



City of Jonesboro

300 S. Church Street
Jonesboro, AR 72401

Meeting Agenda Finance & Administration Council Committee

Tuesday, May 20, 2014

4:40 PM

Municipal Center

Special Called Meeting

1. Call To Order

2. Roll Call by City Clerk Donna Jackson

3. New Business

Resolutions To Be Introduced

RES-14:061

A RESOLUTION BY THE CITY OF JONESBORO TO ENTER INTO AN AGREEMENT WITH ETC INSTITUTE ON BEHALF OF THE JONESBORO METROPOLITAN PLANNING ORGANIZATION TO CONDUCT A SURVEY (OPINION POLL) OF RESIDENTS OF THE JONESBORO MPO PLANNING AREA

Sponsors: MPO

Attachments: [Agreement](#)

4. Public Comments

5. Adjournment



Legislation Details (With Text)

File #:	RES-14:061	Version:	1	Name:	Agreement with ETC Institute to conduct a survey
Type:	Resolution	Status:		Status:	To Be Introduced
File created:	5/12/2014	In control:		In control:	Finance & Administration Council Committee
On agenda:		Final action:		Final action:	
Title:	A RESOLUTION BY THE CITY OF JONESBORO TO ENTER INTO AN AGREEMENT WITH ETC INSTITUTE ON BEHALF OF THE JONESBORO METROPOLITAN PLANNING ORGANIZATION TO CONDUCT A SURVEY (OPINION POLL) OF RESIDENTS OF THE JONESBORO MPO PLANNING AREA				
Sponsors:	MPO				
Indexes:	Contract				
Code sections:					
Attachments:	Agreement				

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

A RESOLUTION BY THE CITY OF JONESBORO TO ENTER INTO AN AGREEMENT WITH ETC INSTITUTE ON BEHALF OF THE JONESBORO METROPOLITAN PLANNING ORGANIZATION TO CONDUCT A SURVEY (OPINION POLL) OF RESIDENTS OF THE JONESBORO MPO PLANNING AREA

WHEREAS, the Transportation Policy Committee of the Jonesboro Area Transportation Study (JATS) is the officially designated Metropolitan Planning Organization (MPO) for the Jonesboro metropolitan area; and

WHEREAS, pursuant to Resolution 2003-01, the City of Jonesboro is the fiscal agent for the Jonesboro Area Transportation Study; and

WHEREAS, the Jonesboro MPO wishes to enter into an agreement with ETC Institute to conduct a survey (opinion poll) of residents of the Jonesboro MPO Planning Area of their values regarding future transportation needs; and

WHEREAS, the funding for this project shall come from funds allocated in the Jonesboro MPO State Fiscal Year 2014 and State Fiscal Year 2015 Unified Planning Work Program

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF JONESBORO, ARKANSAS THAT:

Section 1: The City of Jonesboro shall enter into an agreement with ETC Institute to conduct a survey (opinion poll) of residents of the Jonesboro MPO Planning Area of their values regarding future transportation needs.

Section 2: The total financial contribution shall come from funds allocated in the State Fiscal Year 2014 and State Fiscal Year 2015 Unified Planning Work Program.

Section 3: The Mayor and City Clerk are hereby authorized by the City Council for the City of Jonesboro to execute all documents necessary to effectuate this agreement.

AGREEMENT
FOR
PROFESSIONAL SERVICES
(LOCAL VERSION – LUMP SUM)

JOB NO. 823-600
FEDERAL AID PROJECT ("FAP") NO. AR-81-X018
JONESBORO MPO PLANNING AREA VALUE SURVEY

PREAMBLE

THIS AGREEMENT, entered into this ____ day of _____, _____, by and between the Jonesboro Metropolitan Planning Organization (MPO) ("Owner"), and ETC Institute ("Consultant"), a corporation existing under the laws of the State of Kansas, with principal offices at 725 W. Frontier Ln, Olathe, KS 66061.

WITNESSETH:

WHEREAS, the Owner is planning to conduct a survey (poll) of residents of the Jonesboro MPO planning area of their values regarding future transportation needs; and,

WHEREAS, the Owner's forces are fully employed on other urgent work that prevents their early assignment to the aforementioned work; and,

WHEREAS, the Consultant's staff is adequate and well qualified, and it has been determined that its current workload will permit completion of the project on schedule.

NOW THEREFORE, it is considered to be in the best public interest for the Owner to obtain the assistance of the Consultant's organization in connection with professional services. In consideration of the faithful performance of each party of the mutual covenants and agreements set forth hereinafter, it is mutually agreed as follows:

1. PRELIMINARY MATTERS

- 1.1. "Consultant's Representative" shall be Elaine Tatham, until written notice is provided to the Owner designating a new representative.
- 1.2. "Contract Ceiling Price." The Contract Ceiling Price for this Agreement is \$15,000. The Contract Ceiling Price is the maximum aggregate amount of all payments that the Owner may become obligated to make under this Agreement. In no event, unless modified in writing, shall total payments by the Owner under this Agreement exceed the Contract Ceiling Price. The Consultant shall not be entitled to receive adjustment, reimbursement, or payment for, nor shall the Owner, its officers, agents, employees, or representatives, incur any liability for, any invoice, fee, or cost exceeding the Contract Ceiling Price.
- 1.3. "Fee" means the compensation Owner will pay to the Consultant under this Agreement. The Fee for this Agreement is \$15,000 which includes compensation for all costs and profit. There shall be no reimbursement of costs incurred by the Consultant in the performance of this Agreement.
- 1.4. "Default" means the failure of the Consultant to perform any of the provisions of this Agreement. *Default includes, but is not limited to, failure to complete phases of the work according to schedule or failure to make progress in the work so as to endanger timely performance of this Agreement, failure to pay subcontractors in a timely manner, failure*

to comply with federal and state laws, and failure to comply with certifications made in or pursuant to this Agreement.

- 1.5. "DOT" means the United States Department of Transportation.
- 1.6. "FAR" means the Federal Acquisition Regulations, codified in 48 C.F.R.
- 1.7. "FHWA" means the Federal Highway Administration.
- 1.8. "Title I Services" are those services provided by the Consultant before the award of the contract for the construction of the Project, consisting primarily of professional services for the Project.
- 1.9. "Title I Services Ceiling Price." The Title I Services Ceiling Price for this Agreement is \$15,000. The Title I Services Ceiling price is the maximum aggregate amount of all payments that the Owner may become obligated to make under this Agreement for fees and costs related to Title I Services. In no event, unless modified in writing, shall total payments by the Owner related to Title I Services exceed the Title I Services Ceiling Price. The Consultant shall not be entitled to receive adjustment, reimbursement, or payment for, nor shall the Owner, its officers, agents, employees, or representatives, incur any liability for, any fee or cost related to, Title I Services exceeding the Title I Services Ceiling Price.
- 1.10. "Title II Services" are those services provided by the Consultant after the award of the contract for the construction of the Project, consisting primarily of professional services during the construction of the Project.
- 1.11. "Title II Services Ceiling Price". The Title II Services Ceiling Price for this Agreement is N/A. The Title II Services Ceiling price is the maximum aggregate amount of all payments that the Owner may become obligated to make under this Agreement for fees and costs related to Title II Services. In no event, unless modified in writing, shall total payments by the Owner related to Title II Services exceed the Title II Services Ceiling Price. The Consultant shall not be entitled to receive adjustment, reimbursement, or payment for, nor shall the Owner, its officers, agents, employees, or representatives, incur any liability for, any fee or cost related to, Title II Services exceeding the Title II Services Ceiling Price.

