

STATE OF TEXAS §
COUNTY OF HIDALGO §

**LICENSE AGREEMENT FOR THE USE OF THE
TEXAS DEPARTMENT OF TRANSPORTATION'S
COPYRIGHTED PLANS**

THIS AGREEMENT is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State," and the County of Hidalgo (PO Box 1356 Edinburg, TX 78540) hereinafter called the "Licensee."

WITNESSETH

WHEREAS, the State, in accordance with Transportation Code, §201.205, may:

1. apply for, register, secure, hold, and protect patents, copyrights, trademarks, or other evidence of protection or exclusivity issued under the laws of the United States, any state, or any nation, including ideas, publications, and other original innovations fixed in a tangible medium; and
2. enter into nonexclusive license agreements with any third party for the receipt of fees, royalties, or other thing of monetary or nonmonetary value; and
3. waive or reduce the amount of fees, royalties, or other monetary or nonmonetary value to be assessed if it determines that such waiver will further the goals and missions of the department and result in a net benefit to the State; and

WHEREAS, the State has authored, produced, or participated in the production of a work, or works, consisting of fifty-six (56) Microstation files that comprise the plan and profile (P&P), driveways, alignments, profiles, schematic and topography for the SH 107 Project CSJ: 0342-01-074 (hereinafter "copyrighted plans"), and is the owner of certain rights in the copyrighted plans (including copyrights, copyright applications, copyright renewals, and copyright extensions), title and interests related thereto; and

WHEREAS, the Licensee desires to obtain a license from the State to use a copy of the copyrighted plans; and

WHEREAS, the State will provide a nonexclusive, non-transferable license to the Licensee to use a copy of the copyrighted plans, provided the Licensee agrees to the terms and conditions established in this agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

A G R E E M E N T

Article 1. CONTRACT PERIOD

This agreement becomes effective upon the date of final execution by the State and shall continue in effect until terminated or modified as hereinafter provided.

Article 2. RIGHTS GRANTED

A. The State hereby grants to the Licensee a nonexclusive right, license, and privilege

worldwide to use a copy of the copyrighted plans for TxDOT projects, and the State will provide the Licensee with such a copy for that purpose. The license granted by the State is limited to the Licensee's personal, internal use. The Licensee shall not use the copyrighted plans or any data or other information obtained from the copyrighted plans for any other purpose.

- B. The Licensee agrees that this License does not transfer or convey any ownership or any other rights other than those rights expressly granted by this agreement. Title to and all rights of ownership in the copyrighted plans, and all copies or any part thereof, are and remain with the State. The Licensee does not have, nor shall it attempt to obtain, any title to the copyrighted plans. The Licensee will not use, reproduce, distribute and/or sell the copyrighted plans, or any data or other information obtained from the copyrighted plans, except as expressly authorized in this agreement.

Article 3. LICENSE FEE

There shall be no separate license fee for the copyrighted plans. The Licensee shall pay copying, personnel, overhead, and other charges for the plans as determined by the State in accordance with the Texas Public Information Act. This sum shall be paid to the State prior to release of the copyrighted plans to the Licensee.

Article 4. RESTRICTIONS ON USE OF LICENSE; DISCLAIMER

- A. The State makes no warranty of any kind, express or implied, with respect to the data and other information contained in the copyrighted plans, and specifically makes no warranty that said copyrighted plans shall be marketable or fit for any particular purpose. Furthermore, any description of said copyrighted plans shall not be deemed to create an express warranty that said copyrighted plans will conform to said description. The Licensee recognizes that the copyrighted plans are preliminary and are subject to change at any time without notice.
- B. The Licensee assumes all risk and liability for any losses, damages, claims, or expenses resulting from the use of the copyrighted plans licensed by the State pursuant to this agreement. Since revisions or additions to the copyrighted plans may occur at any time, the Licensee assumes all risk and liability related to using outdated data or information.
- C. The copyrighted plans are copyrighted by the Texas Department of Transportation and may not be resold, redistributed, or published by the Licensee, whether for compensation or for free, nor may the Licensee be compensated for any other use of the copyrighted plans.
- D. The Licensee shall not disclose information obtained from the State under this contract without the express written consent of the State.

Article 5. COPYRIGHT INFRINGEMENT

Each party to this agreement shall notify the other of any infringement or potential infringement by a third party of the copyright or any other rights owned by the State relating to the copyrighted plans. Each party shall cooperate in resolving any and all breaches or infringements. The Licensee agrees to provide any information and execute any instruments necessary for the State's prosecution of any action for infringement or breach of this agreement by any third party.

