

PURCHASE ORDER
TEXAS A&M FOREST SERVICE
PURCHASING DEPARTMENT

Order Date
 04/27/2026

VENDOR

Page 01

200 Technology Way, Suite 1120, College Station, TX 77845-3424; Phone 979-458-7380, FAX 979-458-7386

Purchase Order No.	(Include this number on all correspondence and packages)
P600296	

VENDOR GUARANTEES MERCHANDISE DELIVERED ON THIS ORDER WILL MEET OR EXCEED SPECIFICATIONS IN THE BID INVITATION.

INVOICE TO:
TEXAS A&M FOREST SERVICE FIAD--PURCHASING 200 TECHNOLOGY WAY, SUITE 1151 COLLEGE STATION TX 77845-3424

VENDOR
17518802780 UES PROFESSIONAL SOLUTIONS 44 LLC 2209 WISCONSIN ST DALLAS, TX 75229-2060

ALL TERMS AND CONDITIONS SET FORTH IN OUR BID INVITATION BECOME A PART OF THIS ORDER.

SHIP TO:
TEXAS A&M FOREST SERVICE TFS SMITHVILLE (SCHULTZ) 225 MEDUNA RD SMITHVILLE TX 78957

ANY EXCEPTIONS TO PRICING OR DESCRIPTION CONTAINED HEREIN MUST BE APPROVED BY THE TEXAS A&M FOREST SERVICE PURCHASING DEPARTMENT **PRIOR** TO SHIPPING.

PLEASE NOTE: IF YOUR INVOICE IS NOT ADDRESSED AS INSTRUCTED PAYMENT WILL BE DELAYED.

Item	Description	Quantity	UOM	Unit Price	Ext Price
1	USER REF: 000000-KRL Testing of earthwork, construction materials and utilities. This PO is not to exceed and will be used as needed. Vendor must obtain approval from Trent Burford before performing under this PO. ***** NET 30 ***** NOTE TO VENDOR: "SHIP TO" AND "INVOICE TO" ADDRESSES MAY DIFFER. FAILURE TO SUBMIT INVOICE TO PROPER ADDRESS MAY RESULT IN DELAYED PAYMENT. PURCHASE OF TESTING MATERIALS, UTILITIES AND EARTHWORK DURING CONSTRUCTION OF THE TEXAS A&M FOREST SERVICE'S, SMITHVILLE OFFICE. SERVICES SHALL BE PERFORMED IN ACCORDANCE WITH ATTACHED CONTRACT #C2024-12852 AND QUOTE #120595 POINT OF CONTACTS: TEXAS A&M AGRILIFE (PRIMARY) TRENT BURFORD 578 JOHN KIMBROUGH BLVD., RM.553 COLLEGE STATION, TX 77843 (979) 314-5865 TRENT.BURFORD@AG.TAMU.EDU TEXAS A&M FOREST SERVICE (SECONDARY): TERRY SMITH	1	JOB	26,320.000	26,320.00
				TOTAL	26,320.00

CEC

Texas A&M Forest Service cannot accept collect freight shipments.

FOB: DESTINATION FRT INCLUDED

Terms:

FAILURE TO DELIVER - If the vendor fails to deliver these supplies by the promised delivery date or a reasonable time thereafter, without giving acceptable reasons for delay, or if supplies are rejected for failure to meet specifications, the State reserves the right to purchase specified supplies elsewhere, and charge the increase in price and cost of handling, if any, to the vendor. No substitutions nor cancellations permitted without prior approval of Purchasing Department.

IN ACCORDANCE WITH YOUR BID, SUPPLIES/EQUIPMENT MUST BE PLACED IN THE DEPARTMENT RECEIVING ROOM BY

The State of Texas is exempt from all Federal Excise Taxes.

STATE AND CITY SALES TAX EXEMPTION CERTIFICATE: The undersigned claims an exemption from taxes under Texas Tax Code, Section 151.309 (4), for purchase of tangible personal property described in this numbered order, purchased from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas.

The Terms and Conditions of the State of Texas shall prevail.