2. TYPE OF AGREEMENT

- 2.1. This Agreement is a lump-sum contract. The Consultant is being hired to perform professional services in connection with the Project as set forth herein. In consideration for the professional services rendered by the Consultant, the Owner shall pay to the Consultant the Fee as provided herein. The Fee includes compensation for any cost to be incurred by the Consultant and the Consultant shall not be reimbursed for costs incurred. The Consultant shall bear the costs, and resulting risks, of performing this Agreement. The Consultant may only be paid for work actually performed.
- 2.2. The Project to be performed under this Agreement is a federally-assisted project and federal funds will be used, in part, to pay the Consultant. Therefore, notwithstanding any provision of this Agreement, all payments to the Consultant are subject to the requirements and limitations of 48 C.F.R. Part 31, and the Consultant shall certify the accuracy of all invoices and requests for payment, along with supporting documentation and any other information submitted to the Owner with any claim for full or partial payment.

3. COSTS, FEES, AND PAYMENT

- 3.1. *Fees.* The justification for the fees and cost and the use of the lump-sum method of payment is contained in Appendix A, the scope of services, and the description of the project as provided herein. In consideration for the professional services rendered by the Consultant, the Owner shall pay to the Consultant the Fee in the manner provided herein.
- 3.2. *Invoices and Partial Payments.* Payments of the Fee shall be made as follows, unless modified by the written agreement of both parties:
 - 3.2.1. Not more often than once per month, the Consultant shall submit to the Owner, in such form and detail as the Owner may require, an invoice or voucher containing an estimate of the amount and value of the work accomplished under this Agreement for the period of time covered by the invoice.
 - 3.2.2. In making estimates for payment purposes, such estimates shall include only the amount and value of the work accomplished and performed by the Consultant under this Agreement which meets the standards of quality established under this Agreement. The Consultant shall submit with the estimates any supporting data required by the Owner. At a minimum, the supporting data shall include a progress report in the form and number required by the Owner.
 - 3.2.3. Upon approval of the estimate by the Owner, payment upon properly executed vouchers shall be made to the Consultant, as soon as practicable, of 98 percent of the approved amount of the estimated Fee earned, less all previous payments.
- 3.3. *Final payment.*
 - 3.3.1. The Consultant shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than forty-five (45) days (or longer, as the Owner may approve in writing) after the completion date. Upon approval of the completion invoice or voucher, and upon the Consultant's compliance with all terms of this Agreement, the Owner shall promptly pay any balance of that part of the Fee (if any) not previously paid. After the release of said retainage Consultant agrees that it will continue to provide consultation services to the Owner as needed through supplemental agreement(s) with respect to the contracted services under this Agreement until all work is completed under both Title I and Title II.
 - 3.3.2. Before final payment under this Agreement, the Consultant and each assignee whose assignment is in effect at the time of final payment shall execute and deliver a release of all claims discharging the Owner, its officers, agents, and employees from all liabilities, obligations, and claims which were known or could reasonably have been known to exist arising out of or under this Agreement.
 - 3.3.3. Although the Fee is designated as lump sum, if the Agreement is terminated for the convenience of the Owner pursuant to Section 17, Termination, the Consultant shall be paid only for the pro-rata portion of the Fee actually earned for work actually performed. The Owner may make an equitable adjustment pursuant to Section 17.
- 3.4. *Owner's Right to Withhold Payment.* The Owner may withhold payment to such extent as it deems necessary as a result of: (1) third party claims arising out of the services of the Consultant and made against the Owner; (2) evidence of fraud, over-

billing, or overpayment; (3) inclusion of non-allowable costs; (4) failure to make prompt payments to subcontractors in the time provided by this Agreement; (5) payment requests received including fees for unapproved subcontractors; and/or (6) unsatisfactory performance of services. The withholding of payment under this provision shall in no way relieve the Consultant of its obligation to continue to perform its services under this Agreement.

4. RECORDS & AUDITS

- 4.1. *Records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- 4.2. *Examination.* The Consultant shall maintain, and the Owner, the AHTD, and the FHWA, and their authorized representatives shall have the right to examine and audit all records and other evidence sufficient to document all work performed, all costs and fees claimed or anticipated to be incurred and earned during the performance of this Agreement, any request for modification or amendment of this Agreement, and any claim or dispute. This right of examination shall also include examination and audit of any records considered, relied upon, or relating to the determination that a lump sum type of agreement is justified, including any CPA audit. This right of examination shall also include inspection at all reasonable times of the Consultant's offices and facilities, or parts of them, engaged in performing the Agreement.
- 4.3. *Supporting Data.* If the Consultant has been required to submit data in connection with any action relating to this Agreement, including the negotiation of the Fee, request for an adjustment, or assertion of a claim, the Owner, the AHTD, and the FHWA, or their authorized representatives, in order to evaluate the accuracy, completeness, and accuracy of the data, shall have the right to examine and audit all of the Consultant's records, including computations and projections, related to—
- Any proposal for the Agreement, subcontract, or modification;
 - Discussions conducted on the proposal(s), including those related to negotiating;
 - Fees or costs under the Agreement, subcontract, or modification;
 - Performance of the Agreement, subcontract or modification; or,
 - The amount and basis of any claim or dispute.
- 4.4. *Audit.* The Owner, the AHTD, and the FHWA, or their authorized representatives, shall have access to and the right to examine any of the Consultant's records involving transactions related to this Agreement or a subcontract hereunder.
- 4.5. *Reports.* If the Consultant is required to furnish cost, funding, or performance reports, the Owner, the AHTD, and the FHWA, or their authorized representatives shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Consultant's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- 4.6. *Availability.* The Consultant shall retain and make available at its office at all reasonable times the records, materials, and other evidence described in this and Section 27, Disputes and Claims, for examination, audit, or reproduction, until five years

after final payment under this Agreement, or for any longer period required by statute or by other clauses of this Agreement. In addition—

4.6.1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be retained and made available for five years after the termination; and,

4.6.2. Records relating to any claim or dispute, or to litigation or the settlement of claims arising under or relating to this Agreement shall be retained and made available until after any such claims or litigation, including appeals, are finally resolved.

4.7. The Consultant shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

5. DESCRIPTION OF THE PROJECT

ETC Institute will administer a statistically valid random sample of Jonesboro MPO Planning Area residents, to obtain at least 400 completed survey instruments to assist in the development of the metropolitan transportation plan. This plan will focus on the regional transportation needs of the region through the year 2040. The primary objectives for this project are to identify the transportation needs and values among residents in the region, including residents' preferred housing, work, shopping and transportation arrangements. The MPO would also like to understand how the needs and values of residents differ by age and by region.

