

STANDARD AGREEMENT PROVISIONS FOR CONSULTANT SERVICES

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PREAMBLE

Since the SERVICES contemplated under the AGREEMENT is professional in nature, it is understood that the CONSULTANT, acting as an individual, partnership, firm or other legal entity, is of professional status and will be governed by professional ethics in their relationship to the DEPARTMENT. The DEPARTMENT acknowledges the professional and ethical status of the CONSULTANT by entering into an AGREEMENT on the basis of their qualifications and experience and determining their COMPENSATION 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 interpreted as herein set forth:

- 1.01 AASHTO. The American Association of State Highway and Transportation Officials.
- 1.02 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.
- 1.03 ADDITIONAL COMPENSATION. Payment for additional SERVICES.
- 1.04 ADDITIONAL SERVICES. Any minor SERVICE or action required of the CONSULTANT which is not identified in the AGREEMENT or any SUPPLEMENTAL AGREEMENT. Minor here means less than 7% of the COMPENSATION for the PHASE of SERVICES being performed or \$50,000 cumulative.
- 1.05 AGREEMENT. The legal instrument or negotiated CONTRACT defining the obligations and considerations of the signatory parties. The term "AGREEMENT" includes all SUPPLEMENTAL AGREEMENTS.
- 1.06 APPROVING PARTY. Parties other than contracting parties upon whose approval or acceptance the DEPARTMENT and CONSULTANT must depend in the advancement of the SERVICES.
- 1.07 AUTHORITY TO PROCEED. The initial written authorization from the DEPARTMENT to the CONSULTANT to proceed with the SERVICES.
- 1.08 BUREAU CHIEF. The DEPARTMENT'S officer named in the AGREEMENT who must approve any CHANGE or additional SERVICES Authorization.
- 1.09 CALENDAR DAYS. The total elapsed days including Saturdays, Sundays and Legal Holidays.
- 1.10 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.
- 1.11 COMPENSATION. The monetary amount to be paid by the DEPARTMENT to the CONSULTANT for SERVICES set forth in the AGREEMENT.
- 1.12 CONSTRUCTION COST ESTIMATE. The estimated cost of constructing the PROJECT approved by the Engineer of Design and Environment.
- 1.13 CONSTRUCTION SECTION. A portion of, or an entire DESIGN SECTION, between designated limits, for which separate construction plans are to be prepared.

- 1.14 CONSULTANT. The individual or firm providing engineering and design related SERVICES as a party to the AGREEMENT.
- 1.15 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).
- 1.16 CONTRACTOR. The individual, firm, partnership, or corporation contracting with the DEPARTMENT for performance of the prescribed WORK (construction activities).
- 1.17 CRITICAL PATH METHOD (CPM). A technique for determining the interrelationship and sequence of various activities in achieving a result within a specific time.
- 1.18 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 2.62 and 2.63.
- 1.19 DATES OF SUBMISSION, ACCEPTANCE AND REVIEW TIME. The date of a submission by the CONSULTANT is the date on which it reaches the DEPARTMENT. A review by the DEPARTMENT and APPROVING PARTY, if any, determines whether a submission is acceptable. The date of written notice of acceptance from the DEPARTMENT to the CONSULTANT is the date of acceptance.
- 1.20 DEPARTMENT. The Department of Transportation of the State of Illinois.
- 1.21 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.
- 1.22 DIRECTOR. The DIRECTOR of the Division or Office of the DEPARTMENT who is in charge of the SERVICES under the AGREEMENT.
- 1.23 DISTRICT ENGINEER. The Individual of the DEPARTMENT who has jurisdiction over the SERVICES of a State's District.
- 1.24 ERROR. A failure to provide professional SERVICES in accordance with that degree of care and skill ordinarily exercised under similar conditions excluding, however, OMISSIONS.
- 1.25 EXTRA TASK ORDER. A written authorization of Extra SERVICES negotiated in accordance with the terms of the AGREEMENT and approved by the BUREAU CHIEF.
- 1.26 FHWA. The Federal Highway Administration of the United States Department of Transportation (DOT). FAPG is Federal-Aid Policy Guide.

