

SUBCONTRACT NO. _____
CONTROL SECTION NO. _____
JOB NO. _____

FED. PROJECT NO. _____
FED. ITEM NO. _____

THIRD PARTY AGREEMENT

(Preliminary Engineering, Construction Engineering, Testing Services)
LOCAL AGENCY CONTRACT

THIS CONTRACT, made and entered into as of this date, _____, by and between _____ (fill in consultant name and address), hereinafter referred to as the "CONSULTANT," and the _____ (local agency name and address) hereinafter referred to as the "LOCAL AGENCY."

WITNESSETH:

WHEREAS, the LOCAL AGENCY is planning to _____ (brief project description) a _____ (type of funding) project within its limits; and

WHEREAS, the LOCAL AGENCY has assigned _____ (name), _____ (title) to be the designated full-time public employee to be in Responsible Charge in accordance with 23 CFR 172.9 (d).

WHEREAS, the LOCAL AGENCY desires to engage the professional services and assistance of the CONSULTANT to perform certain _____ (type of service to be performed: preliminary engineering, construction engineering, testing services) and other related work, said work to be hereinafter referred to as the "SERVICES," required in connection with the construction of the following _____ (road or project name) improvements, said improvements to be hereinafter referred to as the "PROJECT:"

(enter route, limits, and detailed work description)

WHEREAS, the LOCAL AGENCY has programmed the PROJECT with the Michigan DEPARTMENT of Transportation, hereinafter referred to as the "MDOT," for the use of _____ (type of funds)

administered by the United States DEPARTMENT of Transportation, Federal Highway Administration, hereinafter referred to as the "FHWA;" and

WHEREAS, the CONSULTANT is willing to render the SERVICES desired by the LOCAL AGENCY for the considerations hereinafter expressed; and

WHEREAS, the CONSULTANT was selected utilizing a qualifications based selection (QBS) process, as applicable; and CONSULTANT performance evaluations will be completed, as defined in Exhibit D.

WHEREAS, the terms and conditions of the PRIME CONTRACT between the MDOT and the LOCAL AGENCY for the PROJECT shall be incorporated by reference as part of this SUBCONTRACT to ensure that if any discrepancies occur between the PRIME CONTRACT and SUBCONTRACT, the PRIME CONTRACT shall prevail; and

WHEREAS, the parties hereto have reached an understanding as to the scope of the work and the performance of the SERVICES on the PROJECT and desire to set forth this understanding in the form of a written contract;

NOW THEREFORE, it is hereby agreed by and between the parties hereto

that: The CONSULTANT will:

1. Perform the work set forth in Exhibit A, dated _____ attached hereto and made a part hereof (SERVICES). The LOCAL AGENCY specifically agrees that it will not perform SERVICES that are not included in the scope of SERVICES in Exhibit A.
2. Perform all SERVICES by the applicable codes, laws, and standards of the LOCAL AGENCY and the MDOT and the FHWA.
3. During the performance of the SERVICES herein provided for, be responsible for any loss or damage to the documents, owned by the LOCAL AGENCY while they are in its possession. Restoration of lost or damaged documents shall be at the CONSULTANTS expense.
4. Furnish qualified personnel, as per 23 CFR Part 172, to assist the PROJECT Engineer/Supervisor in solving problems, when so requested.
5. Attend conferences and make such trips as necessary to the LOCAL AGENCY'S offices and to the site of the work to confer with representative of the LOCAL AGENCY and the MDOT or the FHWA as may be necessary in the carrying out of the work under THIS CONTRACT.
6. Provide and maintain public liability, property damage, and workers' compensation insurance, insuring as they may appear the interests of all parties to THIS CONTRACT against any and all claims that may arise out of the LOCAL AGENCY'S operation hereunder. In addition, provide professional liability insurance, as further defined in

Exhibit B, attached hereto and made a part hereof.

7. Commence work on the PROJECT as set forth in and following execution of THIS CONTRACT only upon receipt of written notice from the PROJECT Engineer/Supervisor.
8. Submit billings to the LOCAL AGENCY as set forth in Section 17.
9. Perform all PROJECT work under the direction of the PROJECT Engineer who will be assigned by the LOCAL AGENCY as provided in Section 14.
10. Provide such reports and maintain such records of the PROJECT as are required to document the work to the satisfaction of the PROJECT Engineer, the LOCAL AGENCY, the MDOT, and the FHWA.
11. Permit the LOCAL AGENCY, the MDOT, the FHWA, and other public agencies interested in the plans and designs for the PROJECT to have full access thereto during the progress of the SERVICES being performed thereon.
12. Have their professional endorsement upon all plans, specifications, estimates, and engineering data furnished to the LOCAL AGENCY.
13. Follow standard accounting practices and permit representatives of the LOCAL AGENCY and MDOT, FHWA, U.S. DEPARTMENT OF Transportation's Inspector General, and the Controller General of the United States to audit and inspect its PROJECT books and records at any reasonable time.
 - a. Such records are to be kept available for three (3) years from the date of the final payment for work conducted under THIS CONTRACT.
 - b. In the event of a dispute with regard to the allowable expenses or any other issue under THIS CONTRACT, the CONSULTANT shall thereafter continue to maintain the records at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.
 - c. In the event of a dispute with regard to the allowable expenses or any other issue under THIS CONTRACT, the CONSULTANT shall thereafter continue to maintain the records at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.
 - d. If any part of the work is subcontracted, the conditions for the responsibilities of the CONSULTANT apply to the CONSULTANT and their SUBCONSULTANTS (or affiliates).

The LOCAL AGENCY shall:

14. Assign a PROJECT Engineer/Supervisor in responsible charge of the PROJECT.
15. For and in consideration of the SERVICES rendered by the CONSULTANT as set forth in THIS CONTRACT, pay the CONSULTANT on the basis of actual cost plus a fixed fee (profit) amount which shall not exceed _____ dollars (\$ _____). The fixed fee (profit) shall be the amount of dollars _____ dollars and _____ cents (\$ _____), which amount is included in the total amount of _____ dollars (\$ _____) as shown in Exhibit A, attached hereto and made part hereof.
16. Pay for actual costs for SERVICES. Work required and performed will be determined in accordance with the following terms, subject to the cost criteria set forth in the Federal Acquisition Regulations, 48 CFR, Part 31.
 - a. Direct Salary Costs: Actual labor costs of personnel performing the SERVICES work. This cost will be based on the employees' actual hourly rate of pay and the actual hours of performance on the PROJECT as supported by employee time records.
 - b. Direct Costs: Actual costs of materials and SERVICES, other than salaries, as may be required hereunder but which are not normally provided as a part of the overhead of the CONSULTANT. All actual costs shall be itemized and certified as paid to specifically named firms or individuals, and shall be supported by proper receipts.

