

**MASTER SERVICES AGREEMENT
PAVEMENT ANALYSIS SERVICES**

THIS MASTER SERVICES AGREEMENT (“**Agreement**”), effective as of August 02, 2016 (“**Effective Date**”), is entered into by and between the North Central Texas Council of Governments (“**NCTCOG**”), a Texas political subdivision and non-profit corporation, with offices located at 616 Six Flags Drive, Arlington, TX 76011, and Dynatest North America, Inc. (“**Contractor**”), with offices located at 2217 West Braker Lane, Austin, TX 78758.

**ARTICLE I
RETENTION OF THE CONTRACTOR**

1.1 This Agreement defines the terms and conditions upon which the Contractor agrees to provide pavement analysis services (hereinafter, “**Services**”) to governmental entities participating in the North Texas SHARE program (hereinafter “Participating Entities”) through a Master Interlocal Agreement with NCTCOG. The Contractor is being retained to provide services described below to Participating Entities based on the Contractor’s demonstrated competence and requisite qualifications to perform the scope of the services described herein and in the Request for Qualifications (hereinafter, “**RFQ**”). The Contractor demonstrated they have the resources, experience, and qualifications to perform professional pavement analysis services, which is of interest to Participating Entities and was procured via RFQ. NCTCOG agrees to and hereby does retain the Contractor, as an independent contractor, and the Contractor agrees to provide services to Participating Entities, in accordance with the terms and conditions provided in this Agreement and consistent with Contractor’s response to NCTCOG RFP # NCT-2016-14.

**ARTICLE II
SCOPE OF SERVICES**

2.1 The Contractor will provide Services described in any written Request for Services issued by NCTCOG or Participating Entities. Any such Request for Services is hereby incorporated by reference and made a part of this Agreement, and shall be subject to the terms and conditions in this Agreement. In the event of a conflict between any term or provision in this Agreement and any term or provision in a Request for Services, the term or provision in this Agreement shall control unless the conflicting term or provision in this Agreement is referenced, and expressly stated not to apply, in such Request for Services.

2.2 All Services rendered under this Agreement will be performed by the Contractor: i) with due care; ii) in accordance with generally prevailing industry standards; iii) in accordance with Participating Entities’ standard operating procedures and applicable policies, as may be amended from time to time; and iv) in compliance with all applicable laws, government regulatory requirements, and any other written instructions, specifications, guidelines, or requirements provided by NCTCOG and/or Participating Entities.

2.3 Any agreed-upon changes to a Request for Services shall be set forth in a Services Order. Contractor will not implement any changes or any new Services until a Services Order has been duly executed by Participating Entity. For the avoidance of doubt, the Contractor acknowledges that Participating Entity is under no obligation to execute a Services Order. Participating Entity shall not be liable for any amounts not included in a Request for Services in the absence of a fully executed amendment or Services Order.

2.4 Pricing for items found on the Pricing Sheet (Attachment 1) represent the maximum cost for each item offered by the Contractor. Pricing may be further negotiated by the Participating Entity and the Contractor, but is not to exceed the cap established in the Pricing Sheet (Attachment 1).

2.5 NCTCOG Obligations

- 2.5.1 NCTCOG agrees to serve as a facilitator with respect to the Services.
- 2.5.2 NCTCOG shall make available a contract page on its NorthTexasSHARE.org website which will include contact information for the Contractor(s).

2.6 Participating Entity Obligations.

- 2.6.1 In order to utilize the Services, Participating Entities must have executed a Master Interlocal Agreement for North Texas SHARE with NCTCOG. This agreement with the Participating Entity will define the legal relationship between NCTCOG and the Participating Entity.

2.7 Contractor Obligations.

- 2.7.1 Contractor must be able to conduct, instruct, and/or implement Pavement Analysis Services consistent with the requirements and intent of RFQ #NCT-2016-14.
- 2.7.2 Contractor shall provide all necessary field inspectors, vehicles, tools, equipment, and traffic control required to perform this work. The scope of services shall include, but not be limited to, items listed in Attachment 1, Pricing Sheet.
- 2.7.3 Contractor will be required to track and report to the NCTCOG on pavement analysis activities relating to the Agreement. The Contractor will be required to provide management reports to NCTCOG on a quarterly basis. Examples of management reports include, but are not limited to: New Engagement Reports (new engagements in reporting period), Billing/Invoice Reports (regular overview of billings for the reporting period), and Timecard Reports (regular overview of all time logged for reporting period).

