

Shortform Contract for NONFEDERALLY FUNDED Projects

CONTRACT BETWEEN
THE WISCONSIN DEPARTMENT OF TRANSPORTATION (DEPARTMENT)
AND
_____ (CONSULTANT)

FOR PROJECT _____-____-____
DOT FOS OBJECT CODE _____

This CONTRACT, made and entered into by and between the Wisconsin Department of Transportation (DEPARTMENT) and the CONSULTANT, provides for those services described in detail herein and is for the purpose of: _____.

The DEPARTMENT deems it advisable to engage the CONSULTANT to provide certain services and has authority to contract for these services under sec. 84.01(13), Wis. Stats.

The CONSULTANT services will be completed by/within _____. Compensation for all services provided by the CONSULTANT under the terms of this contract shall not exceed \$ _____.
The CONSULTANT represents it is in compliance with the laws and regulations relating to its profession and signifies its willingness to provide the desired services.

The CONSULTANT Representative is _____, whose work address and telephone number are _____.

The DEPARTMENT Representative is _____, whose work address and telephone number are _____.

The parties agree to all of the provisions which are annexed and made a part of this CONTRACT, consisting of _____ pages.

Nothing in this CONTRACT accords any third party beneficiary rights whatsoever on any non-party that may be enforced by an non-party to this CONTRACT.

For the CONSULTANT

By: _____

Title: _____

Date: _____

For the State of Wisconsin
Department of Transportation

By: _____

Contract Manager, Bureau of Financial Services

Date: _____

Approved

Governor, State of Wisconsin

Date: _____

STANDARD PROVISIONS

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I. SCOPE OF SERVICES

- (1) The services under this CONTRACT shall consist of performing all work necessary or incidental to accomplish the PROJECT.
- (2) The CONSULTANT shall furnish all services and labor necessary to conduct and complete the services, and shall furnish all materials, equipment, supplies, and incidentals other than those designated to be furnished by the DEPARTMENT.
- (3) The services under this CONTRACT shall be performed in accordance with generally accepted standards of the profession and requirements contained in the Wisconsin Department of Transportation Facilities Development Manual (MANUAL).
- (4) The services shall comply with applicable laws and regulations consistent with the funding for this PROJECT.
- (5) The CONSULTANT shall from time to time during the progress of the services confer with the DEPARTMENT and shall prepare and present such information, studies, or reports as may be necessary or as may be requested by the DEPARTMENT to enable it to reasonably pass judgement on the features of the services. The CONSULTANT shall make such changes, amendments, or revisions in the detail of the services as may be required by the DEPARTMENT. The CONSULTANT is not relieved from the responsibility for continuing adherence to generally accepted standards of the profession by DEPARTMENT required changes in the detail of the services.
- (6) This CONTRACT serves as a permit under sec. 86.07(2), Wis. Stats., for the CONSULTANT to perform the services hereunder on highway property under the jurisdiction of the DEPARTMENT, unless a separate permit is required by the DEPARTMENT Representative. The CONSULTANT is an authorized representative of the DEPARTMENT for purposes of the right of entry under sec. 84.01(1), Wis. Stats., to enter private lands to perform the services required by this CONTRACT.
- (7) Meetings may be scheduled at the request of the CONSULTANT or the DEPARTMENT for the purpose of discussing and reviewing the services under this CONTRACT. Meetings may include a visit to the PROJECT site. Meeting schedules are to be coordinated with the DEPARTMENT Representative.

II. PROSECUTION AND PROGRESS

A. GENERAL

- (1) Services under this CONTRACT shall commence upon written order from the DEPARTMENT to the CONSULTANT, which order will constitute authorization to proceed.
- (2) The CONSULTANT shall complete the services under this CONTRACT within the time for completion specified. Services by the CONSULTANT shall proceed continuously and expeditiously. The time for completion shall not be extended because of any delay attributable to the CONSULTANT but may be extended by the DEPARTMENT in the event of a delay attributable to the DEPARTMENT, or because of unavoidable delays caused by an act of God, war, governmental actions, or other conditions beyond the control of the CONSULTANT.