6. INFORMATION AND TITLE I SERVICES TO BE PROVIDED BY THE CONSULTANT (also outlined in detail in Appendix E of this report)

TASK 1: Initial meeting with MPO staff to review the project's scope and work plan

TASK 2: Develop survey instruments

- o **Deliverable 1:** A copy of the approved survey
- o **Deliverable 2:** An approved survey methodology
- o **Deliverable 3:** Cover letter in both Spanish and English
- o **Deliverable 4:** Sample press releases about the survey

TASK 3: Conduct 400 surveys using a combination mail/phone methodology

- o **Deliverable 5:** Survey mailed to 2,000 residents
- o **Deliverable 6:** Follow-up phone calls to ensure 400 surveys are completed
- o **Deliverable 7:** Raw survey data in spreadsheet
- o **Deliverable 8:** Tables that show the overall results of the survey

TASK 4: Analyze Results and Develop Recommendations

- o **Deliverable 9: Analysis that includes the following:**
 - Crosstabulations of the survey results by age and geographic area

- Tables and charts that show the overall results to the survey
- Up to 15 GIS maps that show selected survey results on maps of the Jonesboro MPO

TASK 5: Review of preliminary findings with Owner, respond to requests for clarification and additional analyses. Prepare a final report summarizing the research methodology, findings, conclusions, and recommendations

- **Deliverable 10:** Ten (10) Copies of a final report containing the following:
 - Executive summary of survey methodology and findings
 - Charts depicting the overall results of the surveys
 - Tabular data that shows the overall results from each surveys along with crosstabulations of the results for selected variables as appropriate
 - A copy of the survey instrument(s)

TASK 6: Make a presentation of the survey results

- **Deliverable Task 11:** An electronic copy of the presentation materials

7. INFORMATION TO BE PROVIDED BY THE OWNER

- Survey content
- Approval of the survey instrument
- Cover letter for the mail version of the survey (sample cover letters will be provided by ETC Institute)
- Appropriate GIS materials (e.g. GIS layers) for the sample design and GIS Mapping
- Requests for sub-analysis of the data as appropriate
- Feedback on the draft and final reports

8. TITLE II SERVICES TO BE PROVIDED BY THE CONSULTANT

NA

9. COORDINATION WITH OWNER

- 9.1. Throughout the Project, the Consultant shall hold conferences as needed at such location as designated by the Owner, with representatives of the Owner, the AHTD, and the FHWA so that as the Project progresses, the Consultant shall have full benefit of the Owner's knowledge of existing needs and facilities and be consistent with the Owner's current policies and practices. The extent and character of the work to be done by the Consultant shall be subject to the general oversight and approval of the Owner.

10. OFFICE LOCATION FOR REVIEW OF WORK

- 10.1. Review of the work as it progresses and all files and documents produced under this Agreement may be made by representatives of the Owner, the AHTD, and the FHWA at the project office of the Consultant located in Olathe, KS.

11. ACCESS TO PROPERTY

11.1. The Consultant's services to the Owner may require entry upon private property. The Owner will present or mail to private landowners a letter of introduction and explanation, describing the work, which shall be drafted by the Consultant. The Consultant will make reasonable attempts to notify resident landowners who are obvious and present when the Consultant is in the field. The Consultant is not expected to provide detailed contact with individual landowners. The Consultant is not expected to obtain entry by means other than the consent of the landowner. If the Consultant is denied entry to private property by the landowner, the Consultant will not enter the property. If denied entry to the property, the Consultant shall notify the Owner and advise the Owner of an alternate evaluation method if one is feasible. The Owner shall decide on the course of action to obtain access to the property.

12. DELIVERABLES

- **Deliverable 1:** A copy of the approved survey
- **Deliverable 2:** An approved survey methodology
- **Deliverable 3:** Cover letter in both Spanish and English
- **Deliverable 4:** Sample press releases about the survey
- **Deliverable 5:** Survey mailed to 2,000 residents
- **Deliverable 6:** Follow-up phone calls to ensure 400 surveys are completed
- **Deliverable 7:** Raw survey data in spreadsheet
- **Deliverable 8:** Tables that show the overall results of the survey
- **Deliverable 9: Analysis that includes the following:**
 - Crosstabulations of the survey results by age and geographic area
 - Tables and charts that show the overall results to the survey
 - Up to 15 GIS maps that show selected survey results on maps of the Jonesboro MPO
- **Deliverable 10:** Ten (10) Copies of a final report containing the following:
 - Executive summary of survey methodology and findings
 - Charts depicting the overall results of the surveys
 - Tabular data that shows the overall results from each surveys along with crosstabulations of the results for selected variables as appropriate
 - A copy of the survey instrument(s)
- **Deliverable Task 11:** An electronic copy of the presentation materials

13. SUBCONTRACTING

13.1. Unless expressly disclosed in Appendix B, the Consultant may not subcontract any of the services to be provided herein without the express written approval of the Owner. All subcontractors, including those listed in Appendix B, shall be bound by the terms of this Agreement. All subcontractors shall be subject to all contractual and legal restrictions

concerning payment and determination of allowable costs, and subject to all disclosure and audit provisions contained herein and in any applicable federal or state law.

13.2. Unless the consent or approval specifically provides otherwise, neither consent by the Owner to any subcontract nor approval of the Consultant's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Consultant of any responsibility, obligation, or duty under this Agreement.

13.3. No subcontract placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations of the FAR.

13.4. *Prompt Payment.* The Consultant shall pay subcontractors for satisfactory performance of their subcontracts within 30 days of receipt of each payment by the Owner to the Consultant. Any retainage payments held by the Consultant must be returned to the subcontractor within 30 days after the subcontractor's work is completed. Failure to comply with this provision shall be considered a Default by the Consultant. If the Consultant fails to comply with this provision, in addition to any other rights or remedies provided under this Agreement, the Owner, at its sole option and discretion, may:

- make payments directly to the subcontractor and offset such payments, along with any administrative costs incurred by the Owner, against reimbursements or payments otherwise due the Consultant;
- notify any sureties; and/or,
- withhold any or all reimbursements or payments otherwise due to the Consultant until the Consultant ensures that the subcontractors have been and will be promptly paid for work performed.

13.5. The Consultant shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

14. RESPONSIBILITY OF THE CONSULTANT

14.1. Notwithstanding any review, approval, acceptance or payment by the Owner, the Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Consultant under this Agreement. The Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

14.2. The Consultant shall demonstrate to the Owner the presence and implementation of quality assurance in the performance of the Consultant's work. The Consultant shall identify individual(s) responsible, as well as methods used to determine the completeness and accuracy of drawings, specifications, cost estimates, and other services provided.

14.3. The Consultant further agrees that in its performance of its work under this Agreement, it shall adhere to the requirements in the Design Standards of the AHTD and FHWA, which shall be incorporated herein by reference.

- 14.4. The Owner shall have the right at any time and in its sole discretion to submit for review all or any portion of the Consultant's work to consulting engineers engaged by the Owner for that purpose. The Consultant shall fully cooperate with any such review.
- 14.5. The Consultant and any subcontractor shall employ qualified and competent personnel to perform the work under this Agreement.
- 14.6. Neither the Owner's review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, or of any cause of action arising out of the performance of this Agreement. The Consultant shall be and remain liable to the Owner for all damages to the Owner caused by the Consultant's negligent performance of any of the services furnished under this Agreement.
- 14.7. The rights and remedies of the Owner provided for under this Agreement are in addition to any other rights and remedies provided by law.
- 14.8. If the Consultant is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

15. WARRANTY OF SERVICES

- 15.1. *Definitions. Acceptance*, as used in this Agreement, means the act of an authorized representative of the Owner by which the Owner approves specific services, as partial or complete performance of the Agreement. *Correction*, as used in this Agreement, means the elimination of a defect.
- 15.2. Notwithstanding inspection and acceptance by the Owner or any provision concerning the conclusiveness thereof, the Consultant warrants that all services performed and work product under this Agreement will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Agreement.
- 15.3. If the Consultant is required to correct or re-perform, it shall be at no cost to the Owner, and any services corrected or re-performed by the Consultant shall be subject to this Section to the same extent as work initially performed. If the Consultant fails or refuses to correct or re-perform, the Owner may, by contract or otherwise, correct or replace with similar services and charge to the Consultant the cost occasioned to the Owner thereby, or make an equitable adjustment in the Fee.
- 15.4. If the Owner does not require correction or re-performance, the Owner shall make an equitable adjustment in the Fee.
- 15.5. Nothing within this Section shall constitute a waiver or exclusion of any other right or remedy that the Owner may possess at law or under this Agreement.

