

CONSTRUCTION ENGINEERING SERVICES BOILERPLATE  
(DEPARTMENT SUPPLIES PROJECT ENGINEER)

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## GENERAL PROVISIONS

### I. DEFINITIONS

- (1) "Authorization" means the written direction from the DEPARTMENT delivered to the CONSULTANT that references this CONTRACT, the specific Services to be performed and the DEPARTMENT PROJECT ID number to which costs will be charged and directs CONSULTANT to proceed.
- (2) "CONSULTANT" means the party engaged by the DEPARTMENT in this CONTRACT to provide consultant construction engineering services for the benefit of the DEPARTMENT.
- (3) "CONSULTANT Representative" means the person designated by the CONSULTANT to act as liaison between the CONSULTANT and the DEPARTMENT.
- (4) "CONTRACT" means this Construction Engineering Services Contract (DEPARTMENT supplies Project Engineer).
- (5) "Contractor" means the individual, partnership, joint venturers, corporation or agency undertaking the performance of the work designated under the terms of a construction contract identified in an Authorization as stated in the first pages of this CONTRACT.
- (6) "DEPARTMENT" means the Wisconsin Department of Transportation, which is primarily responsible to the Federal Highway Administration for MANAGEMENT of construction to insure work is performed in accord with the approved plans, specifications, and estimates.
- (7) "DEPARTMENT Representative" means the qualified, full-time public employee of the DEPARTMENT in immediate charge of the engineering details and field administration of each PROJECT with authority to reject defective material, prohibit the use of inadequate or defective equipment and to suspend any work that is being improperly performed and in responsible charge of this CONTRACT to monitor CONSULTANT compliance with its terms, conditions, and specifications, including awareness of day to day operations, involvement in decisions on changes, CONSULTANT inspection and administration, and presence at PROJECT at a frequency commensurate with project magnitude and complexity. (Note: Acts as "engineer" and "Project Engineer" as used in the State of Wisconsin Department of Transportation Standard Specifications for Road and Bridge Construction, and State of Wisconsin, Department of Transportation Construction and Materials Manual.)
- (8) "FHWA" means the Federal Highway Administration.
- (9) "Inspector" means the authorized representative of the CONSULTANT who has the duties and responsibilities of "inspector" as used in State of Wisconsin Department of Transportation Standard Specifications for Road and Bridge Construction, and State of Wisconsin Department of Transportation Construction and Materials Manual.
- (10) "Manual" means the publications of data and information produced by the DEPARTMENT for the instruction of its employees and furnished in bound or collected form to CONSULTANT.
- (11) "PROJECT" means the specific section of a highway together with all appurtenances and construction to be performed thereon by the Contractor(s) in related construction contracts executed by the DEPARTMENT.

- (12) "Services" means the engineering services, labor, equipment, and materials furnished by CONSULTANT in accordance with this CONTRACT.
- (13) "Special Provisions" means the special directions or requirements peculiar to a PROJECT and not otherwise thoroughly or satisfactorily detailed or presented in the Specifications, and which are contained in the construction contract.
- (14) "Specifications" means the Standard Specifications for Road and Bridge Construction of the Wisconsin Department of Transportation, Edition as incorporated in the construction contract.
- (15) "Work" and "work" mean all labor, materials, equipment and other incidentals necessary or convenient to the successful completion of the PROJECT, or a particular part of the PROJECT, furnished by the Contractor, or its subcontractors or suppliers.

## II. SCOPE OF SERVICES

### A. GENERAL

- (1) The Services under this CONTRACT shall consist of performing to the satisfaction of the DEPARTMENT all those construction engineering services necessary or incidental to accomplish the CONTRACT consistent with applicable professional standards.
- (2) The CONSULTANT shall furnish all services and labor necessary to conduct and complete the Services to accomplish this CONTRACT, and shall furnish all materials, equipment, supplies and incidentals other than those designated in writing as to be furnished by the DEPARTMENT necessary to perform the Services, and check or test them prior to use for this CONTRACT.
- (3) The CONSULTANT's principal contact with the DEPARTMENT shall be through the DEPARTMENT Representative.
- (4) Since the Services under this CONTRACT are to be financed in whole or in part with federal or state funds, the Services shall comply with all applicable federal and state laws and regulations.
- (5) The FHWA may participate in all conferences and reviews.
- (6) At the request of the DEPARTMENT the CONSULTANT during the progress of the Services shall furnish information or data relating to the Services under this CONTRACT as may be required by the DEPARTMENT to enable it to carry out or to proceed with related phases of the PROJECT not covered by this CONTRACT, or which may be necessary to enable the DEPARTMENT to furnish information to the CONSULTANT upon which to proceed with further Services.
- (7) Compliance with all of the foregoing shall be within the purview of this CONTRACT and shall not constitute a basis for additional or extra compensation.

