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# **STANDARD AGREEMENT PROVISIONS FOR CONSULTANT SERVICES**

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### **PREAMBLE**

Since the SERVICES contemplated under the AGREEMENT are professional in nature, it is understood the CONSULTANT, acting as an individual, partnership, firm or other legal entity, is a licensed professional and will be governed by and follow all relevant professional ethics standards in their relationship with the DEPARTMENT. The DEPARTMENT acknowledges this professional status, with the duty to adhere to rigorous ethical and professional standards, by entering into an AGREEMENT on the basis of the qualifications and experience of CONSULTANT, with COMPENSATION determined by mutually satisfactory negotiations.

## **SECTION 1: DEFINITIONS**

Wherever used in these Standard AGREEMENT Provisions for CONSULTANT SERVICES, hereinafter referred to as the "STANDARD PROVISIONS", or any documents where these STANDARD PROVISIONS pertain or govern, the following terms and abbreviations shall be defined as follows:

### **1) ACTUAL COSTS**

The CONSULTANT'S ACTUAL COSTS, directly attributable and properly applicable to the conduct of the CONSULTANT'S business in the performance of the AGREEMENT and in accordance with general accounting practices, including direct salary costs, direct non-salary costs, indirect salary costs and indirect non-salary costs.

### **2) ADDITIONAL COMPENSATION**

Payment for ADDITIONAL SERVICES.

### **3) ADDITIONAL SERVICES**

Any SERVICE or action required of the CONSULTANT which is not identified in the AGREEMENT or any SUPPLEMENTAL AGREEMENT.

### **4) AGREEMENT**

The legal instrument or negotiated CONTRACT defining the obligations and considerations of the signatory parties. The term "AGREEMENT" includes all SUPPLEMENTAL AGREEMENTS.

### **5) APPROVING PARTY**

Parties other than contracting parties upon whose approval or acceptance the DEPARTMENT and CONSULTANT must depend in the advancement of the SERVICES.

### **6) AUTHORITY TO PROCEED**

After EXECUTION, the initial written authorization from the DEPARTMENT to the CONSULTANT to proceed with the SERVICES.

### **7) BUREAU CHIEF**

The individual of the DEPARTMENT who has jurisdiction over the SERVICES in the Central Offices and the authority to approve, per DEPARTMENT policy, WORK ORDERS, ADDITIONAL SERVICES OR CHANGES.

### **8) CALENDAR DAYS**

The total elapsed days including Saturdays, Sundays and Legal Holidays.

### **9) CHANGE**

An addition to, reduction of, or revision in the scope, complexity, character or duration of the SERVICES identified in either the AGREEMENT or any SUPPLEMENTAL AGREEMENT.

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**10) CODE OF FEDERAL REGULATIONS (CFR)**

The codification of the general and permanent rules and regulations (sometimes called administrative law) published in the Federal Register by the executive departments and agencies of the federal government of the United States.

**11) CONFIDENTIAL AND PROPRIETARY INFORMATION**

Any and all present and future knowledge or information of any type, regardless of the manner of storage or transmittal, relating to the execution, enforcement, formulation, and decision-making process or any other related aspect of the operations, programs, procedures, or similar internal administrative activities of the DEPARTMENT or any of its divisions and organizational components. This shall specifically include without limitation, all types of such information stored or conveyed through DEPARTMENT databases, e-mail systems, electronic file directories, hard copy document file systems, oral or written communication with DEPARTMENT staff, CONSULTANTS, or other parties. However, CONFIDENTIAL AND PROPRIETARY INFORMATION does not include information or knowledge which the DEPARTMENT identifies as available for unrestricted public use. For purposes of this AGREEMENT, a "person" shall include individuals, partnerships, trusts, corporations or any other form of association or entity.

**12) COMPENSATION**

The monetary amount to be paid by the DEPARTMENT to the CONSULTANT for SERVICES set forth in the AGREEMENT.

**13) CONSTRUCTION SECTION**

A portion of, or an entire DESIGN SECTION, between designated limits, for which construction plans are to be prepared.

**14) CONSULTANT**

Any individual, sole proprietorship, firm, partnership, corporation, association, or other legal entity prequalified by the DEPARTMENT and permitted by law to practice the profession of architecture, engineering, or land surveying and provide those services, as a party to the AGREEMENT.

**15) CONTRACT**

The written AGREEMENT between the DEPARTMENT and the CONSULTANT setting forth the obligations of the parties, including, but not limited to, the performance of the SERVICES, the furnishing of labor and materials, and the basis of payment (See AGREEMENT).

**16) CONTRACTOR**

The individual, firm, partnership, or corporation contracting with the DEPARTMENT for performance of the prescribed WORK (construction activities).

**17) COST**

The ACTUAL COSTS of labor, direct costs, and overhead associated with the SERVICES.

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**18) DAMAGES**

The direct costs that follow proximately from a breach of the standard of care set forth in Section 2.26. Direct costs include, but are not limited to, all actual costs to correct WORK affected by a breach, and all delay and other time-related costs paid by the DEPARTMENT because of a breach. The total direct costs will not include the value of any betterment resulting from the correction of the WORK, or those costs that would have been incurred had an omitted feature, system or equipment been made a part of the CONTRACT let to the CONTRACTOR to perform the WORK. The CONSULTANT will be liable for special or consequential damages in addition to DAMAGES when special circumstances and conditions are expressly recognized by the CONSULTANT and the DEPARTMENT, and the intent for the CONSULTANT to be liable for said damages is expressly set forth in this AGREEMENT. This definition does not apply to Sections 2.71 and 2.72.

**19) DEPARTMENT**

The Department of Transportation of the State of Illinois.

**20) DESIGN SECTION**

A geographic location or area between designated termini or limits for which the professional SERVICES specified in the AGREEMENT are to be performed by the CONSULTANT.

**21) DIRECTOR**

The DIRECTOR of the Division or Office of the DEPARTMENT who is in charge of the SERVICES under the AGREEMENT.

**22) ERROR**

A failure to provide professional SERVICES in accordance with that degree of care and skill ordinarily exercised under similar conditions excluding, however, OMISSIONS.

**23) EXECUTION**

The signing of the CONTRACT.

**24) FAPG**

Federal-Aid Policy Guide.

**25) FHWA**

The Federal Highway Administration of the United States Department of Transportation (DOT).

**26) FIXED FEE**

A negotiated dollar amount to cover profit and business expenses not paid for otherwise.

**27) KEY PERSONNEL**

The CONSULTANT'S personnel specified in the STATEMENT OF INTEREST and in the AGREEMENT who are considered essential to the SERVICES being performed.



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**28) LIAISON MANAGERS**

The duly authorized representatives of the DEPARTMENT and the CONSULTANT charged with the day-to-day administration of the terms of the AGREEMENT. For most PROJECTS this will be the Project Manager.

**29) NEGLIGENCE**

The OMISSION or neglect of reasonable precaution, care or action in accordance with that degree of care and skill ordinarily exercised under similar conditions.

**30) OMISSION**

A failure to provide professional SERVICES in accordance with that degree of care and skill ordinarily exercised under similar conditions whereby there is a failure to indicate on drawings, specifications or other products of professional SERVICES the requirement for a feature, system or equipment, which is necessary to the complete function of a PROJECT. This definition does not apply to Sections 2.71 and 2.72.

**31) PHASE**

A portion of the SERVICES segregated in the AGREEMENT for sequencing purposes (i.e., such as a corridor report, design report or contract plans).

**32) PROFESSIONAL TRANSPORTATION BULLETIN**

The official Notice of the DEPARTMENT'S need for Architectural, Engineering and Land Surveying SERVICES.

**33) PROGRESS REPORT**

A comprehensive description submitted by the CONSULTANT, in a form and at intervals specified by the DEPARTMENT, comparing actual progress with scheduled progress.

**34) PROJECT**

The proposed development which is the subject of the SERVICES stipulated in the AGREEMENT. It may be comprised of one or more DESIGN or CONSTRUCTION SECTIONS.

**35) PROJECT SCHEDULE**

A comprehensive description of all significant SERVICES required of the CONSULTANT and of all actions required of the DEPARTMENT and APPROVING PARTIES by the obligations of the AGREEMENT, together with the durations and/or dates for performing these SERVICES and actions.

**36) QUALITY ASSURANCE**

All those planned and systematic actions to provide adequate confidence a structure, system, or component will perform satisfactorily in service.

**37) QUALITY CONTROL**

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A system for maintaining desired standards in a product or process, especially by inspecting samples of the product.

**38) RECORD DOCUMENTS**

The documents sealed by a person, duly licensed or registered in the appropriate category by the Department of Professional Regulation of the State of Illinois, will be the Documents of Record for the PROJECT. Documents reproduced by any method shall not supersede the Document of Record.

**39) REGIONAL ENGINEER**

The Individual of the DEPARTMENT who has jurisdiction over the SERVICES of a State's Region and the authority to approve, per DEPARTMENT policy, any WORK ORDER, ADDITIONAL SERVICES or CHANGES.

**40) SCOPE OF SERVICES**

All SERVICES and actions required of the CONSULTANT by the obligations of the AGREEMENT.

**41) SERVICES**

SERVICES provided by a CONSULTANT or in their behalf in the performance of studies, surveys, assessments, evaluations, consultations, inspections, scheduling, sequencing, or training; and/or: The preparation of reports, opinions, recommendations, permit applications, maps, drawings, designs, specifications, manuals, instructions, computer programs for designated systems, or review of construction change orders; or the sampling, testing, monitoring, or QUALITY CONTROL necessary to perform any of the SERVICES listed above. SERVICES do not include construction WORK.

**42) SPECIFIC RATES OF COMPENSATION**

Specific hourly rates at which the CONSULTANT is to be paid for each class of employee directly engaged in SERVICES. Such rates of pay include the CONSULTANT'S payroll, overhead and FIXED FEE.

**43) STATEMENT OF INTEREST**

The CONSULTANT'S official communication expressing their desire to be considered for selection of SERVICES advertised in the PROFESSIONAL TRANSPORTATION BULLETIN in accordance with the DEPARTMENT'S requirements for submittal.

**44) SUBCONSULTANT**

Any independent professional firm, person or organization who, with the approval of the DEPARTMENT, performs a part of the SERVICES and/or work for the CONSULTANT.

**45) SUPPLEMENTAL AGREEMENT**

An AGREEMENT modifying the existing AGREEMENT.

**46) TOTAL AGREEMENT AMOUNT**

The costs of all SERVICES including SUBCONSULTANTS for a specific PHASE of an AGREEMENT.

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**47) UNIT OF WORK**

A measurement of SERVICES, such as Kilometers (miles) of centerline or base line, meters (feet) of borings, geotechnical or sub-surface exploration testing and sampling, laboratory testing, and ground radar penetration.

**48) WORK**

Services, labor, materials, transportation and equipment necessary for the construction of the PROJECT to be provided by a construction CONTRACTOR. WORK includes sole responsibility for all construction means, methods and procedures and construction site safety.

**49) UPPER LIMIT OF COMPENSATION**

The total COMPENSATION in the AGREEMENTS which cannot be exceeded without revising the AGREEMENT.

**50) WORK ORDER**

A written authorization by the DEPARTMENT to the CONSULTANT to proceed with the SERVICES for each separate job issued under the miscellaneous WORK ORDER AGREEMENT. WORK ORDERS contain the following information:

- a) Location and description of the job
- b) Compensation for the SERVICES
- c) Submittal date of the WORK ORDER
- d) Completion date of the SERVICES

Each WORK ORDER is signed by the DEPARTMENT.

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## **SECTION 2: GENERAL CLAUSES AND COVENANTS**

### **2.1 CONSULTANT OFFICE AND PERSONNEL REQUIREMENTS**

#### **2.10 ENDORSEMENT OF DOCUMENTS**

The CONSULTANT will endorse and seal all final reports, contract plans, maps, right-of-way plats, special provisions for construction contract documents and final cost estimates. Such endorsements must be made by a person, duly licensed or registered in the appropriate category by the Department of Professional Regulation of the State of Illinois, being in the full-time employ of the CONSULTANT and responsible for the portion of the SERVICES for which license registration is required. These sealed documents will serve as the RECORD DOCUMENTS for the SERVICES covered by the terms of the AGREEMENT.