16. TERM, COMMENCEMENT, AND COMPLETION

- 16.1. This Agreement shall commence on the effective date set forth above and remain in effect until the completion of the Consultant's Scope of Services, as defined herein, to be completed within a period of 14 weeks, unless extended or terminated by the Owner in accordance with this Agreement.
- 16.2. The Consultant shall begin work under the terms of this Agreement within ten (10) days of receiving written notice to proceed. [If services are to be performed in

subsequent phases, then each phase shall be commenced upon the Owner's approval of the previous phase. The Consultant shall not be entitled to any compensation or reimbursement for services performed in a phase unless and until it has received approval from the Owner to proceed with such services.]

16.3. It is further agreed that time is of the essence in performance of this Agreement. The Consultant shall complete the work, or each phase, as scheduled, and the Owner shall provide any required approval of the work or phase meeting the requirements contained herein in a reasonable and timely manner. The Project shall be completed as illustrated in Appendix D.

17. TERMINATION

17.1. The Owner may terminate this Agreement in whole or, from time to time, in part, for the Owner's convenience or because of the Default of the Consultant.

17.2. The Owner shall terminate this Agreement by delivering to the Consultant written notice of the termination.

17.3. Upon receipt of the notice, the Consultant shall:

- Immediately discontinue all services affected (unless the notice directs otherwise).
- Deliver to the Owner all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.
- Terminate all subcontracts to the extent they relate to the work terminated.
- In the sole discretion and option of the Owner, and if and only if requested to do so, assign to the Owner all right, title, and interest of the Consultant under the subcontracts terminated, in which case the Owner shall have the right to settle any claim or dispute arising out of those subcontracts without waiver of any right or claim the Owner may possess against the Consultant.
- With approval or ratification by the Owner, settle all outstanding liabilities arising from the termination of subcontracts, the cost of which would be allowable in whole or in part, under this Agreement.
- Complete performance of the work not terminated.
- Take any action that may be necessary, or that the Owner may direct, for the protection and preservation of the property related to this Agreement that is in the possession of the Consultant and in which the Owner has or may acquire an interest.

17.4. If the termination is for the convenience of the Owner, the Owner shall make an equitable adjustment in the Fee, subject to the Ceiling Prices and Funding Limitations provisions, *but shall allow no anticipated Fee or profit on unperformed services.*

17.5. If the termination is for the Consultant's Default, the Owner may complete the work by contract or otherwise and the Consultant shall be liable for any reasonable and necessary additional cost incurred by the Owner to the extent caused by Consultant's default.

17.6. Disputes and claims arising from termination of this Agreement shall be governed by Section 27, Disputes and Claims (48 CFR 31.205-42(e)(2)).

17.7. The rights and remedies of the Owner provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement, and shall not constitute a waiver of any other such right or remedy.

18. STOP WORK ORDERS

18.1. The Owner may, at any time, by written order to the Consultant, require the Consultant to stop all, or any part, of the work called for by this Agreement for a period of up to 90 days after the order is delivered to the Consultant, and for any further period to which the parties may agree. Upon receipt of the order, the Consultant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Consultant, or within any extension of that period to which the parties shall have agreed, the Owner shall either—

18.1.1. Cancel the stop work order; or

18.1.2. Terminate the work pursuant to Section 17, Termination.

18.2. If a stop work order issued under this Section is canceled or the period of the order or any extension thereof expires, the Consultant shall resume work. The Owner shall make an equitable adjustment in the delivery schedule or Fee, or both, and the Agreement shall be modified, in writing, accordingly, if—

- The stop work order was not issued because of Consultant's Default in its performance of its obligations under any part of this Agreement; and,
- The stop work order results in an increase in the time required for, or in the Consultant's cost properly allocable to, the performance of any part of this Agreement; and,
- The Consultant provides Notice of Potential Claim pursuant to Section 27, Disputes and Claims.

19. CHANGES

19.1. The Owner may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Agreement, including but not limited to: (1) drawings, designs, or specifications; (2) time of performance (i.e., hours of the day, days of the week, etc.); and (3) places of inspection, delivery, or acceptance.

19.2. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, the Owner shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fee; and (3) other affected terms.

19.3. All claims and disputes shall be governed by Section 27, Disputes and Claims. As provided in Section 27, the Consultant must provide written notice of its intention to make a claim for additional compensation before beginning the work on which the claim

is based. If such notice is not given, the Consultant hereby agrees to waive any claim for such additional compensation.

- 19.4. Failure to agree to any adjustment shall be a dispute under Section 27, Disputes and Claims. *However, nothing in this Section or any other provision of this Agreement shall excuse the Consultant from proceeding with the Agreement as changed.*

20. OWNERSHIP OF DOCUMENTS & DATA

- 20.1. All project documents and data, regardless of form and including but not limited to original drawings, disks of CADD drawings, cross-sections, estimates, files, field notes, and data, shall be the property of the Owner. The Consultant shall further provide all documents and data to the Owner upon the Owner's request. The Consultant may retain reproduced copies of drawings and other documents. In the event that any patent rights or copyrights are created in any of the documents, data compilations, or any other work product, the Owner shall have an irrevocable license to use such documents, or data compilations, or work product.

21. PATENT AND COPYRIGHT INFRINGEMENT

- 21.1. The Consultant shall report to the Owner, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Consultant has knowledge.
- 21.2. In the event of any claim or suit against the Owner on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this Agreement, the Consultant shall furnish to the Owner, when requested by the Owner, all evidence and information in possession of the Consultant pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Consultant.
- 21.3. The Consultant agrees to include, and require inclusion of, the provisions of this Section in all subcontracts at any tier for supplies or services.
- 21.4. The Consultant shall indemnify the Owner and its officers, agents, and employees against liability, including costs and attorneys' fees, for infringement of any United States patent or copyright arising from the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under this Agreement, or out of the use or disposal by or for the account of the Owner of such supplies or construction work.
- 21.5. This indemnity shall not apply unless the Consultant shall have been informed within ten (10) business days following the Owner's receipt of legal notice of any suit alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Owner directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Agreement not normally used by the Consultant, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Consultant, unless required by final decree of a court of competent jurisdiction.

22. BANKRUPTCY

22.1. In the event the Consultant enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Consultant agrees to furnish, by certified mail, written notice of the bankruptcy to the Owner. This notice shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notice shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of AHTD job numbers and FAP numbers for all contracts with Owner against which final payment has not been made. This obligation remains in effect until final payment under this Agreement.

23. FUNDING LIMITATIONS

23.1. The Owner's obligations under this Agreement are contingent upon the availability of appropriated funds from which payments under the terms of this Agreement can be made in this and each subsequent fiscal year for the duration of the Agreement. No legal liability on the part of the Owner of any kind whatsoever under this Agreement shall arise until funds are made available to the Owner for performance of this Agreement, including those to be appropriated by the State of Arkansas and those to be provided by the United States.