ARTICLE III TERM

3.1 **Term.** This Agreement will commence on the Effective Date and remain in effect for an initial three (3) year period ending on December 31, 2019 (the "Term"), unless earlier terminated as provided herein. This Agreement may be renewed, at NCTCOG's sole discretion, for up to three (3) additional one (1) year terms. The total term of this Agreement shall not exceed six (6) years.

NCTCOG reserves the right to periodically procure pavement analysis services in the future to supplement the pool of Contractor(s), on an as needed basis. Contractor(s) with an existing Master Services Agreement(s) will not be required to respond to any such procurements which may occur during the term of this Agreement.

3.2 **Termination.** NCTCOG may terminate this Agreement and/or any Request for Service to which it is a signatory at any time, with or without cause, upon thirty (30) days' prior written notice to Contractor. Upon its receipt of notice of termination of this Agreement or Request for Service, Contractor shall follow any instructions of NCTCOG respecting work stoppage. Contractor shall cooperate with NCTCOG and/or Participating Entities to provide for an orderly conclusion of the Services. Contractor shall use its best efforts to minimize the amount of any non-cancelable obligations and shall assign any contracts related thereto to NCTCOG or Participating Entity at its request. If NCTCOG or Participating Entity elects to continue any activities underlying a terminated Request for Service after termination, Contractor shall cooperate with NCTCOG or Participating Entity to provide for an orderly transfer of Contractor's responsibilities with respect to such Request(s) for Service to NCTCOG or Participating Entity. Upon the effective date of any such termination, the Contractor shall submit a final invoice for payment in accordance with Article IV, and NCTCOG or Participating Entity shall pay such amounts as are due to Contractor through the effective date of termination. NCTCOG or Participating Entity shall only be liable for payment of services rendered before the effective date of termination. If Agreement is terminated, certain reporting requirements identified in this Agreement shall survive termination of this Agreement.

Upon any material breach of this Agreement by either party, the non-breaching party may terminate this Agreement upon twenty (20) days written notice to the breaching party. The notice shall become effective at the end of the twenty (20) day period unless the breaching party cures such breach within such period.

ARTICLE IV COMPENSATION

4.1 **Remuneration.** NCTCOG intends to make this Agreement available to other governmental entities through its shared services program. NCTCOG will utilize a 1% administrative fee, to be based upon the total contracted value that will apply to this Agreement, and any addendums, Request(s) for Service, etc., between the Contractor and NCTCOG or the Contractor and Participating Entity. The administrative fee will be remitted by the Contractor to NCTCOG on a quarterly basis, along with required quarterly reporting. Payments and reporting should be submitted to:

NCTCOG
ATTN: North Texas SHARE
PO Box 5888
Arlington, TX 76005-5888
Email: NorthTexasSHARE@nctcog.org

4.2 **Invoices.** Contractor shall submit an invoice to Participating Entities every month, or as otherwise stated in a Request for Service, for Services provided. Participating Entities shall pay undisputed amounts in such invoice within thirty (30) days of receipt. Invoices for service used by Participating Entities should be submitted to their respective jurisdictions and designees.

Costs incurred prior to execution of this Agreement are not eligible for reimbursement. There shall be no obligation whatsoever to pay for performance of this Agreement from the monies of the NCTCOG or Participating Entities, other than from the monies designated for this Agreement and/or executed Request(s) for Services. Contractor expressly agrees that NCTCOG shall not be liable, financial or otherwise, for Services provided to Participating Entities.