#### **2.11 EXECUTION OF THE CONTRACT**

The DEPARTMENT will, in accordance with the rules governing the DEPARTMENT procurements, execute the CONTRACT and shall be the sole entity having the authority to accept performance and make payments under the CONTRACT. Execution of the CONTRACT by the Chief Procurement Officer or the State Purchasing Officer is for approval of the procurement process and execution of the CONTRACT by the DEPARTMENT. Neither the Chief Procurement Officer nor the State Purchasing Officer shall be responsible for administration of the CONTRACT or determinations respecting performance or payment, thereunder, except as otherwise permitted in the Illinois Procurement Code.

#### **2.12 QUALIFICATION OF PERSONNEL**

- a) The CONSULTANT shall employ only persons duly licensed or registered in the appropriate category in responsible charge of all elements of the SERVICES, for which Illinois Statutes require license or registration, and further shall employ only well qualified persons in responsible charge of any elements of the SERVICES, all subject to DEPARTMENT approval.
- b) The CONSULTANT'S KEY PERSONNEL specified by name in the AGREEMENT shall be considered essential to the SERVICES being performed. If, for any reason, substitution of a key person becomes necessary, the CONSULTANT shall provide advance written notification of the substitution to the REGIONAL ENGINEER or BUREAU CHIEF. Such written notification shall include the proposed successor's name and resume of their qualifications. The DEPARTMENT shall have the right to approve or reject the proposed successor.
- c) The CONSULTANT shall report within 15 WORKING DAYS that a key person is no longer employed by the CONSULTANT and hence will no longer be available to perform SERVICES on the PROJECT. The CONSULTANT shall provide the successor's name and resume expeditiously, but within 60 days of the key person no longer being available.

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- d) If at any time subsequent to execution of the CONTRACT, CONSULTANT or SUBCONSULTANT loses its prequalification for a category of SERVICES to be performed on the CONTRACT, CONSULTANT shall notify the DEPARTMENT, in writing, of the CONSULTANT or SUBCONSULTANT's loss of prequalification relevant to the CONTRACT. Notice to the DEPARTMENT shall be made no more than 15 working days from the date of loss of prequalification.
  - e) The CONSULTANT'S failure to comply with this section may result in termination of the AGREEMENT and/or loss of prequalification.

### **2.13 QUALITY ASSURANCE AND QUALITY CONTROL (QA/QC) PLAN**

The CONSULTANT'S QUALITY ASSURANCE and QUALITY CONTROL (QA/QC) Plan for this PROJECT was presented by the CONSULTANT during the negotiation process and was accepted by the DEPARTMENT. The CONSULTANT must adhere to this QA/QC Plan. Failure to follow the QA/QC Plan could result in termination, changes to the prequalification status and the loss of all or part of the COMPENSATION associated with the QA/QC Plan.

The CONSULTANT will be required to indicate in writing that there was compliance with the approved plan. The statement of compliance must be sent to the administrating district or office at each milestone submittal (preliminary plans, draft reports, soil report, drainage study, etc.) This statement of compliance can be in a form of an additional statement in the transmittal letter when submitting the preliminary plans or draft report to the DEPARTMENT. However, the final statement of compliance shall be on the form prescribed by the DEPARTMENT.

The QA/QC Plan may be modified by the CONSULTANT. Written acceptance of this modified QA/QC Plan must be signed by the DEPARTMENT'S LIAISON MANAGER.

### **2.14 EMPLOYMENT OF THE DEPARTMENT'S PERSONNEL**

The CONSULTANT will not employ any person or persons currently employed by the DEPARTMENT for any SERVICES required by the terms of the AGREEMENT without the written permission of the DEPARTMENT.

### **2.15 COVENANT AGAINST CONTINGENT FEES**

The CONSULTANT warrants they have not employed or retained any company or person other than a bona fide employee working solely for the CONSULTANT to solicit or secure the AGREEMENT, and they have not paid or agreed to pay any company or person other than a bona fide employee 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 the AGREEMENT. For breach or violation of their warranty, the DEPARTMENT shall have the right to annul the AGREEMENT without liability or, in its discretion, to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

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## **2.16 COVENANT OF INTEREST**

The CONSULTANT covenants they have 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 their SERVICES under the AGREEMENT.

## **2.17 CONTINUING OBLIGATION**

The CONSULTANT agrees if, because of death or any other occurrence, it becomes impossible for any principal or principals of the CONSULTANT to render the SERVICES set forth in the AGREEMENT, neither the CONSULTANT nor the surviving principals shall be relieved of their obligations to complete performance there under. However, in such an occurrence, the DEPARTMENT at its own option may terminate the AGREEMENT if it is not furnished competent evidence the SERVICES can still be acceptably finished as scheduled.

## **2.2 SERVICE REQUIREMENTS**

### **2.20 AUTHORIZATION AND APPROVAL**

The DEPARTMENT is not liable and will not pay the CONSULTANT for any SERVICES performed prior to the date of AUTHORITY TO PROCEED.

### **2.21 PROGRESS REPORTS AND ADJUSTMENTS TO PROJECT SCHEDULE**

- a) The CONSULTANT and the DEPARTMENT agree to meet the PROJECT SCHEDULE in the AGREEMENT. Timeliness in meeting the PROJECT SCHEDULE is a factor considered in the CONSULTANT'S performance rating. An unfavorable performance rating is a penalty reflected when future assignments are being considered.
- b) On preliminary engineering PROJECTS, the CONSULTANT will submit a monthly PROGRESS REPORT to the DEPARTMENT with each invoice, showing progress to the first day of the month in comparison to the PROJECT SCHEDULE in the format required by the DEPARTMENT. However, if agreed to by the CONSULTANT and the LIAISON MANAGER, the PROGRESS REPORT may be submitted on a four (4) week cycle rather than a monthly cycle. The PROGRESS REPORT shall show scheduled periods for each of the elements of the CONSULTANT'S SERVICES. Prior to starting the SERVICES, the CONSULTANT shall agree with the DEPARTMENT on the percentage each SERVICE element is of the whole. PROGRESS REPORTS will include a statement summarizing the SERVICES performed during the Report period and an outline of the SERVICE expected to be performed during the following period.
- c) The CONSULTANT may be required to meet with DEPARTMENT staff on a monthly or bi-monthly basis to discuss the progress of SERVICES accomplished to date and the proposed direction the study will take the

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following months. A monthly or bi-monthly progress meeting can be canceled by notification from the DEPARTMENT.

- d) In the event of delays due to unforeseeable causes beyond the control of and without fault or negligence of the CONSULTANT (such as acts of God or a public enemy, acts of the DEPARTMENT or APPROVING PARTY not resulting from the CONSULTANT'S unacceptable SERVICES, fire, strikes, flood and the like) no claim for DAMAGES shall be made by either party. The anticipated date of completion of the SERVICES, including review time (if applicable), will be stated in the AGREEMENT. Termination of the AGREEMENT or adjustment of the fee, excluding the FIXED FEE for labor, for the remaining SERVICES may be requested by either party if overall delay from only these unforeseeable causes prevents completion of the SERVICES within six months after this specified completion date. The request for an adjustment must be made in writing after the six months have elapsed, and only the SERVICES remaining at that time, shall be adjusted.
- e) **DURATION OF CONTRACT**  
In accordance with Section 20-60(a) of the Illinois Procurement Code, 30 ILCS 500 *et seq*, an AGREEMENT may be entered into for any period of time deemed to be in the best interests of the DEPARTMENT but not exceeding 10 years inclusive of proposed AGREEMENT renewals and extensions.
- f) If delays occur due to any cause preventing compliance with the PROJECT SCHEDULE, the CONSULTANT, except on construction engineering PROJECTS, shall apply in writing to the DEPARTMENT for an extension of time. If approved, the PROJECT SCHEDULE shall be revised accordingly. Such extension of time of completion shall in no way be construed to operate as a waiver on the part of the DEPARTMENT of any of its rights in the AGREEMENT.

## **2.22 RELATIONSHIP WITH OTHERS**

The CONSULTANT shall cooperate fully with the DEPARTMENT, CONSULTANTS on adjacent PROJECTS, municipalities and local government officials, public utility companies and others as may be directed by the DEPARTMENT. These shall include attendance at meetings, discussions and hearings as requested by the DEPARTMENT. The FHWA shall have access to the SERVICES and shall be furnished information as their interests may require.

## **2.23 RIGHT TO ENTER**

In accordance with DEPARTMENT practices, the CONSULTANT will notify all property owners of intent to enter for subsurface utility engineering, subsurface investigations, surveys, or field investigations and will furnish a detailed record of all such contacts to the DEPARTMENT on a monthly basis. If owners cannot be found, the occupant will be notified. The DEPARTMENT will supply requested documents identifying the CONSULTANT as the DEPARTMENT'S agent. If the property owner or occupant denies the CONSULTANT permission to enter or if neither can be

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found, such incident will be reported to the DEPARTMENT. The DEPARTMENT will initiate necessary procedures after receipt of such report.

## **2.24 SUBLETTING, ASSIGNMENT OR TRANSFER**

- a) Neither this AGREEMENT nor any portion of the SERVICES under the AGREEMENT shall be sublet, sold, transferred, assigned or otherwise disposed of to other firms or successors in interest except with prior written consent of the DEPARTMENT. The DEPARTMENT'S written consent shall in no way relieve the CONSULTANT from their primary responsibility for the performance and accuracy of the SERVICES. Subcontracting more than 50% of the SERVICES will not be allowed, except in special cases where it can be justified.
- b) SUBCONSULTANTS must be prequalified in accordance with the DEPARTMENT requirements. For specialized SERVICES that are required but which do not fall into the areas of prequalification of the DEPARTMENT, a non-prequalified firm may be used with DEPARTMENT approval.
- c) CONSULTANT shall utilize the SUBCONSULTANT Standard Agreement Template available from the DEPARTMENT to enter into an AGREEMENT for SUBCONSULTANT SERVICES with SUBCONSULTANT. However, CONSULTANT may use a contract template other than the SUBCONSULTANT Standard Agreement Template if CONSULTANT first receives prior written approval from the DEPARTMENT.
- d) A copy of the signed and dated AGREEMENT for SUBCONSULTANT SERVICES must be furnished to the DEPARTMENT and approved before any payments will be made to the CONSULTANT for SUBCONSULTANT SERVICES.
- e) The DEPARTMENT will not reimburse the CONSULTANT any amount in excess of their actual payments to the SUBCONSULTANT made within the limits and provisions of the AGREEMENT for SUBCONSULTANT SERVICES approved by the DEPARTMENT. The CONSULTANT'S costs for administering and supervising the SUBCONSULTANT'S SERVICES are eligible for profit for administering and supervising SUBCONSULTANT SERVICES.
- f) No DEPARTMENT approval of the AGREEMENT for SUBCONSULTANT SERVICES will be necessary to employ an individual professional specialist on a per diem basis or to utilize nonprofessional SERVICES such as reproductions, printing, scale models and other routine SERVICES normally performed or provided by others, provided payment for such SERVICES is already included in the COMPENSATION.
- g) The CONSULTANT will include clauses in its AGREEMENT for SUBCONSULTANT SERVICES with any SUBCONSULTANT stipulating the SERVICES under the AGREEMENT shall not be sublet, sold, transferred,



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assigned or otherwise disposed of to other firms except with prior written consent of the DEPARTMENT.

- h) The CONSULTANT must provide a SUBCONSULTANT Utilization plan identifying all proposed SUBCONSULTANTS, regardless of status as a DBE, and list the information described in Section 2.67 for each SUBCONSULTANT.

## **2.25 PUBLIC UTILITIES**

- a) Where facilities of utility companies, other than railroads, require rearrangement in connection with the proposed construction, the CONSULTANT shall make the necessary contacts and confer with the owners regarding the requisite revisions in their facilities, apprising the DEPARTMENT of the results of all such contacts. The CONSULTANT'S contacts with railroads shall be made only through the DEPARTMENT
- b) The CONSULTANT shall make no commitments binding upon the DEPARTMENT.
- c) The DEPARTMENT will conduct all negotiations with utilities and railroads. The CONSULTANT will participate in such negotiations when requested by the DEPARTMENT.
- d) These provisions do not apply to construction engineering SERVICES.