Overhead (Indirect Costs): For A pro-rated portion of the actual overhead incurred by the CONSULTANT during performance of the PROJECT work shall be computed as set forth in 48 CFR, Federal Acquisition Regulations, Part 31, see Attachment C. The amount of overhead payment, including payroll overhead, will be calculated as a percentage of all direct labor costs related to staff personnel and members of the firm. Overhead shall include those costs, which because of their incurrence for common or joint objectives, are not readily subject to treatment as a direct cost. If a certified overhead rate, attachment C, has not been established, a provisional overhead rate, which will be applied to direct labor costs for progress payments, is set forth in Exhibit A. Use the provisional overhead rate until the actual overhead rate has been determined.

- c. Non MDOT Pre-Qualified CONSULTANT:
It is agreed that the use of the provisional overhead rate set forth in Exhibit A sets neither a minimum nor maximum to the actual overhead costs to be paid the CONSULTANT. Any overpayments or underpayments made to the CONSULTANT for SERVICES performed resulting from usage of the provisional overhead rate, will be corrected in the first billing submitted subsequent to the CONSULTANT'S calculations of an actual overhead rate for the financial year end applicable to the reported direct labor cost. The audit at the completion of THIS CONTRACT or at such time as THIS CONTRACT is terminated, will verify the propriety of reporting overhead.

MDOT Pre-Qualified CONSULTANT:

When work occasioned at the LOCAL AGENCY'S request is contracted with the CONSULTANT to perform the SERVICES, the actual overhead costs incurred by the CONSULTANT at the MDOT-accepted rate during work, computed as set forth in 48 CFR, Federal Acquisition Regulations, Part 31. The amount of overhead payment, including payroll overhead, will be calculated as applied rates to direct labor costs. Overhead costs will include those costs that, because of their incurrence for common or joint objectives, are not readily subject to treatment as direct costs. The MDOT-accepted overhead rate is not subject to adjustment for overhead costs, but the LOCAL AGENCY and MDOT retains the right to audit the records of the CONSULTANT at any reasonable time.

Contract LOCAL AGENCY Work:

When work occasioned at the LOCAL AGENCY'S request is contracted with another LOCAL AGENCY to perform the SERVICES, the actual overhead costs incurred by the LOCAL AGENCY shall be computed as set forth in 2 CFR 200.414. The LOCAL AGENCY must submit a 2 CFR 200.414 compliant overhead (indirect) cost rate proposal/plan to MDOT, prior to claiming any overhead (indirect) costs. The LOCAL AGENCY and MDOT retains the right to audit the records of the CONSULTANT at any reasonable time.

Reimbursement for costs incurred is subject to the cost criteria set forth in 48 CFR Part 31, and/or 2 CFR 200Subpart E-Cost Principles as applicable, is incorporated herein by reference as if the same were repeated in full herein.

- d. Facilities Cost of Capital: A pro-rated portion of the actual facilities costs of capital incurred by the CONSULTANT during work is reimbursable only if the estimated facilities cost of capital was specifically identified in the cost proposal, included in the Scope of Services for this work (Exhibit A).
- e. Travel and Subsistence: Actual costs in accordance with and not to exceed the amounts set forth in the State of Michigan Standardized Travel Regulations, incorporated herein by reference as if the same were repeated in full herein.
- f. Fixes Fee (Profit): In addition to the payments for direct and overhead costs as hereinbefore provided, the LOCAL AGENCY agrees to pay the CONSULTANT a fixed amount for profit for the SERVICES performed. It is agreed and understood that such amount constitutes full compensation to the CONSULTANT for profit and will not vary because of any differences between the estimated cost and the actual cost for work performed, except that in the event THIS CONTRACT is terminated, payment of a fixed fee (profit) in respect to the PROJECT shall be in an amount which can be established by the CONSULTANT from its accounts and records and subject to the provisions of Section 30.

- g. SUBCONSULTANT Costs: Actual costs of SUBCONSULTANTS performing SERVICES under THIS CONTRACT. Amounts for fixed fees paid by the CONSULTANT to the SUBCONSULTANT will not be considered an actual cost of the CONSULTANT, but will be considered a part of the fixed fee of the CONSULTANT.

17. Make payments to the CONSULTANT in accordance with the following procedures:

- a. Progress payments may be made for reimbursement of amounts earned to date and shall include direct costs, other direct costs, calculated amounts for overhead using overhead, and facilities cost of capital using applied rates, set forth hereinbefore, plus a portion of the fixed fee. The portion of the fixed fee which may be included in progress payments shall be equal to the total fixed fee multiplied by the percentage of the work which has been completed to date of billing.
- b. Partial payments will be made upon the submission by the CONSULTANT of a billing, accompanied by properly completed reporting forms and such other evidence of progress as may be required by the LOCAL AGENCY. Partial payments shall be made only one a month.
- c. Final billing under THIS CONTRACT shall be submitted in a timely manner but not later than three (3) months after completion of the SERVICES. Billing for work submitted later than three (3) months after completion of SERVICES will not be paid. Final payment, including adjustments of direct salary costs, other direct costs and overhead costs, will be made upon completion of audit by the LOCAL AGENCY and/or as appropriate, by representatives of the MDOT and the FHWA.

In the event such audit indicates an overpayment, the CONSULTANT will repay the LOCAL AGENCY within _____ days of the date of the invoice.

It is further agreed that:

- 18. Upon completion or termination of THIS CONTRACT, all documents prepared by the CONSULTANT, including tracings, drawings, estimates, specifications, field notes, investigations, studies, etc., as instruments of SERVICE, shall become property of the LOCAL AGENCY.
- 19. No portion of the PROJECT work, hereto before defined, shall be sublet, assigned, or otherwise disposed of except as herein provided or with the prior written consent for the LOCAL AGENCY and approval by MDOT and the FHWA. Consent to sublet, assign or otherwise dispose of any portion of the SERVICES shall not be construed to relieve the CONSULTANT of any responsibility for the fulfillment of THIS CONTRACT.