24. SUCCESSORS AND ASSIGNS

24.1. This Agreement shall be binding upon the parties and their successors and assigns, and except as expressly set forth herein, neither the Owner nor the Consultant may assign, delegate, or transfer any benefit or obligation under this Agreement without the express written consent of the other party. Nothing herein shall be construed as a waiver of any immunity or as creating any personal liability on the part of any officer or agent of the Owner or any other governmental entity either made a party to, or having any interest in, this Agreement.

25. INDEMNITY AND RESPONSIBILITY FOR CLAIMS AND LIABILITY

25.1. *Indemnity.* The Consultant shall hold harmless and indemnify the Owner and the AHTD, and their officers, employees, and agents, from and for all claims and liabilities stemming from any wrongful (whether negligent, reckless, or intentional) acts or omissions on the part of the Consultant and its subcontractors, and their agents and employees.

25.2. *No Personal Liability.* No director, officer, manager, employee, agent, assign, or representative of the Owner or the AHTD shall be liable to the Consultant in a personal or individual capacity under any term of this Agreement, because of any breach thereof, or for any act or omission in its execution or performance.

25.3. *Independent Contractor Relationship.* The parties intend that the Consultant shall be an independent contractor of the Owner and that the Consultant shall be liable for any act or omission of the Consultant or its agents, employees, or subcontractors arising under or occurring during the performance of this Agreement. No act or direction of the Owner shall be deemed to be an exercise of supervision or control of the Consultant's performance.

26. INSURANCE

- 26.1. *Professional Liability Insurance Coverage.* The Consultant shall maintain at all times during the performance of services under this Agreement professional liability insurance coverage for errors, omissions, and negligent acts arising out of the performance of this Agreement in an amount per claim of not less than five (5) times the original Contract Ceiling Price or \$1,000,000, whichever is less. Such insurance shall extend to the Consultant and to its legal representatives in the event of death, dissolution, or bankruptcy, and shall cover the errors, omissions, or negligent acts of the Consultant's subcontractors, agents, and employees. Such insurance shall extend to any errors, omissions, and negligent acts in the performance of services under this Agreement committed by the Consultant or alleged to have been committed by the Consultant or any person for whom the Consultant is legally responsible.
- 26.2. *Deductible.* The Consultant may maintain a professional liability insurance policy with a deductible clause in an amount approved by the Owner if, in the judgment and opinion of the Owner, the Consultant's financial resources are sufficient to adequately cover possible liability in the amount of the deductible. The Consultant shall submit promptly to the Owner, upon request as often as quarterly, detailed financial statements and any other information requested by the Owner to reasonably determine whether or not the Consultant's financial resources are sufficient to adequately cover possible liability in the amount of the deductible.
- 26.3. *Worker's Compensation Insurance.* The Consultant shall at all times during the Term of this Agreement maintain Worker's Compensation and Employers Liability Insurance as required under Arkansas law.
- 26.4. *General Liability Insurance.* The Consultant shall at all times during the term of this Agreement maintain comprehensive general liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000, and comprehensive automobile liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000, which shall cover all owned, hired, and non-owned vehicles. The Consultant's insurance coverage shall also cover restoration of plans, drawings, field notes, and other documents in the event of their loss or destruction while in the custody of the Consultant.
- 26.5. *Insurance Policies and Certificates.* The Consultant shall provide the Owner upon request copies of its insurance policies and evidence satisfactory to the Owner concerning the effectiveness and the specific terms of the insurance. Prior to the execution of this Agreement, the Consultant shall furnish to the Owner certificates of insurance reflecting policies in force, and it shall also provide certificates evidencing all renewals of any expiring insurance policy required hereunder within thirty (30) days of the expiration thereof. The Consultant's failure to provide and continue in force and effect any insurance required under this Article shall be deemed a Default for which Owner, in its sole discretion, may terminate this Agreement immediately or on such other terms as it sees fit.
- 26.6. *Additional Insurance Requirements.* All insurance maintained by the Consultant pursuant to this Section shall be written by insurance companies licensed to do business in Arkansas, in form and substance satisfactory to the Owner, and shall provide that the insurance will not be subject to cancellation, termination, or change during its term except upon thirty (30) days prior written notice to the Owner.
- 26.7. *Duration of Insurance Obligations.* The Consultant shall maintain its professional insurance coverage required under this Agreement in force and effect for a period not less than five years after the final acceptance of the project or the completion of the

Consultant's services under this Agreement, whichever comes later. Comprehensive General Liability Insurance Coverage required under this Agreement shall be in full force and effect until the final acceptance or the completion of the Consultant's services, whichever comes later. All other insurance shall be maintained in full force and effect until final acceptance of the project or completion of the Consultant's services, whichever comes first.

26.8. *Consultant's Insurance Primary.* All insurance policies maintained by the Consultant pursuant to this Agreement shall provide that the consultant's insurance shall be primary and the Owner's own insurance shall be non-contributing.

26.9. *Additional Insured.* All liability insurance policies, except the professional liability policy, maintained by the Consultant pursuant to this Agreement shall be endorsed to include the Owner, its officers, directors, managers, employees, agents, assigns and representatives, individually and collectively, as additional insured, and all property damage insurance shall be endorsed with a waiver of subrogation by the insurer as to the Owner.

27. DISPUTES AND CLAIMS

27.1. *Notice of Potential Claim.* Whenever a Consultant deems that any additional compensation is due, the Consultant shall notify the Owner in writing of its intention to make a claim for additional compensation ("Notice of Potential Claim") **before beginning the work that gives rise to the claim.**

27.2. *Time & Manner for Submitting Claim.* All disputes and claims shall first be submitted in writing to the Owner within 45 calendar days after the completion or termination date. **The Consultant hereby agrees that the failure to submit the dispute or claim to the Owner prior to 45 calendar days after the completion or termination date shall constitute a waiver of the dispute or claim.**

27.3. *Form.* All disputes and claims must be submitted in writing and in sufficient detail to permit the Owner to determine the basis for entitlement and the actual allowable costs incurred. Each claim must contain:

- A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected by the claim;
- The date the actions resulting in the claim occurred or conditions resulting in the claim became evident;
- A copy of the "Notice of Potential Claim";
- The name, title, and activity of each Owner's employee knowledgeable about facts that gave rise to such claim;
- The name, title, and activity of each Consultant, Subcontractor, or employee knowledgeable about the facts that gave rise to the claim;
- The specific provisions of the Agreement that support the claim and a statement why such provisions support the claim;
- The identification and substance of any relevant documents, things, or oral communications related to the claim;

- A statement whether the claim is based on provisions of the Agreement or an alleged breach of the Agreement;
- If an extension of time is sought, the specific number of days sought and the basis for the extension;
- The amount of additional compensation sought and a specific cost breakdown of the amount claimed; and,
- Any other information or documents that are relevant to the claim.

27.4. *Decision and Appeal.* The decision of the Owner shall be final and conclusive.

27.5. *Continued Performance.* Pending final resolution of a dispute or claim, unless the Owner has terminated this Agreement pursuant to Section 17, or issued a stop work order pursuant to Section 18, the Consultant shall proceed diligently with the performance of this Agreement in accordance with the Owner's decisions.