## B. CONTROL AND AUTHORITY

- (1) The DEPARTMENT Representative will be designated by the District Chief Construction Engineer. (See definition of "DEPARTMENT Representative") The DEPARTMENT Representative is identified on the first pages of this CONTRACT.
- (2) The CONSULTANT Representative shall be designated by the CONSULTANT to serve as field supervisor of all CONSULTANT personnel and services performed under this CONTRACT, and to act as liaison between the CONSULTANT and DEPARTMENT Representative. The CONSULTANT Representative shall report to and be directly accountable to the DEPARTMENT Representative. The CONSULTANT Representative is identified on the first pages of this CONTRACT.
- (3) In the event of a controversy the CONSULTANT Representative shall first confer with the DEPARTMENT Representative. In the event the CONSULTANT Representative and DEPARTMENT Representative cannot agree, the DEPARTMENT Representative will promptly contact the District Chief Construction Engineer of the DEPARTMENT or his or her delegate who will determine the necessary course of action. The DEPARTMENT reserves the unilateral right to assign or augment personnel, or terminate the CONTRACT, as stated in Sections II.D.(2) and III.C.(1) below.
- (4) This CONTRACT serves as a permit under sec. 86.07(2), Wis. Stats., for the CONSULTANT and any of its approved subcontractors to carry out the Services hereunder. CONSULTANT and any of its approved subcontractors are authorized representatives of the DEPARTMENT for purposes of the right of entry under sec. 84.01(10), Wis. Stats., to enter private lands to make surveys or inspections to carry out Services required by this CONTRACT.

## C. SERVICES TO BE PERFORMED BY THE CONSULTANT

The CONSULTANT agrees to:

- (1) Attend conferences required to carry out the CONTRACT.
- (2) Designate a CONSULTANT Representative, with the duties and responsibilities designated in Section II. B.(2) of the CONTRACT.
- (3) Become familiar with the standard construction practices of the DEPARTMENT, the construction plans and contract(s) for the PROJECT, and the Contractor's proposed schedule of operations prior to beginning field Services under this CONTRACT.
- (4) Assign a sufficient number of technically qualified and experienced personnel to the PROJECT to perform the Services required under the CONTRACT, in a timely manner to avoid delay to the Contractor.
- (5) Notify the DEPARTMENT Representative immediately of any unanticipated PROJECT conditions.
- (6) Withdraw any personnel or halt any services no longer required, at the request of the DEPARTMENT, or within a reasonable time after the lack of need becomes apparent to the CONSULTANT.

- (7) Perform CONSULTANT field operations in accordance with OSHA regulations and accepted safety practices.
- (8) Provide for CONSULTANT personnel transportation, supplies, materials and incidentals as are needed to accomplish the Services required under the CONTRACT.
- (9) Perform construction surveys and staking, and provide measurements needed by the Contractor.
- (10) Act as Inspector as provided in the Specifications, Special Provisions, and State of Wisconsin Department of Transportation Construction and Materials Manual.
- (11) Sample or test, or both, materials to be incorporated in the work, and effectively recommend rejection of Contractor's work and materials not meeting the Specifications, Special Provisions, or State of Wisconsin Department of Transportation Construction and Materials Manual.
- (12) Make certain that test report records or certificates of compliance have been received, prior to the incorporation of materials in the work, for materials tested off the PROJECT site.
- (13) Keep Inspectors' diaries consistent with DEPARTMENT practice.
- (14) Prepare and submit, such periodic, intermediate and final data and records as may be required by the DEPARTMENT Representative and as are applicable to the PROJECT.
- (15) Review Contractor submittal of records and reports required by the DEPARTMENT Representative as applicable to the PROJECT.
- (16) Collect, properly label or identify, and deliver to the DEPARTMENT all original diaries, logs, notebooks, accounts, records, reports and other documents prepared by the CONSULTANT in the performance of the CONTRACT, upon completion or termination of the CONTRACT.
- (17) Return, upon completion or termination of the CONTRACT, all Specifications, Manuals, guides, written instructions, construction contracts and plans, unused forms and record keeping books, and other documents and materials furnished by the DEPARTMENT. The CONSULTANT may be responsible for replacing lost documents or materials at a fair and reasonable price. See also V.C.(1) below.
- (18) Prepare and submit a certificate of completion to the DEPARTMENT upon completion of the CONTRACT Services. See III.A.(9) below.