- 1.27 FIELD AND OFFICE CHECK (F&OC). An official and comprehensive review of the acceptability of the SERVICES, conducted by the DEPARTMENT, the CONSULTANT and the APPROVING PARTY, for the purposes of determining the completeness of the plans and their presentation and for documenting the requirements necessary to complete the final detailed construction contract plans and right-of-way plans.
- 1.28 FIXED FEE. A negotiated dollar amount to cover profit and business expenses not paid for otherwise.
- 1.29 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.
- 1.30 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.
- 1.31 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.
- 1.32 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 2.62 and 2.63.
- 1.33 PS&E. Plans, Specifications and Estimates for the PROJECT.
- 1.34 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).
- 1.35 PROFESSIONAL TRANSPORTATION BULLETIN. The official Notice of the DEPARTMENT'S need for Architectural/Engineering Professional SERVICES.
- 1.36 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.
- 1.37 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.
- 1.38 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.
- 1.39 QUALITY ASSURANCE. All those planned and systematic actions to provide adequate confidence that a structure, system, or component will perform satisfactorily in service.
- 1.40 QUALITY CONTROL. A system for maintaining desired standards in a product or process, especially by inspecting samples of the product.

- 1.41 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.
- 1.42 SCOPE OF SERVICES. All SERVICES and actions required of the CONSULTANT by the obligations of the AGREEMENT.
- 1.43 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.
- 1.44 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.
- 1.45 STATEMENT OF INTEREST. The CONSULTANT'S written communication expressing their desire to be considered for selection of SERVICES advertised in the PROFESSIONAL TRANSPORTATION BULLETIN.
- 1.46 SUBCONSULTANT. Any independent professional firm, person or organization who, with the approval of the DEPARTMENT, performs a part of the SERVICES for the CONSULTANT.
- 1.47 SUPPLEMENTAL AGREEMENT. An AGREEMENT modifying the existing AGREEMENT.
- 1.48 SUPPLEMENTAL SERVICES. Identifiable but indeterminate SERVICES set forth in the AGREEMENT that are separate and distinct from those covered by the Prime AGREEMENT and which the DEPARTMENT has the option to authorize.
- 1.49 TS&L. Bridge and structure "type", "size" and "location" drawings.
- 1.50 TOTAL AGREEMENT AMOUNT. The costs of all SERVICES including SUBCONSULTANTS for a specific PHASE of an AGREEMENT.
- 1.51 UNIT OF WORK. A measurement of WORK or 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.
- 1.52 UPPER LIMIT OF COMPENSATION. The total COMPENSATION in Actual Cost and Direct Labor Multiple AGREEMENTS which cannot be exceeded without revising the AGREEMENT.
- 1.53 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.

- 1.54 WORKING DAYS. Total elapsed days with the exception of Saturdays, Sundays and Holidays recognized by the DEPARTMENT.
- 1.55 TASK ORDER. A written authorization by the DEPARTMENT to the CONSULTANT to proceed with the SERVICES for each separate job issued under the miscellaneous TASK ORDER AGREEMENT.

SECTION 2

GENERAL CLAUSES AND COVENANTS

2.1 CONSULTANT OFFICE AND PERSONNEL REQUIREMENTS

2.10 THE CONSULTANT OFFICE

If, in the judgment of the DEPARTMENT, the character of the SERVICES require that the CONSULTANT maintain an office within the vicinity of the PROJECT, the DEPARTMENT will so inform the CONSULTANT prior to completing the negotiation of the AGREEMENT.

2.11 ENDORSEMENT OF DOCUMENTS

The CONSULTANT will endorse and seal all final draft 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.

2.12 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 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.
- d) 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 that 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 that 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.

2.16 COVENANT OF INTEREST

The CONSULTANT covenants that 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 that 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 thereunder. However, in such an occurrence, the DEPARTMENT at its own option may terminate the AGREEMENT if it is not furnished competent evidence that the SERVICES can still be acceptably finished as scheduled.