**ARTICLE V
RELATIONSHIP BETWEEN THE PARTIES**

5.1 **Contractual Relationship.** It is understood and agreed that the relationship described in this Agreement between the Parties is contractual in nature and is not to be construed to create a partnership or joint venture or agency relationship between the parties. Neither party shall have the right to act on behalf of the other except as expressly set forth in this Agreement. Contractor will be solely responsible for and will pay all taxes related to the receipt of payments hereunder and shall give reasonable proof and supporting documents, if reasonably requested, to verify the payment of such taxes. No Contractor personnel shall obtain the status of or otherwise be considered an employee of NCTCOG or Participating Entity by virtue of their activities under this Agreement.

**ARTICLE VI
REPRESENTATION AND WARRANTIES**

6.1 **Representations and Warranties.** Contractor represents and warrants that:

- 6.1.1 As of the Effective Date of this Agreement, it is not a party to any oral or written contract or understanding with any third party that is inconsistent with this Agreement and/or would affect the Contractor's performance under this Agreement; or that will in any way limit or conflict with its ability to fulfill the terms of this Agreement. The Contractor further represents that it will not enter into any such agreement during the Term of this Agreement;
- 6.1.2 NCTCOG is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from, or ineligible for, participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. Contractor and its subcontractors shall include a statement of compliance with Federal and State Debarment and suspension regulations in all Third-party contracts.
- 6.1.3 Contractor shall notify NCTCOG if Contractor or any of the Contractor's sub-contractors becomes debarred or suspended during the performance of this Agreement. Debarment or suspension of the Contractor or any of Contractor's sub-contractors may result in immediate termination of this Agreement.
- 6.1.4 Contractor and its employees and sub-contractors have all of the necessary qualifications, licenses, permits, and/or registrations to perform the Services in accordance with the terms and conditions of this Agreement, and at all times during the Term, all such qualifications, licenses, permits, and/or registrations shall be current and in good standing.
- 6.1.5 Contractor shall, and shall cause its representatives to, comply with all municipal, state, and federal laws, rules, and regulations applicable to the performance of the Contractor's obligations under this Agreement.

**ARTICLE VII
CONFIDENTIAL INFORMATION AND OWNERSHIP**

7.1 **Confidential Information.** Contractor acknowledges that any information it or its employees, agents, or subcontractors obtain regarding the operation of NCTCOG or Participating Entities, its products, services, policies, customer, personnel, and other aspect of its operation ("Confidential Information") is proprietary and confidential, and shall not be revealed, sold, exchanged, traded, or disclosed to any person, company, or other entity during the period of the Contractor's retention hereunder or at any time thereafter without the express written permission of NCTCOG or Participating Entity.

7.2 **Ownership.** Contractor acknowledges that NCTCOG or Participating Entities, as governmental entities, are subject to the Texas Public Information Act. All final documents, reports, information, or materials are and shall at all times be and remain, upon payment of Contractor's invoices therefore, the property of NCTCOG or Participating Entity and shall not be subject to any restriction or limitation on their future use by, or on behalf of, NCTCOG or Participating Entity, except otherwise provided herein. Subject to the foregoing exception, if at any time demand be made by NCTCOG or Participating Entity for any documentation, whether after termination of this Agreement or otherwise, the same shall be turned over to NCTCOG without delay, and in no event later than thirty (30) days after such demand is made. Contractor shall have the right to retain copies of documentation and other items for its archives. If for any

reason the foregoing Agreement regarding the ownership of documentation is determined to be unenforceable, either in whole or in part, the Contractor hereby assigns and agrees to assign to NCTCOG all rights, title, and interest that the Contractor may have or at any time acquire in said documentation and other materials, provided that the Contractor has been paid the aforesaid.

**ARTICLE VIII
GENERAL PROVISIONS**

8.1 **Notices.** All notices from one Party to another Party regarding this Agreement shall be in writing and delivered to the addresses shown below:

If to NCTCOG: North Central Texas Council of Governments
P.O. Box 5888
Arlington, TX 76005-5888
Phone: (817) 695-2534
Email: northtexasshare@nctcog.org; kkirkpatrick@nctcog.org
Attn: North Texas SHARE

If to Contractor:

Robert R. Williams
Dynatest North America, Inc.
2717 West Booker Lane
Austin, TX 78758
rwilliams@dynatest.com 1 512-521-5008 ext. 215

The above contact information may be modified without requiring an amendment to the Agreement.