#### D. SERVICES TO BE PROVIDED BY THE DEPARTMENT

- (1) The DEPARTMENT agrees to:
  - (a) Make available to the CONSULTANT copies of the construction contract(s) and plans, shop drawings, plan revisions, Specifications, Manuals, guides, written instructions and other information and data necessary to enable the CONSULTANT to perform the Services under this CONTRACT to the same standards required of the DEPARTMENT'S personnel.

- (b) Provide for the use of the CONSULTANT a supply of the blank diaries, logs, record keeping books and reporting forms necessary for the CONSULTANT to perform the Services under this CONTRACT to the same standards required of the DEPARTMENT'S personnel.
  - (c) Provide space in the field office and field laboratory furnished by the Contractor under the terms of the construction contract, for the occupancy and use of the CONSULTANT until completion of the construction work.
  - (d) Provide for laboratory testing of materials requiring off-site testing facilities, and authorize CONSULTANT to obtain test reports or certificates of compliance for such testing.
  - (e) Perform soil borings and subsurface explorations.
  - (f) Designate a DEPARTMENT Representative with the duties and responsibilities set forth in Section II. B. (1) of the CONTRACT.
  - (g) Provide, through the DEPARTMENT Representative, direction to the CONSULTANT and supervision as may be reasonably necessary to perform and complete the CONTRACT in conformance with standard construction engineering practices of the DEPARTMENT.
- (2) The DEPARTMENT reserves the right to assign to the PROJECT such DEPARTMENT personnel as may be needed to perform specialized work duties or to augment the CONSULTANT'S personnel. The cost of such DEPARTMENT personnel and services will be reflected in a decrease in Services order as provided in Section IV.B.(6) of the CONTRACT if such assignment is required by the failure of the CONSULTANT to provide a sufficient, properly-qualified and experienced work force, as determined by the DEPARTMENT.

#### E. AGENCY COORDINATION, PUBLIC RELATIONS, AND COOPERATION

- (1) Contact and coordination with all affected local, state and federal agencies, including the FHWA; other consultants and other contractors; the general public; utilities and railroad companies shall be the responsibility of the DEPARTMENT.
- (2) The CONSULTANT shall cooperate fully with the DEPARTMENT; and with local, state and federal agencies including the FHWA, the general public, utilities, railroad companies, and other consultants and other contractors when so directed by the DEPARTMENT. Cooperation may include attendance at conferences.

#### F. MEETINGS AND CONFERENCES

- (1) Conferences, as may be necessary for the discussion and review of the Services under this CONTRACT, shall be scheduled between the CONSULTANT and the DEPARTMENT. These conferences may include field review of the PROJECT.
- (2) Conferences shall be held upon the request of the CONSULTANT or the DEPARTMENT.

- (3) Conferences are in addition to those meetings which are necessary for close coordination during day-to-day progress of the work.

### III. PROSECUTION AND PROGRESS

#### A. GENERAL

- (1) It is anticipated work under the construction contract will start on and be completed by the dates indicated on the first pages of this CONTRACT.
- (2) To the extent possible and subject to III. A. (7) below, the CONSULTANT shall complete all Services to be rendered under this CONTRACT not later than three (3) months after completion of PROJECT construction, or termination of Contractor(s)' responsibility as defined in the Specifications, whichever occurs later.
- (3) The DEPARTMENT shall be under no duty to perform under this CONTRACT unless any required Authorization is executed by the DEPARTMENT and issued to the CONSULTANT.
- (4) Written order to proceed with the Services on any construction project under this CONTRACT will be given by the DEPARTMENT to the CONSULTANT. The DEPARTMENT will not be liable for payment of any Services performed or costs incurred by the CONSULTANT prior to the written Authorization.
- (5) Services under this CONTRACT shall commence with attendance at an Operation Planning Conference by the CONSULTANT and the DEPARTMENT. Attendees shall include the CONSULTANT Representative and the DEPARTMENT Representative and such other persons as may be designated by each party to the CONTRACT. The DEPARTMENT will notify the CONSULTANT of the location, date and time and will make necessary arrangements for the conference. Topics for discussion shall include scope of the Contractor's construction operations and anticipated schedule, required staffing by the CONSULTANT, lines of communication and authority, equipment needs, standard practices of the DEPARTMENT, and related subjects.
- (6) The CONSULTANT Representative shall attend the pre-construction conference held between the DEPARTMENT, the Contractor and involved utilities and agencies.
- (7) The CONSULTANT shall complete the Services under this CONTRACT within the time for completion specified. Time shall not be extended because of any unwarranted or avoidable delay attributable to the CONSULTANT, but may be extended by the DEPARTMENT in the event of a delay attributable to the Contractor, DEPARTMENT or its authorized representatives, or because of unavoidable delay caused by an act of God, act of war, act of government or other conditions beyond the control of the CONSULTANT, including "unavoidable delays" as defined in the Specifications. See also III. B. below.
- (8) The CONSULTANT shall notify the DEPARTMENT in writing when it has determined the Services under this CONTRACT are completed.
- (9) Upon completion of the CONTRACT Services, the CONSULTANT shall file a certification of completion with the DEPARTMENT. The certificate shall certify that the obligations of the CONSULTANT under the CONTRACT are complete.