## **2.26 ACCURACY OF PROFESSIONAL SERVICES AND PROFESSIONAL LIABILITY INSURANCE**

- a) The CONSULTANT and DEPARTMENT agree to work together on a basis of trust, good faith and fair dealing to achieve the intent of this AGREEMENT. Each party shall take such actions reasonably necessary to enable the accurate completion of the professional SERVICES and other obligations provided for under this AGREEMENT as intended in a timely, efficient and economical manner.
- b) The CONSULTANT will guard against ERRORS and OMISSIONS in the performance of the professional SERVICES under this AGREEMENT. The CONSULTANT will apply appropriate care to the performance of the professional SERVICES and the preparation of all SERVICE products called for in this AGREEMENT, including but not limited to, plans and drawings, contract documents and other instruments to be furnished in the course of performance of the SERVICES. The CONSULTANT shall be governed by that degree of care, knowledge, skill, and diligence other reputable members of the engineering profession would ordinarily exercise under like circumstances within the State of Illinois. The CONSULTANT will be responsible to the DEPARTMENT for DAMAGES arising from ERRORS and OMISSIONS caused by the CONSULTANT'S NEGLIGENCE in the performance of the professional SERVICES and preparation of SERVICE products under this AGREEMENT.

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When agreed, the CONSULTANT will be liable for special or consequential damages defined in the AGREEMENT.

- c) Acceptance of the SERVICES will not relieve the CONSULTANT of the responsibility for subsequent correction of any such ERRORS, OMISSIONS, and/or negligent acts or of his/her liability for loss or damage resulting there from. In the event any dispute or claim, related to construction or the construction contracts, should arise between any of the parties to this AGREEMENT, each party agrees to exercise good faith efforts to resolve the matter fairly, amicably and in a timely manner.
- d) This AGREEMENT shall continue as an open CONTRACT and the obligations created herein shall remain in full force and effect until the completion of construction or any PHASE of professional SERVICES performed by others based upon SERVICES or SERVICE product provided by the CONSULTANT. All obligations of the CONSULTANT accepted under this AGREEMENT shall cease if construction or subsequent professional SERVICES are not commenced within 5 years after final delivery of professional SERVICES or work product pursuant to this AGREEMENT.
- e) At any time during construction or during any PHASE of professional SERVICES performed by others based on SERVICES or SERVICE product provided by the CONSULTANT, the CONSULTANT will confer with the DEPARTMENT and others upon request for the purpose of interpretation or providing clarification of the SERVICES or work product provided by the CONSULTANT.
- f) The DEPARTMENT will notify the CONSULTANT of any ERROR or OMISSION believed by the DEPARTMENT to be caused by the NEGLIGENCE, ERRORS and/or OMISSIONS of the CONSULTANT as soon as practicable after discovery. Notification may be given by the most practical means deemed suitable by the DEPARTMENT. The CONSULTANT will designate and keep current the name of an individual with proper address and telephone number for purposes of notification hereunder. The notification will advise the CONSULTANT of the nature of the matter, the action sought from the CONSULTANT and the time constraints required for response. The CONSULTANT agrees to contact the DEPARTMENT promptly in accordance with the time constraints contained in the notification, to undertake necessary construction site visits and inspections, to dispatch personnel to appropriate DEPARTMENT office locations for resolution purposes, and to complete all corrective work necessary to resolve the matter notwithstanding any disagreement or dispute as to NEGLIGENCE or ERROR and/or OMISSION. In the event it is later determined the CONSULTANT was not negligent, the CONSULTANT will be compensated for ADDITIONAL SERVICES performed in accordance with the payment provisions of this AGREEMENT. The DEPARTMENT reserves the right to take immediate action to remedy any ERROR or OMISSION if notification is not successful; if the CONSULTANT fails to respond to a notification; or if the conditions created by the ERROR or

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OMISSION are in need of urgent correction to avoid accumulation of additional construction costs or damage to state property and reasonable notice is not practicable.

- g) The DEPARTMENT and the CONSULTANT will work together on a basis of good faith and fair dealings. When a dispute arises concerning damages caused by ERRORS or OMISSIONS, the CONSULTANT may choose to appeal. The fact the CONSULTANT has provided assistance in the resolution of the problem will not be construed as absolving the CONSULTANT of damages. The procedure for dispute resolution shall be governed by the CONSULTANT-DEPARTMENT dispute resolution process for ERRORS and/or OMISSIONS outlined in the Illinois Department of Transportation Bureau of Design and Environment Manual, presently in Section 8-4.01(e) of the Manual.
- h) Professional Liability Insurance. This policy will provide coverage for all claims the CONSULTANT shall become legally obligated to pay resulting from any negligent act, ERROR or OMISSION related to CONSULTANT'S professional SERVICES required under this AGREEMENT.

Construction Cost under \$1,000,000,  
*(Preliminary Engineering Cost less than \$100,000)*  
\$250,000 per occurrence  
\$250,000 aggregate

Construction Cost under \$10,000,000,  
*(Preliminary Engineering Cost less than \$1,000,000)*  
\$500,000 per occurrence  
\$1,000,000 aggregate

Construction Cost over \$10,000,000,  
*(Preliminary Engineering Cost over \$1,000,000)*  
\$1,000,000 per occurrence  
\$2,000,000 aggregate

## **2.27 POLICIES AND PROCEDURES**

The CONSULTANT shall perform the SERVICES required under the AGREEMENT in accordance with the policies and procedures of the publications available on the DEPARTMENT'S website, in effect at the time of the AGREEMENT. CONSULTANT shall also perform SERVICES in accordance with other directives current at the time of the AGREEMENT and made available to the CONSULTANT by the DEPARTMENT. In case of conflict in the references, the CONSULTANT shall identify them to the DEPARTMENT and follow the instructions furnished by the DEPARTMENT.

## **2.28 REVIEWS AND ACCEPTANCES**

SERVICES performed by the CONSULTANT shall be subject to review and acceptance in stages as required by the DEPARTMENT. The DEPARTMENT reserves the right to review and to accept on the part of FHWA and other affected

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public agencies, railroads and utilities insofar as the interest of each is concerned. Acceptance shall not relieve the CONSULTANT of their professional obligation to correct at their expense any ERROR, OMISSIONS and/or negligent acts in their SERVICES or of their liability for the losses resulting therefrom as set forth in Section 2.26.

## **2.29 REVISIONS OF PLANS, SPECIFICATIONS OR ESTIMATES**

- a) The DEPARTMENT may, upon written notice and without invalidating the AGREEMENT, require changes resulting in the revision or abandonment of SERVICES already performed by the CONSULTANT or require other elements of SERVICE not originally contemplated and for which full COMPENSATION is not provided in any portion of the AGREEMENT.
- b) The value of such changes, to the extent not reflected in other COMPENSATION to the CONSULTANT, shall be determined by the contracting and approving parties in accordance with methods of payment set forth in the AGREEMENT, and the COMPENSATION shall be adjusted accordingly. The DEPARTMENT is not obligated to pay the CONSULTANT for SERVICES performed on CHANGES prior to written authorization by the DEPARTMENT.

## **2.30 CADD FILES**

The DEPARTMENT CADD configuration operates on Micro Station and GEOPAK software. CONSULTANT should contact the appropriate Project Manager for project related information with respect to using Micro Station and GEOPAK for the CONTRACT. Periodic updates will be posted on DEPARTMENT'S website concerning the use of CADD software. Notification of changes to software requirements will be sent out through the DEPARTMENT CADD Support subscription service.

## **2.4 LEGAL OBLIGATIONS**

### **2.40 COMPLIANCE WITH STATE AND OTHER LAWS**

The CONSULTANT shall at all times observe and comply with all Federal and State laws, local laws, orders, ordinances and regulations which in any manner affect the conduct of SERVICES, or which may have an affect over the PROJECT. The CONSULTANT shall indemnify and save harmless the State and all of its officers, agents, employees and servants against any claim or liability arising from or based on the breach of such law, ordinance, regulation, order, whether by the CONSULTANT or anyone subject to the control of the CONSULTANT. A new law change may cause an increase in the cost and result in a SUPPLEMENTAL AGREEMENT. The assurances hereinafter made by the CONSULTANT are each a material representation of fact upon which reliance is placed by the DEPARTMENT

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in entering into this CONTRACT. The DEPARTMENT may terminate the CONTRACT if it is later determined the CONSULTANT rendered a false or erroneous assurance.

#### **2.41 FELONY CONVICTIONS**

The CONSULTANT certifies it is not barred from being awarded a contract under 30 ILCS 500/50-10. Section 50-10 prohibits a CONSULTANT from entering into a contract with the DEPARTMENT if the CONSULTANT has been convicted of a felony and five years have not passed from the completion of the sentence for that felony. The CONSULTANT further acknowledges the chief procurement officer may declare the CONTRACT void if this certification is false.

The CONSULTANT also certifies it is not barred from being awarded a contract under 30 ILCS 500/50-10.5. Section 50-10.5 prohibits a CONSULTANT from entering into a contract with the DEPARTMENT if the CONSULTANT, or any officer, director, partner, or other managerial agent of the CONSULTANT has been convicted within the last five years of a felony under the Sarbanes-Oxley Act of 2002 or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953 or is in violation of Subsection (e). The CONSULTANT further acknowledges that the chief procurement officer shall declare the CONTRACT void if this certification is false.

#### **2.42 DELINQUENT PAYMENT**

The CONSULTANT certifies it, or any affiliate, is not barred from being awarded a contract under 30 ILCS 500. Section 50-11 prohibits a person from entering into a contract with a state agency if it knows or should know it, or any affiliate, is delinquent in the payment of any debt to the state as defined by the Debt Collection Board. Section 50-12 prohibits a person from entering into a contract with the state agency if it, or any affiliate, has failed to collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act. The CONSULTANT further acknowledges the contracting state agency may declare the contract void if this certification is false or if the CONSULTANT or any affiliate is determined to be delinquent in the payment of any debt to the state during the term of the contract.

#### **2.43 CONFLICTS OF INTEREST**

Section 50-13 of the Illinois Procurement Code provides that:

- a) Prohibition. It is unlawful for any person holding an elective office in this State, holding a seat in the General Assembly, or appointed to or employed in any of the offices or agencies of State government and who receives compensation for such employment in excess of 60% of the salary of the Governor of the State of Illinois, or who is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority, or who is the spouse or minor child of any such person to have or acquire any contract, or any direct pecuniary interest in any contract therein, whether for stationery, printing, paper, or any services, materials, or supplies, that will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois or in any contract of the Capital Development Board or the Illinois Toll Highway Authority

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- b) Interests. It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) is entitled to receive (i) more than 7 1/2% of the total distributable income or (ii) an amount in excess of the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein.
  - c) Combined interests. It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) together with his or her spouse or minor children is entitled to receive (i) more than 15%, in the aggregate, of the total distributable income or (ii) an amount in excess of 2 times the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein.
  - d) Appointees and firms. In addition to any provisions of this Code, the interests of certain appointees and their firms are subject to Section 3A-35 of the Illinois Governmental Ethics Act.
  - e) Securities. Nothing in this Section invalidates the provisions of any bond or other security previously offered or to be offered for sale or sold by or for the State of Illinois.
  - f) Prior interests. This Section does not affect the validity of any contract made between the State and an officer or employee of the State or member of the General Assembly, his or her spouse, minor child, or other immediate family member living in his or her residence or any combination of those persons if that contract was in existence before his or her election or employment as an officer, member, or employee. The contract is voidable, however, if it cannot be completed within 365 days after the officer, member, or employee takes office or is employed.
  - g) Penalty. A person convicted of a violation of this Section is guilty of a business offense and shall be fined not less than \$1,000 nor more than \$5,000. (Source: P.A. 95-331, eff. 8-21-07.)

#### **2.44 ENVIRONMENTAL PROTECTION ACT**

The CONSULTANT certifies it is not barred from being awarded a contract under 30 ILCS 50/50-14. Section 50-14 prohibits a CONSULTANT from entering into a contract with the DEPARTMENT if the CONSULTANT has been found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act within the last five years. The CONSULTANT further acknowledges the chief procurement officer may declare the CONTRACT void if this certification is false.

#### **2.45 NEGOTIATIONS**

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Section 50-15 of the Illinois Procurement Code provides, in pertinent part that: (a) it is unlawful for any person employed in or on a continual contractual relationship with any of the officers or agencies of State government to participate in contract negotiations on behalf of that office or agency with any firm, partnership, association, or corporation with whom that person has a contract for future employment or is negotiating concerning possible future employment. CONSULTANT certifies that the award and/or execution of this CONTRACT would not cause any violation of Section 50-15, and that CONSULTANT has no knowledge of any facts relevant to the kind of acts prohibited by Section 50-15.