Article 6. RESPONSIBILITY FOR MAINTENANCE OF THE WORK

The State is not responsible for providing the Licensee any upgrades or modifications to the copyrighted plans after a copy of the copyrighted plans has been provided to the Licensee under this agreement. Should the Licensee make any modifications to the copyrighted plans,

the Licensee shall provide the State with a copy of such modified version of the work.

Article 7. ASSIGNMENT PROHIBITION

The Licensee is prohibited from assigning the licensed rights to the copyrighted plans, or licensing any of the rights conferred by this agreement, to any third party without the advance written approval of the State. Any attempted sublicense, assignment, or other transfer of the copyrighted plans, any of the data or other information contained in the copyrighted plans, or of the rights or obligations of this agreement without the State's consent shall be void and shall be grounds for termination of this agreement.

Article 8. COVENANT AGAINST CHALLENGE

By entering into this agreement, the Licensee is prohibited from challenging or contesting in any manner the validity of the copyright in the copyrighted plans or its ownership by the State.

Article 9. TERMINATION

- A. Including the provisions established herein, this agreement may be terminated by either of the following conditions:
- (1) Mutual agreement and consent of the parties hereto.
 - (2) By the State, upon written notice to the Licensee as consequence of the Licensee's failure to comply with the requirements of this agreement, unless the Licensee's failure to comply with the agreement is due to no fault of its own.
- B. If the termination is due to the failure of the Licensee to fulfill its contractual obligations, the State will notify the Licensee that a possible breach of contract has occurred. The Licensee must remedy the breach as outlined by the State to the State's satisfaction within thirty (30) days from receipt of the State's notification. The State will declare this agreement terminated upon the Licensee's failure to remedy the breach within the thirty-day period.
- C. Termination of the agreement shall extinguish all rights, duties, obligations and liabilities of the State and the Licensee under this agreement. All rights granted to the Licensee shall revert to the State as owner of the copyrighted plans.
- D. Termination or expiration of this agreement shall not extinguish any of the Licensee's or the State's obligations under this agreement that by their terms continue after the date of termination or expiration.

Article 10. INDEMNIFICATION

The Licensee shall indemnify and save harmless the State from any and all losses, liabilities, damages, claims, demands, costs, expenses, or other liabilities arising out of or connected with the Licensee's use of the copyrighted plans during the term of this agreement, including, but not limited to, any illegal or improper use of the copyrighted plans or any data or information contained in the copyrighted plans, and any manipulation or other modification of the copyrighted plans. Since revisions or additions to the copyrighted plans may occur at any time, the Licensee agrees to indemnify and save harmless the State and its officers, agents, and employees from any and all claims, damages, and attorneys' fees arising from the use of outdated data or information. The Licensee's indemnification of the State shall extend for a period of three (3) years beyond the date of termination of this agreement.

Article 11. REMEDIES

Violation or breach of contract by the Licensee shall be grounds for termination of the agreement and any increased costs arising from the Licensee's default, breach of contract or

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

Article 12. COMPLIANCE WITH LAWS

The Licensee shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative body in any manner affecting the performance of this agreement.

Article 13. SUPPLEMENTAL AGREEMENTS

Any changes in the contract period, character, or agreement terms shall be enacted by a written supplemental agreement executed by both parties. Any supplemental agreements must be executed during the contract period established in Article 1, Contract Period.

Article 14. LEGAL CONSTRUCTION

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

Article 15. PRIOR AGREEMENTS SUPERSEDED

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings and/or written or oral agreements between the State and the Licensee respecting the within subject matter.

Article 16. SIGNATORY AUTHORITY

The undersigned for the Licensee represents and warrants that he/she is an officer of the organization for which he/she has executed this agreement and that he/she has the full and complete authority to enter into this agreement on behalf of the Licensee.

Article 17. NOTICES

All notices to either party by the other party required under this agreement shall be delivered personally or sent by U.S. Mail, postage prepaid, addressed to such party at the following respective addresses:

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| Licensee: | State: |
| <u> Hidalgo County </u> | Texas Department of Transportation |
| Attn. Judge _____ | Attn: Pedro R. Alvarez, P.E. District Engineer |
| <u> PO Box 1356 </u> | 600 W. Interstate 2 |
| <u> Edinburg, TX 78540 </u> | Pharr, TX 78577-1717 |

and shall be deemed to be received by the addressee on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

IN TESTIMONY WHEREOF, the State and the Licensee have executed dual counterparts of this agreement.

_____Hidalgo County_____ **(Licensee)**

By _____ **Date** _____

Typed or Printed Name and Title _____

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____

Date: _____