27.6. The rights and remedies of the Owner provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement, and shall not constitute a waiver of any other such right or remedy. If the Owner decides the facts justify the action, the Owner may, at its sole option and discretion, receive and act upon a proposal, dispute, or claim submitted at any time before final payment under this Agreement.

28. COVENANT AGAINST CONTINGENCY FEES

28.1. The Consultant warrants that no person or agency has been employed or retained to solicit or obtain this Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Owner shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Fee or consideration, or otherwise recover, the full amount of the contingent fee.

28.2. *Bona fide agency*, as used in this Section, means an established commercial or selling agency, maintained by the Consultant for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds itself out as being able to obtain any government contract or contracts through improper influence.

28.3. *Bona fide employee*, as used in this Section, means a person, employed by the Consultant and subject to the Consultant's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds out as being able to obtain any government contract or contracts through improper influence.

28.4. *Contingent fee*, as used in this Section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a government contract.

28.5. *Improper influence*, as used in this Section, means any influence that induces or tends to induce a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter.

29. TITLE VI ASSURANCES (NONDISCRIMINATION)

During the performance of this Agreement, the Consultant, for itself, successors, and assigns, certifies and agrees as follows:

- 29.1. *Compliance with Regulations.* The Consultant shall comply with the Regulations relative to Title VI (Nondiscrimination in Federally-assisted programs of the Department of Transportation and its operating elements, especially Title 49, Code of Federal Regulations, Part 21 and 23 Code of Federal Regulations, as amended, and hereinafter referred to as the Regulations). These regulations are herein incorporated by reference and made a part of this Agreement. Title VI provides that the recipients of Federal financial assistance will maintain and implement a policy of nondiscrimination in which no person shall, on the basis of race, color, national origin, sex, age, or disability, be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity by recipients of Federal financial assistance or their assignees and successors in interest.
- 29.2. *Nondiscrimination.* The Consultant, with regard to the work performed by it during the term of this Agreement, shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the USDOT Regulations.
- 29.3. *Solicitations for Subcontracts, Including Procurements of Material & Equipment.* In all solicitations, either by competitive bidding or negotiation, made by the Consultant or for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- 29.4. *Information and Reports.* The Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities by the Owner, the AHTD, or the USDOT and its Affiliated Modes to be pertinent to ascertain compliance with such regulations or directives. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Owner, the AHTD or the USDOT and its Affiliated Modes, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 29.5. *Sanctions for Noncompliance.* In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the Owner shall impose such contract sanctions as it, the AHTD, or the USDOT and its Affiliated Modes may determine to be appropriate, including but not limited to, withholding of payments to the Consultant under the Agreement until the Consultant complies with the provisions and/or cancellation, termination, or suspension of the Agreement, in whole or in part.
- 29.6. *Incorporation of Provisions.* The Consultant shall include the terms and conditions of this section in every subcontract including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the Owner, the AHTD, or USDOT and its Affiliated Modes may direct as a means of

enforcing these terms and conditions, including sanctions for noncompliance; *provided*, however that, in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Consultant may request the Owner or the AHTD to enter into such litigation to protect the interests of the State, and, litigation to protect the interest of the United States.

30. DBE CLAUSE

- 30.1. The Consultant or subcontractor shall not discriminate on the basis of race, color, national origin, sex, age, religion, or disability in the performance of this Agreement. The Consultant shall comply with the applicable requirements of 49 C.F.R. Part 26 and perform any actions necessary to maintain compliance in the award and administration of DOT-assisted contracts. Failure by the Consultant to comply with or perform these requirements is a material breach of this Agreement, which may result in the cancellation, termination, or suspension of this Agreement in whole or in part, or such other remedy that the Owner may determine appropriate.
- 30.2. The Consultant shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

31. TITLE II OF THE AMERICANS WITH DISABILITIES ACT (NONDISCRIMINATION)

- 31.1 The Consultant will comply with the provisions of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, FHWA Federal Aid Project Guidance, and any other Federal, State, and/or local laws, rules and/or regulations.
- 31.2 The Consultant, during the term of this Agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion or disability, in admission or access to and treatment in programs and activities associated with this Agreement, or in the selection and retention of subcontractors, including procurement of material and leases of equipment. The Consultant shall not participate either directly or indirectly in any discrimination prohibited by the Regulations, including employment practices.
- 31.3 In accordance with Section 504 regulations 49 C.F.R. Part 27.15, the Owner's Notice of Nondiscrimination is required in any bulletins, announcements, handbooks, pamphlets, brochures, and any other publications associated with this Agreement that are made available to the public, program participants, applicants or employees.

32. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

- 32.1. The Consultant certifies, to the best of its knowledge and belief, that—
- 32.1.1. The Consultant and any of its Principals—
- 32.1.1.1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal or state agency;
- 32.1.1.2. Have not, within a 3-year period preceding this offer, 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) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

32.1.1.3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in Subsection 32.1.1.2; and,

32.1.1.4. The Consultant has not within a 3-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency.

32.2. *Principals*, for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, United States Code, as well as any other applicable federal and state laws.

32.3. The Consultant shall provide immediate written notice to the Owner if, at any time prior to contract award, the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

32.4. The certification in Subsection 32.1 is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Consultant knowingly rendered an erroneous certification, the Owner may terminate the contract resulting from this solicitation for default in addition to any other remedies available to the Owner.

33. MISCELLANEOUS

33.1. *General Compliance with Laws.* The Consultant shall comply with all Federal, State, and local laws, regulations, and ordinances applicable to the work, including but not limited to, the Americans with Disabilities Act and Occupational Safety and Health Act as amended.

33.2. *Registered Professional Engineer's Endorsement.* All plans, specifications, estimates, and engineering data provided by the Consultant shall be endorsed and recommended by an authorized representative of the Consultant, who shall be a registered Professional Engineer licensed in the State of Arkansas.

33.3. *Choice of Law.* This Agreement shall be governed by the laws of the State of Arkansas without consideration of its choice of law provisions.

33.4. *Choice of Forum.* The Consultant agrees that any cause of action stemming from or related to this Agreement, including but not limited to disputes or claims arising under this Agreement, for acts or omissions in the performance, suspension, or termination of this Agreement, whether sounding in contract or tort, equity or law, may only be brought in the appropriate forum within State of Arkansas.

33.5. *No Waiver of Immunity.* The Owner expressly does not waive any defense of immunity that it may possess under either federal or state law, and no provision in this Agreement shall be construed to constitute such a waiver in whole or in part.

- 33.6. *Conflicts Between Laws, Regulations, and Provisions.* In the event of conflicting provisions of law, the interpretation shall be governed by the following in this order, from most controlling to least: Federal law and regulations, State law and regulations, Department and FHWA Design Standards, and this Agreement.
- 33.7. *Severability.* If any term or condition of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, all remaining terms of this Agreement shall remain valid and enforceable unless one or both of the parties would be materially prejudiced.
- 33.8. *No-Waiver.* The failure of the Owner to strictly enforce any term of this Agreement shall not be construed as a waiver of the Owner's right to require the Consultant's subsequent performance of the same or similar obligation or duty.
- 33.9. *Modification and Merger.* This written Agreement and any provisions incorporated by reference reflect the entire agreement of the parties and may be modified only by the express written agreement of both parties.

