoever prepared by or for the CONSULTANT shall be made available to ALDOT for inspection and review at a reasonable time(s) and place(s) as designated by ALDOT. Provision of all reports, drawings, studies, maps, or any other documents of any nature whatsoever to ALDOT shall not in any way relieve the CONSULTANT of any of its duties or responsibilities for any and all aspects of work provided therein or thereby. Authorized representatives of the FHWA may also review and inspect said reports, drawings, studies, maps, or other documents of any nature whatsoever prepared under this AGREEMENT should funds of the United States of America be in any way utilized in payment for the same. Instructions, suggestions, modifications, or comments communicated by ALDOT regarding the work to be performed under this AGREEMENT at any time during the term of this AGREEMENT to CONSULTANT does not relieve CONSULTANT of its duties or responsibilities or the engineering or quality thereof for any and all aspects of work under this AGREEMENT. CONSULTANT shall confirm in writing receipt of any such communication. CONSULTANT shall be responsible for any ALDOT cost incurred in any work or service under this AGREEMENT due to CONSULTANT'S conduct as provided in Exhibit F.

Acceptance by ALDOT of any work performed by CONSULTANT shall not relieve CONSULTANT of its duties, responsibilities or professional or other obligations to correct deficiencies in its work, at its sole and complete expense, without recourse, any responsibility as provided in Exhibit F.

The CONSULTANT shall be liable and responsible for contractor claims as provided in Exhibit F. For contractor claims against the STATE, the CONSULTANT shall attend, participate and defend the claim in the claims review process. Claims determined to be caused by the CONSULTANT as provided in Exhibit F shall be paid by the CONSULTANT.

**MAINTENANCE OF RECORDS**

It is agreed that the CONSULTANT and the subcontractors of CONSULTANT shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred for this project and to make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment of funds under the contract, for inspection by the STATE and FHWA and copies thereof shall be furnished if requested.

**OWNERSHIP OF ENGINEERING DOCUMENTS**

- a. Upon completion or termination of the work covered by this AGREEMENT, the CONSULTANT shall deliver to the STATE upon STATE'S request all survey notes, computations, tracings and all other documents and data pertaining to the work or to the project, which material shall become the property of the STATE. All completed original tracings of maps and other engineering data furnished to the STATE by the CONSULTANT shall bear thereon the endorsement of the CONSULTANT.
- b. The STATE shall in no way be limited in its subsequent use of the designs or ideas incorporated in the work for the preparation of contract plans and documents. The STATE, insofar as it has the right, releases the CONSULTANT from liability, resulting from use by the STATE of such designs or ideas on work other than that covered in this AGREEMENT.

## **EQUAL RIGHTS PROVISIONS**

During the performance of this contract, the CONSULTANT for itself, its assignees and successors in interest agrees as follows:

**a. Compliance with Regulations**

The CONSULTANT will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assigned programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, as amended by 23 CFR 710-405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

**b. Nondiscrimination**

The CONSULTANT, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, religion, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices where the contract covers a program set forth in Appendix B of the Regulations.

The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

**c. Solicitations**

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, supplier or lessor shall be notified by the CONSULTANT of the CONSULTANT'S obligation under this contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex or national origin.

**d. Information and Reports**

The CONSULTANT will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the STATE or the Federal Highway Administration 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 the STATE, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

**e. Sanctions for Noncompliance**

In the event of the CONSULTANT'S noncompliance with the nondiscrimination provisions provided for herein, the STATE shall impose such contract sanctions as it may determine to be appropriate, including but not limited to,

1. withholding of payments to the CONSULTANT under contract until the CONSULTANT complies, and/or
2. cancellation, termination or suspension of the contract, in whole or in part.

**f. Incorporation of Provisions**

The CONSULTANT will include the foregoing provisions a. through f. in every subcontract, including procurements of materials and leases of equipment, unless except by the Regulations, orders or instructions issued pursuant thereto. The CONSULTANT will take such action with respect to any subcontract, procurement, or lease as the STATE 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 subcontractors, suppliers, or lessor as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interest of the STATE.

**COST PRINCIPLES**

The STATE'S cost principles for use in determining the allowability of any item of cost, both direct and indirect, in this AGREEMENT, shall be the applicable provisions of Volume I, Federal Acquisition Regulations, Parts 30 and 31. The CONSULTANT shall maintain costs and supporting documentation in accordance with the Federal Acquisition Regulations, Parts 30 and 31 and other Regulations referenced with these Parts where applicable. The CONSULTANT shall gain an understanding of these documents and regulations. The applicable provisions of the above referenced regulations documents are hereby incorporated by reference herein as if fully set forth.

**EXECUTORY CLAUSE AND NON-MERIT SYSTEM STATUS**

- a. The CONSULTANT specifically agrees that this AGREEMENT shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the STATE beyond the moneys available for this purpose.

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REVISED 3/17/82  
REVISED 5/5/82  
REVISED 10/13/87  
REVISED 5/12/89  
REVISED 4/9/04

EXHIBIT H  
Page 3

- b. The CONSULTANT, in accordance with the status of CONSULTANT as an independent contractor, covenants and agrees that the conduct of CONSULTANT will be consistent with such status, that CONSULTANT will neither hold CONSULTANT out as, or claim to be, an officer or employee of the STATE by reason hereof, and that CONSULTANT will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE under the merit system or any other law of Alabama, including but not limited to workmen's compensation coverage, or retirement membership or credit or any Federal employment law. This paragraph b. also applies in like manner to the employees of CONSULTANT.