- (3) The CONSULTANT shall notify the DEPARTMENT in writing when the services have been completed. Upon the DEPARTMENT's subsequent determination that the services have satisfactorily been completed, the DEPARTMENT will provide written notification to the CONSULTANT acknowledging formal acceptance of the completed services.
- (4) Unless the CONTRACT has been terminated prior to completion of the services, the CONTRACT shall not be considered terminated upon completion and acceptance of the services, or upon final payment therefore, but shall be considered to be in full force and effect for the purposes of requiring the CONSULTANT to make revisions or corrections in the services as are necessary to correct errors or omissions made by the CONSULTANT.

B. DELAYS AND EXTENSIONS

- (1) Delays in completing the services within the time provided for completion for reasons not attributable to the CONSULTANT may constitute justification for additional compensation to the extent of documentable increases in costs as a result thereof. Failure of the CONSULTANT to submit a formal written request for a time extension and additional compensation prior to the expiration of the CONTRACT time shall constitute a basis for denying any cost adjustments for reasons of delay.
- (2) Delays grossly affecting the completion of the services attributable or caused by one of the parties hereto shall be considered as cause for the termination of this CONTRACT by the other party.

C. TERMINATION

- (1) The DEPARTMENT reserves the right to terminate all or part of this CONTRACT at any time upon not less than ten days' written notice to the CONSULTANT.
- (2) In the event the CONTRACT is terminated by the DEPARTMENT without fault on the part of the CONSULTANT, or by the CONSULTANT under II.B.(2) above, the CONSULTANT shall be paid for the services rendered, an amount bearing the same ratio to the total CONTRACT price as the amount of services completed or partially completed and delivered to the DEPARTMENT bears to the total amount of services provided for herein, 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 a reasonable value of the services rendered and delivered to the DEPARTMENT up to the time of termination. The value of the services will be determined by the DEPARTMENT.
- (4) In the event of the death or 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 will be paid as set forth in II.C.(2) above.

D. SUBLETTING OR ASSIGNMENT OF CONTRACT

- (1) The CONSULTANT shall not sublet or assign any part of this CONTRACT without prior written approval of the DEPARTMENT.
- (2) When the CONSULTANT is authorized to sublet or assign a portion of the services, the CONSULTANT shall perform services amounting to at least one-half of the original CONTRACT amount.
- (3) 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.
- (4) When the CONSULTANT subcontracts a portion of the services, the subcontract shall provide for the performance of the services to the full scope as contemplated in this CONTRACT and to the same standards and concept as if performed by the CONSULTANT.
- (5) No subcontracting and assignment of any services under this CONTRACT shall state, imply, intend, or be construed to limit the legal liability of the CONSULTANT or the subconsultant.

III. BASIS OF PAYMENT

- (1) The CONSULTANT will be paid by the DEPARTMENT for the completed and approved services rendered under this CONTRACT on the basis and at the CONTRACT price set forth elsewhere in this CONTRACT. Such payment shall be full compensation for services rendered and for all labor, materials and supplies, equipment, and incidentals necessary to complete the services. Compensation in excess of the total CONTRACT amount will not be allowed unless justified and authorized by an approved written CONTRACT amendment. Compensation for improper performance by the CONSULTANT will not be allowed. No payment shall be construed as DEPARTMENT acceptance of unsatisfactory or defective services or improper materials.
- (2) Reimbursement for costs will be limited to those which are allowable under 48 CFR 1-31.2, Federal Acquisition Regulation, and by DEPARTMENT policy.
- (3) The CONSULTANT shall submit invoices in the format specified in the MANUAL, not more often than once per month during the progress of the services, for partial payment for the authorized services completed to date. The final invoice shall be submitted to the DEPARTMENT within three months of completion of the services. Final payment of any balance due the CONSULTANT will be made promptly upon its verification by the DEPARTMENT, upon completion of the required services, and upon receipt of documents or materials required to be returned or furnished to the DEPARTMENT. Should this CONTRACT include more than one PROJECT, separate invoices shall be submitted for each individual PROJECT.