2.2 SERVICE REQUIREMENTS

2.20 AUTHORIZATION AND APPROVAL

SERVICES to be performed by the CONSULTANT under the AGREEMENT shall begin within five days after date of AUTHORITY TO PROCEED. 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 that will be considered in the CONSULTANT'S performance rating. An unfavorable performance rating is a penalty that will be reflected when future assignments are being considered.

b) On preliminary engineering PROJECTS, the CONSULTANT will submit a monthly PROGRESS REPORT to the DEPARTMENT by the tenth day of each month, 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 that 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.

On construction engineering PROJECTS, the PROJECT SCHEDULE is the construction contract schedule and PROGRESS REPORTS are not necessary.

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 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 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) 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 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) A copy of the signed and dated subagreement must be furnished to the DEPARTMENT and approved before any payments will be made to the CONSULTANT for SUBCONSULTANT SERVICES.
- d) 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 subagreement approved by the DEPARTMENT. The CONSULTANT'S costs for administering and supervising the SUBCONSULTANT'S SERVICES are eligible for payment but no profit to the CONSULTANT will be permitted on the cost of the SUBCONSULTANT.

- e) No DEPARTMENT approval of the subagreement 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 that payment for such SERVICES is already included in the COMPENSATION.
- f) The CONSULTANT will include clauses in its subagreement with any SUBCONSULTANT that stipulates that the SERVICES under the AGREEMENT shall not be sublet, sold, transferred, assigned or otherwise disposed of to other firms except with prior written consent of the DEPARTMENT.

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 DISTRICT ENGINEER.
- b) The CONSULTANT shall make no commitments binding upon the DEPARTMENT. The DEPARTMENT will conduct all negotiations with utilities and railroads. The CONSULTANT will participate in such negotiations when requested by the DEPARTMENT.
- c) 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 that are 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 that 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. 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 therefrom. 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 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. In the event it is later determined that 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 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) Any dispute in the interpretation of the provisions of the AGREEMENT or the damages accessed due to Consultant ERRORS OR OMISSIONS 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. The DEPARTMENT may request the Consultant firm file a claim for adjudication by the Court of Claims within 60 days after the date of the written response. This shall not be construed to abrogate the CONSULTANT'S rights under the law.
- 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

a) The CONSULTANT shall perform the SERVICES required under the AGREEMENT in accordance with the policies and procedures of the publications listed below, in effect at the time of the AGREEMENT. In case of conflict in the references, the CONSULTANT shall identify them to the DEPARTMENT and follow the instructions furnished by the DEPARTMENT.

b) DEPARTMENT'S PUBLICATIONS:

(1) General

Design and Environment Manual

Design Memorandums

Bureau of Location and Environment Procedures Memorandum

Bureau of Design and Environment Procedures Memorandum

Bureau of Design and Environment Technical Environmental
Memorandum

(2) Access Control/Access Management

BDE Manual Chapter 35

Policy on Permits for Access

Driveways to State Highways

Policy on Permits for Low Volume

Access Driveways to State Highways

(3) Bridges and Structures

BBS-1 Bridge Manual

BBS-2 Geotechnical Manual

BBS-3 Prestressed Concrete Manual

BBS-4 Culvert Design Manual

BBS-5 Sign Structure Manual

BBS-6 Illinois Highway Drainage Policy

BBS-7 Drainage Manual

Structural Services Manual

(4) Environmental

Policy on the Design & Environment Manual

BDE Manual Part III

LEN-3 Policy on Borrow/Use Areas

LEN-4 Policy on Traffic Noise & Vibration Manual

LEN-5 Policy on Preservation of Archaeological & Other Objects of
Antiquity

- LEN-6 Policy on Socio-Economic Impact Assessment Manual
- LEN-7 Policy on Ecological & Natural Resources Manual
- LEN-8 Policy on Air Quality Manual
- LEN-9 Policy on Water Quality Manual
- LEN-10 Processing Access Control Revisions for Freeways on the State Highway System
- LEN-11 Contacting the Corps of Engineers for Dredging, Filling, & Other Work in Water in the U.S.
- LEN-12 Coordination of Environmental Resource Surveys & Studies
- LEN-13 Policy on Identifying & Responding to Hazardous Substances, Hazardous Waste & Special Wastes in Highway Project Development
- LEN-14 Policy on Removal and Replacement of Trees