#### **2.46 INDUCEMENTS**

Section 50-25 of the Illinois Procurement Code provides any person who offers or pays any money or other valuable thing to any person to induce him or her not to bid on a State contract is guilty of a Class 4 felony. Any person who accepts any money or other valuable thing for not bidding on a State contract or who withholds a bid in consideration of the promise for the payment of money or other valuable thing is guilty of a Class 4 felony. CONSULTANT certifies the award and/or execution of this CONTRACT would not cause any violation of Section 50-25 of the Code, and the CONSULTANT has no knowledge of any facts relevant to the kind of acts prohibited by Section 50-25.

#### **2.47 REVOLVING DOOR PROHIBITION**

Section 50-30 of the Illinois Procurement Code provides that Chief procurement officers, associate procurement officers, State purchasing officers, their designees whose principal duties are directly related to State procurement, and executive officers confirmed by the Senate are expressly prohibited for a period of 2 years after terminating an affected position from engaging in any procurement activity relating to the State agency most recently employing them in an affected position for a period of at least 6 months. The prohibition includes but is not limited to: lobbying the procurement process; specifying; bidding; proposing bid, proposal, or contract documents; on their own behalf or on behalf of any firm, partnership, association, or corporation. This Section applies only to those persons who terminate an affected position on or after January 15, 1999. CONSULTANT certifies the award and/or execution of this CONTRACT would not cause any violation of Section 50-30 of the Code, and CONSULTANT has no knowledge of any facts relevant to the kinds of acts prohibited therein.

#### **2.48 DISCLOSURE**

Section 50-35 of the Illinois Procurement Code provides that all offers of more than \$50,000 shall be accompanied by disclosure of the financial interests of the offeror. This disclosed information for the successful offeror, will be maintained as public information subject to release pursuant to the Freedom of Information Act.

The financial interests to be disclosed shall include ownership or distributive income share that is in excess of 5.0% or an amount greater than 60% of the annual salary of the Governor, of the offering entity or its parent entity, whichever is less, unless the offeror is a publicly traded entity subject to Federal 10K reporting, in which case

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it may submit its 10K disclosure in place of the prescribed disclosure. The disclosure shall include the names, addresses, and dollar or proportionate share of ownership of each person making the disclosure, their instrument of ownership or beneficial relationship, and notice of any potential conflict of interest resulting from the current ownership or beneficial interest of each person making the disclosure having any of the relationships identified in Section 50-35 and on the disclosure form found on the website at: <http://www.dot.state.il.us>

In addition, all disclosures shall indicate any other current or pending contracts, proposals, leases, or other ongoing procurement relationships the offering entity has with any other unit of state government and shall clearly identify the unit and the contract proposal, lease, or other relationship.

This requirement is fulfilled when CONSULTANT submits Form A-Financial Information and Potential Conflicts of Interest Disclosure and Form B – Other Contracts and Procurement Related Information Disclosure with their STATEMENT OF INTEREST.

#### **2.49 REPORTING ANTI-COMPETITIVE PRACTICES**

Section 50-40 of the Illinois Procurement Code provides that when, for any reason, any vendor, bidder, CONSULTANT, chief procurement officer, State purchasing officer, designee, elected official, or State employee suspects collusion or other anti-competitive practice among any bidders, offerors, CONSULTANTS, proposers, or employees of the State, a notice of the relevant facts shall be transmitted to the Attorney General and the chief procurement officer. CONSULTANT certifies CONSULTANT has not failed to report any relevant facts concerning the practices addressed in Section 50-40 which may involve this CONTRACT and any bid submitted thereon.

#### **2.50 CONFIDENTIALITY**

Section 50-45 of the Illinois Procurement Code provides that any chief procurement officer, State purchasing officer, designee, or executive officer who willfully uses or allows the use of specifications, competitive bid documents, proprietary competitive information, proposals, contracts, or selection information to compromise the fairness or integrity of the procurement, bidding, or contract process shall be subject to immediate dismissal, regardless of the Personnel code, any contract, or any collective bargaining AGREEMENT, and may in addition be subject to criminal prosecution. CONSULTANT certifies CONSULTANT has no knowledge of any fact relevant to the practices addressed in Section 50-45 which may involve this CONTRACT and any bid submitted thereon.

#### **2.51 CONFIDENTIAL AND PROPRIETARY INFORMATION**

If the SCOPE OF SERVICES for the CONTRACT includes work involving CONFIDENTIAL AND PROPRIETARY INFORMATION, including but not limited to oversight responsibility of an internal DEPARTMENT program or function, CONSULTANT and CONSULTANT provided personnel shall abide by the following requirements:



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- a) Confidentiality. The CONSULTANT and CONSULTANT provided personnel shall not disclose or permit disclosure of any CONFIDENTIAL AND PROPRIETARY INFORMATION to any person, and shall take all actions necessary to avoid such disclosure and otherwise to maintain the confidentiality of the CONFIDENTIAL AND PROPRIETARY INFORMATION. The CONSULTANT shall inform all personnel provided to the DEPARTMENT of the obligations under this Section, and shall provide to the DEPARTMENT a signed assurance from all affected personnel they have read this requirement and they agree to abide by the same. The CONSULTANT and CONSULTANT provided personnel will not at any time use any CONFIDENTIAL AND PROPRIETARY INFORMATION for the direct or indirect benefit of any person, including the CONSULTANT, except such use that is solely in furtherance of the performance of the AGREEMENT and limited to the terms thereof.
- b) Ownership. The CONSULTANT acknowledges and agrees all CONFIDENTIAL AND PROPRIETARY INFORMATION is the exclusive property of the DEPARTMENT or entities providing information to the DEPARTMENT. CONSULTANT agrees to disclose fully the use and purpose of the use of any CONFIDENTIAL AND PROPRIETARY INFORMATION to DEPARTMENT when requested by the DEPARTMENT. CONSULTANT shall immediately, upon demand by DEPARTMENT, return all CONFIDENTIAL AND PROPRIETARY INFORMATION and all copies in his/her possession, custody or control to DEPARTMENT.
- c) Breach by CONSULTANT. In the event of a breach or threatened breach by the CONSULTANT, the DEPARTMENT shall be entitled to an injunction restraining CONSULTANT from disclosing or using or from rendering any services to any person using CONFIDENTIAL AND PROPRIETARY INFORMATION released in breach of this AGREEMENT. Nothing herein shall be construed as prohibiting the DEPARTMENT from pursuing any other remedies available to the DEPARTMENT for such breach or threatened breach, including recovery of monetary damages from CONSULTANT. This provision shall survive any termination of this AGREEMENT.

## **2.52 INSIDER INFORMATION**

Section 50-50 of the Illinois Procurement Code provides that it is unlawful for any current or former elected or appointed State official or State employee to knowingly use confidential information available only by virtue of that office or employment for actual or anticipated gain for themselves or another person. CONSULTANT certifies CONSULTANT has no knowledge of any fact relevant to the practices addressed in Section 50-50 which may involve this CONTRACT and any bid submitted thereon.

## **2.53 BRIBERY**

The CONSULTANT certifies it is not barred from being awarded a contract under 30 ILCS 500/50-5. Section 50-5 prohibits a CONSULTANT from entering into a contract with the DEPARTMENT if the CONSULTANT has been convicted of bribery or attempting to bribe an officer or employee of the state of Illinois, or if the CONSULTANT has made an admission of guilt of such conduct which is a matter of

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record. The CONSULTANT further acknowledges the chief procurement officer may declare the CONTRACT void if this certification is false.

#### **2.54 MULTI-YEAR CONTRACTS**

Section 50-2 of the Illinois Procurement Code provides that every person that has entered into a contract or contract renewal for more than one year in duration shall certify, by January 1 of each fiscal year covered by the contract after the initial fiscal year, to the chief procurement officer for the DEPARTMENT, a written statement of any changes that affect its ability to satisfy the requirements of Article 50 of the Illinois Procurement Code pertaining to eligibility for a contract award. If a consultant or subconsultant continues to meet all requirements of said Article, or if the work under the AGREEMENT has been substantially completed before contract expiration, but the contract term has not yet expired, it shall not be required to submit such a certification. If a consultant or subconsultant is not able to truthfully certify that it continues to meet all requirements, it shall provide with its certification a detailed explanation of the circumstances leading to the change in certification status. A consultant or subconsultant that makes a material false statement in relation to any given certification required under Article 50 is, in addition to any other penalties or consequences prescribed by law, subject to liability under the Illinois False Claims Act for submission of a false claim.

#### **2.55 EDUCATIONAL LOAN**

The Educational Loan Default Act provides that no State agency shall contract with an individual for goods or SERVICES if that individual is in default, as defined by Section 2 of this Act, on an educational loan. Any contract used by a State agency shall include a statement certifying the individual is not in default on an educational loan as provided in this Section. The CONSULTANT, if an individual as opposed to a corporation partnership, or other form of business organization, certifies CONSULTANT is not in default on an educational loan as provided in Section 3 of the Act.

#### **2.56 BID RIGGING/BID ROTATING**

Section 33E-11 of the Criminal Code of 1961 provides: (a) that every bid submitted to and public contract executed pursuant to such bid by the State or a unit of local government shall contain a certification by the prime CONSULTANT that the prime CONSULTANT is not barred from contracting with any unit of State or local government as a result of a violation of either Section 33E-3 or 33E-4 of the Code. The state and units of local government shall provide appropriate forms for such certification. A CONSULTANT who makes a false statement, material to the certification, commits a Class 3 felony. A violation of Section 33E-3 would be represented by a conviction of the crime of bid rigging which, in addition to Class 3 felony sentencing, provides that any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be barred for 5 years from the date of conviction from contracting with any unit of State or local government.

A violation of Section 33E-4 would be represented by a conviction of the crime of bid rotating which, in addition to Class 2 felony sentencing, provides that any person

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convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be permanently barred from contracting with any unit of State or local government.

The CONSULTANT certifies the CONSULTANT is not barred from contracting with the DEPARTMENT by reason of a violation of either Section 33E-3 or Section 33E-4.

**2.57 INTERNATIONAL ANTI-BOYCOTT**

Section 5 of the International Anti-Boycott Certification Act provides that every contract entered into by the State of Illinois for the manufacture, furnishing, or purchasing of supplies, material, or equipment or for the furnishing of WORK, labor, or SERVICES, in an amount exceeding the threshold for small purchases according to the purchasing laws of this State or \$10,000, whichever is less, shall contain certification, as a material condition of the contract, by which the CONSULTANT agrees that neither the CONSULTANT nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. DEPARTMENT of Commerce promulgated under that Act. The CONSULTANT makes the certification set forth in Section 5 of the Act.

**2.58 EXPATRIATED ENTITIES**

Except in limited circumstances, no CONSULTANT or SUBCONSULTANT business or member of a unitary business group, as defined in the Illinois Income Tax Act, shall submit a statement of interest or act as a SUBCONSULTANT if that business or any member of the unitary business group is an expatriated entity.

**2.59 DRUG FREE WORKPLACE**

The Illinois Drug Free Workplace Act applies to this CONTRACT and it is necessary to comply with the provisions of the Act if the CONSULTANT is a corporation, partnership, or other entity (including a sole proprietorship) which has 25 or more employees.

The CONSULTANT certifies if awarded a CONTRACT in excess of \$5,000 it will provide a drug free workplace and its employees shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance during the performance of the CONTRACT.

**2.60 FEDERAL AND STATE CERTIFICATIONS REGARDING LOBBYING**

CONSULTANT certifies compliance with Section 319 of federal Public Law 101-121 (31 U.S.C.) covering government-wide restrictions on lobbying, which provides that no federal appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influence 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 a cooperative agreement and the extension, continuation,

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renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

CONSULTANT further certifies if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this CONTRACT, grant, loan, or cooperative agreement, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when the transaction was made or entered into. Submission of this certification is a prerequisite to making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The CONSULTANT also agrees CONSULTANT shall require the language of this certification will be included in all lower tier subcontracts and all subcontractors, will certify and disclose accordingly.

CONSULTANT further certifies, with respect to Illinois Executive Order Number 1 (2007) on lobbying, CONSULTANT has complied and will comply with the requirements set forth in the Order. The requirement of this certification is a material part of the CONTRACT, and the CONSULTANT shall require this certification provision to be included in all approved SUBCONSULTANT contracts.