THIS ORDER IS NOT VALID UNLESS SIGNED BY THE PURCHASING AGENT

Chen E. ...
 PURCHASING AGENT FOR

TEXAS A&M FOREST SERVICE

PURCHASE ORDER

VENDOR

**TEXAS A&M FOREST SERVICE
PURCHASING DEPARTMENT**

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Item	Description	Quantity	UOM	Unit Price	Ext Price
CEC	<p>200 TECHNOLOGY WAY, SUITE 1151 COLLEGE STATION, TX 77845 (979) 458-7381 TSMITH@TFS.TAMU.EDU</p> <p>UES PROFESSIONAL SOLUTIONS 44, LLC ATTN:EMMA SCHERMERHORN, P.E. 7 ROUNDVILLE LANE, ROUND ROCK, TX 78664 (512)284-8022</p> <p>VENDOR QUOTE: 120596 VENDOR REF: EMMA SCHERMERHORN #512-284-8022</p>				

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FOB: DESTINATION FRT INCLUDED

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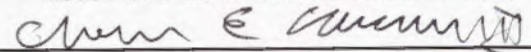
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THIS ORDER IS NOT VALID UNLESS SIGNED BY THE PURCHASING AGENT



PURCHASING AGENT FOR

TEXAS A&M FOREST SERVICE



Mr. Trent Burford
Texas A&M AgriLife Facilities and Construction
578 John Kimbrough Blvd., Rm 553
College Station, TX 77843

April 24, 2026

Re: UES Proposal No. 120595
Construction Materials Testing
Texas A&M Forest Service Smithville
Smithville, TX 78957

Dear Mr. Trent Burford:

UES Professional Solutions 44, LLC (UES), is pleased to submit this proposal for providing Construction Materials Testing (CMT) and related quality control services for the referenced project.

UES has integrated the resources to form the largest geotechnical engineering, materials testing, special inspection and environmental services firm in the Central Texas region. Our personnel and equipment resources are unmatched and we have the experienced staff to perform the necessary CMT services in accordance with the project requirements. In the Central Texas region, our laboratories, equipment, and staff have been inspected by the Cement and Concrete Reference Laboratory (CCRL) and the AASHTO Materials Reference Laboratory (AMRL) as part of the American Association of State Highway and Transportation Officials (AASHTO) and has been certified by the United States Army Corps of Engineers and the Texas Department of Transportation. UES meets the requirements of ASTM R18, C1077, D3666, D3740 and E329 and participates in Cement and Concrete Reference Laboratory (CCRL) and AASHTO resource proficiency sampling programs.

For the purpose of this proposal, we have estimated quantities and tests per our experience, with the information provided. The actual costs for CMT services can decrease or increase with changes in the scope of work and are heavily dependent on the contractor's work methods, production, and sequencing. This is only an estimate for budgetary purposes and UES's total fee will be based on the actual amount of time and laboratory testing required for the project. These services will be performed on a unit price basis in accordance with the attached Schedule of Services and Fees. UES is willing to re-evaluate our budget once a formal construction schedule is finalized.

UES utilizes a proprietary electronic laboratory data management and report generation system. CMT reports prepared in Adobe PDF format are emailed to the Client and their designees. Report turnaround time is typically one day. UES also provides an extranet where CMT reports can be accessed by the Client at any time. CMT reports are automatically posted to our extranet when they are emailed. Our system is designed to provide high quality, real-time information.

We appreciate the opportunity to submit this proposal for CMT services and look forward to working with you during the construction phase of this project. If there are any questions concerning this proposal or if we can be of further assistance, please contact us at your convenience.

Respectfully submitted,
UES



Emma Schermerhorn
Project Estimator



Balaji B. Iyer, P.E.
Sr. VP Construction Material Testing

CLIENT APPROVAL

Consultant offers the CLIENT the Letter of Authorization as described above. CLIENT may accept Consultant's offer by signing in the space provided below and returning a signed copy to Consultant. Such notification may be given by returning the original letter of authorization. In the event the CLIENT authorizes work without returning a signed copy, the CLIENT agrees to be bound by the terms and conditions as stated herein. The letter of authorization described above has been read, understood, and accepted by CLIENT effective as of the date that the executed letter of authorization is returned to Consultant.