(5) Highway Construction

- DES-6 Standard Specifications For Road & Bridge Construction
- DES-7 Highway Standards
- DES-10 Coded Pay Items Book
- DES-13 Computer Aided Drafting

CON-1 Construction Manual

- TRA-1 Traffic Control through Construction and Maintenance Work Zones
- TRA-11 Standard Specification for Road and Bridge Construction
- TRA-10 Illinois Manual of Uniform Traffic Control Devices

LAC-1 Land Acquisition Policies and Procedures

- MAT-5 Manual of Instructions for Bituminous Proportioning and Testing
- MAT-6 Manual for Aggregate Inspection
- MAT-8 Manual of Instructions for Concrete Proportioning and Testing
- MAT-10 Highway Subgrade Stability Manual
- MAT-13 Manual of Test Procedures for Material
Policy on the Accommodation of Utilities on Right of Way of the State Highway System

(6) Other Directives current at the time of the AGREEMENT and made available to the CONSULTANT.

c) FHWA'S PUBLICATIONS - All applicable portions of the Federal-Aid Policy Guide including:

- (1) Chapter I, Subchapter H, Part 771 (Right-of-Way and Environment) Environmental Impact and Related Procedures.
- (2) Chapter I, Subchapter H, Part 772 (Right-of-Way and Environment) Procedures for Abatement of Highway Traffic Noise and Construction Noise.
- (3) Chapter I, Subchapter H, Parts 710, 712, 740 (Right-of-Way and Environment) Right-of-Way General, The Acquisition Function, Relocation Assistance.
- (4) Chapter I, Subchapter B, Part 172 (Payment Procedures) Administration of Engineering and Design Related Service Contracts.

- (5) Chapter I, Subchapter G, Part 625 (Engineering and Traffic Operations) Design Standards for Highways.
- (6) Chapter I, Subchapter G, Part 630, Subpart B (Engineering and Traffic Operations) Plans, Specifications, and Estimates.
- (7) Chapter I, Subchapter G, Part 650 (Engineering and Traffic Operations) Bridges, Structures, and Hydraulics.
- (8) Chapter I, Subchapter G, Part 650, Subpart A (Engineering and Traffic Operations) Location and Hydraulic Design of Encroachments on Flood Plains.

d) OTHER PUBLICATIONS

- (1) The AASHTO Standards, Policies and Guides and other Standards listed in FAGP, Transmittal 1, Chapter 1, Subchapter G, Part 625.
- (2) Reference Guide Outline, Specifications for Aerial Surveys and Mapping by Photogrammetric Methods for Highways, prepared by the American Society of Photogrammetry.

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 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 authorization by the BUREAU CHIEF.

2.30 CADD FILES

MicroStation TM by Bentley Systems, Incorporated is the DEPARTMENT'S standard software for Computer Aided Drafting and Design (CADD). It is required that all files be in MicroStation format when delivered with contracted CONSULTANT files. All files received are required to function in the MicroStation environment without need for post-processing or any adjustments. Any supporting resource files or libraries shall be noted and provided with the submission of CADD documents. Refer to the IDOT Internet web site (<http://www.dot.state.il.us>) and the PROFESSIONAL TRANSPORTATION BULLETIN for the current software and file versions to use for documents.

Geopak TM software by GEOPAK Corporation is the DEPARTMENT'S required standard for automated roadway design.

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

2.41 FELONS.

Section 50-10 of the Illinois Procurement Code provides that unless otherwise provided, no person or business convicted of a felony shall do business with the State of Illinois or any state agency from the date of conviction until 5 years after the date of completion of the sentence for that felony, unless no person held responsible by a prosecutorial office for the facts upon which the conviction was based continues to have any involvement with the business. The CONSULTANT certifies that the award and/or execution of this CONTRACT would not cause any violation of Section 50-10 of the Code.

2.42 CONFLICTS OF INTEREST.

Section 50-13 of the Illinois Procurement Code provides that: (a) 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; (b) that 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) that 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.

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.

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 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.