34. CERTIFICATION OF AUTHORIZED REPRESENTATIVES

- 34.1. This Agreement and the certifications contained herein or attached hereto constitute the whole Agreement of the parties, and each party certifies that this Agreement and any attached certification have been executed by their duly authorized representatives.

35. NOTICE

- 35.1. All notices, approvals, requests, consents, or other communications required or permitted under this Agreement shall be addressed to either the Owner's Representative or the Consultant's Representative, and mailed or hand-delivered to:

- 35.1.1. To the Owner's Representative:

Mayor Harold Perrin
City of Jonesboro/Jonesboro MPO
300 South Church Street
P.O. Box 1845
Jonesboro, AR 72403

- 35.1.2. To the Consultant:

Elaine Tatham
ETC Institute
725 W. Frontier Ln.
Olathe, KS 66061

IN WITNESS WHEREOF, the parties execute this Agreement, to be effective upon the date set out above.

ETC Institute

City of Jonesboro/Jonesboro MPO

BY: Elaine Tatham
Elaine Tatham
President

BY: _____
Harold Perrin
Mayor

APPENDICES

APPENDIX A	JUSTIFICATION OF FEES AND COSTS
APPENDIX B	SUBCONTRACTS – N/A, deleted
APPENDIX C	STANDARD CERTIFICATIONS
APPENDIX D	PROJECT SCHEDULE
APPENDIX E	GENERAL AND DETAILED SCOPE OF WORK

APPENDIX A

Submitted by: ETC Institute. Questions: Contact Grace Wepler at 913-829-1215

Task 1: Initial meeting with MPO staff to review the project's scope and work plan

Labor Class Involved in Task	Man-Hours	Fully Loaded Hourly Rate	Cost
TOTAL:			N/A - INCLUDED

Task 2: Develop survey instruments

Labor Class Involved in Task	Man-Hours	Fully Loaded Hourly Rate	Cost
Project Management	15	\$ 78.80	\$ 1,200.00
TOTAL:			\$ 1,200.00

Task 3: Conduct surveys

Labor Class Involved in Task	Man-Hours	Fully Loaded Hourly Rate	Cost
Project Management	3	\$ 78.80	\$ 236.39
Support Staff Supervisor	30	\$ 54.36	\$ 1,636.76
Support Staff	310	\$ 24.67	\$ 7,646.83
TOTAL:			\$ 9,519.98

Task 4: Analyze Results and Develop Recommendations

Labor Class Involved in Task	Man-Hours	Fully Loaded Hourly Rate	Cost
Project Manager	16	\$ 78.80	\$ 1,260.77
Researcher	6	\$ 62.81	\$ 389.42
TOTAL:			\$ 1,650.19

Task 5: Prepare a formal report

Labor Class Involved in Task	Man-Hours	Fully Loaded Hourly Rate	Cost
Project Manager	5	\$ 78.80	\$ 393.99
Researcher	18	\$ 62.81	\$ 1,155.70
TOTAL:			\$ 1,549.69

Task 6: Prepare/make a presentation of the survey results

Labor Class Involved in Task	Man-Hours	Fully Loaded Hourly Rate	Cost
Project Manager	14	\$ 78.80	\$ 1,080.32
TOTAL:			\$ 1,080.32

TOTAL ALL TASKS: \$15,000

Invoices will be submitted upon completion of tasks as follows:

- Invoice #1: \$1,200. The first invoice will be submitted upon completion of Task 1 and 2. The deliverables for this payment will be Deliverables 1, 2, 3 and 4.
- Invoice #2: \$9,520. The second invoice will be submitted upon completion of Task 3. The deliverables for this payment will be Deliverables 5, 6, 7 and 8.
- Invoice #3: \$4,280. The third invoice will be submitted upon completion of Tasks 4 - 6. The deliverables for this payment will be Deliverables 9, 10 and 11.

APPENDIX B (Deleted – NA)

APPENDIX C

State Job No. 823-600
Federal Aid Project No. AR 81-X018

CERTIFICATION OF CONSULTANT

I hereby certify that I, Elaine Tatham, am the President and duly authorized representative of the firm of ETC Institute, whose headquarters address is 725 W. Frontier Lane Olathe, Kansas 66061, and that neither I nor the above firm I here represent has:

- (a) employed or retained for a commission, brokerage, contingent fee, or other considerations, any firm or person (other than a bona fide employee working solely for me) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me) any fee contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract;
- (d) included any costs which are not expressly allowable under the cost principles of the FAR of 48 CFR 31, whether direct or indirect. All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed.

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Arkansas State Highway and Transportation Department and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

Furthermore, as a recipient of Federal Aid Highway Funds, I certify and hereby agree to the conditions of Title VI Assurances as outlined in Section 31 of this Agreement and shall insert the Notice of Nondiscrimination Statement as shown below in all solicitation of work or procurement of materials or equipment.

NOTICE OF NONDISCRIMINATION STATEMENT

[Provided by Consultant/Subconsultant. A sample is shown below.]

The ETC Institute ("Consultant"), complies with all civil rights provisions of federal statutes and related authorities that prohibited discrimination in programs and activities receiving federal financial assistance. Therefore, the Consultant does not discriminate on the basis of race, sex, color, age, national origin, or disability, in the admission, access to and treatment in Consultant's programs and activities, as well as the Consultant's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Consultant's nondiscrimination policies may be directed to Elaine Tatham (ADA/504/Title I Coordinator), 725 W. Frontier Lane Olathe, Kansas 66061, 913-829-1215, or, the following email address: etathametc@aol.com.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.


Elaine Tatham, President

5/7/14
Date

State Job No. 823-600
Federal Aid Project No. AR 81-X018

CERTIFICATION OF CITY OF JONESBORO, ARKANSAS

I hereby certify that I am the Mayor of the City of Jonesboro, Arkansas and that the aforementioned consulting firm or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee contributions donation, or consideration of any kind:

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Arkansas Highway and Transportation Department and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal-Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

Date

Mayor, City of Jonesboro, Arkansas

APPENDIX D

PROJECT SCHEDULE

<u>Date</u>	<u>Task</u>
May 2014	Task 1: Initial meeting with MPO staff to review the project's scope and work plan Task 2: Develop survey instruments
June-July 2014	Task 3 Conduct surveys and then provide initial survey results by July 15th, 2014
July-August 2014	Task 4: Analyze results and develop recommendations by July 31 st , Task 5: Prepare a final report summarizing the research methodology, findings, conclusions, and recommendations by August 15th Task 6: Presentation of the survey results TBA

APPENDIX E

GENERAL AND DETAILED SCOPE OF WORK

TASK 1: Initial meeting with MPO staff to review the project's scope and work plan. ETC Institute will meet (by teleconference) with the Jonesboro MPO to ensure that all members of the consulting team have the same understanding of the goals and objectives for the project. At this meeting, the details of the research design strategy will be discussed, and the research objectives will be finalized. ETC Institute will also provide the MPO with sample Long Range Transportation Plan Surveys conducted by our firm to begin the survey design process. ETC Institute will also review and discuss the *2011 Community Preference Survey* conducted by the National Association of Realtors which has been identified as a potential model for the survey.

TASK 2: Develop survey instruments. Based on the discussion at the initial meeting, ETC Institute will design the survey instrument. It is envisioned that at least three drafts of the survey will be prepared before the survey is finalized by the MPO.