EXECUTED BY CLIENT'S AUTHORIZED REPRESENTATIVE: _____
(signature)

Printed Name: _____ Title: _____

Date Accepted: _____

CLIENT Business Name: _____

Billing Address: _____

Telephone: _____ Email: _____

Property Owners Name: _____

Address: _____

Project Legal Description: _____

Project County: _____

ACCOUNTS PAYABLE INFORMATION

A/P Contact Name: _____ A/P Contact Telephone: _____

*A/P Contact Email: _____

**A/P Contact Email must be provided before UES can proceed with its proposed services*

REPORT DISTRUBUTION

Name: _____ Email: _____

Name: _____ Email: _____

Name: _____ Email: _____

Name: _____ Email: _____

UES
 Construction Materials Engineering and Testing
 Basic Services and Cost Estimate
 Project Name: Texas A&M Forest Service Smithville; Smithville, TX 78957

<u>DESCRIPTION</u>	<u>Estimated Quantity</u>	<u>Unit Rate</u>	<u>Estimated Total</u>
<u>EARTHWORK</u>			
Engineering Technician /Hour	52.00	\$60.00	\$3,120.00
Nuclear Density Gauge/Trip	13.00	\$80.00	\$1,040.00
Atterberg Limit Test/Each	3.00	\$67.00	\$201.00
Moisture Density Relationship, ASTM D-698/Each	3.00	\$222.00	\$666.00
-200 Sieve/Each	3.00	\$54.00	\$162.00
Material Pickup/Hour	4.00	\$60.00	\$240.00
Vehicle Trip Charge/Trip	14.00	\$130.00	\$1,820.00
Project Management and Report Review/Hour	11.00	\$136.00	\$1,496.00
Administrative Assistant/Hour	3.00	\$68.00	\$204.00
<u>UTILITIES</u>			
Engineering Technician /Hour	28.00	\$60.00	\$1,680.00
Nuclear Density Gauge/Trip	7.00	\$80.00	\$560.00
Moisture Density Relationship, ASTM D-698/Each	2.00	\$222.00	\$444.00
Atterberg Limit Test/Each	2.00	\$67.00	\$134.00
-200 Sieve/Each	2.00	\$54.00	\$108.00
Material Pickup/Hour	4.00	\$60.00	\$240.00
Vehicle Trip Charge/Trip	8.00	\$130.00	\$1,040.00
Project Management and Report Review/Hour	7.00	\$136.00	\$952.00
Administrative Assistant/Hour	2.00	\$68.00	\$136.00
<u>CONCRETE TESTING</u>			
Engineering Technician/Hour	24.00	\$60.00	\$1,440.00
Concrete Observation/Hour	24.00	\$60.00	\$1,440.00
Concrete Comp. Test/Each	55.00	\$21.00	\$1,155.00
Cylinder Pickup/Hour	24.00	\$60.00	\$1,440.00
Vehicle Trip Charge/Trip	18.00	\$130.00	\$2,340.00
Project Management and Report Review/Hour	12.00	\$136.00	\$1,632.00
Administrative Assistant/Hour	3.00	\$68.00	\$204.00
<u>STRUCTURAL STEEL</u>			
Structural Steel Inspection/Hour	15.00	\$104.00	\$1,560.00
Vehicle Trip Charge/Trip	3.00	\$130.00	\$390.00
Project Management and Report Review/Hour	3.00	\$136.00	\$408.00
Administrative Assistant/Hour	1.00	\$68.00	\$68.00
<u>ESTIMATED BUDGET</u>			\$26,320.00