The CONSULTANT certifies that the award and/or execution of this CONTRACT would not cause any violation of Section 50-13 of the Code, or that an effective exemption has been issued by the Board of Ethics to any individual subject to the Section 50-13 prohibitions pursuant to the provisions of Section 50-20 of the Code and Executive Order Number 3 (1998). Information concerning the exemption process is available from the DEPARTMENT upon request.

2.43 NEGOTIATIONS.

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.

2.44 INDUCEMENTS.

Section 50-25 of the Illinois Procurement Code provides that 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 that the award and/or execution of this CONTRACT would not cause any violation of Section 50-25 of the Code, and that the CONSULTANT has no knowledge of any facts relevant to the kind of acts prohibited by Section 50-25.

2.45 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 that the award and/or execution of this CONTRACT would not cause any violation of Section 50-30 of the Code, and that CONSULTANT has no knowledge of any facts relevant to the kinds of acts prohibited therein.

2.46 DISCLOSURE.

Section 50-35 of the Illinois Procurement Code provides that all offers of more than \$10,000 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 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.

2.47 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 that 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.

2.48 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 that 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.

2.49 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 that 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.

2.50 BRIBERY.

Section 50-5 of the Illinois Procurement Code provides that: (a) no person or business shall be awarded a contract or subcontract under this Code who: (1) has been convicted under the laws of Illinois or any other state of bribery or attempting to bribe an officer or employee of the State of Illinois or any other state in that officer's or employee's official capacity; or (2) has made an admission of guilt of that conduct that is a matter of record but has not been prosecuted for that conduct.

No business shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of the business if the employee or agent is no longer employed by the business, and: (1) the business has been finally adjudicated not guilty; or (2) the business demonstrates to the governmental entity with which it seeks to contract, and that entity finds that the commission of the offense was not authorized, requested, commanded, or performed by a director, officer, or high managerial agent on behalf of the business as provided in paragraph (2) of subsection (a) of Section 5-4 of the Criminal Code of 1961.

For purposes of this Section, when an official, agent, or employee of a business committed the bribery or attempted bribery on behalf of the business and in accordance with the direction or authorization of a responsible official of the business, the business shall be chargeable with the conduct.

Every bid submitted to and contract executed by the State shall contain a certification by the CONSULTANT that the CONSULTANT is not barred from being awarded a contract or subcontract under this Section. A CONSULTANT who makes a false statement, material to the certification, commits a Class 3 felony. The CONSULTANT certifies that CONSULTANT is not barred from being awarded a contract under Section 50-5.

2.51 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 that 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 that CONSULTANT is not in default on an educational loan as provided in Section 3 of the Act.

2.52 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 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. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation, and: (1) it has been finally adjudicated not guilty, or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer, or a high managerial agent on behalf of the corporation.

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

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. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty, or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer, or a high managerial agent on behalf of the corporation.

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

2.53 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.

2.54 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 that if awarded a CONTRACT in excess of \$5,000 it will provide a drug free workplace by: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the CONSULTANT'S workplace; specifying the actions that will be taken against employees for violations of such prohibition; and notifying the employee that, as a condition of employment on such CONTRACT, the employee shall abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (b) Establishing a drug free awareness program to inform employees about the dangers of drug abuse in the workplace; the CONSULTANT'S policy of maintaining a drug free workplace; any available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed upon employees for drug violations; (c) Providing a copy of the statement required by subparagraph (a) to each employee engaged in the performance of the CONTRACT and to post the statement in a prominent place in the workplace; (d) Notifying the DEPARTMENT within ten (10) days after receiving notice from an employee or otherwise receiving actual notice of the conviction of an employee for a violation of any criminal drug statute occurring in the workplace; (e) Imposing or requiring, within thirty (30) days after receiving such notice from an employee of a conviction or actual notice of such a conviction, an appropriate personnel action, up to and including termination, or the satisfactory participation in a drug abuse assistance program approved by a federal, state, or local health, law enforcement, or other appropriate agency; (f) Assisting employees in selecting a course of action in the event drug counseling, treatment, and

rehabilitation is required and indicating that a trained referral team is in place; (g) Making a good faith effort to continue to maintain a drug free workplace through implementation of the actions and efforts stated in this certification.