20. All questions which may arise as to the quality and acceptability of work, the manner of performance and rate of progress of the work, and the interpretation of plans and specifications shall be decided by the LOCAL AGENCY'S PROJECT Engineer/Supervisor. All questions as to the satisfactory and acceptable fulfillment of the terms of THIS CONTRACT shall be decided by the LOCAL AGENCY.
21. This agreement is to be governed by the laws of the State of Michigan. All disputes between the LOCAL AGENCY and CONSULTANT shall be resolved per the Dispute Resolution in Appendix C.
22. Any change in SERVICES to be performed by the CONSULTANT involving extra compensation must be authorized in writing by the LOCAL AGENCY and approved by the MDOT and the FHWA prior to the performance thereof by the CONSULTANT and requires an amendment to THIS CONTRACT.
23. The CONSULTANT and the LOCAL AGENCY specifically agree that in the event problems arise that may be the result of errors and/or omissions by the CONSULTANT or due to a failure of the CONSULTANT to otherwise perform in accordance with THIS CONTRACT, the CONSULTANT will be held responsible with no cost to the LOCAL AGENCY or in accordance with Dispute Resolution in Appendix C.
24. In addition, the CONSULTANT shall comply with, and shall require any CONTRACTOR or SUBCONTRACTOR to comply with, the following:
 - a. In connection with the performance of the PROJECT under THIS CONTRACT, the CONSULTANT (hereinafter in Appendix "A" referred to as the "CONTRACTOR") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in Appendix "A," attached hereto and made a part hereof and will require a similar covenant on the part of any CONTRACTOR or SUBCONTRACTOR employed in the performance of THIS CONTRACT.
 - b. During the performance of THIS CONTRACT, the CONSULTANT, for itself, its assignees, and its successors in interest (hereinafter in Appendix B referred to as the "CONTRACTOR"), agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 USC Sections 1971, 1975a-1975d, and 2000a-2000h-6, and the Regulations of the DEPARTMENT of Transportation (49 CFR Part 21) issued pursuant to said Act, including Appendix B, dated June 2011, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to THIS CONTRACT.
 - c. The parties hereto further agree that they accept the MDOT'S Minority Business Enterprises/Women's Business Enterprises (MBE/WBE) Program with respect to the PROJECT and will abide by the provisions set forth in Appendix C, dated October 1, 2005, attached hereto and made a part hereof, being an excerpt from Title 42 C.F.R. Part 23, more specifically 23.43(a)(1) and (2) thereof.

25. The CONSULTANT warrants that it has not employed or retained any company or person other than bona fide employees 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 bona fide employees working solely for the CONSULTANT any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of THIS CONTRACT. For breach or violation of this warranty, the LOCAL AGENCY will have the right to annul THIS CONTRACT without liability or, at its discretion, to deduct from the contract price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
26. The CONSULTANT specifically agrees that in the performance of the SERVICES herein enumerated, by itself, by an approved SUBCONTRACTOR, or by anyone acting on its behalf, it will comply with any and all state, federal, and local statutes, ordinances, and regulations and will obtain all permits applicable to the entry into the performance of THIS CONTRACT.
27. No charges or claims for damages shall be made by the CONSULTANT for delays or hindrances from any cause whatsoever during the progress of any portions of the SERVICES specified in THIS CONTRACT, except as hereinafter provided.

In case of a substantial delay on the part of the LOCAL AGENCY in providing to the CONSULTANT either the necessary information or approval to proceed with the work, resulting, through no fault of the CONSULTANT, in delays of such extent as to require the CONSULTANT to perform its work under changed conditions not contemplated by the parties, the LOCAL AGENCY will consider supplemental compensation limited to increased costs incurred as a direct result of such delays. Any claim for supplemental compensation must be in writing and accompanied by substantiating data. Authorization of such supplemental compensation shall be by an amendment to THIS CONTRACT subject to prior approval by the MDOT.

When delays are caused by circumstances or conditions beyond the control of the CONSULTANT, as determined by the LOCAL AGENCY, the CONSULTANT may be granted an extension of time for such reasonable period as may be mutually agreed upon between the parties. However, that permitting of the CONSULTANT to proceed to complete the SERVICES, or any part of them, after the date through which the time of completion may have been extended, will in no way operate as a waiver on the part of the LOCAL AGENCY of any of its rights herein set forth.

28. In case the CONSULTANT deems extra compensation will be due it for work or materials not clearly covered in THIS CONTRACT, or not ordered by the LOCAL AGENCY as a change, or due to changed conditions, the CONSULTANT shall notify the LOCAL AGENCY in writing of its intention to make claim for such extra

compensation before beginning such work. Failure on the part of the CONSULTANT to give such notification will constitute a waiver of the claim for such extra compensation. The filing of such notice by the CONSULTANT shall not in any way be construed to establish the validity of the claim. Such extra compensation shall be provided only by amendment to THIS CONTRACT with approval of the MDOT and the FHWA.

29. In addition to the protection afforded by any policy of insurance, the CONSULTANT agrees to indemnify and save harmless the State of Michigan, the Michigan State Transportation Commission, LOCAL AGENCY, the FHWA, and all officers, agents, and employees thereof:
- a. From any and all claims by persons, firms, or corporations for labor, materials, supplies, or services provided to the CONSULTANT in connection with the CONSULTANT's performance of the SERVICES; and
 - b. From any and all costs or claims for additional compensation or damages, or injuries to or death of any and all persons, for loss of or damage to property, for environmental damage, degradation, response and cleanup cost, including attorney fees and related costs, caused by errors and/or omissions attributable to the CONSULTANT'S performance of the SERVICES under THIS CONTRACT unless the CONSULTANT proves that notwithstanding the error or omission, the CONSULTANT met generally accepted standards of care. In addition to excusing consultants from liability for errors or omissions that the CONSULTANT proves occurred despite its compliance with generally accepted standards of care, the CONSULTANT will only be responsible for the percentage of the damages and costs that corresponds to the proportion of the total damages and costs caused by the errors and/or omissions attributable to the CONSULTANT for which the CONSULTANT is otherwise liable under this subparagraph.