- (10) Should the DEPARTMENT deem it necessary for the CONSULTANT to render additional services for review of contract items, conditions, claims or litigation matters after completion of the CONTRACT, the CONSULTANT agrees to cooperate and render the requested services. These services shall be paid for as extra services in the amount and manner mutually agreed upon by the DEPARTMENT and the CONSULTANT as a CONTRACT amendment.
- (11) A close-out conference shall be held upon completion of this CONTRACT to evaluate the performance of the CONSULTANT. Attendees shall include the CONSULTANT Representative and DEPARTMENT Representative, and such other persons as may be designated by each party to the CONTRACT. The DEPARTMENT will notify the CONSULTANT of the location, date and time and will make necessary arrangements for the conference. The evaluation shall consider the quality and adequacy of the CONSULTANT's Services, extent of corrections, ability to meet schedules, cooperation, substantiation of costs, documentation of claims and related subjects. The evaluation shall become a permanent part of the CONSULTANT's record kept by the DEPARTMENT.
- (12) The CONTRACT will be considered completed when the CONSULTANT is released by written notice from the DEPARTMENT.

#### B. DELAYS AND EXTENSIONS

Delays caused through no fault of the CONSULTANT may be cause for extension of time for completion of the Services. Time extensions may be granted upon proper claim and justification by the CONSULTANT. Approved time extensions may be cause for consideration of adjustments in payment by CONTRACT amendment, where warranted. See also III. A. (7) above.

#### C. TERMINATION OF CONTRACT

- (1) The right is reserved by the DEPARTMENT to terminate all or part of this CONTRACT at any time upon written notice to the CONSULTANT. Notice of termination shall be sent not less than ten (10) days in advance of the termination date stated in the notice.
- (2) In the event the CONTRACT is terminated by the DEPARTMENT without fault on the part of the CONSULTANT, the CONSULTANT shall be paid for the Services rendered on the basis of the CONSULTANT's actual costs based on DEPARTMENT audit plus a portion of the Fixed Fee, as determined by mutual agreement between the DEPARTMENT and the CONSULTANT as a CONTRACT amendment.
- (3) In the event the Services of the CONSULTANT are terminated by the DEPARTMENT for fault on the part of the CONSULTANT, the CONSULTANT shall be paid the reasonable value of the Services rendered and delivered to the DEPARTMENT up to the time of termination. The value of the work performed and Services rendered and delivered will be determined by the DEPARTMENT.
- (4) In the event of the death of any member or partner of the CONSULTANT'S firm, the surviving members shall complete the Services, unless otherwise mutually agreed upon by the DEPARTMENT and the survivors, in which case the CONSULTANT shall be paid as set forth in Section III.C.(2) above.



#### D. SUBLETTING OR ASSIGNMENT OF CONTRACT

- (1) The CONSULTANT shall not sublet or assign all or any part of the Services under this CONTRACT without the prior written approval of the DEPARTMENT. Consent to assign, sublet or otherwise dispose of any portion of the CONTRACT shall not be construed to relieve the CONSULTANT of any responsibility for the fulfillment of the CONTRACT.
- (2) All the applicable terms of this CONTRACT remain in force and are a condition to any Services approved to be sublet or assigned.

#### IV. BASIS OF PAYMENT

##### A. GENERAL

- (1) Compensation for services provided by the CONSULTANT under terms of the CONTRACT shall be as stated on the first pages of this CONTRACT.
- (2) Reimbursement for costs will be limited to those which are allowable under applicable federal acquisition regulations and the DEPARTMENT's Facilities Development Manual.
- (3) A percent of the fixed fee as stated on the first pages of this CONTRACT may be withheld until the terms of the CONTRACT have been fulfilled.
- (4) The payment by the DEPARTMENT for the completed and approved Services rendered under this CONTRACT is intended as full compensation for work performed or services rendered and for all labor, material, supplies, equipment and incidentals necessary to complete the work.
- (5) The CONSULTANT shall submit invoices, on the form or format similar to that specified in the DEPARTMENT Facilities Development Manual, not more often than once per month during the progress of the Services, for partial payment on account, for the authorized Services completed to date. The Final invoice shall be submitted to the DEPARTMENT within three months of completion of Services under this CONTRACT.
- (6) This CONTRACT is subject to S.16.528 Wisconsin Statutes, Interest on Late Payments.
- (7) Should this CONTRACT contain more than one PROJECT a separate invoice and a separate final statement shall be submitted for each individual PROJECT.
- (8) No payment shall be construed as DEPARTMENT acceptance of unsatisfactory or defective services or improper materials. Final payment of any balance due the CONSULTANT will be made within 30 days after its verification by the DEPARTMENT, upon completion of the Services under the CONTRACT and its acceptance by the DEPARTMENT, and upon receipt documents required to be returned or to be furnished under this CONTRACT.
- (9) The DEPARTMENT has the equitable right to set off against any sum due and payable to CONSULTANT under this CONTRACT, any amount the DEPARTMENT determines the