Proposal No.	120595
Project Name	Texas A&M Forest Service Smithville; Smithville, TX 78957
PROPOSAL ASSUMPTIONS AND BASIS FOR ESTIMATE	
Project Description	1. It is our understanding that a new single story office building and shop building with an approximate footprint of 8,894 square feet is to be constructed in the City of Smithville, TX 78957. In this proposal, it is anticipated that a slab on grade with footings foundation based on our understanding of the project information provided in the contract documents along with the applicable city standards for the City of Smithville, TX 78957 and the geotechnical report by UES.
Construction Documents	1. Enclosed budget is based on bid tab dated:04/24/2026, civil plans dated: 11/20/2025, structural plans dated: 11/20/2025, and the Geotechnical Report dated: 07/23/2025 as provided by UES. 2. UES did not have a detailed construction schedule during the preparation of this estimate.
Earthwork	1. Enclosed budget allows up to 14 inspection days to perform field density testing on the sub-grade and fill materials being placed. UES has assumed monitoring to be performed on an average, 4 hours per day basis, during these tasks. This duration could vary, up or down, depending on the schedule and production of the earthwork contractor. 2. Building Structures: 1 density test for every 2,500 square feet and 6 inch lift 3. Paving: 1 density test for every 5,000 square feet and 6 inch lift
Utilities	1. The enclosed budget allows up to 8 inspection days to monitor onsite earthwork relating to utility trench backfill. UES has assumed that an engineering technician could be required on-site for about 28 hours during these tasks. In addition, the technician could obtain approximately 2 soil samples for laboratory proctor analysis. This duration could vary, up or down, depending on the schedule and production of the contractor. 2. Utilities: 1 density test per 6-inch lift per 100 LF 3. Trench backfill for utilities should be properly placed and compacted in accordance with requirements of local City standards
Concrete	1. The enclosed budget allows up to 18 inspection days to monitor concrete placement and testing. UES has assumed that an engineering technician could be required on-site for about 48 hours during these tasks. In addition, the technician would be on-site to mold approximately 55 test cylinders. This duration could vary, up or down, depending on the schedule and production of the contractor. 2. Concrete cylinders will be cast at a minimum rate of 5 cylinders per mix per day or one set of 5 cylinders per mix per 100 CY, whichever is greater, on all pours. 3. Paving: 1 set of 5 test cylinders every 100 cubic yards 4. Building Structure: 1 set of 5 test cylinders every 100 cubic yards 5. Stand-alone cylinder pickups are assumed to be required on all concrete pours.
Structural Steel	1. Enclosed budget allows up to 3 inspection days to complete all visual inspections within the building. UES has assumed monitoring to be performed on an average, 5 hours per day basis, during this task. 2. Structural steel inspections will consist of visual inspection of welds and bolted connections. 3. Structural Steel: 1 trip every 5,000 square feet
General	1. Field testing services will be provided on an "as requested" basis when scheduled by your representative. A minimum of 24 hours' notice is required to properly schedule our services. To schedule our services please contact our dispatcher at (512) 284-8022 during our office hours from 7:00 AM to 5:00 PM. UES shall not be held responsible for tests not performed as a result of a failure to schedule our services or any subsequent damage caused as a result of a lack of testing. 2. UES requests that Client arranges for a coordination/scheduling meeting at the onset of each major work task (e.g., Earthwork - Buildings, Foundations, Concrete - Buildings) to verify testing and inspection scope, schedule, and assumptions. 3. During the time of this cost estimate no construction schedule was available for estimating purposes. The construction schedule is a critical item in determining a precise cost estimate for construction materials testing. In lieu of a defined construction schedule UES will estimate the project based on comparable project production rates and typical industry standards. UES is willing to re-evaluate our budget once a formal construction schedule is finalized. 4. All time is for a minimum of four hours or as noted and is charged Portal to Portal from UES's Central Texas offices. 5. Work performed over 8 hours portal to portal, before 7 a.m. and after 5 p.m., and weekend time, will be considered overtime work and will be billed at a rate of 1.5 times the appropriate hourly rate in addition to any applicable test fees. 6. Estimate is valid for 90 days from the proposal date shown above. 7. No reports will be issued until we have a signed contract, purchase order or Letter of Authorization to proceed in our office. Signed contract, purchase order or Letter of Authorization to proceed must be received within 3 days of commencement of services or work stoppage will commence on the 4th day and continue until signed authorization is received in our office. For projects with new clients, written authorization must be received prior to the start of work and payments must be received before any reports are issued. Service for welding certifications and ferroskan work must be paid prior to work or upon arrival to the site to perform the work. 8. The contractor shall be responsible for providing a protected storage container for concrete cylinders at a point on the job site mutually agreeable with UES for the purpose of storing concrete cylinders until they are transported to the Laboratory. The container shall be constructed and equipped to maintain the environment specified for initial curing in ASTM C31 (section 10.1.2). 9. Measurement uncertainty is not taken into account by UES when issuing statements of conformity as to whether tested items pass or fail specified values (ISO 17025-17, 7.1.3). 10. Project Engineering services on materials engineering and testing, for consultation, analysis, report preparation and review, and supervision and scheduling of field and laboratory personnel will be charged on a "per report" basis. 11. UES utilizes a proprietary electronic laboratory data management and report generation system. CMT reports prepared in Adobe PDF format are emailed to the Client and their designees. UES also provides an extranet where CMT reports can be accessed by the Client at any time. CMT reports are automatically posted to our extranet when they are emailed.