LOCAL AGENCY will not be subject to any obligations or liabilities by CONTRACTORS of the CONSULTANT or their SUBCONTRACTORS or any other person not a party to THIS CONTRACT without its specific consent and notwithstanding its concurrence in or approval of the award of any contract or subcontract or the solicitation thereof.

It is expressly understood and agreed that the CONSULTANT will take no action or conduct that arises either directly or indirectly out of its obligations, responsibilities, and duties under THIS CONTRACT that results in claims being asserted against or judgments being imposed against the State of Michigan, the Michigan State Transportation Commission, LOCAL AGENCY, and/or the FHWA, as applicable. In the event that the same occurs, it will be considered as a breach of THIS CONTRACT, thereby giving the State of Michigan, the Michigan State Transportation Commission, LOCAL AGENCY, and/or the FHWA, as applicable, a right to seek and obtain any necessary relief or remedy, including, but not limited to, a judgment for money damages.

30. LOCAL AGENCY may terminate THIS CONTRACT and/or any AUTHORIZATION(S) under THIS CONTRACT for convenience or cause, as set forth below, before the SERVICES are completed. Written notice of termination will be sent to the CONSULTANT. The CONSULTANT will be reimbursed in accordance with the following:

a. Termination for Convenience:

FOR COSTS TO BE REIMBURSED ON AN ACTUAL COST PLUS FIXED FEE BASIS: The CONSULTANT will be reimbursed for all costs incurred up to the termination date set forth in the notice of termination. Such reimbursement will be as set forth in Sections 16 and 17. The CONSULTANT will be reimbursed a proportionate share of the fixed fee based on the portion of the project that is complete as determined by LOCAL AGENCY. LOCAL AGENCY will receive the work product produced by the CONSULTANT under THIS CONTRACT up to the time of termination, prior to the CONSULTANT being reimbursed. In no case will the compensation paid to the CONSULTANT for partial completion of SERVICES exceed the amount the CONSULTANT would have received had the SERVICES been completed.

b. Termination for Cause:

The LOCAL AGENCY may terminate this CONTRACT whenever the CONSULTANT causes any of the following events to occur: fails to complete any of the SERVICES in a manner satisfactory to LOCAL AGENCY, and/or discloses LOCAL AGENCY'S confidential information, and/or replaces any Key People without prior written approval from LOCAL AGENCY, and/or fails to find an acceptable replacement to the Project Team within thirty (30) days, (or within the extension of time granted by LOCAL AGENCY, if any), and/or makes any public relations communications, (and/or products) that are intended for external audience without prior written approval from the LOCAL AGENCY.

AUTHORIZATION(S) pursuant to THIS CONTRACT for cause. Written notice of termination will be sent to the CONSULTANT. The CONSULTANT will be reimbursed as follows:

FOR COSTS TO BE REIMBURSED ON AN ACTUAL COST PLUS FIXED FEE BASIS: The CONSULTANT will be reimbursed for SERVICES completed up to receipt of the notice of termination. LOCAL AGENCY may pay a proportionate share for a partially completed work product. The value of such partially completed work product will be determined by LOCAL AGENCY based on actual costs incurred up to the estimated value of the work product received by LOCAL AGENCY, as determined by LOCAL AGENCY. Such actual costs will be as set forth in Section 16.

The CONSULTANT will be reimbursed a proportionate share of the fixed fee based on the portion of the project that is complete, as determined by LOCAL AGENCY. LOCAL AGENCY will receive the work product produced by the CONSULTANT under THIS CONTRACT up to the time of termination, prior to the CONSULTANT

being reimbursed. In no case will the compensation paid to the CONSULTANT for partial completion of the SERVICES exceed the amount the CONSULTANT would have received had the SERVICES been completed.

The value of such partially completed work product will be determined by LOCAL AGENCY based on actual costs incurred up to the estimated value of the work product received by LOCAL AGENCY as determined by LOCAL AGENCY.

In the event that termination by LOCAL AGENCY is necessitated by any wrongful breach, failure, default, or omission by the CONSULTANT, LOCAL AGENCY will be entitled to pursue whatever remedy is available to it, including, but not limited to, withholding funds or off-setting against funds owed to the CONSULTANT under THIS CONTRACT, as well as any other existing or future contracts between the CONSULTANT and LOCAL AGENCY, for any and all damages and costs incurred or sustained by LOCAL AGENCY as a result of its termination of THIS CONTRACT due to the wrongful breach, failure, default, or omission by the CONSULTANT.

In the event of termination of THIS CONTRACT and/or any AUTHORIZATION(S), LOCAL AGENCY may procure the professional SERVICES from other sources and hold the CONSULTANT responsible for any damages or excess costs occasioned thereby.

In the event that the CONSULTANT disagrees with LOCAL AGENCY regarding a determination of the completeness or value of SERVICES performed or the amount of reimbursement for which the CONSULTANT is eligible under the provisions of this section, the CONSULTANT may invoke the dispute process defined in Exhibit C.

31. The CONSULTANT'S signature on THIS CONTRACT constitutes the CONSULTANT'S certification of "status" under penalty of perjury under the laws of the United States with respect to 49 CFR Part 29, as amended and as relocated to 2 CFR Part 1200, pursuant to Executive Order 12549.

The certification included as a part of THIS CONTRACT as Attachment A is Appendix A of 49 CFR Part 29 and applies to the CONSULTANT (referred to in Appendix A as "the prospective primary participant").

The CONSULTANT is responsible for obtaining the same certification from all SUBCONTRACTORS under THIS CONTRACT by inserting the following paragraph in all subcontracts:

"The SUBCONTRACTOR'S signature on THIS CONTRACT constitutes the SUBCONTRACTOR'S certification of 'status' under penalty of perjury under the laws of the United States with respect to 49 CFR Part 29, as amended and as relocated to 2 CFR Part 1200, pursuant to Executive Order 12549. The certification included as a part of THIS CONTRACT as Attachment B is Appendix B of 49 CFR Part 29."

This certification is required of all SUBCONTRACTORS, testing laboratories, and other lower tier participants with whom the CONSULTANT enters into a written arrangement for the procurement of goods or services provided for in THIS CONTRACT.