- (4) 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.
- (5) The CONSULTANT and any subconsultants shall maintain all documents and evidence pertaining to costs incurred under this CONTRACT for inspection by the DEPARTMENT and FHWA during normal business hours in their respective offices for a period of three years following the final CONTRACT payment.
- (6) If, in the CONSULTANT's opinion, orders or instructions given by the DEPARTMENT would require the discarding or redoing of services which were based upon earlier direction or approvals, or instructions given by the DEPARTMENT would involve services not within the scope of services, the CONSULTANT must notify the DEPARTMENT in writing if it desires extra compensation or a time extension. The DEPARTMENT will review the CONSULTANT'S submittal, and if acceptable, approve a CONTRACT amendment.

IV. MISCELLANEOUS PROVISIONS

A. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this CONTRACT all manuals, guides, written instructions, unused forms, books, information and documents furnished to the CONSULTANT by the DEPARTMENT for performance of this CONTRACT or collected or prepared by the CONSULTANT in the performance of this CONTRACT shall be properly arranged, delivered, and become the property of the DEPARTMENT. 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.

B. 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 at its discretion to deduct from the agreement price or consideration, otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

C. LEGAL RELATIONS

- (1) The CONSULTANT shall become familiar with, and shall at all times observe and comply with all applicable laws and regulations.

- (2) In carrying out the provisions of this CONTRACT, or in exercising any power or authority granted to the DEPARTMENT thereby, there shall be no personal liability upon the authorized representatives of the DEPARTMENT, it being understood that in such matters they act as agents and representatives.
- (3) The CONSULTANT shall be responsible for any and all damages to property or persons arising out of 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 all of its 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 this CONTRACT.

D. NONDISCRIMINATION IN EMPLOYMENT

In connection with the performance of services under this CONTRACT, the CONSULTANT agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, development disability as defined in sec. 51.01(5) Wis. Stats., sexual orientation as defined in sec. 111.32(13m) Wis. Stats., or national origin. This provision includes, but is not limited to, employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay, other forms of compensation, selection for training including apprenticeship.

Except with respect to sexual orientation, the CONSULTANT agrees to take affirmative action to ensure equal employment opportunities. The CONSULTANT agrees to post in conspicuous places, available for employees and applicants, notices setting forth the provisions of the nondiscrimination clause.

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

- (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, "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 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (4) The CONSULTANT will include the provisions of this section, "Equal Employment Opportunity" in every subcontract in excess of \$10,000.

F. ERRORS AND OMISSIONS

The CONSULTANT shall be responsible for the accuracy of the services performed under this 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. The CONSULTANT shall give immediate attention to these revisions or corrections to prevent or minimize delay to the PROJECT. The CONSULTANT shall be responsible to the DEPARTMENT for any losses to or costs to repair or remedy as a result of the CONSULTANT'S negligent acts, errors, or omissions.

G. CONFLICT OF INTEREST

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. The CONSULTANT shall not employ any person currently employed by the DEPARTMENT for any services included under the provisions of this CONTRACT.

H. CERTIFICATION REGARDING DEBARMENT

The CONSULTANT certifies (by entering into this CONTRACT) that it and its principals (1) are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency; (2) have not been convicted of or had a civil judgement rendered against them within the previous three years, (3) are not indicted or otherwise criminally or civilly charged by a government entity, and (4) have not had one or more public transactions terminated for cause or default within the previous three years.

The CONSULTANT agrees that it will not knowingly enter into any transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this transaction, unless authorized by the DEPARTMENT.

I. INSURANCE REQUIREMENTS

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

- a) Comprehensive General Liability - \$1,000,000 combined single limits per occurrence
- b) Auto Liability - \$300,000 combined single limits per occurrence
- c) Worker's Compensation - coverage satisfying statutory provisions of Chapter 102, Wis. Stats.; not less than \$100,000 employer's liability.

J. IMPLEMENTATION OF CLEAN AIR ACT AND CLEAN WATER ACT (All contracts exceeding \$100,000)

The CONSULTANT agrees to comply with all the requirements of the Clean Air Act and the Clean Water Act and all regulations and guidelines listed thereunder related to CONSULTANT and the Services provided under this CONTRACT.

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.

The CONSULTANT agrees to include or cause to be included the requirements of the preceding two paragraphs in every nonexempt subcontract.