Additionally, Section 50-38 of the Illinois Procurement Code requires that if CONSULTANT or SUBCONSULTANT hires a person required to register under the Lobbyist Registration Act to assist in obtaining a contract it shall:

- a) Disclose all costs, fees, compensation, reimbursements, and other remunerations paid or to be paid to the lobbyist related to the contract,
- b) Not bill or otherwise cause the state of Illinois to pay for any of the lobbyist's costs, fees, compensation, reimbursements, or other remuneration, and
- c) Sign a verification certifying none of the lobbyist's costs, fees, compensation, reimbursements, or other remuneration were billed to the state.

This information, along with all supporting documents, shall be filed with the DEPARTMENT and with the Secretary of State.

No person or entity shall retain a person or entity to attempt to influence the outcome of a procurement decision made under the Procurement Code for compensation contingent in whole or in part upon the decision or procurement. Any person who violates this subsection is guilty of a business offense and shall be fined not more than \$10,000.

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The CONSULTANT acknowledges it is required to disclose the hiring of any person required to register pursuant to the Illinois Lobbyist Registration Act (25 ILCS 170) in connection with this CONTRACT.

**2.61 CONTROL OF PROPERTY**

CONSULTANT certifies the control, utilization, and disposition of property or equipment acquired using federal funds is maintained according to the provisions of A-102 Common Rule.

**2.62 DEBARMENT**

CONSULTANT certifies to the best of its knowledge and belief, CONSULTANT and CONSULTANT'S principals:

- a) are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal DEPARTMENT or agency;
- b) within a three-year period preceding this CONTRACT have not been convicted of or had a civil judgment rendered against it 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 anti-trust 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 5-40(b);
- d) have not within a three-year period preceding this CONTRACT had one or more public transactions (federal, state, or local) terminated for cause or default.

The inability of a prospective CONSULTANT to certify to the certification in this section will not necessarily result in denial of participation in this CONTRACT. The prospective CONSULTANT shall submit an explanation of why it cannot provide the certification in this section. This certification is a material representation of fact upon which reliance was placed when the DEPARTMENT determined whether to enter into this transaction. If it is later determined the CONSULTANT knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the DEPARTMENT may terminate the CONTRACT for cause. The CONSULTANT shall provide immediate written notice to the DEPARTMENT if at any time the CONSULTANT learns its certification was erroneous by reason of changed circumstances. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this Article shall have the meaning set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.

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The CONSULTANT agrees it shall not knowingly enter into any lower tier covered transaction when a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized, in writing by the DEPARTMENT. The CONSULTANT agrees it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transaction", provided by the DEPARTMENT, without modification, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions. The CONSULTANT may rely upon a certification of a prospective participant in a lower-tier covered transaction it is not debarred, suspended, and ineligible or voluntarily excluded from the covered transaction, unless CONSULTANT knows the certification is erroneous. CONSULTANT may decide the method and frequency by which it determines the eligibility of its principals. Each CONSULTANT may, but is not required to, check the Non-procurement List. If a CONSULTANT knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation, in addition to other remedies available to the federal government, the DEPARTMENT may terminate the CONTRACT for cause or default.

Nothing contained in this Section shall be construed to require establishment of a system of records in order to render in good faith the certification required by this Section. The knowledge and information of a CONSULTANT is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

#### **2.63 PROMPT PAYMENT**

Within fifteen (15) calendar days of when a CONSULTANT receives any payment from DEPARTMENT for SERVICES that include SERVICES performed by a SUBCONSULTANT, CONSULTANT shall pay SUBCONSULTANT for the SERVICES it performed as part of PAYMENT for SERVICES from DEPARTMENT to CONSULTANT. If CONSULTANT, without reasonable cause, fails to make full payment of amounts due to SUBCONSULTANT within fifteen (15) days after receipt of a PAYMENT under this CONTRACT, CONSULTANT shall pay to SUBCONSULTANT, in addition to the payment due, interest in the amount of 2% per month, calculated from the expiration of the 15-day period until fully paid. In the event a dispute between CONSULTANT and SUBCONSULTANT arises regarding payment for services performed or materials supplied under the CONTRACT, the dispute resolution procedure outlined in Section 7(b) of the Illinois Prompt Payment Act, 30 ILCS 540/7(b), as administered by the DEPARTMENT, may be utilized by any aggrieved SUBCONSULTANT. Any payment or portion of a payment subject to this paragraph may only be withheld from a SUBCONSULTANT to which it is due for reasonable cause. CONSULTANT shall not withhold retainage from SUBCONSULTANT. DEPARTMENT will not approve any delay or postponement of the 15 day payment requirement, above, except for reasonable cause shown after notice and hearing pursuant to Section 7(b) of the Illinois State Prompt Payment Act.

#### **2.64 TRAINING AND APPRENTICESHIP PROGRAMS**

CONSULTANT and SUBCONSULTANT must participate in applicable apprenticeship and training programs approved by and registered with the United States Department of

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Labor's Bureau of Apprenticeship and Training for all on-site construction related activities, including material testing and drilling, performed by laborers, workers and mechanics. For purposes of this Agreement, engineers, architects and land surveyors are considered "professional services" as defined in Section 30-15 of the Procurement Code, and are not considered laborers, workers or mechanics. With respect to material testing and drilling, these requirements do not apply where the work is performed in a county without a prevailing wage classification for material testing as provided by the Illinois Prevailing Wage Act, 820 ILCS 130/1 et seq.

## **2.65 PREVAILING WAGE**

Pursuant to the Prevailing Wage Act (820 ILCS 130/et seq.) for Illinois, not less than the prevailing rate of wages as found by the Illinois Department of Labor or determined by the court shall be paid to all laborers, workers, and mechanics performing work under the contract. During contract performance, if the prevailing rate of wages is revised, the revised rate shall apply. Prevailing rate of wages are available on the Illinois Department of Labor official website: <http://www.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx>. All other applicable provisions of the Prevailing Wage Act apply, including notice provisions, record retention, and submittal of certified payrolls.

## **2.66 COST PRINCIPLES AND COST ACCOUNTING STANDARDS**

The cost principles of this CONTRACT are governed by the cost principles found in Title 48, Code of Federal Regulations, subpart 31; and all costs included in this CONTRACT are allowable under Part 31, Title 48 of the Code of Federal Regulations.

In compliance with federal guidelines, all non-department of Defense CONTRACTS shall comply with sections of the Cost Accounting Standards (CAS). Therefore, in the Code of Federal Regulations, Title 48, Chapter 99, specifically 9903.2, 9904.401, 9904.402, 9904.405, and 9904.06 will apply to all DEPARTMENT CONTRACTS. The basic standards are as follows:

- 9903.2 Cost Accounting Standards (CAS) program requirements
- 9904.401 Consistency in estimating, accumulating and reporting costs
- 9904.402 Consistency in allocating costs incurred for the same purpose
- 9904.405 Accounting for unallowable costs
- 9904.406 Cost accounting period

Firms awarded \$25,000,000 (or more) in all types of federal contracts in one accounting period (fiscal year) with one contract exceeding \$1,000,000 are subjected to full CAS coverage. This requires the CONSULTANT comply with all of the CAS in effect on the contract award date and with any new standards that become applicable. Full CAS covered firms are required to submit to the DEPARTMENT a Cost Accounting Standard Board Disclosure Statement (9903.202-9) along with their annual prequalification documents.

## **2.67 DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION**

For purposes of this Section 2.67, the term "CONSULTANT" shall include both the definition of "CONSULTANT" provided in Section 1 of this AGREEMENT, as well as

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any firm seeking to provide SERVICES to the DEPARTMENT through submitting a STATEMENT OF INTEREST for the CONTRACT, and all SUBCONSULTANTS and any other tier of sub-contractor who may be hired to perform SERVICES on the CONTRACT; additionally, CONTRACT shall include both the definition of "CONTRACT" provided in Section 1 of this AGREEMENT, as well as any related SUPPLEMENTAL AGREEMENTs to the CONTRACT.

The federal regulatory provisions of Title 49, Part 26 of the Code of Federal Regulations, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, and as may be amended (49 CFR Part 26), apply to the award and performance of the CONTRACT concerning the utilization of disadvantaged business enterprise (DBE) firms when the CONTRACT contains a stated percentage-based DBE firm participation goal (DBE goal). 49 CFR Part 26, in its entirety, is hereby incorporated by reference into this AGREEMENT. In the event there is no DBE goal listed in the CONTRACT, this Section is inapplicable to the CONTRACT.

The percentage-based DBE goal stated in the CONTRACT, if present, has been included in the CONTRACT because the DEPARTMENT has determined the SERVICES in this CONTRACT include subcontracting opportunities that may be suitable for performance by DBE firms. The determination is based on an assessment of the type of SERVICES, the location of the SERVICES, and the availability of DBE firms to do a part of the SERVICES. The assessment indicates, in the absence of unlawful discrimination, and in an arena of fair and open competition, DBE firms can be expected to perform the stated percentage of contractual SERVICES in the CONTRACT, which is the DBE goal for the CONTRACT. Consequently, in addition to the other award criteria established for this CONTRACT, the DEPARTMENT will only award this CONTRACT to a CONSULTANT that makes a good faith effort to achieve the DBE goal. A CONSULTANT makes a good faith effort if either of the following is done in accordance with the procedures set forth in 49 CFR Part 26:

- (a) CONSULTANT documents enough DBE participation has actually been obtained to meet the DBE goal or,
- (b) CONSULTANT documents a good faith effort has been made to meet the DBE goal, even though the effort did not succeed in obtaining enough DBE participation to meet the DBE goal.

In addition to other resources, CONSULTANT shall utilize:

- (c) the IL UCP DBE Directory: <http://www.idot.illinois.gov/doing-business/certifications/disadvantaged-business-enterprise-certification/il-ucp-directory/index> and
- (d) the Bureau of Design and Environment List of DBE Prequalified Engineering Consultant Firms:



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<http://apps.dot.illinois.gov/eplan/desenv/epas/ConsultantsPrequalificationDBER080.pdf>

Compliance with this Section is required both in the award of the CONTRACT as well as the performance of the CONTRACT. In order to assure the timely award and execution of the CONTRACT, CONSULTANT shall, in its STATEMENT OF INTEREST, identify the DBE firm(s) that will participate in the CONTRACT, provide a description of the SERVICES, by prequalification category, each DBE firm will perform, and disclose an estimate of the percentage of the total CONTRACT award amount, or percentage of total CONTRACT payments, that will be paid to the listed DBE firm(s). After award of the CONTRACT, upon commencement of contract negotiations under Section 625.120 of Title 44 of the Illinois Administrative Code, CONSULTANT shall additionally submit a Utilization Plan that complies with the following:

- (e) The Utilization Plan shall indicate the CONSULTANT either has obtained sufficient DBE participation commitments to meet the DBE goal or has not obtained enough DBE participation commitments, in spite of a good faith effort to meet the DBE goal; and
- (f) The Utilization Plan shall provide the name and telephone number of a responsible official of the CONSULTANT, designated for purposes of notification of Utilization Plan approval or disapproval under the procedures of this Section; and
- (g) The Utilization Plan shall also include the following:
  - (1) The names and addresses of DBE firms that will participate in the CONTRACT;
  - (2) A description of the SERVICES, by prequalification category, each DBE firm will perform;
  - (3) An estimate of the percentage of the total CONTRACT award amount, or total CONTRACT payments that will be paid to the listed DBE firm(s);
  - (4) A Letter of Intent, signed by the CONSULTANT and each participating DBE firm documenting the commitment to use the listed DBE SUBCONSULTANT(s), which shall include an attached written certification, for each DBE SUBCONSULTANT, signed by the CONSULTANT and each respective DBE SUBCONSULTANT(S), stating that the DBE SUBCONSULTANT has agreed to perform a commercially useful function, as described in 49 CFR 26.55, on the CONTRACT, that no changes to the submitted Utilization Plan may be made without prior written approval of the DEPARTMENT, and that complete and accurate information regarding the actual services performed, and the payment therefore, must be provided to the DEPARTMENT;

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- (5) If the CONSULTANT is a joint venture or teaming venture, comprised of DBE firms and non-DBE firms, the Utilization Plan must also include a clear identification of the portion of the SERVICES to be performed by the DBE partner(s); and
  - (6) If the DBE goal will not be met, the Utilization Plan shall include evidence of good faith efforts by the CONSULTANT to meet the DBE goal, as described more fully below.

A determination by the DEPARTMENT a CONSULTANT failed to comply with the Utilization Plan requirements described herein, including but not limited to any inconsistency between the Utilization Plan and the DBE related information provided in the STATEMENT OF INTEREST, as required above, will result in termination of contract negotiations with the CONSULTANT. However, if the Utilization Plan is not approved because it is only technically deficient, the CONSULTANT will be notified and will be allowed no more than five (5) calendar days to cure the technical deficiency.