8.2 **Tax.** NCTCOG and several participating entities are exempt from Texas limited sales, federal excise and use tax, and does not pay tax on purchase, rental, or lease of tangible personal property for the organization’s use. A tax exemption certificate will be issued upon request.

8.3 **Indemnification.** Contractor shall defend, indemnify, and hold harmless NCTCOG and Participating Entities, NCTCOG’s affiliates, and any of their respective directors, officers, employees, agents, subcontractors, successors, and assigns from any and all suits, actions, claims, demands, judgments, liabilities, losses, damages, costs, and expenses (including reasonable attorneys’ fees and court costs) (collectively, “Losses”) arising out of or relating to: (i) Services performed and carried out pursuant to this Agreement; (ii) breach of any obligation, warranty, or representation in this Agreement, (iii) the negligence or willful misconduct of Contractor and/or its employees or subcontractors; or (iv) any infringement, misappropriation, or violation by Contractor and/or its employees or subcontractors of any right of a third party; provided, however, that Contractor shall have no obligation to defend, indemnify, or hold harmless to the extent any Losses are the result of NCTCOG’s or Participating Entities’ gross negligence or willful misconduct.

8.4 **Limitation of Liability.** In no event shall either party be liable for special, consequential, incidental, indirect or punitive loss, damages or expenses arising out of or relating to this Agreement, whether arising from a breach of contract or warranty, or arising in tort, strict liability, by statute or otherwise, even if it has been advised of their possible existence or if such loss, damages or expenses were reasonably foreseeable.

Notwithstanding any provision hereof to the contrary, neither party’s liability shall be limited by this Article with respect to claims arising from breach of any confidentiality obligation, arising from such party’s infringement of the other party’s intellectual property rights, covered by any express indemnity obligation of such party hereunder, arising from or with respect to injuries to persons or damages to tangible property, or arising out of the gross negligence or willful misconduct of the party or its employees.

8.5 **Insurance.** At all times during the term of this Agreement, Contractor shall procure, pay for, and maintain, with approved insurance carriers, the minimum insurance requirements set forth below, unless otherwise agreed in a Request for Services between Contractor and Participating Entities. Further, Contractor shall require all contractors and sub-contractors performing work for which the same liabilities may apply under this Agreement to do likewise. Contractor

may cause the insurance to be effected in whole or in part by the contractors or sub-contractors under their contracts. NCTCOG reserves the right to waive or modify insurance requirements at its sole discretion.

1. Workers' Compensation: Statutory limits and employer's liability of not less than \$100,000 for each accident.
2. Commercial General Liability:
 - a. Minimum Required Limits:
 - \$1,000,000 per occurrence
 - \$1,000,000 general aggregate
 - b. Commercial General Liability policy to include:
 - Coverage A: Bodily injury and property damage;
 - Coverage B: Personal and advertising injury liability;
 - Coverage C: Medical payments
 - Products: Completed operations
 - Fire legal liability
 - c. Policy coverage must be on an "occurrence" basis using CGL forms as approved by the Texas State Board of Insurance
 - d. Attachment of Endorsement CG 20 10- additional insured
 - e. All other endorsements shall require prior approval by the NCTCOG.
3. Comprehensive Automobile/Truck Liability: Coverage shall be provided for all owned hired, and non-owned vehicles. Minimum required limit: \$1,000,000 combined single limit.
4. Professional liability:
 - a. Minimum Required Limits:
 - \$1,000,000 each claim
 - \$1,000,000 policy aggregate

8.6 Conflict of Interest. During the term of this Agreement, and all extensions hereto and for a period of one (1) year thereafter, neither party, shall, without the prior written consent of the other, directly or indirectly, whether for its own account or with any other persons or entity whatsoever, employ, solicit to employ or endeavor to entice away any person who is employed by the other party.

8.7 Force Majeure. It is expressly understood and agreed by both parties to this Agreement that, if the performance of any provision of this Agreement is delayed by force majeure, defined as reason of war, civil commotion, act of God, governmental restriction, regulation or interference, fire, explosion, hurricane, flood, failure of transportation, court injunction, or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated herein, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the period of time applicable to such requirement shall be extended for a period of time equal to the period of time such party was delayed. Each party must inform the other in writing within a reasonable time of the existence of such force majeure.