ETC Institute will work closely with the MPO to develop a survey instrument that will gather statistically valid data from residents between the ages of 18 and over, traditionally underserved populations (residents who do not speak English and other minority groups) and for each of the major geographic areas that comprise the MPO, including the cities of Jonesboro, Brookland, Bay and Bono, and some unincorporated portions of Craighead County.

Deliverable 1: A copy of the approved survey

Deliverable 2: An approved survey methodology.

Deliverable 3: Cover letter in both Spanish and English

Deliverable 4: Sample press releases about the survey

TASK 3: Conduct surveys. ETC Institute will work with the MPO to develop a sampling plan that supports the goals and objectives of the project. We are recommending the completion of at least 400 surveys in the MPO which includes: the cities of Jonesboro, Brookland, Bay, Bono and some unincorporated portions of Craighead County. A total of 400 completed surveys is the required number to achieve results that have a precision of at least +/-5% at the 95% level of confidence. ETC Institute will design the sample and monitor the distribution of the survey to ensure that all ages and other key demographic variables are represented in the final survey results.

A combination of mail and phone administration process will be used to maximize the overall level of response. Even if people do not respond by mail, people who receive the mailed version of the survey are significantly more likely to respond to the survey by phone because they know the survey is legitimate. Specifically elements of this methodology that will take place include the following:

- ETC Institute will work with the MPO to design the survey instrument. The survey will be no longer than 6 pages, with a maximum of 3 open-ended comments, and will include screening questions to ensure that only respondents between the ages of 18-65 are surveyed.
- ETC Institute will develop the sample frame. ETC Institute will purchase a sample of all known residents of the study area. ETC Institute purchases mailing and phone lists from info USA and has used this company for 25+ years. ETC Institute uses a computerized random process to determine which households will be selected to participate in the survey.

- ETC Institute will test the survey with at least 25 residents before the survey is administered. Any problems or issues that are identified will be reported to the MPO and corrective action will be taken as appropriate. The pretest will be conducted no later than 1 week prior to the start of the actual survey.
- ETC will provide the MPO with sample press releases that can be used to notify the public about the survey.
- Once the MPO has given ETC Institute authorization to begin administering the survey, ETC Institute's phone interviewers will begin making phone calls to each of the households in the sample frame. Phone interviewing will be conducted between the hours of noon and 9 p.m.
- Surveys will be mailed to each of the residents in the sample frame. Only one survey per household will be sent. Postage-paid envelopes will be provided to each respondent.
- Approximately two weeks after the surveys are mailed, ETC Institute's phone interviewers will begin making follow-up phone calls to each of the persons in the sample frame. Phone follow-ups will significantly increase the response rate. This will **greatly reduce the probability that the results are affected by non-response bias**. Non-response bias can be a major drawback to surveys that are administered by mail or phone alone. Persons who indicate that they have already returned the survey will be thanked. Persons who have not completed the survey will be given the opportunity to complete the survey by phone.
- Phone follow-ups will be concentrated in areas where the response to the mail survey is low to ensure the survey is representative of the entire region and by age of respondents.
- ETC Institute will conduct at least one teleconference meeting with the MPO during the survey administration phase.

Ensuring Representation for Non-English Speaking Populations. ETC Institute has administered surveys in many communities across the United States where a high percentage of the population does not speak English as a first language. As a result, we are sensitive to the importance of ensuring that non-English populations are properly represented in the survey. In order to ensure that non-English speaking residents are well represented, ETC Institute will do the following:

- The cover letter that is sent with the mail version of the survey will contain information that is translated into other languages, such as Spanish.
- ETC Institute will provide a toll-free phone number that non-English (and English) speaking residents can call. Spanish speaking interviewers from our firm will be available to administer the survey over the phone in Spanish. Other languages can be made available if needed.

Maintain Quality Control. ETC Institute recognizes that quality control will be critical to the overall success of the project. If decision makers in the region do not believe that the survey data are accurate, the results of this study will have little value to the community.

The project's success, in many ways, will be dependent on the management of data collection and processing activities. Although it is important to ensure that high standards of quality are maintained during all tasks in the project, failure to achieve these standards during the data collection and data processing portions of the project will jeopardize the overall success of the project. ETC Institute has an ongoing quality assurance program in place. This program has been developed and refined through our experience with hundreds of studies that involved the design and administration of surveys.

Our quality assurance program is directly monitored by the company President, Dr. Elaine Tatham and the company vice-president, Christopher Tatham. The program is designed to give clients "error free" results, and all employees at ETC Institute are directly involved in the program.

Some of the basic elements of ETC Institute's quality assurance process include the following:

- **Training of phone interviewers.** All phone interviewers are required to complete ETC Institute's in-house training program. The program teaches new employees the appropriate methods for conducting interviews, how to respond to different situations that may occur, and how to properly record responses. All interviewers work directly under the supervision of an experienced supervisor. All interviewers will receive specialized training for this survey before they begin conducting interviews.
- **Data entry fields will be limited to specific ranges to minimize the probability of error.** The data processing system that will be used by our firm for the study alerts data entry personnel with an audible alarm if entries do not conform to these specifications.
- **ETC Institute will select at least 10% of the records at random for verification.** A supervisor will match records in the databases against the corresponding survey to ensure that the data entry is accurate and complete.
- **Sampling Methodology.** Demographic questions will be included on each of the survey instruments. The demographic data will be used to monitor the distribution of the respondents to ensure that the responding population for each survey is representative of the universe for each sample.

Deliverable 5: Survey mailed to 2,000 of residents

Deliverable 6: Follow-up phone calls to ensure 400 surveys are completed

Deliverable 7: Raw survey data in spreadsheet

Deliverable 8: Tables that show the overall results of the survey

TASK 4: Analyze Results and Develop Recommendations. ETC Institute will analyze the results of the survey. The analysis will include the following:

- An assessment of the overall results of the surveys
- An analysis of the differences between various groups of residents, including an analysis of the results by age and by geographic area

In addition to the analysis described above, ETC Institute will also conduct GIS Mapping analysis of the survey results. The GIS-mapping analysis will assist in determining differences in perceptions and needs of residents by geographic area of the MPO. GIS mapping are described in more detail below.

Geocoding and GIS Maps. ETC Institute will geocode the home address of resident survey respondents to latitude and longitude coordinates. ETC Institute is able to create maps that show the results by various regions, including clusters of cities/towns, counties and rural/urban compositions.

Deliverable 9: Analysis that includes the following:

- Crosstabulations of the survey results by age and geographic area
- Tables and charts that show the overall results to the survey
- Up to 15 GIS maps that show selected survey results on maps of the Jonesboro MPO

TASK 5: Review of preliminary findings with Owner, respond to requests for clarification and additional analyses. Prepare a final report summarizing the research methodology, findings, conclusions, and recommendations. ETC Institute will prepare a final report summarizing research methodology, findings, conclusions and recommendations.

Deliverable 10: Ten (10) Copies of a final report containing the following:

- Executive summary of survey methodology and findings
- Charts depicting the overall results of the surveys
- Tabular data that shows the overall results from each surveys along with crosstabulations of the results for selected variables as appropriate
- A copy of the survey instrument(s)

TASK 6: Make a presentation of the survey results. At the conclusion of the project, ETC Institute will make a formal presentation of the survey results to the MPO (possibly by video teleconference). The presentations will focus on the results of the survey and the implications that the study findings have for the MPO's Long-Range Transportation Plan Update.

Deliverable Task 11: An electronic copy of the presentation materials