2.55 CERTIFICATION REGARDING LOBBYING.

CONSULTANT certifies compliance with Section 319 of Public Law 101-102 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, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

CONSULTANT further certifies that 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 that CONSULTANT shall require that the language of this certification will be included in all lower tier subcontracts and that all subcontractors, will certify and disclose accordingly.

2.56 CONTROL OF PROPERTY.

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

2.57 COST PRINCIPLES.

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 Title 48, Code of Federal Regulations, Part 31.

2.58 DEBARMENT.

CONSULTANT certifies that 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 that 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 that 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.

The CONSULTANT agrees that 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 that 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 that it is not debarred, suspended, 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 Nonprocurement 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.

2.59 COST ACCOUNTING STANDARDS.

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 that 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.

2.60 DISADVANTAGED BUSINESS ENTERPRISE POLICY

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

2.61 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.

2.62 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.

- 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
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- 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 and/or WORK.

- f) Certificates showing that 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 and/or WORK 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.

2.63 INDEMNIFICATION OTHER THAN PROFESSIONAL SERVICES

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 SERVICE 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.

2.64 NONDISCRIMINATION (CIVIL RIGHTS ACT OF 1964)

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

- a) Compliance with Regulations: The CONSULTANT will comply with the Regulations of the DEPARTMENT of Transportation related to nondiscrimination in Federally-assisted programs of the DEPARTMENT of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this AGREEMENT.

- b) Employment Practices:

(1) The CONSULTANT, in its 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 that

applicants are employed, and that 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 to be provided by the DEPARTMENT setting forth the provisions of their nondiscrimination clause.

- (2) The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The 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 said labor union or workers' representative of the CONSULTANT'S commitments under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.
- (5) The 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 AGREEMENT 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 Government 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) The CONSULTANT will include the provisions of this Section in every subagreement or purchase order that is 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 SUBCONSULTANT or vendor. The CONSULTANT will take such action with respect to any subagreement or purchase order as the DEPARTMENT or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with litigation with a SUBCONSULTANT or vendor as a result of such direction by the Federal

Highway Administration, the 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 their 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 of Transportation, 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 their 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 leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of 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 Highway Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or
 - b. Cancellation, termination or suspension of the AGREEMENT, in whole or in part.

(6) Incorporation of Provisions: The CONSULTANT shall include Section 2.64c(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, that, 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.

2.65 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) That the CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such under utilization.
- b) That, 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 that minorities and women are not under utilized.
- c) That, in all solicitations or advertisements for employees placed by the CONSULTANT or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability or an unfavorable discharge from military service.
- d) That 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 such 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 thereunder.

- e) That 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) That 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) That 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 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.

2.66 TAXES, ROYALTIES AND EXPENSES

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

2.67 RESPONSIBILITY FOR CLAIMS AND LIABILITY - PROPERTY DAMAGES

- a) 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.

2.68 TERMINATION AND ABANDONMENT

- a) If the DEPARTMENT is dissatisfied with the CONSULTANT'S performance, or believes that 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:
 - a. To be paid in the above-described manner.
 - b. 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.
- c) 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 2.21d. 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.
- d) The AGREEMENT will be terminated if:
 - (1) 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.
 - (2) The CONSULTANT completes a PHASE, stage or part of the SERVICES, and any remaining PHASE, stage or part of the SERVICES are not authorized within three (3) years after the date of the AGREEMENT or any subsequent SUPPLEMENTAL AGREEMENT.

2.69 SETTLEMENT OF CONSULTANT CLAIMS

- a) In any case where the CONSULTANT deems that ADDITIONAL COMPENSATION will be due them for SERVICES or materials not covered in the AGREEMENT nor ordered in writing by the DEPARTMENT, the CONSULTANT shall notify the DEPARTMENT in writing before they begin the additional SERVICES for which they proposes to base the claim. If such notification is not previously given or claimed costs are not clearly identified and separated in their accounting records, the CONSULTANT agrees to waive the claim for such ADDITIONAL COMPENSATION. However, such notice or accounting by the CONSULTANT shall not in any way be construed as proving the validity of their 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.
- c) The titles and captions to all sections of these STANDARD PROVISIONS are intended for convenience of reference only, and shall not be construed as having any pertinence to the interpretation of the content of the sections which they introduce.