32. The CONSULTANT'S signature on THIS CONTRACT constitutes the CONSULTANT'S certification that to the best of his or her knowledge and belief no federal appropriated funds have been paid or will be paid by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any federal 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, or the extension, continuation, removal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

The CONSULTANT will require that the language of this certification be included in the award documents for all third-party agreements (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was 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 will be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00) for each such failure.

33. The CONSULTANT agrees to pay each SUBCONTRACTOR for the satisfactory completion of work associated with the subcontract no later than ten (10) calendar days from the receipt of each payment the CONSULTANT receives from MDOT. This requirement is also applicable to all sub-tier SUBCONTRACTORS and will be made a part of all subcontract agreements.

This prompt payment provision is a requirement of 49 CFR Part 26, as amended, and does not confer third-party beneficiary right or other direct right to a SUBCONTRACTOR against MDOT. This provision applies to both DBE and non-DBE SUBCONTRACTORS.

The CONSULTANT further agrees that it will comply with 49 CFR Part 26, as amended, and will report any and all DBE SUBCONTRACTOR payments to MDOT semi-annually in the format set forth in Appendix G, dated July 2015, attached hereto and made a part hereof, or any other format acceptable to MDOT.

34. The CONSULTANT agrees that the costs reported to LOCAL AGENCY for THIS CONTRACT will represent only those items that are properly chargeable in accordance with THIS CONTRACT. The CONSULTANT also certifies that it has read the Contract terms and has made itself aware of the applicable laws, regulations, and terms of THIS

CONTRACT

that apply to the reporting of costs incurred under the terms of THIS CONTRACT.

The following exhibits, appendices, and attachments are included on page 14 of THIS CONTRACT, IN WITNESS WHEREOF, the parties hereto have set their hands and seals by their duty authorized agents and representative the day and year first above written.

By: _____
TITLE:

By: _____
TITLE:

By: _____
TITLE:

By: _____
TITLE:

LIST OF EXHIBITS/APPENDIXES/ATTACHMENTS

Exhibit A – Scope of Services

Exhibit B – Professional Liability Insurance

Exhibit C – The Dispute Resolution Process

Exhibit D – Consultant Performance Evaluations

Appendix A – Prohibition of Discrimination in State Contracts

Appendix B – TITLE VI Assurance

Appendix C – Assurances that Recipients and Contractors Must Make

Appendix D – Local Consultant Conflict of Interest

Appendix E – Public Relations Communications, and Use of Project Information for External Audiences

Appendix G – Prime Consultant State of DBE Sub-Consultant Payments

Attachment A – Certification Regarding Debarment, Suspension, and Other Responsibility Matters
– Primary Covered Transactions

Attachment B – Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusions-Lower Tier Covered Transactions

Attachment C – Transportation Certification of Indirect Rate

EXHIBIT A

Scope of Services

EXHIBIT B

PROFESSIONAL LIABILITY INSURANCE

June 27, 1996

The CONSULTANT specifically agrees to maintain professional liability insurance for protection from claims arising out of the performance of SERVICES under THIS CONTRACT.

This insurance will be maintained in an amount not less than One Million Dollars (\$1,000,000.00) per claim and annual aggregate. Such insurance will be in effect for the life of THIS CONTRACT and for the period through the construction and DEPARTMENT acceptance of such construction, resulting from the SERVICES provided by THIS CONTRACT, whichever is later.

As evidence of said coverage, the CONSULTANT will submit to the DEPARTMENT certificates of insurance. All required insurance will be in effect and all documents required by this section will be submitted to the DEPARTMENT prior to the commencement of the SERVICES. All such approvals will include a provision for a cancellation notice of not less than thirty (30) days, directed to the DEPARTMENT. The CONSULTANT specifically agrees to immediately provide written notification of any change to its professional liability insurance coverage.

EXHIBIT C

THE DISPUTE RESOLUTION PROCESS

November, 2015

BACKGROUND

During the design and construction phases of projects, there are quality assurance and quality assessment procedures required of CONSULTANTS and the LOCAL AGENCY that are intended to minimize the occurrence of errors and/or omissions. Even so, there are often valid changes required during construction in order to complete the project. These changes may or may not be the result of the Design or Construction Engineering Consultant's errors or omissions.

Some of the changes may be due to errors and/or omissions in the Design Plans or Construction Engineering Services resulting in cost increases to the project or degradation of quality of the road project. When changes to a project result in errors or omissions and cause additional costs or reduction in quality, an assessment must be made to determine the extent of the Design and/or Construction Engineering consultant's responsibility for the errors and/or omissions, including the CONSULTANT'S share of the additional costs.

LOCAL AGENCY personnel must keep in mind that Design Plans and Construction Engineering Services will normally contain minor deficiencies that do not materially (*an issue is considered material when the perceived cost of the error and/or omission is greater than the administrative cost of the dispute resolution process*) affect the cost or quality of the project. The steps to assign responsibility are intended to be used in those cases where LOCAL AGENCY personnel have reason to believe that, in their professional judgment, a Design and/or Construction Engineering CONSULTANT did not adhere to recognized professional standards of care in the performance of its duties, resulting in substantial additional costs to the LOCAL AGENCY.

It is also important to understand that the cost of correcting an error and/or omission should be compared to the estimated first-time cost that would have been incurred had the services or contract documents been correct to begin with. For example, the omission of a pay item that has to be added during construction will cause an increase in the construction cost, but the cost would have been higher had the pay item been included from the beginning. In this case, the cost of the omission depends on how much more it costs to include the item during construction than it would have cost had the item been included when the project was bid. This is known as premium cost. Premium costs are the additional cost of a contract that would not have been incurred if the work had been included in the original contract. More specifically, premium costs are dollar amounts paid for non value added work. Delays, inefficiencies, rework, or extra work as shown below, other than those caused by the CONTRACTOR or his or her SUBCONTRACTORS or suppliers, will be considered as non-value added work. Non-value added work can occur in three distinct situations.

- Work delays or inefficiencies. The premium costs are the total delay/ inefficiencies damages paid to the CONTRACTOR.
- Rework. The premium costs are the dollar amounts paid for the original items of work that have to be removed plus the costs to remove these items.
- Extra work. The premium costs are the net difference between the final, agreed-upon

price paid to the CONTRACTOR and the Engineer's Estimate i.e., what the cost would have been had the extra work been included in the original bid at letting.