CONSULTANT owes the DEPARTMENT, whether arising under this CONTRACT or under any other CONTRACT or otherwise.

- (10) All documents and evidence pertaining to costs incurred under this CONTRACT will be available for inspection during normal business hours in the CONSULTANT'S office for a period of three (3) years following final CONTRACT payment.

#### B. SERVICE ORDERS, EXTRA SERVICES, OR DECREASED SERVICES

- (1) Written orders regarding the Services may be given by the DEPARTMENT. Properly approved written orders that change the scope of Services in this CONTRACT, or increase or decrease the quantity of labor or materials or the expense of the Services, shall not annul or void this CONTRACT.
- (2) The CONSULTANT must proceed with the Services as directed by furnishing the necessary labor, equipment, materials and professional services to complete the Services within the time limits specified in the Service order schedules or as adjusted by written agreement of the parties.
- (3) If in the CONSULTANT'S opinion the orders involve Services not included in the terms or scope of this CONTRACT or would require the discarding or redoing of Services which were based upon earlier direction or approvals, the CONSULTANT must notify the DEPARTMENT in writing of its opinion if it desires extra compensation.
- (4) Such notification shall include the justification for the claim for extra compensation and the amount of additional fee requested.
- (5) The DEPARTMENT will review the CONSULTANT'S submittal and, if acceptable, approve a change order as an amendment to this CONTRACT. Services under a change order shall not proceed until so authorized by the DEPARTMENT by written CONTRACT amendment.
- (6) If the DEPARTMENT orders a decrease in CONSULTANT Services as provided in Section II.D.(2) of the CONTRACT, the cost of the DEPARTMENT personnel and services will be shown in the order and the order will also direct an appropriate pro rata reduction in the Fixed Fee and other CONTRACT amounts.

#### V. MISCELLANEOUS PROVISIONS

##### A. CONSTRUCTION ENGINEERING STANDARDS

- (1) All Services under the CONTRACT shall be performed in accordance with the current standard practices of the DEPARTMENT as contained in the Specifications, Special Provisions, Manuals, guides and written instructions of the DEPARTMENT and shall be consistent with generally accepted professional practice.
- (2) No variation will be permitted except by written order of the DEPARTMENT.

## B. REVISION OF SPECIFICATIONS AND PLANS

- (1) The DEPARTMENT may, by written notice and without invalidating this CONTRACT, require changes in the Specifications, construction contract plans or Special Provisions resulting in the revision or abandonment of Services already performed by the CONSULTANT or resulting in Services by the CONSULTANT not contemplated in the CONTRACT and for which full compensation is not provided in the CONTRACT.
- (2) Claims by the CONSULTANT for compensation for Services resulting from these revisions shall be submitted and processed in accordance with Section IV.B. above.

## C. OWNERSHIP OF DOCUMENTS

- (1) Upon completion or termination of this CONTRACT the originals of all plans, Specifications, Manuals, guides, written instructions, copies of the construction contract, unused forms and recordkeeping books, and other written data and information furnished to the CONSULTANT by the DEPARTMENT for the performance of the CONTRACT, and all other information and data collected or prepared by the CONSULTANT in the performance of this CONTRACT shall be properly arranged and delivered to the DEPARTMENT, and shall become the property of the DEPARTMENT. See also II. C. (17) above.
- (2) Documents collected or prepared by the CONSULTANT in the performance of this contract may be used without restriction by the DEPARTMENT for any public purpose. Any such use shall be without compensation or liability to the CONSULTANT.

## D. CONTINGENT FEES

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

## E. ACCESS TO RECORDS

- (1) The CONSULTANT and subcontractors to the CONSULTANT if any, agree to maintain for inspection by the DEPARTMENT and the FHWA all books, documents, papers, accounting records and other evidence pertaining to all costs incurred under this CONTRACT and to make such materials available at their respective offices at all reasonable times during the life of the CONTRACT and for three (3) years from the date of final payment under the CONTRACT, and to furnish copies thereof if requested.
- (2) If more than a nominal number of copies are requested, the additional copies shall be furnished at the expense of the requesting agency.