8.8 Ability to Perform. Contractor agrees promptly to inform NCTCOG of any event or change in circumstances which may reasonably be expected to negatively affect the Contractor's ability to perform its obligations under this Agreement in the manner contemplated by the parties.

8.9 Availability of Funding. This Agreement and all claims, suits, or obligations arising under or related to this Agreement are subject to and limited by the receipt and availability of funds which are received from the funding agencies by NCTCOG dedicated for the purposes of this Agreement.


8.10 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Texas, United States of America. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of this Agreement shall be in Tarrant County, Texas.

8.11 Waiver. Failure by either party to insist on strict adherence to any one or more of the terms or conditions of this Agreement, or on one or more occasions, will not be construed as a waiver, nor deprive that party of the right to require strict compliance with the same thereafter.

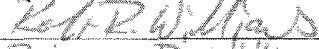
- 8.12 **Entire Agreement.** This Agreement and any attachments/addendums, as provided herein, constitutes the entire agreement of the parties and supersedes all other agreements, discussions, representations or understandings between the parties with respect to the subject matter hereof. No amendments hereto, or waivers or releases of obligations hereunder, shall be effective unless agreed to in writing by the parties hereto.
- 8.13 **Assignment.** This Agreement may not be assigned by either Party without the prior written consent of the other Party.
- 8.14 **Severability.** In the event 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 provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intents of the Parties.
- 8.15 **Amendments.** This Agreement may be amended only by a written amendment executed by both Parties, except that any alterations, additions, or deletions to the terms of this Agreement, which are required by changes in Federal and State law or regulations or required by the funding source, are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation.
- 8.16 **Dispute Resolution.** The parties to this Agreement agree to the extent possible and not in contravention of any applicable State or Federal law or procedure established for dispute resolution, to attempt to resolve any dispute between them regarding this Agreement informally through voluntary mediation, arbitration or any other local dispute mediation process, including but not limited to dispute resolution policies of NCTCOG, before resorting to litigation.
- 8.17 **Publicity.** Contractor shall not issue any press release or make any statement to the media with respect to this Agreement or the services provided hereunder without the prior written consent of NCTCOG.
- 8.18 **Survival.** Rights and obligations under this Agreement which by their nature should survive will remain in effect after termination or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

North Central Texas Council of Governments

Signature: 
 Name: Mike Eastland
 Title: Executive Director
 Date: 08/02/2016

Dynatest North America, Inc.

Signature: 
 Name: Robert R. Williams
 Title: Senior Engineer
 Date: August 2, 2016