Premium costs associated with Errors and Omissions shall be Federal-aid Non-Participating. Another example is improper or missing testing documentation. In this case, the cost of the omission depends on whether or not the Federal Aid or State participation will remain as the quality of the construction may not be able to be determined and was affected by the missing or improper acceptance documentation to support payment.

THE PROCESS – OVERVIEW

PROJECTS will be built as designed and let. Furthermore, field staff will not revise the design for purposes of enhancement or personal choice. In the event the PROJECT cannot be practically built or let as designed, due to omissions or errors, then the steps of this procedure will govern.

There are three (3) possible categories of potential errors, omissions, or questions of a material nature.

Category 1 – Design Issues The first category is when potential errors, omissions, or questions of a material nature are related to the Design Plans only. These events will be referred to as “Design Issues” until such time as the cause, effect, and responsibility have been determined. *[Any issue is material when the cost of the error and/or omission is perceived to be greater than the administrative cost of the dispute resolution process.]*

Category 2 – Design/Construction Engineering Issues The second category is when it cannot be determined whether the potential errors, omissions, or questions of a material nature are encountered in the Construction Engineering Services or in the Design Plans.. These events will be referred to as “Construction Engineering/Design Issues” until such time as the cause, effect, and responsibility have been determined.

Category 3 – Construction Engineering Issues The third category is when the potential errors, omissions, or questions of a material nature are encountered in Construction Engineering Services and not related to the Design Plans. These events will be referred to as “Construction Engineering Issues” until such time as the cause, effect, and responsibility have been determined.

In the event that the **MDOT TSC Construction Engineer** decides that the Design and/or Construction Engineering Issue is not material, the Local Agency Project Supervisor will proceed unilaterally. A copy of the Design Issue decision, changes, and/or other relevant documents must be sent immediately to the **LOCAL AGENCY**, and the Construction Engineering CONSULTANT, if applicable. Typically, this will be a e-mail of the work order. The LOCAL AGENCY will forward these decisions, changes, and/or other documents to the Design Consultant. This step is important for two reasons. First, the Design CONSULTANT, and/or the **LOCAL AGENCY** will have an opportunity to review the change and take action if they disagree. Second, this will give an opportunity for everyone to learn of the deficiencies in order to improve the product in the future.

In the event that the **MDOT TSC Construction Engineer** is uncertain regarding the designer's intent, he/she must contact the **LOCAL AGENCY** to determine the intent. The **LOCAL**

AGENCY will contact the **CONSULTANT** staff when appropriate.

The process will initially focus on solving the problem with the objective of minimizing the impact on construction. After that, the process will focus on responsibility according to the multi-step procedure that follows. The step of determining responsibility must be taken any time the Design and/or Construction Engineering **CONSULTANT** is brought into the process and incurs costs. These steps must also be taken any time errors and/or omissions in consultant prepared Design Plans or Construction Engineering Services result in increased cost during construction or decrease in the quality of the project.

The determination of the degree of responsibility for substandard work must include a review of the **CONSULTANT'S** scope of work, the standards in effect when the work was done, design information provided to the **CONSULTANT**, and directions provided by the **LOCAL AGENCY**. In making this determination, the **LOCAL AGENCY** must discuss the error and/or omission with the **CONSULTANT** and any involved **LOCAL AGENCY** personnel to obtain all information and points of view. The **LOCAL AGENCY** is to make a record of conversations and other documentation that support whatever determination is made and then place copies of those records in the project files. Separate budgets will be created for payment to Design and Construction Engineering **CONSULTANTS** for their correction of Design or Construction Engineering Issues that are judged not to be their responsibility and for changes by the **LOCAL AGENCY** for their activities during this process.

PROCESS – DISPUTE ESOLUTION

For levels one and two of these proceedings, the first focus should be on resolving the Design or Construction Engineering Issue in order to minimize the impact on construction. The **LOCAL AGENCY** and the consultant will attempt to jointly determine the solution. In the event that such agreement cannot be reached, the **LOCAL AGENCY** alone will decide on the appropriate solution. In the event that the Design and/or Construction Engineering **CONSULTANT** does not agree with any of these decisions, it may appeal its financial responsibility to the next level. After the Design or Construction Engineering Issue is resolved, the focus shifts to responsibility and financial implications. All decisions must be completely agreed upon by the representatives of the **LOCAL AGENCY**.

Level 1 – Omissions and Errors Identification and Correction

Step A – Notify the Design or Construction Engineering **CONSULTANT** of the first notice of the issue in either design or construction.

Step B – The **LOCAL AGENCY** and **CONSULTANT** personnel will collaborate on the safest, cost efficient solution to construct the project within the character of the scope of work. If consensus cannot be reached the **LOCAL AGENCY** is then charged with determining the appropriate resolution to the issue to get the project back under design or construction. This issue resolution should be discussed with the **MDOT TSC Construction Engineer** with regards to appropriateness and potential project financial participation implications prior to any final decisions being made.

Step C – Issue Work Order/Contract Modification that resolves issue so that design or construction work may continue. Processes for contract modifications will follow those set forth in the MDOT Construction Manual or other guidance documents pertaining to revisions to the contract.

Level 2 – Cost Responsibility Determination

Step A – Mutually determine, between the LOCAL AGENCY and the CONSULTANT, if the issue was caused by a plan error or omission.

If it is determined that a plan error created the issue, the financial responsibility for the correction and associated design and construction costs will be borne 100% by the CONSULTANT.

If it is determined that an omission created the issue, only the premium cost above what the LOCAL AGENCY would have expected to pay, if the work was included in the original bid construction documents, will be borne by the CONSULTANT.

Step B – If the CONSULTANT disagrees with the determination in Step 2 A, then the disputed items are sent to the mutually agreed upon review PANEL for a recommendation of cost responsibility. The LOCAL AGENCY will facilitate the development of the members of the review PANEL.