## F. LEGAL RELATIONS

- (1) The CONSULTANT shall become familiar with, and shall at all times observe and comply with, all applicable federal, state and local laws, ordinances and regulations in effect at the time the Services are performed.
- (2) In carrying out the provisions of this CONTRACT or in exercising any power or authority granted to the DEPARTMENT or FHWA there shall be no personal liability upon the authorized representatives of the DEPARTMENT and the FHWA, it being understood that in such matters they act as agents and representatives of those agencies.
- (3) The CONSULTANT shall be responsible for any and all damages to property or persons arising out of a negligent act, error and/or omission in the CONSULTANT'S performance of the Services under this CONTRACT.
- (4) The CONSULTANT shall indemnify, and save harmless, the DEPARTMENT and the FHWA and all of their officers, agents and employees on account of any damages to persons or property resulting from negligence of the CONSULTANT in connection with performance and completion of the Services covered by the CONTRACT.

## G. NONDISCRIMINATION IN EMPLOYMENT

- (1) During the performance of this CONTRACT, the CONSULTANT for itself, its assignees and successors in interest agrees as follows: In connection with the performance of Services under this CONTRACT, the CONSULTANT agrees not to discriminate against any employee or applicant because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wisconsin State Statute 51.01(5), sexual orientation as defined in Wisconsin State Statute 111.32(13m) or national origin. This provision shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the CONSULTANT further agrees to take affirmative action to ensure equal employment opportunities. The CONSULTANT agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the DEPARTMENT, setting forth the provisions of the nondiscrimination clause.
- (2) The following statutory definition shall be used for the purpose of interpreting and administering this contract. "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, or another neurological condition closely related to mental retardation or requiring treatment similar to that required for the mentally retarded, which disability has originated before the individual has attained 18 years of age, has continued or can be expected to continue indefinitely and constitutes a substantial handicap to the afflicted individual.
- (3) The CONSULTANT will comply with the Regulations of the State of Wisconsin and the DEPARTMENT relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this CONTRACT.

- (4) The CONSULTANT with regard to the Services performed by it after award and prior to completion of this CONTRACT, will not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the CONTRACT covers a program set forth in Appendix B of the REGULATIONS.
- (5) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for activities to be performed under a subcontract including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this CONTRACT and the REGULATIONS relative to nondiscrimination on grounds of sex, race, color or national origin.
- (6) The CONSULTANT will provide all information and reports required by the REGULATIONS, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the DEPARTMENT to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is not available, the CONSULTANT shall so certify to the DEPARTMENT and shall set forth what efforts it has made to obtain the information.
- (7) In the event of the CONSULTANT'S noncompliance with the nondiscrimination provisions of this CONTRACT, the DEPARTMENT shall impose such CONTRACT sanctions as it may determine to be appropriate including, but not limited to:
  - (a) Withholding of payments to the CONSULTANT under the CONTRACT until the CONSULTANT complies, or
  - (b) Cancellation, termination or suspension of the CONTRACT in whole or in part; or both.
- (8) The CONSULTANT will include the provisions for nondiscrimination in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulation, order, or instructions issued pursuant thereto. The CONSULTANT will take such action with respect to any subcontract or procurement as the DEPARTMENT may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the DEPARTMENT to enter into such litigation to protect the interests of the State and, in addition, the CONSULTANT may request the FHWA to enter into such litigation to protect the interests of the United States.

#### H. FEDERAL REQUIREMENTS FOR DISADVANTAGED BUSINESS PROGRAM

- (1) Disadvantaged Businesses (DB) as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the DB requirements of 49 CFR Part 23 apply to this CONTRACT.

- (2) The CONSULTANT agrees to ensure that Disadvantaged Businesses as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of any subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard the CONSULTANT shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged businesses have the maximum opportunity to compete for and perform subcontracts. The CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts. Failure to carry out the requirements of this provision shall constitute a breach of contract and may result in termination of this CONTRACT by the DEPARTMENT or other such remedy as the DEPARTMENT deems appropriate.

I. EQUAL EMPLOYMENT OPPORTUNITY (All Contracts Exceeding \$10,000)

During the performance of this CONTRACT, the CONSULTANT agrees as follows:

- (1) The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (2) The CONSULTANT will comply with all provisions of Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- (3) The CONSULTANT will furnish all information and reports required by Executive Order 11246 and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the DEPARTMENT, FHWA, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulation and orders.
- (4) The CONSULTANT will include the provisions of this Section entitled "Equal Employment Opportunity" in every subcontract in excess of \$10,000.

J. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (All Contracts Exceeding \$100,000)

- (1) The CONSULTANT stipulates that any facility to be utilized in the performance of this CONTRACT, unless such CONTRACT is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR Part 15), is not listed, on the date of CONTRACT award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities Pursuant to 40 CFR 15.20.
- (2) The CONSULTANT agrees to comply with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
- (3) The CONSULTANT shall promptly notify the DEPARTMENT and the U.S. EPA Assistant Administrator for Enforcement of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for this CONTRACT is under consideration to be listed on the EPA List of Violating Facilities.

- (4) The CONSULTANT agrees to include or cause to be included the requirements of the preceding three paragraphs (1), (2), (3), in every nonexempt subcontract.

#### K. ERRORS AND OMISSIONS

- (1) The CONSULTANT shall be responsible for the accuracy of the Services performed by the CONSULTANT under the CONTRACT, and shall promptly make necessary revisions or corrections to its Services resulting from its negligent acts, its errors or its omissions without additional compensation.
- (2) The CONSULTANT shall give immediate attention to these revisions or corrections to prevent or minimize delay to the Contractor.
- (3) The CONSULTANT shall be responsible to the DEPARTMENT for any losses to or costs to repair or remedy construction as a result of CONSULTANT's negligent acts, errors, or omissions.

#### L. CONFLICT OF INTEREST

- (1) The CONSULTANT warrants it has no public or private interest, and shall not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the Services under this CONTRACT.
- (2) The CONSULTANT shall not employ any person currently employed by the DEPARTMENT for any Services included under the provisions of the CONTRACT.

#### M. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

For purposes of this Section V.M., "proposal" means this entire CONTRACT document when signed and submitted by CONSULTANT to the DEPARTMENT before execution by the Governor.

##### a. Instructions for Certification

- (1) By signing and submitting this proposal, the CONSULTANT is providing the certification set out in b. below.
- (2) The inability of CONSULTANT to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The CONSULTANT shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the DEPARTMENT'S; determination whether to enter into this transaction. However, failure of the CONSULTANT to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- (3) The certification in this clause is a material representation of fact upon which reliance was placed when the DEPARTMENT determined to enter into this transaction. If it is later determined that the CONSULTANT knowingly rendered an erroneous

certification in addition to other remedies available to the federal government, the DEPARTMENT may terminate this transaction for cause or default.

- (4) The CONSULTANT shall provide immediate written notice to the DEPARTMENT if at any time the CONSULTANT learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (5) The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this provision, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the DEPARTMENT for assistance in obtaining a copy of those REGULATIONS.
- (6) The CONSULTANT agrees (by submitting this proposal that, should this CONTRACT be entered into), it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DEPARTMENT.
- (7) The CONSULTANT further agrees by submitting this proposal that it will include the provision titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," which is included at V.N. below, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (8) The CONSULTANT may rely upon a certification of a prospective subcontractor/materials supplier that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A CONSULTANT may decide the method and frequency by which it determines the eligibility of its principals. Each CONSULTANT may, but is not required to, check the DEPARTMENT Disapproval List (Telephone # 608/266-1631).
- (9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this provision. The knowledge and information of a CONSULTANT is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (10) Except for transactions authorized by the DEPARTMENT under section V.M a.(6) above, if a CONSULTANT in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the DEPARTMENT may terminate this transaction for cause or default.

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

- (1) The CONSULTANT certifies to the best of its knowledge and belief, that it and its principals:



- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment, rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in section V.M.b.(1)(b) above; and
  - (d) Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or Local) terminated for cause or default.
- (2) Where the CONSULTANT is unable to certify to any of the statements in this certification, such CONSULTANT shall attach an explanation to this proposal.

**N. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY -EXCLUSION--LOWER TIER COVERED TRANSACTIONS**

This certification applies to subcontractors, material suppliers, vendors and other lower tier participants. For purposes of this Section V.N., "proposal" means this entire CONTRACT document when signed and submitted by CONSULTANT to the DEPARTMENT before execution by the Governor.

**a. Instructions for Certification**

- (1) By signing and submitting this proposal, the CONSULTANT is certifying that the prospective lower tier participant is providing the certification set out below.
- (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participants knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the DEPARTMENT may pursue available remedies, including suspension or debarment.
- (3) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (4) The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction;", "principal", and "voluntarily excluded", as used in this provision, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those REGULATIONS.

- (5) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DEPARTMENT.
  - (6) The prospective lower tier participant further agrees by submitting this proposal that it will include this provision titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
  - (7) The participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the DEPARTMENT Disapproval List.
  - (8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this provision. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  - (9) Except for transactions authorized under section V.N.a.(5) above, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the DEPARTMENT may pursue available remedies, including suspension or debarment.
- b. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions
- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## O. INSURANCE REQUIREMENTS

- (1) The CONSULTANT shall procure and maintain for the life of the CONTRACT the following types and amounts of insurance from an insurance company or companies authorized to do business in the State of Wisconsin.