The Utilization Plan will be accepted by the DEPARTMENT if the Utilization Plan documents sufficient commercially useful DBE firm SERVICES to meet the DBE goal, or the CONSULTANT submits sufficient documentation of a good faith effort to meet the contract goal, as described in 49 CFR Part 26, Appendix A.

A good faith effort to meet the DBE goal means the CONSULTANT must show all necessary and reasonable steps were taken to achieve the DBE goal. Necessary and reasonable steps are those which, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not successful. See, 49 CFR Part 26, Appendix A. In determining the sufficiency of good faith efforts, the DEPARTMENT will consider the quality, quantity, and intensity of the kinds of efforts the CONSULTANT made. Mere pro forma efforts, in other words, efforts done as a matter of form, are not good faith efforts; rather, CONSULTANT is expected to have taken genuine efforts reasonably expected of a CONSULTANT actively and aggressively trying to obtain DBE participation sufficient to meet the DBE goal.

The following is a list of types of action the DEPARTMENT will consider as part of the evaluation of CONSULTANT's good faith efforts to obtain participation. These listed factors are not intended to be a mandatory checklist, and are not intended to be exhaustive. Other factors or efforts brought to the attention of the DEPARTMENT may be relevant in appropriate cases, and will be considered by the DEPARTMENT:

- (h) Soliciting through all reasonable and available means interest from prequalified DBE firms. The CONSULTANT must document such efforts and solicit interest within sufficient time to allow the DBE firms to respond to the solicitation. Documenting evidence of such soliciting includes, but is not limited to, keeping records of the names, addresses, and telephone numbers of DBE

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firms considered and a description of the information provided to the firm regarding the SERVICES selected for DBE subcontracting.

- (i) Providing interested DBE firms with adequate information about the requirements of the CONTRACT, in a timely manner.
- (j) Not rejecting DBE firms as being unqualified without sound reasons based on a thorough investigation of their capabilities.

The DEPARTMENT acknowledges a CONSULTANT using good business judgment would consider a number of factors in soliciting prospective SUBCONSULTANTS, including DBE SUBCONSULTANTS, and would take a potential SUBCONSULTANT's expected share of the total CONTRACT award amount or CONTRACT payment, and capabilities of the SUBCONSULTANT into consideration, in the context of overall PROJECT goals. However, the fact there may be some additional administrative or contractual expenses involved in finding and using DBE firms is not, in itself, sufficient reason for a CONSULTANT to fail to meet the DBE goal, as long as such expenses are reasonable. Also, the ability or desire of a CONSULTANT to perform particular SERVICES with its own staff does not relieve the CONSULTANT of the responsibility to make actual good faith efforts to meet the goal.

In order for SERVICES performed by a DBE firm to count toward DBE goal credit, the firm must be DBE certified by the date on which STATEMENT OF INTERESTS are due for the CONTRACT.

To be counted toward DBE goal credit, a DBE firm must perform as a PRIME or SUBCONSULTANT in a prequalified category of work, unless prior written DEPARTMENT approval is first obtained. The calculation of DBE goal credit will be made through an accounting of the Utilization Plan and SERVICES actually performed by the DBE firm(s) identified in the Utilization Plan. The Utilization Plan must identify SERVICES anticipated to be performed by DBE firms and paid for by the CONSULTANT upon satisfactory completion. 100 percent goal credit will be counted for the portion of the total dollar value of the CONTRACT performed by the DBE firm, including all approved direct costs incurred by the DBE firm.

Compliance with this provision is an essential part of the CONTRACT, and any violation will be considered a material breach of the CONTRACT. The DEPARTMENT is prohibited by federal regulations from crediting the participation of a DBE firm included in the Utilization Plan toward either the DBE goal or the DEPARTMENT's overall agency DBE goal until the amount to be applied toward the goals has been paid to the DBE. The following administrative procedures and remedies govern compliance by the CONSULTANT with the contractual obligations established by 49 CFR 26, et seq., this provision, and the Utilization Plan. After submission, no amendment to the Utilization Plan may be made without prior written approval from the DEPARTMENT.

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In the event of a need for a change to the SERVICES in the CONTRACT by the DEPARTMENT, except in the case of open-ended work order based contracts, any deviation from the SCOPE OF SERVICES to be provided by a DBE firm must be approved, in writing, by the DEPARTMENT before any additional or altered SERVICES performed by the DBE firm will be counted toward CONTRACT DBE goal credit. CONSULTANT shall notify affected DBE firms in writing of any changes in the SCOPE OF SERVICES which will result in a reduction in the dollar amount to be paid to the DBE firm under the CONTRACT. Where the revision includes SERVICES committed to a new DBE firm, not previously involved in the CONTRACT, a written request for approval of a new DBE firm must be submitted to and approved in writing by the DEPARTMENT prior to the commencement of any DBE goal attributable performance by the new DBE firm.

CONSULTANT shall not terminate or replace a DBE firm listed on the approved Utilization Plan, or perform SERVICES designated for a listed DBE firm, except as provided in this Section and the Utilization Plan. CONSULTANT shall utilize the specific DBE firms listed to perform the category of SERVICES for which each DBE firm is listed in the Utilization Plan, unless CONSULTANT obtains the DEPARTMENT's written consent. Unless written DEPARTMENT consent is provided for termination of a DBE SUBCONSULTANT, CONSULTANT shall not be entitled to any payment for DBE firm designated SERVICES unless they are performed by the DBE firm SUBCONSULTANT listed in the Utilization Plan.

Written DEPARTMENT consent will be granted only if the DEPARTMENT's Bureau of Small Business Enterprises agrees, for reasons stated in its concurrence document, the CONSULTANT has good cause to terminate or replace the DBE firm. Before transmitting to the Bureau of Small Business Enterprises any request to terminate and/or substitute a DBE firm, CONSULTANT shall give notice in writing to the DBE firm SUBCONSULTANT, with a copy to the Bureau, of its intent to request to terminate and/or substitute the firm, and the reason for the request. CONSULTANT shall give the DBE five (5) business days to respond to the CONSULTANT's notice. The DBE so notified shall advise the Bureau and CONSULTANT of the reasons, if any, why it objects to the proposed termination of its subcontract, and why the Bureau should not approve the CONSULTANT's requested action. If required in a particular case, as a matter of public necessity, the Bureau may provide a response period shorter than five (5) business days. All requests for termination or replacement shall be submitted to the Department of Transportation, Bureau of Small Business Enterprises, Contract Compliance Section, 2300 South Dirksen Parkway, Room 319, Springfield, Illinois 62764. Telephone number (217) 785-4611. Telefax number (217) 785-1524.

For purposes of this paragraph, good cause includes the following circumstances:

- (k) The listed DBE firm fails or refuses to execute a written sub-agreement;
- (l) The listed DBE firm fails or refuses to perform the SERVICES of its subcontract in a way consistent with normal industry standards. Provided, however, good cause does not exist if the failure or refusal of the DBE firm to perform its

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SERVICES on the subcontract results from the bad faith or discriminatory action of the CONSULTANT;

- (m) The listed DBE firm becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (n) The listed DBE firm voluntarily withdraws from the projects and provides CONSULTANT written notice of its withdrawal;
- (o) The listed DBE firm is no longer prequalified in a necessary category of professional services, or otherwise ineligible to receive DBE credit for the type of SERVICES required;
- (p) A DBE firm owner dies or becomes disabled with the result the listed DBE firm is unable to complete its SERVICES on the CONTRACT;
- (q) Other documented good cause that compels the termination of a DBE SUBCONSULTANT AGREEMENT.

When a DBE firm is terminated, or fails to complete its work on the CONTRACT for any reason, CONSULTANT shall make a good faith effort to find another DBE firm to substitute for the original DBE to perform at least the same percentage of SERVICES under the CONTRACT as the terminated DBE, to the extent needed to meet the established DBE goal. The good faith efforts to find a replacement firm shall be documented by CONSULTANT. If the DEPARTMENT requests documentation under this provision, CONSULTANT shall submit the documentation within seven (7) business days of such request. This period may be extended for an additional seven (7) business days, if necessary, at the request of CONSULTANT. DEPARTMENT shall provide a written determination to CONSULTANT stating whether or not good faith efforts have been demonstrated to replace a terminated DBE firm.

If a DBE firm identified on the Utilization Plan becomes ineligible to participate in the DBE program during the performance of the CONTRACT solely because it has exceeded the size standard for DBE firms established in 49 CFR 26 *et seq.*, any work performed by the DBE after such an event will continue to count toward DBE goal credit on the CONTRACT.

CONSULTANT shall maintain a record of payments for SERVICES performed by DBE firms. The records shall be made available to DEPARTMENT for inspection upon request.

CONSULTANT makes the following assurance and agrees to include the following assurance in each subcontract CONSULTANT enters into with a SUBCONSULTANT:

The CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this CONTRACT. The CONSULTANT shall carry out

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applicable requirements of 49 CFR Part 26 in the formation and administration of this CONTRACT. Failure by the CONSULTANT to carry out these requirements is a material breach of this CONTRACT, which may result in the termination of the CONTRACT with the DEPARTMENT, or such other remedy as the DEPARTMENT deems appropriate, which may include, but not be limited to:

- (r) Withholding PAYMENT due under the CONTRACT until compliance is reached;
- (s) Assessing regulatory or other sanctions;
- (t) Bringing an action for liquidated damages up to equal the dollar amount that will be excluded from DBE goal credit, due to non-compliance; and/or
- (u) Reflecting non-compliance in Consultant performance evaluations, which may impact selection in future procurements;
- (v) Disqualification from submitting Statements of Interests.

## **2.68 NONDISCRIMINATION**

For purposes of this Section 2.68, the term "CONSULTANT" shall include both the definition of "CONSULTANT" provided in Section 1 of this AGREEMENT, as well as any SUBCONSULTANTS and any other tier of sub-contractor who may be hired to perform SERVICES on the CONTRACT.

During the performance of the AGREEMENT, the CONSULTANT agrees as follows:

- a) Compliance with Regulations: The CONSULTANT will comply with the Regulations of the USDOT related to nondiscrimination in federally-assisted programs of the USDOT (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this CONTRACT.
- b) Employment Practices:
  - (1) CONSULTANT, in employment practices, will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONSULTANT will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of their nondiscrimination clause.

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- (2) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
  - (3) CONSULTANT will send to each labor union or representative of workers with which they have a collective bargaining agreement or other contract or understanding, a notice to be provided by the DEPARTMENT, advising the labor union or workers' representative of the CONSULTANT'S commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - (4) CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
  - (5) CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
  - (6) In the event of the CONSULTANT's noncompliance with the non-discrimination clauses of this Section, or with any of the said rules, regulations or orders, this AGREEMENT may be canceled, terminated or suspended in whole or in part and the CONSULTANT may be declared ineligible for further DEPARTMENT agreements or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
  - (7) CONSULTANT will include the provisions of paragraphs (1) through (7) of this Sub-Section in every SUBCONSULTANT contract or purchase order initiated because of this AGREEMENT specifically for the PROJECT, unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each tier of SUBCONSULTANT or vendor. CONSULTANT will take such action with respect to any subagreement or purchase order as the Secretary of Labor, DEPARTMENT or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, in the event a CONSULTANT becomes involved in, or is threatened with litigation with a SUBCONSULTANT or vendor as a result of such, the

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CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

- c) The CONSULTANT, in its selection of SUBCONSULTANTS, procurement of materials, and leasing of equipment: during the performance of the AGREEMENT, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:
- (1) Compliance With Regulations: The CONSULTANT shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of the CONTRACT.
  - (2) Nondiscrimination: The CONSULTANT, with regard to the SERVICES performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, religion, sex or national origin in the selection and retention of SUBCONSULTANTS, including procurements of materials and leasing of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by the Regulations, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the Regulations.
  - (3) Solicitations for SUBCONSULTANTS, Including procurements of materials and equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for SERVICES to be performed under a SUBAGREEMENT, including procurements of materials or leases of equipment, each potential SUBCONSULTANT(s) or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this AGREEMENT and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.
  - (4) Information and Reports: The CONSULTANT 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 its facilities as may be determined by the DEPARTMENT or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish their information, the CONSULTANT shall so certify to the DEPARTMENT, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
  - (5) Sanctions for Noncompliance: In the event of the CONSULTANT'S noncompliance with the nondiscrimination provisions of their contract, the DEPARTMENT shall impose such contract sanctions as it or the Federal



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Highway Administration may determine to be appropriate, including, but not limited to:

- (i) Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or
  - (ii) Cancellation, termination or suspension of the AGREEMENT, in whole or in part.
- (6) Incorporation of Provisions: The CONSULTANT shall include Section 2.68(c)(3) in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto that is initiated because of this AGREEMENT specifically for this PROJECT. The CONSULTANT shall take such action with respect to any SUBCONSULTANT or procurement as the DEPARTMENT or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a SUBCONSULTANT or supplier as a result of such direction, the CONSULTANT may request the DEPARTMENT to enter into such litigation to protect the interests of the State, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- d) In accordance with USDOT 1050.2A, Appendix E, during the performance of the AGREEMENT, CONSULTANT agrees to comply with applicable federal non-discrimination statutes and authorities, including but not limited to:
- (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
  - (2) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42U.S.C. §460 I), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
  - (3) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
  - (4) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
  - (5) Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

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- (6) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - (7) Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;
  - (8) The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - (9) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures protection against discrimination of minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - (10) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
  - (11) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

## **2.69 ILLINOIS HUMAN RIGHTS ACT — EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

In the event of the CONSULTANT'S non-compliance with the provisions of their Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights, the CONSULTANT may be declared ineligible for future agreements or subagreements with the State of Illinois or any of its political subdivisions or municipal corporations, and the AGREEMENT may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of their AGREEMENT, the CONSULTANT agrees as follows:

- a) The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, order of protection status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, military status or an unfavorable discharge from military service; and further that it will examine all

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job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such under utilization.