### **CONSULTANTS' CERTIFICATIONS**

The CONSULTANT by acceptance of this contract certifies that the rates or composition of cost noted in Article IV - PAYMENTS are based on the current actual hourly rates paid to employees, estimated non salary direct cost based on historical prices, the latest available audited indirect cost rate, and estimated cost of reimbursements to employees for travel (mileage, per diem, and meal allowance) based on the current policy of the CONSULTANT. The CONSULTANT agrees that mileage reimbursements for use of company vehicles is based on the lesser of the approved rate allowed by the General Services Administration of the United States Government or the reimbursement policies of the CONSULTANT at the time of execution of the AGREEMENT. The CONSULTANT agrees that no mileage reimbursement will be allowed for the purpose of commuting to and from work or for personal use of a vehicle. The CONSULTANT agrees that the per diem rate will be limited to the rate allowed by the STATE at the time of execution of the AGREEMENT. The CONSULTANT agrees that a meal allowance shall be limited to CONSULTANT employees while in travel status only and only when used in lieu of a per diem rate.

The CONSULTANT shall submit detailed certified labor rates as requested, and in a timely manner, to the External Audits Section of the Finance and Audits Bureau of The Alabama Department of Transportation. The CONSULTANT agrees that material differences between rates submitted with a proposal and rates provided as certified for the same proposal are subject to adjustment and reimbursement.

CONSULTANT 11/12/81  
REVISED 7/24/01  
REVISED 10/18/01

EXHIBIT I

**FAILURE TO COMPLETE AGREEMENT WITHIN AGREED UPON TIME**

The CONSULTANT, by execution of the AGREEMENT, agrees that the work described within the AGREEMENT will be completed in accordance with the time specified in the AGREEMENT and in the event the CONSULTANT does not complete the work on time, with the exception of any delays that are not within its control, the CONSULTANT shall pay for all costs of the STATE attributable to, arising or resulting from, the CONSULTANT'S delay. In addition, the STATE will have the absolute right to eliminate the CONSULTANT for consideration of any future work.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND  
OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS**

A. Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

Instructions for Certification

By signing and submitting this AGREEMENT, the prospective primary participant is providing the certification set out below.

The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

The prospective primary participant shall provide immediate written notice to the department or agency to whom this AGREEMENT is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this AGREEMENT is being submitted for assistance in obtaining a copy of those regulations.

The prospective primary participant agrees by submitting this AGREEMENT that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

The prospective primary participant further agrees by submitting this AGREEMENT that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to check the Nonprocurement List.

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

Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in the preceding paragraph of this certification; and

Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this AGREEMENT.

B. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

Instructions for Certification

By signing and submitting this AGREEMENT, the prospective lower tier participant is providing the certification set out below.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

The prospective lower tier participant shall provide immediate written notice to the person to which this AGREEMENT is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this AGREEMENT is submitted for assistance in obtaining a copy of those regulations.

The prospective lower tier participant agrees by submitting this AGREEMENT that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction, with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

The prospective lower tier participant further agrees by submitting this AGREEMENT that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

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

Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-  
Lower Tier Covered Transactions**

The prospective lower tier participant certifies, by submission of this AGREEMENT, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal Department or agency.

When the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this AGREEMENT.

(Exceptions to the above are to be submitted on a  
separate sheet.)

For any exception noted, indicate to whom it applies, initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

By executing the AGREEMENT to which this Exhibit K is attached, I further certify that I am the proper authorized individual or corporate official, as applicable, to make this certification and that the above and foregoing statements are true and correct and that by signing this certification I am also agreeing on behalf of the contractor in whose name the agreement is made, whether individual, partnership or corporation as might be applicable, that this Exhibit K is a part of the agreement to which it is attached.

**PARTICIPATION BY FOREIGN CONSULTANTS**  
**AND SUBCONSULTANTS**

In accordance with Section 109 of Public Law 100-202 enacted on December 22, 1987, the State, acting by and through its Department of Transportation, will not consider for award any bid proposals submitted by any consultant, and will not consent to subletting any portions of the contract to any subconsultant, of a foreign country during any period in which foreign country is listed by the United States Trade Representative as discriminating against U.S. firms in conducting procurements for public works projects.

Unless otherwise noted by the United States Trade Representative, the country of Japan shall be deemed to be listed as discriminating against U.S. firms in conducting procurements for public works projects.

For the purpose of the foregoing provisions of this Exhibit L, any consultant or subconsultant who is a citizen or national of a foreign country or is controlled directly or indirectly by citizens or nationals of a foreign country shall be considered to be a consultant or subconsultant or such foreign country.

**CERTIFICATION FOR FEDERAL-AID CONTRACTS**

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, 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 Federal 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, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

**FUNDS SHALL NOT BE CONSTITUTED AS A DEBT**

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General's Office of Administrative hearings or where appropriate, private mediators.

**TERMINATION DUE TO INSUFFICIENT FUNDS**

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.
- b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.