2.70 OWNERSHIP OF DOCUMENTS

The CONSULTANT agrees that all 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 files, related electronic files and specifications furnished by the CONSULTANT pursuant to the AGREEMENT are instruments of its WORK in respect of the SERVICES. They may not be suitable for reuse on extensions of the WORK, or on any other WORK. 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.

2.71 RETENTION OF RECORDS

In compliance with Illinois Public Act 87-991(30 ILCS 550/6a-3-1), every agreement for goods or SERVICES shall provide that the CONSULTANT shall maintain certain records and documents.

The CONSULTANT shall maintain, for a minimum of 5 years after the completion of the CONTRACT, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the CONTRACT; the CONTRACT and all books, records, and supporting documents related to the CONTRACT shall be available for review and audit by the Auditor General and other State Auditors; and the CONSULTANT agrees to cooperate fully with any audit conducted by the Auditor General and other State Auditors, 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 presumption in favor of the STATE for the recovery of any funds paid by the STATE under the CONTRACT for which adequate books, records and supporting documentation are not available to support their purported disbursement.

2.8 **METHODS OF PAYMENT**

2.80 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) Variable Lump Sum - Uses a provisional overhead rate, until final audit.

- (3) 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.
- (4) Cost Plus a FIXED FEE - ACTUAL COSTS are reimbursable to the CONSULTANT as defined in Section 2.86 of the STANDARD PROVISIONS, plus a FIXED FEE. The FIXED FEE is determined by $.145 [(1 + \text{Actual Overhead} + R) \text{Direct Labor} + \text{Direct Cost}]$. This Upper Limit of COMPENSATION cannot exceed the Total AGREEMENT Amount; where R is the Complexity Factor which is 0.0, 0.035, or 0.07 depending on the complexity of the project.
- (5) Direct Labor Multiple – This method contains separate upper limits. The first is established by multiplying direct labor by $3+R$ (R being the complexity factor). The second is direct costs. Neither upper limit may be exceeded. The multiple for construction engineering PROJECTS is $2.8+R$; where R is the Complexity Factor which is 0.0, 0.003, or 0.008 depending on the complexity of the project.
- (6) 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.

2.81 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 that the reported percentage of completion of the SERVICES are reasonable. Payment will be made in the amount of sums earned less previous partial payments and less retainage.
- b) The maximum retainage shall not exceed 1 percent of the Total AGREEMENT Amount up to a maximum retainage amount of \$18,000. The retainage shall be 1 percent of the sums earned up to the maximum retainage, and then held at that dollar amount until all of the SERVICES are accepted, and then reduced to zero. If the DEPARTMENT chooses to delay acceptance of the SERVICES due to no fault of the CONSULTANT or if a small part of the SERVICES must be delayed appreciably (such as right-of-way staking or checking of structural shop drawings), the DEPARTMENT may elect to reduce the retainage to zero. For PROJECTS, which

are to be audited, the CONSULTANT agrees that it will pay the DEPARTMENT all monies as required by the audit.

- c) If the method of payment is Variable Lump Sum or Lump Sum, the sums earned shall be computed by multiplying the sum (or estimated total) amount by the percentage of completion shown on the PROGRESS REPORT and approved by the DEPARTMENT. Estimated amounts may be adjusted by mutual agreement between the contracting parties to reflect significant developments.
- d) 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 2.86) 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 elapsed time to the total period of the construction CONTRACT. Reimbursable salary costs shall be computed as Direct Salary Costs (see Section 2.86(b) hereof), plus the agreed percentage of fringe benefits shown in the AGREEMENT, plus the premium portion of overtime wages. Indirect costs shall be computed as the percentage of Direct Payroll shown in the AGREEMENT. The percentages shown in the AGREEMENT are provisional and may be adjusted from time to time by mutual AGREEMENT between the contracting parties to more accurately estimate these costs.
- e) If the method of payment is a Direct Labor Multiple, the total amount of any partial COMPENSATION shall not exceed the total AGREEMENT amount multiplied by the approved percentage of completion of the SERVICES.
- f) If the method of payment is Specific Rates, the sums earned shall be computed on the basis of time records certified by the CONSULTANT.
- g) 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.