- (a) Comprehensive General Liability Insurance -- not less than \$1,000,000 in combined single limits per occurrence.
  - (b) Automobile Liability Insurance -- not less than \$300,000 in combined single limits per occurrence.
  - (c) Worker's Compensation Insurance -- coverage satisfying the statutory provisions of Chapter 102, Wisconsin Statutes; not less than \$100,000 employer's liability.
- (2) A certification or certifications showing the CONSULTANT is covered by the above--required types and amounts of insurance, together with the effective dates and expiration dates of such insurance, shall be furnished to the DEPARTMENT prior to performance of any Services under this CONTRACT.
  - (3) Alteration or cancellation by an insurance company or companies shall be brought to the attention of the DEPARTMENT at least ten (10) days prior to the effective date of such alternation or cancellation and may be cause for termination of this CONTRACT.
  - (4) The CONSULTANT shall not alter or cancel the required coverage without the written approval of the DEPARTMENT.

P. CERTIFICATION REGARDING LOBBYING

CONSULTANT certifies that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the CONSULTANT shall complete and submit **standard form-LLL, "Disclosure Form to Report Lobbying,"** in accordance with its instructions.
- (3) The CONSULTANT shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Q. DEPARTMENTAL PROCEDURES FOR HANDLING ERRORS AS DESCRIBED IN SECTION V.K.

- (1) The DEPARTMENT may recover those additional costs incurred by the DEPARTMENT and FHWA as the result of errors determined to be the responsibility of CONSULTANT as described in Section V. K.

Each CONSULTANT error and the facts about the error will be reviewed by the DEPARTMENT to establish responsibility for additional costs incurred as a result of a particular CONSULTANT error.

- (2) At the first indication of a CONSULTANT error during construction, the DEPARTMENT Representative shall:
  - (a) Notify the District Director or his or her designee.
  - (b) Notify the CONSULTANT of the error. This notification will be made verbally and then followed with a written notice. The CONSULTANT will be invited to participate in a solution in cooperation with DEPARTMENT staff.
  - (c) Prepare a report including a description and results of the CONSULTANT error. Any immediate action taken to reduce the cost of the error should also be documented. This report should be forwarded to the District Director or his or her designee.
- (3) The DEPARTMENT may take the following actions:
  - (a) The DEPARTMENT may convene a review group consisting of up to five (5) DEPARTMENT representatives and one (1) representative from a list provided by the Wisconsin Association of Consulting Engineers (WACE). If a representative from the list provided by WACE is not readily available the DEPARTMENT may proceed without the WACE representative. The WACE representative may not be associated with the CONSULTANT nor have any current direct or indirect contractual relationship with the CONSULTANT or any other conflict of interest. The DEPARTMENT will lead the deliberations.
  - (b) A written notice will be sent to the CONSULTANT setting the meeting date. The CONSULTANT will be given at least 30 days notice.
  - (c) The DEPARTMENT will hold a meeting, prepare written findings and determine the payment process when applicable.
  - (d) When the DEPARTMENT pursues reimbursement, the CONSULTANT will be notified of the decision and options for repayment. The DEPARTMENT's options listed in priority order are:
    - ((1)) Repayment in full.
    - ((2)) Deductions from other payments due and payable to the CONSULTANT by equitable right of set off.
    - ((3)) Legal action by the DEPARTMENT to collect the costs, if the CONSULTANT has no other agreements with the DEPARTMENT or no payments due and payable, and refuses repayment in full.

((4)) Any combination of the above.

- (4) Any appeal must be in writing and received within 30 days of the DEPARTMENT's decision.

R. PREVAILING WAGE RATES

CONSULTANT is advised that sec. 103.50, Wis. Stats, the Wisconsin prevailing wage rate law, does not apply to any laborers or mechanics in the employ of CONSULTANT because CONSULTANT's Services under this CONTRACT are not based on bids as provided in sec. 84.06(2), Stats.

CONSULTANT is advised that the Federal government has independent authority to interpret the Davis-Bacon Act, 40 U.S.C. 276a. The Davis-Bacon Act may apply when the United States is a participating party to this CONTRACT for purposes of reimbursing the DEPARTMENT for portions of the expenditures made by the DEPARTMENT. It is the opinion of the DEPARTMENT that the Davis-Bacon Act does not apply to any laborers or mechanics in the employ of CONSULTANT because this CONTRACT is not advertised for the actual construction, alteration or repair of a public work and the function is not part of the construction contract.