**ATTACHEMENT I
Pricing Sheet
Dynatest North America, Inc.**

Item #	Description:	Unit	PROVIDE PRICE PER TIERED GROUP			
			Unit Base Cost \$	Unit Cost (\$) 0-200 Miles	Unit Cost (\$) 201-700 Lane Miles	Unit Cost (\$) 701+ Lane Miles
1	Automatically and continuously measure pavement cracking, texture, rutting, width, and pavement type	Lane Mile ¹		\$89	\$66	\$63
2	Collect pavement surface distress through automated means	Lane Mile ¹		\$39	\$33	\$30
3	Provide a digital condition rating system to collect user defined severity/extent based pavement distresses and pertinent roadway attributes to accommodate a standardized approach to collecting data	Lump Sum	2500			
4	Collect dual-wheel path roughness data to International Roughness Index standards	Lane Mile ¹		\$1	\$1	\$1
5	Roadway information that shall be collected and provided to the Participant at a minimum includes items a. through i. in Section 5 of the Overview in this bid. (Page 5)	Lane Mile ¹		\$5	\$3	\$2
6	Collect digital images at 25-foot intervals of the road surface condition and link to a geodatabase (minimum forward facing imagery)	Lane Mile ¹		\$1	\$1	\$1
7	Collect sidewalk data to include location, length, width and condition and create shape (.shp) files for incorporation into the Participant's GIS system, if applicable	Lane Mile ¹		\$170	\$160	\$150
8	Collect sidewalk ADA ramp data to include location, configuration, presence of truncated domes or other detectable warning feature, and condition and create shape (.shp) files for incorporation into the Participant's GIS system, if applicable.	Each	4			
9	Collect roadway sign data to include type and location and create shape (.shp) files for incorporation into the Participant's GIS system, if applicable	Each	2			
10	Collect photos of ADA ramps, sidewalks, and/or roadway signs inventoried under items 7, 8, and 9 above.	Each	0.1			
11	Collect location of curb and gutter and create shape (.shp) files for incorporation into the Participant's GIS system, if applicable	Linear Feet	0.01			
12	Collect location and type of visible in-pavement features such as valves, manhole covers, etc. and create shape (.shp) files for incorporation into the Participant's GIS system, if applicable	Each	2			
13	Load assessment data for all Participant-maintained pavements into a pavement management software system required by local government Participant(s), if applicable. Cost includes base cost plus lane mile unit cost.	Each Participant	2400	\$8	\$6	\$4
14	Implement map module so that pavement condition and other data can be integrated, displayed, and accessed through the map interface in a format consistent with the Participant's horizontal and vertical control network system, if applicable. Cost includes base cost plus lane mile unit cost.	Each Participant	4400	\$10	\$10	\$10
15	Provide to the Participant the pavement condition data in a pavement management system database approved by Participant. Coordinate with the Participant's IT department to provide pavement condition data in a format compatible with the Participant's Environmental Systems Research Institute (ESRI) GIS database, if applicable. Cost includes base cost plus lane mile unit cost.	Each Participant	2400	\$8	\$6	\$4
16	Calculate a Pavement Condition Index (PCI) score for each road segment using an approved pavement management system and in accordance with ASTM D6433. Provide results compatible with the Participant's GIS database, if applicable	Lane Mile ¹		\$8	\$6	\$4
17	Calculate the International Roughness Index for each road segment in accordance with ASTM E1926. Provide results compatible with the Participant's GIS database, if applicable	Lane Mile ¹		\$1	\$1	\$1
18	With input from Participant's staff, devise a weighing system taking into account PCI, IRI, average daily traffic for thoroughfares (traffic count raw data provided by Participant), and public safety emergency routes; and apply this 0-100 numeric index to the roadway information collected for the entire jurisdiction. Cost includes base cost plus lane mile unit cost.	Lane Mile ¹	3000	\$3	\$2	\$1
19	Estimate the annual budget required to meet the long term goals regarding desired pavement condition levels. Cost includes base cost plus lane mile unit cost.	Each Participant	5000	\$3	\$3	\$3
20	Create a five year and ten year pavement rehabilitation plan with input from Participant's staff. Cost includes base cost plus lane mile unit cost.	Each Participant	5000	\$3	\$3	\$3
21	Recommend the computer hardware and software needed for successful implementation, potentially including recommendations for licenses of pavement management system software and other geodatabase software as needed	Each Participant	3500			
22	Train Participant staff and provide assistance to the Public Works and IT Department as needed for the use of data collected through the fully automated system (20 person maximum per class)	Day	6000			
23	Collect and analyze pavement structural condition information through the use of a falling weight deflectometer in accordance with industry standards on designated participant-owned roadways	**				
24	Collect and analyze pavement structural condition information through the use of Ground Penetrating Radar (GPR) in accordance with industry standards on designated participant-owned roadways	**				
25	Collect and analyze pavement structural condition information through the use of pavement cores in accordance with industry standards on designated participant-owned roadways (traffic control included) ²	**				
26	Additional miscellaneous services, selected by Participant, not to exceed 15% of total bid.					

** See following sheet for definitions of terms on this page.

¹ Lane mile is to be defined as a mile traveled as

1. A single pass on *alleyways*
2. A centered single pass on *residential streets*
3. Includes the outside lane in each direction for *collectors and arterials* (2 total).

² Spacing for pavement cores to be negotiated with each participant.

Services to be negotiated with each community when requested. These items may require the service of an engineer, either provided by the client or contracted by the vendor.