- b) If the CONSULTANT hires additional employees in order to perform their CONTRACT or any portion thereof, it will determine the availability (in accordance with the Department of Human Rights' Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way minorities and women are not underutilized.
- c) In all solicitations or advertisements for employees placed by the CONSULTANT or on its behalf, it will state all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, order of protection status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, military status or an unfavorable discharge from military service.
- d) The CONSULTANT will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the CONSULTANT'S obligations under the Illinois Human Rights Act and the Department of Human Rights' Rules and Regulations. If any labor organization or representative fails or refuses to cooperate with the CONSULTANT in its efforts to comply with such Act and Rules and Regulations, the CONSULTANT will promptly so notify the Department of Human Rights and the DEPARTMENT and will recruit employees from other sources when necessary to fulfill its obligations under the contract.
- e) The CONSULTANT will submit reports as required by the Rules and Regulations of the Department of Human Rights, furnish all relevant information as may from time to time be requested by the Department of Human Rights or the DEPARTMENT, and in all respects comply with the Illinois Human Rights Act and the rules and regulations of the Department of Human Rights.)
- f) The CONSULTANT will permit access to all relevant books, records, accounts and WORK sites by personnel of the DEPARTMENT and the Department of Human Rights for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the rules and regulations of the Department of Human Rights.
- g) The CONSULTANT will include verbatim or by reference the provisions of their clause in every subagreement it awards under which any portion of the AGREEMENT obligations are undertaken or assumed, so that such provisions will be binding upon such SUBCONSULTANT. In the same manner as with other provisions of their AGREEMENT, the CONSULTANT will be liable for compliance with applicable provisions of their clause by such SUBCONSULTANTS; and further it will promptly notify the DEPARTMENT and the Department of Human Rights in the event any SUBCONSULTANT fails or

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refuses to comply therewith. In addition, the CONSULTANT will not utilize any SUBCONSULTANT declared by the Illinois Human Rights Commission to be ineligible for agreements or subagreements with the State of Illinois or any of its political subdivisions or municipal corporations.

#### **2.70 HEADGEAR, VEST AND FOOTWEAR POLICY**

- a) All employees of a CONSULTANT engaged in ground level field activities on or within 8 meters (25 feet) of a pavement open to traffic, shall wear high visibility vests or approved high visibility outer garments. Flaggers shall wear high visibility vests at all times.
- b) All employees of a CONSULTANT are required to wear either hardhats or caps of high visibility color when engaged in field activities within 8 meters (25 feet) of a pavement open to traffic or under construction, when not in vehicles or self-propelled mobile equipment.
- c) All employees of a CONSULTANT are required to wear protective hardhats/caps when they are in an area where there is a potential for injury from falling, moving, swinging or flying objects.
- d) Safety-toe footwear shall be worn by employees of a CONSULTANT engaged in operations where the danger of injury to the foot may occur.

All employees of a CONSULTANT should also wear appropriate clothing for the WORK task involved. This includes shirts when in the vicinity of the public.

#### **2.71 INSURANCE OTHER THAN PROFESSIONAL LIABILITY**

- a) The CONSULTANT shall obtain the following minimum amounts of insurance from insurance companies authorized to do business in the State of Illinois:
  - (1) Workmen's Compensation Insurance in accordance with the laws of the State of Illinois.
  - b) Commercial General Liability. Required liability insurance coverage shall be written in the occurrence form and shall provide coverage for the operations of the CONSULTANT: operations of SUBCONSULTANTS (contingent or protective liability); completed operations; broad form property damage; and contractual liability. The general aggregate limits shall be endorsed on a per PROJECT basis.
    - (1) General Aggregate Limit \$2,000,000
    - (2) Each Occurrence Limit \$1,000,000

The coverage shall provide by an endorsement in the appropriate manner and form, the DEPARTMENT, its officers and employees shall be named as additional insured with respect to the policies and operations performed. The DEPARTMENT may accept a separate owner's protective liability policy provided all coverage; limits and endorsements are in conformity with this Section.

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- c) Commercial Automobile Liability. The policy shall cover owned, non-owned and hired vehicles:

Bodily Injury & Property Damage  
Liability Limit Each Occurrence \$1,000,000

- d) Umbrella Liability. Any policy shall provide excess limits over and above the other insurance limits stated in this Section. The CONSULTANT may purchase insurance for the full limits required or by a combination of primary policies for lesser limits and remaining limits provided by the umbrella policy.
- e) Such insurance shall be maintained in full force and effect during the life of the AGREEMENT and shall protect the CONSULTANT, its employees, agents and representatives from claims for damages, for personal injury and death and for damages to property arising in any manner from the negligent act or failure to act by the CONSULTANT, its employees, agents and representatives in the performance of the SERVICES.
- f) Certificates showing the CONSULTANT is carrying the above-described insurance in the specified amounts shall be furnished to the DEPARTMENT before it is obligated to make any payment to the CONSULTANT for SERVICES performed under the provisions of the AGREEMENT. The certificates shall provide that the policies shall not be changed or cancelled during the life of the AGREEMENT until 30 days advance written notice to the DEPARTMENT has elapsed.

## **2.72 INDEMNIFICATION**

To the fullest extent permitted by law, the CONSULTANT shall indemnify and hold harmless the DEPARTMENT, its officers and employees from and against all claims, damages, losses and expenses, including, but not limited to attorney's fees and costs of defense, arising out of or resulting from performance of the SERVICES and/or Work, but only to the extent caused in whole or in part by any negligent act or omission of the CONSULTANT, any SUBCONSULTANT, or anyone directly or indirectly employed by any of them or anyone whose acts may be liable.

## **2.73 COMMUNICATION DISCLOSURE**

Disclose the name and address of each lobbyist and other agent of the bidder or offeror who has communicated, is communicating, or may communicate with any state officer or employee concerning the bid or offer. This disclosure is a continuing obligation and must be promptly supplemented for accuracy throughout the process and throughout the term of the CONTRACT.

## **2.74 TAXES, ROYALTIES AND EXPENSES**

The CONSULTANT shall pay all taxes, royalties and expenses incurred in connection with their SERVICES under the AGREEMENT.

## **2.75 RESPONSIBILITY FOR CLAIMS AND LIABILITY - PROPERTY DAMAGES**

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The CONSULTANT will negotiate and pay for property damages resulting from the clearing of shrubbery, trees, crops, etc., which must be removed or damaged to comply with the AGREEMENT and for all labor, material and equipment costs incurred. These costs are reimbursable and are included in the COMPENSATION stated in the AGREEMENT. If the COMPENSATION provides for reimbursement of ACTUAL COSTS of damages, the DEPARTMENT will reimburse the ACTUAL COSTS only to the amount it preapproved in the AGREEMENT.

## **2.76 TERMINATION AND ABANDONMENT**

- a) If the DEPARTMENT is dissatisfied with the CONSULTANT'S performance, or believes there has been a substantial decrease in the CONSULTANT'S productive capacity, the DEPARTMENT may give written notice that remedial action shall be taken by the CONSULTANT within 30 CALENDAR DAYS. If such action is not taken, the DEPARTMENT may terminate the AGREEMENT by giving written notice to the CONSULTANT at least 15 CALENDAR DAYS prior to the effective date of termination. In this event, the CONSULTANT shall be paid for the value of all acceptable SERVICES performed prior to the effective date of termination based on the payment terms of the AGREEMENT.
- b) Further, the DEPARTMENT at its sole discretion may terminate the AGREEMENT for any other reason, which involves no fault of the CONSULTANT, by giving written notice to the CONSULTANT at least 15 CALENDAR DAYS prior to the effective date of the termination. In this event, the CONSULTANT shall be paid:
  - (1) As outlined in the preceding paragraph, provided the SERVICES performed are 20 percent or more of the total SERVICES set forth in the AGREEMENT.
  - (2) If the CONSULTANT has performed less than 20 percent of the SERVICES, they may elect:
    - (i) To be paid in the above-described manner.
    - (ii) To be paid their actual identifiable costs properly allocable to the DEPARTMENT for SERVICES done under the terms of the AGREEMENT, including a reasonable proportion of the profit on the completed part of the SERVICES and AGREEMENT closing costs.
    - (iii) Termination notice at least 15 days in advance of the effective date of termination may also be given in writing by the CONSULTANT if completion of the SERVICES is delayed to the extent and for the reasons stated in Section 2.21(d). If the AGREEMENT is terminated for their cause, the CONSULTANT shall be paid for the value of all acceptable SERVICES performed prior to the effective date of termination based on the payment terms of the AGREEMENT.
  - (3) The AGREEMENT will be terminated if:

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- (i) The CONSULTANT is notified by the DEPARTMENT to suspend SERVICES and authorization to resume is not given within three (3) years after the date of the AGREEMENT or any subsequent SUPPLEMENTAL AGREEMENT.
  - (ii) The CONSULTANT completes a PHASE, stage or part of the SERVICES, and performance of any remaining PHASE, stage or part of the SERVICES is not authorized within three (3) years after the date of the AGREEMENT or any subsequent SUPPLEMENTAL AGREEMENT.

#### **2.77 AVAILABILITY OF FUNDS**

Obligations of the STATE shall cease immediately without penalty or further payment being required if, in any fiscal year, the Illinois General Assembly or federal funding source fails to appropriate or otherwise make available funds for this CONTRACT.

#### **2.78 SETTLEMENT OF CONSULTANT CLAIMS**

- a) In any case where the CONSULTANT deems ADDITIONAL COMPENSATION will be due them for SERVICES or materials neither identified in the AGREEMENT nor ordered in writing by the DEPARTMENT (hereinafter referred to as a "claim"), the CONSULTANT shall notify the DEPARTMENT in writing before they begin to perform the additional SERVICES for which they propose to base a claim. If such notification is not previously given by CONSULTANT and the claimed costs are not clearly identified and separated in CONSULTANT accounting records, CONSULTANT agrees any such claim for ADDITIONAL COMPENSATION is entirely and unconditionally waived by CONSULTANT. Satisfactory technical compliance with the above stated notice and accounting requirements for the CONSULTANT shall not, in any manner, be construed as proof of the validity or merit of a claim.
- b) Any dispute in the interpretation of the provisions of the AGREEMENT shall be settled through negotiation between the LIAISON MANAGERS of the signatory parties. If they cannot agree, the dispute will be referred through proper administrative channels to the DEPARTMENT. The DEPARTMENT shall decide all claims, questions and disputes and the decision shall be final. This shall not be construed to abrogate the CONSULTANT'S rights under the law.