**MASTER SERVICES AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM
AND ROCK ENGINEERING AND TESTING LABORATORY, LLC**

This Master Services Agreement ("Agreement") is entered into as of September 1, 2023 (the "Effective Date"), by and between The Texas A&M University System (hereafter referred to as "A&M System"), an agency of the state of Texas, and Rock Engineering and Testing Laboratory, LLC (hereafter referred to as "PROVIDER"). A&M System and PROVIDER are sometimes hereafter referred to as "Party" individually or "Parties" collectively).

A&M System and PROVIDER hereby agree as follows:

1. SCOPE OF WORK

PROVIDER will work with A&M System to provide construction material testing services on an as needed basis. The services included (but not limited to) in the scope of this Agreement are listed in Exhibit A, attached hereto.

A&M System universities and agencies (collectively referred to as "Members") may also utilize the services within this Agreement if needed on their managed construction projects.

2. PROVIDER OBLIGATIONS

- A. PROVIDER will perform the Services in accordance with the standards of care, skill, and diligence expected of a qualified, competent and experienced professional in the provision of the type of services required under this Agreement.
- B. PROVIDER will obtain, maintain in effect, and pay the cost for all licenses, permits, or certifications that may be necessary for PROVIDER's performance of this Agreement.
- C. PROVIDER represents and warrants that there are no obligations, commitments, third party rights, or impediments of any kind that will limit or prevent PROVIDER's performance of the Services.

3. TERM OF THE AGREEMENT

The initial term of this Agreement shall begin September 1, 2023 and will extend through August 31, 2026. This Agreement can be extended for two (2) additional one-year terms upon written agreement of both parties. Any extensions shall be at the same terms and conditions plus any approved changes to be determined by A&M System and negotiated in writing with the PROVIDER.

4. PAYMENT TERMS

- A. A&M System shall not pay any costs or fees as a direct result of this Agreement. For the services rendered under this Agreement, A&M System or Member shall pay PROVIDER based on the rate schedule attached as Exhibit B and made a part of this Agreement. The rate schedule may be renegotiated at the discretion of A&M System upon renewal of this Agreement.
- B. PROVIDER will submit invoices to A&M System or Member for the amounts due consistent with the payment schedule as negotiated per project. Each invoice must reference the A&M System purchase order number (which will be provided to PROVIDER within 15 days of the execution of this Agreement) and include a description of services provided to include but not limited to time, deliverables, and activities along with

documentation that A&M System or Member may reasonably request to support the invoice amount. The A&M System or Member will make payment on a properly prepared and submitted invoice in accordance with Chapter 2251, Texas Government Code (the "Texas Prompt Payment Act"), which shall govern remittance of payment and remedies for late payment and non-payment.

- C. For reasonable business-related travel, lodging and/or meal expenses validly incurred directly and solely in support of the Services and approved by A&M System or Member in advance, PROVIDER will be reimbursed by A&M System or Member according to the State of Texas rates, rules, and regulations (<https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>). When requesting such reimbursement, PROVIDER will submit to A&M System or Member receipts, invoices and other documentation as required by A&M System or Member. Under no circumstances will PROVIDER be reimbursed for alcohol purchases. State travel rates are subject to change without notice and will be adjusted accordingly. Mileage rates will be calculated from point-to-point (PROVIDER's place of business to job site) using the State of Texas mileage. Should the Agreement be renewed for an additional term, travel reimbursement amounts will be renegotiated at that time.

If the PROVIDER's place of business, inclusive of branch offices providing services, are located more than 60 miles from the job site, then a round trip charge of \$120 per trip will be allowed, regardless of the number of people in a vehicle(s) and of the time it takes to reach the site. This is to help offset personnel travel time which is NOT chargeable. If your PROVIDER's place of business is located closer than 60 miles to the job site, a round trip charge will not be allowed. Mileage reimbursement still applies in either case.

Overtime and holidays will be paid at straight time.

- D. All payments will be made by electronic direct deposit. PROVIDER is required to complete and submit to A&M System a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at; <https://www.tamus.edu/business/budgets-and-accounting/accounting/general/>.
- E. Invoices are to be sent to e-Builder with the appropriate link provided in the purchase order for each specific project. The invoices must include a summary of services performed.

5. DEFAULT AND TERMINATION

- A. In the event of substantial failure by PROVIDER to perform in accordance with the terms hereof, A&M System may terminate this Agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of A&M System.
- B. A&M System may terminate this Agreement at any time upon thirty (30) days prior notice to PROVIDER.