The LOCAL AGENCY and the CONSULTANT will each select a member of their choosing, the two selected members will then mutually agree to select one more member. The review PANEL will be made up of three members. The LOCAL AGENCY will then notify, a PANEL of impartial and non-interested individuals to mediate a resolution to the issue. The cost for the PANEL members should be shared between the LOCAL AGENCY and the CONSULTANT. Example participants could be members ACEC, CRA, MML, etc. The PANEL will guide the LOCAL AGENCY and the CONSULTANT toward an agreement. The staff from MDOT may also be present as observers. At such time as the PANEL determines that the LOCAL AGENCY and the CONSULTANT are not making reasonable progress toward resolving one or more issues, the PANEL will render a non-binding written decision of those issues. In the event the non-binding written decision is not acceptable to either party, then other legal remedies may be sought.

Level 3 – Cost Recovery or Payment

Upon the conclusion of the level 2 process, the LOCAL AGENCY will do one of the following in accordance with the results of this process:

Cost Recovery The LOCAL AGENCY will prepare a billing to the Design or Construction Engineering Consultant for its share of the costs incurred for work performed during this process plus its share of any increased costs of construction, in accordance with the Design Consultant’s determined share of responsibility; or

Payment The LOCAL AGENCY will prepare a payment to the Design or

Construction Engineering Consultant for a share of its costs incurred for work performed during this process in accordance with its determined share of responsibility.

Upon the conclusion of this process, the LOCAL AGENCY will do one of the following in accordance with the results of this process:

- a. The LOCAL AGENCY will prepare a billing to the Design or Construction Engineering Consultant for its share of the costs incurred for work performed during this process plus its share of any increased costs of construction, in accordance with the Design Consultant's determined share of responsibility; or
- b. The LOCAL AGENCY will prepare a payment to the Design or Construction Engineering Consultant for a share of its costs incurred for work performed during this process in accordance with its determined share of responsibility.

EXHIBIT D

CONSULTANT PERFORMANCE EVALUATIONS

May 20, 2015

The purpose of the Consultant Performance Evaluation process is to: provide CONSULTANTS documented feedback of their performance on local federal-aid projects; promote project management/consultant communication; identify and document areas of potential improvements of CONSULTANT performance, improve the overall quality of local projects, and to obtain ratings for use in future project selections.

The performance evaluation process is required for all types of CONSULTANT services utilizing federal-aid. An evaluation must be prepared for the prime vendor, as well as separate evaluations for each sub-vendor. Evaluations of both prime and SUB-CONSULTANTS are critical because their evaluation scores affect future selection scoring and ranking. The performance evaluation should include, but not be limited to, an assessment of timely completion of work, adherence to contract scope and budget, and the quality of the work conducted. .

The LOCAL AGENCY specifically agrees to complete and maintain CONSULTANT performance evaluations at the end of THIS CONTRACT and submit them to MDOT before the final reimbursement will be processed in LARS.

APPENDIX A

PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under THIS CONTRACT; the CONTRACTOR agrees as follows:

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the CONTRACTOR shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of THIS CONTRACT. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the CONTRACTOR shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of THIS CONTRACT.
2. The CONTRACTOR hereby agrees that any and all subcontracts to THIS CONTRACT, whereby a portion of the work set forth in THIS CONTRACT is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The CONTRACTOR will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The CONTRACTOR or its collective bargaining representative shall send to each labor union or representative of workers with which the CONTRACTOR has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the CONTRACTOR'S commitments under this Appendix.
6. The CONTRACTOR shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking

of bids for any individual state project.

7. The CONTRACTOR shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each SUBCONTRACTOR, as well as the CONTRACTOR itself, and said CONTRACTOR shall permit access to the CONTRACTOR'S books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under THIS CONTRACT and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a CONTRACTOR has not complied with the contractual obligations under THIS CONTRACT, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the Contract found to have been violated and/or declare the CONTRACTOR ineligible for future contracts with the state and its political and civil subdivisions, DEPARTMENTS, and officers, including the governing boards of institutions of higher education, until the CONTRACTOR complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the CONTRACTOR is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.
9. The CONTRACTOR shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each SUBCONTRACTOR or supplier.

Revised June 2011

APPENDIX B

TITLE VI ASSURANCE

During the performance of THIS CONTRACT, the CONTRACTOR, for itself, its assignees, and its successors in interest (hereinafter referred to as the "CONTRACTOR"), agrees as follows:

1. **Compliance with Regulations**: For all federally assisted programs, the CONTRACTOR shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of THIS CONTRACT.
2. **Nondiscrimination**: The CONTRACTOR, with regard to the work performed under THE CONTRACT, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment of SUBCONTRACTORS, including procurements of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the CONTRACTOR covers a program set forth in Appendix B of the Regulations.
3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment**: All solicitations made by the CONTRACTOR, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential SUBCONTRACTOR or supplier of the CONTRACTOR'S obligations under the Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports**: The CONTRACTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined to be pertinent by the DEPARTMENT or the United States DEPARTMENT of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish the required information, the CONTRACTOR shall certify to the DEPARTMENT or the USDOT, as appropriate, and shall set forth the efforts that it made to obtain the information.
5. **Sanctions for Noncompliance**: In the event of the CONTRACTOR'S noncompliance with the nondiscrimination provisions of THIS CONTRACT, the DEPARTMENT shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:
 - a. Withholding payments to the CONTRACTOR until the CONTRACTOR complies; and/or b.
 - b. Canceling, terminating, or suspending THE CONTRACT, in whole or in part.

6. **Incorporation of Provisions:** The CONTRACTOR shall include the provisions of Sections (1) through (6) in every subcontract, including procurement of material and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONTRACTOR shall take such action with respect to any subcontract or procurement as the DEPARTMENT or the USDOT may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event a CONTRACTOR becomes involved in or is threatened with litigation from a SUBCONTRACTOR or supplier as a result of such direction, the CONTRACTOR may request the DEPARTMENT to enter into such litigation to protect the interests of the state. In addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

Revised June 2011

APPENDIX C

Assurances that Recipients and CONTRACTORs Must Make (Excerpts from US DOT Regulation 49 CFR § 26.13)

1. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the DEPARTMENT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

2. Each contract MDOT signs with a CONTRACTOR (and each subcontract the prime CONTRACTOR signs with a SUBCONTRACTOR) must include the following assurance:

The CONTRACTOR, subrecipient or SUBCONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of THIS CONTRACT. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of THIS CONTRACT, which may result in the termination of THIS CONTRACT or such other remedy as the recipient deems appropriate.