#### **2.79 OWNERSHIP OF DOCUMENTS**

The CONSULTANT agrees all deliverable survey data, reports, drawings, studies, specifications, estimates, maps and computations prepared by or for them under the terms of the AGREEMENT shall be properly arranged, indexed and delivered to the DEPARTMENT upon termination or completion of the SERVICES. This can include CADD and related electronic files. All CADD files and other electronic data files, if required, shall be prepared and delivered to the DEPARTMENT in accordance with the hardware and/or software specifications described in the AGREEMENT and/or current policy from the DEPARTMENT. These documents shall become and remain the property of the DEPARTMENT, which shall have the right to use same without restriction or limitation and without COMPENSATION to the CONSULTANT other than that provided in the AGREEMENT. All documents including drawings, CADD

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files, related electronic files and specifications furnished by the CONSULTANT pursuant to the AGREEMENT are instruments of SERVICES. They may not be suitable for reuse on extensions of the SERVICES, or on any other SERVICES any reuse without specific written verification or adaptation by the CONSULTANT will be at the user's risk and without liability to the CONSULTANT. Unless otherwise provided in the AGREEMENT, CADD files and related electronic files from a PHASE I PROJECT shall be suitable for reuse in a subsequent PHASE II CONTRACT and CADD files and related electronic files from a PHASE II CONTRACT shall be suitable for reuse during the construction PHASE of the PROJECT. A SUPPLEMENTAL AGREEMENT may be required if revisions are necessary, by the CONSULTANT, to the CADD files and related documents as a result of policy CHANGES and/or version updates.

#### **2.80 RETENTION OF RECORDS**

The CONSULTANT shall maintain, for a minimum of 3 years after acceptance of the Affidavit of Completion and the last action on the CONTRACT, adequate books, records, and supporting documents related to the performance of the AGREEMENT necessary to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the CONTRACT and amounts charged to the DEPARTMENT. Immediately upon request, CONSULTANT shall make the CONTRACT and all books, records, and supporting documents related to the CONTRACT available for review and audit by the Auditor General, chief procurement officer, internal auditor and/or the DEPARTMENT, and the federal funding entity (when applicable).. The CONSULTANT agrees to cooperate fully with any such audit and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this Section shall establish a substantial presumption in favor of the DEPARTMENT for a recovery claim for any funds paid by the DEPARTMENT under the CONTRACT for which adequate books, records and supporting documentation are not available to support their purported disbursement.



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## 2.9 METHODS OF PAYMENT

### 2.90 PAYMENT METHODS

a) One or more of the following methods of COMPENSATION for CONSULTANT SERVICES have been specified where applicable in the AGREEMENT

- (1) Lump Sum - The sum is fixed and does not change unless the scope or schedule changes.
- (2) UNIT OF WORK - A sum of money per item or unit (acre, mile, ton, etc.). Partial payments can be based on a completed amount subject to the Total AGREEMENT Amount for the CONSULTANT.
- (3) Cost Plus a FIXED FEE - ACTUAL COSTS are reimbursable to the CONSULTANT as defined in Section 2.94 of the STANDARD PROVISIONS, plus a FIXED FEE.

Total Compensation = DL+DC+OH+FF.

DL is the total Direct Labor,  
DC is the total Direct Cost,  
OH is the firm's overhead rate applied to their DL and  
FF is the Fixed Fee.

Where  $FF = (0.33 + R) DL + \%SubDL$ , where R is the advertised Complexity Factor and %SubDL is 10% profit allowed on the direct labor of the subconsultants.

The Fixed Fee cannot exceed 15% of the DL + OH.

The individual Upper Limits of Compensation for Direct Costs, FIXED FEE and for (Direct Labor + OH) cannot be exceeded.

- (4) Specific Hourly Rates - Payment for actual hours worked at the SPECIFIC RATES OF COMPENSATION for each class of employee listed below:  
CLASSIFICATION SALARY FRINGE BENEFITS FIXED SPECIFIC RATES  
AND OVERHEAD FEE PER HOUR

(NOTE: List Classifications to be utilized together with dollars chargeable for each.)

These rates include Direct Salary Costs, Indirect Salary Costs, Indirect Non-Salary Costs, Direct Non-Salary Costs (not listed below as separately reimbursed) and FIXED FEE. Related travel, subsistence and other pre-agreed costs shall be reimbursed at reasonable actual cost to the CONSULTANT. All other costs are understood to be included in the specific rates. The Total AGREEMENT Amount to the CONSULTANT cannot be exceeded.

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## **2.91 PARTIAL PAYMENTS/INVOICES**

The CONSULTANT shall submit invoices to the DEPARTMENT'S LIAISON MANAGER using the forms provided by the DEPARTMENT, on their Internet Web Site, monthly or, if agreed upon, not more often than every four weeks for partial payment on account of their SERVICES completed to date.

- a) Promptly upon receipt, review and approval of properly documented invoices, the DEPARTMENT shall pay or cause to be paid to the CONSULTANT, not more often than monthly or every four weeks, partial payments of the COMPENSATION specified in the AGREEMENT. The DEPARTMENT'S LIAISON MANAGER shall establish the reported percentage of completion of the SERVICES is reasonable. Payment will be made in the amount of sums earned less previous partial payments
- b) If the method of payment is Cost Plus a FIXED FEE, the total amount of any partial COMPENSATION shall not exceed the Total AGREEMENT Amount multiplied by the approved percentage of completion of the SERVICES. The sums earned shall be the CONSULTANT'S certified reimbursable costs (see Section 2.94) plus that percentage of the FIXED FEE equal to the percentage of completion shown on the PROGRESS REPORT and approved by the DEPARTMENT, except for construction engineering AGREEMENTS, where the percentage of the FIXED FEE shall equal the percentage of total Direct Labor and Overhead dollars expended to date to the total Direct Labor and Overhead dollars authorized. Reimbursable salary costs shall be computed as Direct Salary Costs (see Section 2.94(b) hereof), plus the agreed percentage of fringe benefits shown in the AGREEMENT. Indirect costs shall be computed as the percentage of Direct Payroll shown in the AGREEMENT.
- c) If the method of payment is Specific Rates, the sums earned shall be computed on the basis of time records certified by the CONSULTANT.
- d) If the method of payment is UNIT OF WORK, the sums earned shall be computed based on the quantities of WORK incurred certified by the CONSULTANT.
- e) Unless prior written approval is obtained from the DEPARTMENT or the invoice is for final payment, CONSULTANT shall not submit an invoice for payment of less than one thousand dollars (\$1,000).

## **2.92 FINAL PAYMENT**

- a) The CONSULTANT shall submit an affidavit with their final invoice, stating all obligations incurred by them in performance of the SERVICES have been paid in full. The affidavit shall be on the form prescribed by the DEPARTMENT.
- b) If the method of payment is Specific Rates, the DEPARTMENT will promptly, upon acceptance of the final submission of the SERVICES, pay the CONSULTANT 100% of the invoiced amount (up to the Total AGREEMENT Amount), subject to adjustment upon completion of the audit.

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- c) If the method of payment is a, Lump Sum or UNIT OF WORK, the DEPARTMENT will promptly, upon acceptance of the final submission of the SERVICES, pay the CONSULTANT, a sum equal to 100% of the COMPENSATION set forth in the AGREEMENT less the total of all previous partial payments paid or in the process of payment. The quantities billed for UNIT OF WORK payment is also subjected to adjustment upon completion of the audit.
  - d) If the method of payment is Cost Plus a FIXED FEE, the DEPARTMENT will promptly, upon acceptance of the final submission of the SERVICES, pay the CONSULTANT 100% of the invoiced amount (up to the Total AGREEMENT Amount) subject to the final audit.

### **2.93 ADJUSTMENT OF UPPER LIMIT OF COMPENSATION**

- a) If the duration of the CONTRACT is 18 months or less, the CONSULTANT shall review the SERVICES accomplished and make an itemized estimate showing costs incurred and costs of SERVICES still required to complete their obligation when costs approach 50% of the UPPER LIMIT OF COMPENSATION. They shall do the same before costs reach 75% and 90% of the UPPER LIMIT OF COMPENSATION.

If any of these estimates exceed the UPPER LIMIT OF COMPENSATION, the CONSULTANT shall immediately notify the DEPARTMENT.

- b) If the duration of the CONTRACT exceeds 18 months, and the basis of payment is Cost Plus FIXED FEE, the CONSULTANT shall review the SERVICES accomplished and make an itemized estimate showing costs incurred and costs of SERVICES still required to complete their obligation on a quarterly basis, and the results of the review shall be submitted to the DEPARTMENT 25 days following March 31, June 30, September 30 and December 31 of each calendar year. In addition, the CONSULTANT shall make such a review and submit said report when the costs incurred approach 90% of the UPPER LIMIT OF COMPENSATION.
- c) The DEPARTMENT shall review the estimate and, upon determining the cost estimate is reasonable and any costs that should be absorbed by the CONSULTANT due to their own inefficiency and/or ERRORS are not included, shall promptly direct the CONSULTANT to:
  - (1) Stop SERVICES at a logical point when monies due the CONSULTANT are within the UPPER LIMIT OF COMPENSATION, or Continue SERVICES under the terms of the AGREEMENT up to an adjusted Upper Limit of COMPENSATION as authorized in writing by the appropriate DEPARTMENT personnel.
  - (2) The CONSULTANT waives their right to any payment in excess of the original UPPER LIMIT OF COMPENSATION if an estimate of overrun has

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not been submitted and received written authorization prior to incurring the excess costs.

**2.94 ITEMS ELIGIBLE FOR REIMBURSEMENT AS CONSULTANT'S COSTS**

- a) When the method of COMPENSATION includes payment of the CONSULTANT'S ACTUAL COSTS, the following items of cost are reimbursable to the extent they are in compliance with Federal Acquisition Regulations, Subparts 31.1 and 31.2 and FAPG Chapter 1, Subchapter B, Paragraph 172.
- b) Direct Salary Costs are the Direct Productive Payroll (actual wages paid all employees of the CONSULTANT regardless of job classification when directly engaged in SERVICES necessary to fulfill the terms of the AGREEMENT) less the premium portion of such wages paid for overtime.
  - (1) Related costs which are normally paid by the CONSULTANT may include items such as:
    - (i) Wages paid or accrued for vacation time.
    - (ii) Wages paid for holidays and for sick, military, jury and other authorized leave.
    - (iii) Group and Workmen's Compensation Insurance costs.
    - (iv) Bonus, incentive compensation or deferred compensation which is an established practice of the firm and in accordance with the Federal Acquisition Regulations.
    - (v) Social Security and Unemployment taxes.
    - (vi) Pension or retirement benefits.
    - (vii) Group Medical Plan and Life Insurance Premiums.
  - (2) The allocation of the related costs shall be in accordance with the CONSULTANT'S established policy and with accepted accounting practices. Generally, these costs will be expressed as a percentage of the direct salary costs.
  - (3) Salaries of principals and other salaried personnel for the firm may be included in the direct salary costs for all time they are productively engaged in SERVICES necessary to fulfill the terms of the AGREEMENT, provided this is the CONSULTANT'S normal practice and the cost is not also included in indirect salary costs. If senior staff of the CONSULTANT perform routine SERVICES, such as standard design and drafting SERVICES, which could be performed by lesser-salaried personnel, the wage rates billed directly for these SERVICES shall not exceed those rates paid to the CONSULTANT'S salaried personnel performing the same or similar SERVICES.

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- (4) Premium wages for overtime paid to employees, in accordance with the CONSULTANT'S normal practice and directly chargeable to the PROJECT, may be reimbursed as Direct Costs with no surcharge for related costs provided such premium wages in any billing period do not exceed four percent of the direct productive payroll billed to the PROJECT for that period. No payments for premium wages in excess of four percent shall be made unless the CONSULTANT obtained prior written approval from the DEPARTMENT to exceed their limit.
- c) Direct Costs are actual and reasonable non-salary costs incurred specifically in fulfilling the terms of the AGREEMENT.
- d) Travel, Food and Lodging or per diem allowances paid by the CONSULTANT to his/her employees will be reimbursed in accordance with the provisions of the Travel Guide for State Employees.
- e) Indirect costs (or overhead costs) are the remaining costs of the CONSULTANT'S business operations after the assignment to all of their clients of all direct costs, exclusive of costs ineligible for COMPENSATION. The CONSULTANT'S established practices for allocation of eligible indirect costs to each PROJECT shall be used if in accordance with generally accepted accounting procedures. In general, these costs will be expressed as a percentage of the direct salary costs charged to the CONSULTANT'S clients.
- f) Indirect salary costs are the actual wages paid to all employees of the CONSULTANT for SERVICES not directly chargeable to individual clients.
- g) Indirect non-salary costs are all non-salary costs of the CONSULTANT'S business operations eligible for COMPENSATION not directly chargeable to individual clients.