6. OWNERSHIP OF CREATED WORKS

PROVIDER irrevocably assigns, transfers and conveys to A&M System, for no additional consideration, all of PROVIDER's ownership, rights, title and interest in and to all works prepared by PROVIDER under this Agreement ("Deliverables"), including, without limitation, all copyrights, patents, trademarks, trade secrets and other intellectual property rights and all other rights that may hereafter be vested relating to the Deliverables under law. PROVIDER certifies that all

Deliverables will be original, or that PROVIDER will have obtained all rights necessary for the ownership and unrestricted use of the Deliverables by A&M System. PROVIDER shall secure for A&M System all consents, releases, and contracts and perform other reasonable acts as A&M System may deem necessary to secure and evidence A&M System's rights in any Deliverable.

7. CONFIDENTIALITY

- A. The Parties anticipate that under this Agreement it may be necessary for a Party (the "Disclosing Party") to transfer information of a confidential nature ("Confidential Information") to the other Party (the "Receiving Party"). The Disclosing Party shall clearly identify Confidential Information at the time of disclosure by (a) appropriate stamp or markings on the document exchanged, or (b) written notice, with attached listings of all material, copies of all documents, and complete summaries of all oral disclosures (under prior assertion of the confidential nature of the same) to which each notice relates, delivered within thirty (30) days of the disclosure to the other party. "Confidential Information" does not include information that: (a) is or becomes publicly known or available other than as a result of a breach of this Agreement by the Receiving Party; (b) was already in the possession of the Receiving Party as the result of disclosure by an individual or entity that was not then obligated to keep that information confidential; (c) the Disclosing Party had disclosed or discloses to an individual or entity without confidentiality restrictions; or (d) the Receiving Party had developed or develops independently before or after the Disclosing Party discloses equivalent information to the Receiving Party.
- B. The Receiving Party shall use the same reasonable efforts to protect the Disclosing Party's Confidential Information as it uses to protect its own confidential information of a similar nature. The Receiving Party may only disclose Confidential Information to its personnel having a need to know the Confidential Information to fulfill the Receiving Party's obligations under this Agreement. The Receiving Party may not reproduce, disclose, or use Confidential Information except in performing its obligations under this Agreement. If the Receiving Party is legally required to disclose Confidential Information, the Receiving Party shall, to the extent allowed by law, promptly give the Disclosing Party written notice of the requirement so as to provide the Disclosing Party a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. If the Receiving Party complies with the terms of this Section, disclosure of that portion of the Confidential Information, which the Receiving Party is legally required to disclose, will not constitute a breach of this Agreement.
- C. The Receiving Party shall, upon request of the Disclosing Party, promptly return or destroy all materials embodying Confidential Information other than materials in electronic backup systems or otherwise not reasonably capable of being readily located and segregated without undue burden or expense, except that the Receiving Party may securely retain one (1) copy in its files solely for record purposes. The Receiving Party's obligations as to Confidential Information will survive the termination or expiration of this Agreement for a period of three (3) years.

8. INSURANCE

Insurance requirements as stated within Exhibit C, attached hereto.

9. INDEMNIFICATION

PROVIDER shall indemnify and hold harmless A&M System, and their regents, employees and agents (collectively, the "A&M System Indemnitees") from and against any third-party claims,

damages, liabilities, expense or loss asserted against A&M System Indemnities arising out of any acts or omissions of PROVIDER or its employees or agents pertaining to the activities and obligations under this Agreement, except to the extent such liability, loss or damage arises from an A&M System Indemnitee's gross negligence or willful misconduct.

10. MISCELLANEOUS

- A. **Authority to Contract, Representations & Warranties.** If PROVIDER is a business entity, PROVIDER warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of PROVIDER has been duly authorized to act for and bind PROVIDER.
- B. **Use of Name.** Each Party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that Party (its "Marks"), including all goodwill pertaining to the Marks, are the sole property of that Party. Neither Party may use the Marks of the other without the advance written consent of that Party, except that each Party may use the name of the other Party in factual statements that, in context, are not misleading. The Parties will mutually agree in advance upon any public announcements, or communications to the media regarding this Agreement or the services to be provided pursuant to this Agreement.
- C. **Public Information.** PROVIDER acknowledges that A&M System is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon A&M System's written request, PROVIDER will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of A&M System to A&M System in a non-proprietary format acceptable to A&M System that is accessible by the public. PROVIDER acknowledges that A&M System may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and PROVIDER agrees that this Agreement can be terminated if PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.
- D. **Dispute Resolution.** To the extent that Chapter 2260, Texas Government Code is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by A&M System and PROVIDER to attempt to resolve any claim for breach of contract made by PROVIDER that cannot be resolved in the ordinary course of business. PROVIDER shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of A&M System, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim. This provision and nothing in this Agreement waives A&M System's sovereign immunity to suit or liability, and A&M System has not waived its right to seek redress in the courts.
- E. **Copyrights & Patents [If Applicable].** PROVIDER shall not knowingly provide to the A&M System any materials or services that infringe any intellectual property, privacy, or other right of any party. If PROVIDER becomes aware of any possible infringement claims, PROVIDER shall immediately notify the A&M System in writing as to any judicial, administrative, or other action, suit, claim, investigation, or proceeding (each a