Revised October 1, 2005

APPENDIX D

LOCAL CONSULTANT CONFLICT OF INTEREST

The CONSULTANT and its Affiliates agree not to have any public or private interest, and shall not acquire directly or indirectly any such interest in connection with the project, that would conflict or appear to conflict in any manner with the performance of SERVICES under THIS CONTRACT. "Affiliate" means a corporate entity linked to the CONSULTANT through common ownership. The CONSULTANT and its Affiliates agree not to provide any services to a construction CONTRACTOR or any entity that may have an adversarial interest in a project for which it has provided services to the MDOT OR LOCAL AGENCY. The CONSULTANT and its Affiliates agree to disclose to the LOCAL AGENCY and the MDOT all other interests that the prime or SUBCONSULTANT have or contemplate having during each phase of the project. The phases of the PROJECT include, but are not limited to, planning, scoping, early preliminary engineering, design engineering, real estate acquisition, and construction engineering. In all situations, the MDOT will decide if a conflict of interest exists. If the MDOT concludes that a conflict of interest exists, it will inform the LOCAL AGENCY and CONSULTANT and its Affiliates. If the CONSULTANT and its Affiliates choose to retain the interest constituting the conflict, the MDOT may require the LOCAL AGENCY to terminate the Contract for cause if a conflict of interest finding is upheld.

APPENDIX E

Public Relations Communications and Use of Project Information for External Audiences

Any public relations communications and/or products pertaining to this CONTRACT or the SERVICES hereunder that are intended for an external audience will not be made without prior written approval from LOCAL AGENCY, and then only in accordance with explicit instructions from LOCAL AGENCY. Examples of public relations communications and/or products may include the following:

Use of the LOCAL AGENCY logo;

Brochures, flyers, invitations, programs, or any other printed materials intended for external audiences; Posting on social media sites or web sites;

New or updated video, digital versatile disk (DVD), or video sharing productions;

Exhibits or presentations.

A violation of this provision will be considered a breach of this CONTRACT, and LOCAL AGENCY may terminate this CONTRACT under provisions of Section 30(b).

APPENDIX G

Prime Consultant State of DBE Sub-Consultant Payments

ATTACHMENT A

(This is a reproduction of Appendix A of 49 CFR Part 29) **Certification Regarding Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions**

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant 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 or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant 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 or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the DEPARTMENT or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the DEPARTMENT or agency to which this proposal is submitted if at any time the prospective primary participant 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 clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the DEPARTMENT or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary 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 proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DEPARTMENT or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction," provided by the DEPARTMENT or agency entering into this covered transaction, without modification,

in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, 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 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
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 clause. 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.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DEPARTMENT or agency may terminate this transaction for cause or default.

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

1. The prospective primary participant 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 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 paragraph (1)(b) of this certification; and
 - d. Have not within a three year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[60 FR 33042, 33064, June 26, 1995]

ATTACHMENT B

[This is a reproduction of Appendix B of 49 CFR Part 29]
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY, AND VOLUNTARY EXCLUSION--LOWER
TIER COVERED TRANSACTIONS**

Instructions for Certification

1. By signing and submitting this proposal, 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 participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the DEPARTMENT or agency with which this transaction originated may pursue available remedies, including suspension and/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”, “proposal”, and “voluntarily excluded”, as used in this clause, 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 or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause 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. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it 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 Nonprocurement List (Telephone No. (517) 335-2513 or (517) 335-2514).

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 clause. 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 paragraph 5 of these instructions, 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, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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.

[Federal Register Doc. 88-11561 Filed 5-25-88; 8:45 a.m.] March 9, 1989

ATTACHMENT C

Transportation Certification of Indirect Rate

Michigan Department
Of Transportation
5108L (01/11)

CERTIFICATION OF INDIRECT (OVERHEAD) RATE

This Certification is required according to U.S. Department of Transportation, Federal Highway Administration (FHWA) Order 4470.1A, dated October 27, 2010. FHWA has issued this new policy to be effective January 1, 2011. This policy requires consultants to certify that costs used to establish indirect (overhead) cost rates applicable to Federal-aid engineering and design related services contracts do not include any costs which are expressly unallowable, and that the indirect (overhead) rate was established based only on allowable costs.

This certification is to provide assurance that the indirect (overhead) cost rate was calculated in accordance with the applicable cost principles contained in the Federal Acquisition Regulations (FAR) of Title 48, Code of Federal Regulations (CFR) Part 31.

This form shall be completed and submitted by the prime consultant, for the prime contract as well as for each subcontract (first and second tier subconsultants(s)) proposed to be included as part of this priced proposal, where an indirect (overhead) rate is proposed. Please note that the Certifying Official is defined as the firm's Executive (Vice President, President or equivalent) or Chief Financial Officer.

PROJECT INFORMATION

MOOT CONTROL SECTION(S)-JOB NUMBERS(S):	CONTRACT / AUTHORIZATION NUMBER:
LOCAL AGENCY:	
PROJECT DESCRIPTION:	

DECLARATION OF CERTIFICATION

INDIRECT (OVERHEAD) COST RATE: _____

DATE OF INDIRECT (OVERHEAD) COST RATE DETERMINATION (mm/dd/yyyy): _____

FISCAL PERIOD COVERED (mm/dd/yyyy to mm/dd/yyyy): _____ to _____

I, the undersigned, certify that I have reviewed the indirect (overhead) rate calculation for the fiscal period as specified above and to the best of my knowledge and belief:

- 1) All costs included to establish the above rate are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) of Title 48, Code of Federal Regulation (CFR), part 31.
- 2) This indirect (overhead) cost rate does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR 31.

All known material transactions or events that have occurred affecting the firm's ownership, organization, and indirect (overhead) cost rates have been disclosed.

CONSULTANT INFORMATION

ROLE <input checked="" type="checkbox"/> Prime <input type="checkbox"/> Tier 1 Sub <input type="checkbox"/> Tier 2 Sub			
LEGAL BUSINESS NAME:		FEDERAL ID NUMBER (Must match prequalification file):	
COMPANY ADDRESS:	CITY:	STATE:	ZIP CODE:
EMAIL ADDRESS:	PHONE NO.:		

CERTIFYING OFFICIAL

NAME OF CERTIFYING OFFICIAL (Print Name and Title): _____ SIGNATURE OF CERTIFYING OFFICIAL: _____