"Proceeding") alleging that any such material or service infringes any intellectual property, privacy, or other right. PROVIDER shall indemnify and defend The Texas A&M University System, and their regents, officers, employees, representatives, and agents against all: (a) amounts awarded in, or paid in settlement of, that Proceeding, including any interest, and (b) out-of-pocket expenses incurred in defending that Proceeding or in any related investigation or negotiation, including court costs, witness fees, and attorneys' and other professionals' fees and disbursements arising out of that Proceeding. If any such service or material becomes, or in PROVIDER's reasonable opinion is likely to become, the subject of an infringement claim, PROVIDER may, at its option and expense, either (1) procure for the A&M System the right to continue exercising the rights licensed to the A&M System under this Agreement, or (b) replace or modify the service or material so that it becomes non-infringing and remains functionally equivalent. If neither of the foregoing options are, in PROVIDER's reasonable opinion, commercially reasonable, PROVIDER may terminate this Agreement and promptly refund to the A&M System a prorated portion of any applicable prepaid Fees. This paragraph is not subject to Section 7 (Limitation of Liability) of the Agreement. The foregoing states the entire liability of PROVIDER and the sole and exclusive remedy for the A&M System with respect to any third party claim of infringement or misappropriation of intellectual property rights.

- F. **Independent Contractor.** Notwithstanding any provision of this Agreement to the contrary, the Parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by this Agreement or by PROVIDER's service to A&M System. Except as specifically required under the terms of this Agreement, PROVIDER (and its representatives, agents, employees and subcontractors) will not represent themselves to be an agent or representative of A&M System or A&M System. As an independent contractor, PROVIDER is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance. PROVIDER and its employees shall observe and abide by all applicable A&M System policies, regulations, rules and procedures, including those applicable to conduct on its premises.
- G. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under Section 231.006, *Texas Family Code*, PROVIDER certifies that it is not ineligible to receive the payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- H. **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, PROVIDER agrees that any payments owing to PROVIDER under this Agreement may be applied directly toward certain debts or delinquencies that PROVIDER owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- I. **Prior Employment.** PROVIDER acknowledges that Section 2252.901, *Texas Government Code*, prohibits A&M System from using state appropriated funds to enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with individual who has been previously employed by A&M System during the twelve (12) month period immediately prior to the effective date of the Agreement. If PROVIDER is an individual, by signing this Agreement,

PROVIDER represents and warrants that it is not a former or retired employee of A&M System that was employed by A&M System during the twelve (12) month period immediately prior to the effective date of the Agreement.

- J. **Not Eligible for Rehire.** PROVIDER is responsible for ensuring that its employees involved in any work being performed for A&M System under this Agreement have not been designated as "Not Eligible for Rehire" as defined in System policy 32.02, *Discipline and Dismissal of Employees*, Section 4 ("NEFR Employee"). In the event A&M System becomes aware that PROVIDER has a NEFR Employee involved in any work being performed under this Agreement, A&M System will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by A&M System.
- K. **Franchise Tax Certification.** If PROVIDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then PROVIDER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that PROVIDER is exempt from the payment of franchise (margin) taxes.
- L. **State Auditor's Office.** PROVIDER understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. PROVIDER agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. PROVIDER will include this provision in all contracts with permitted subcontractors.
- M. **Entire Agreement.** This Agreement constitutes the entire and only agreement between the Parties hereto and supersedes any prior understanding, written or oral agreements between the Parties, or "side deals" which are not described in this Agreement. This Agreement may be amended only by a subsequent written agreement signed by authorized representatives of both parties.
- N. **Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision had never been contained herein. The Parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto and shall become effective on the date designated by such law or by regulation.
- O. **Survival.** Any provision of this Agreement that may reasonably be interpreted as being intended by the Parties to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.
- P. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- Q. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of A&M System.
- R. **HUB Subcontracting Plan.** It is the policy of the state of Texas and A&M System to encourage the use of Historically Underutilized Businesses ("HUB") in our contracts, purchasing transactions and through subcontracting opportunities. The goal of the HUB program is to promote equal access and equal opportunity to HUB vendors in

A&M System contracting and purchasing. PROVIDER will use good faith efforts to subcontract work performed under this Agreement in accordance with the HUB subcontracting plan attached hereto as Exhibit D ("HSP"). Except as specifically provided in the HSP, PROVIDER will not subcontract any of its duties or obligations under this Agreement, in whole or in part. Furthermore, PROVIDER will comply with all of its duties and obligations under Section 20.285 of the Texas Administrative Code.

- S. **Force Majeure.** Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party's reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).
- T. **Loss of Funding.** Performance by A&M System under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, A&M System will issue written notice to PROVIDER and A&M System may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of A&M System. In the event of a termination or cancellation under this Section, A&M System will not be liable to PROVIDER for any damages that are caused or associated with such termination or cancellation.
- U. **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
- V. **Venue.** Pursuant to Section 85.18(b), *Texas Education Code*, mandatory venue for all legal proceedings against the A&M System is to be in the county in which the principal office of A&M System's governing officer is located. At the date of this Agreement, such county is Brazos County, Texas.
- W. **Non-Waiver.** A&M System is an agency of the state of Texas and under the Constitution and the laws of the state of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has authority as is granted to it under the Constitution and the laws of the state of Texas. PROVIDER expressly acknowledges that A&M System is an agency of the state of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by A&M System of its right to claim such exemptions, remedies, privileges, and immunities as may be provided by law, including the sovereign immunity of A&M System.
- X. **Conflict of Interest.** PROVIDER certifies, to the best of their knowledge and belief, that no member of the A&M System Board of Regents, nor any employee of A&M System, has a direct or indirect financial interest in PROVIDER or in the transaction that is the subject of the Agreement.

- Y. **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Chapter 2271, *Texas Government Code*, is applicable to this Agreement, PROVIDER certifies that (a) it does not currently boycott Israel, and (b) it will not boycott Israel during the Term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- Z. **Certification Regarding Business with Certain Countries and Organizations.** PROVIDER represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152, *Texas Government Code*. PROVIDER acknowledges this Agreement may be terminated immediately if this certification is inaccurate.
- AA. **Records Retention.** PROVIDER will preserve all contracting information, as defined under *Texas Government Code*, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for seven years after the conclusion of the Agreement.
- BB. **Verification Regarding Discrimination Against Firearm Entities and Trade Associations.** To the extent that Chapter 2274, *Texas Government Code*, is applicable to this Agreement, PROVIDER verifies that (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- CC. **Verification Regarding Boycotting Energy Companies.** To the extent that Chapter 2274, *Texas Government Code*, is applicable to this Agreement, PROVIDER verifies that (1) it does not boycott energy companies, and (2) it will not boycott energy companies during the term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
- DD. **Compliance with Laws.** PROVIDER shall comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under this Agreement.
- EE. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed given: (a) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (b) the next business day after it is sent by overnight carrier, (c) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (d) on the date of delivery if delivered personally. A&M System and PROVIDER can change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

A&M System: The Texas A&M University System
301 Tarrow St., Suite 273
College Station, Texas 77840
Attention: Jeff Zimmermann
Phone: (979) 458-6410
E-mail: zimmermann@tamus.edu

PROVIDER: Rock Engineering and Testing Laboratory, LLC
10856 Vandale Street
San Antonio, TX 78216
Attention: Kyle Hamock
Phone: 210-365-9311
Email: kyle.hammock@rocktesting.com

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

The Texas A&M University System

DocuSigned by:
Jeff Zimmermann
By _____
E2BE2924E89547F
Jeff Zimmermann
Executive Director, Procurement

8/24/2023

Date

Rock Engineering and Testing Laboratory, LLC

DocuSigned by:
Kyle D. Hammock, P.E.
By _____
007D9E67182E8496
Kyle D. Hammock, P.E.
VP

8/24/2023

Date