2.82 FINAL PAYMENT

- a) The CONSULTANT shall submit an affidavit with their final invoice, stating that 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.
- c) If the method of payment is a Variable Lump Sum, 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 overhead and fringe benefit rate for Variable Lump Sum is subjected to adjustment upon completion of the audit. 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 or a Direct Labor Multiple, 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 adjustments of the Efficiency Factor (See Section 2.83) and the final audit. The final evaluation will be used to compensate the CONSULTANT for their performance (See Section 2.84) over and above the Total AGREEMENT Amount.

2.83 EFFICIENCY FACTOR

For Direct Labor Multiple CONTRACTS, after the final invoice is submitted and approved, if the actual direct labor costs times the multiple is less than the estimated direct labor costs times the multiple, the CONSULTANT may submit an invoice for 50% of the difference. This efficiency factor does not apply to QA/QC costs, PHASE III cost in PHASE II or TASK ORDER CONTRACTS.

For Actual Cost FIXED FEE CONTRACTS, after the final bill is submitted and approved, if the actual direct labor cost plus the provisional overhead cost is less than the estimated direct labor cost plus the provisional overhead cost, the CONSULTANT may submit an invoice for 50% of the difference. This efficiency factor does not apply to QA/QC labor cost, PHASE III labor cost in PHASE II or TASK ORDER CONTRACTS.

2.84 PAY FOR PERFORMANCE

The DEPARTMENT will evaluate the CONSULTANT during the duration of the PROJECT and upon completion of the PROJECT issue a final evaluation. This final evaluation will be used to compensate the CONSULTANT for their performance. The amount will vary depending on this final evaluation.

<u>Final Evaluation</u>	<u>% *</u>
Excellent	5
Good	3
Satisfactory	0
Substandard	-5
Poor	-10

The % is applied to 1 X negotiated direct labor and/or calculated unit price labor (including all SUPPLEMENTAL AGREEMENTS). The % does not apply to PHASE III labor cost included in PHASE II CONTRACTS.

After receipt of the final evaluation, the CONSULTANT has 30 CALENDAR DAYS in which to appeal a substandard or poor evaluation according to DEPARTMENT policy. The appeal must be submitted in writing to the DEPARTMENT entity that prepared the final evaluation.

2.85 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 or Direct Labor Multiple, 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 that the cost estimate is reasonable and that 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 SERVICE and WORK at a logical point when monies due the CONSULTANT are within the UPPER LIMIT OF COMPENSATION, or
 - (2) Continue SERVICES under the terms of the AGREEMENT up to an adjusted Upper Limit of COMPENSATION as authorized in writing by the DEPARTMENT. The CONSULTANT waives their right to any payment in excess of the original UPPER LIMIT OF COMPENSATION if an estimate of overrun has not been submitted and received written authorization prior to incurring the excess costs.

2.86 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 that 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:
 - a. Wages paid or accrued for vacation time.
 - b. Wages paid for holidays and for sick, military, jury and other authorized leave.
 - c. Group and Workmen's Compensation Insurance costs.
 - d. Bonus, incentive compensation or deferred compensation which is an established practice of the firm and which does not exceed the DEPARTMENT'S policy limiting these costs to what it considers "reasonable" in accordance with the Federal Acquisition Regulations.
 - e. Social Security and Unemployment taxes.
 - f. Pension or retirement benefits.
 - g. 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 that the cost is not also included in indirect salary costs. The maximum amount of the principal's and employee's salary, which the DEPARTMENT will reimburse either directly or indirectly, shall be as determined by the DEPARTMENT'S policy as to what is considered "reasonable" in accordance with Federal Acquisition Regulations. If principals 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.

The maximum total compensation for partners, principals and employees is \$60.00 per hour (\$124,800 annually) that may be charged directly to the CONTRACT. COMPENSATION that may be charged indirectly to the overhead is subject to the cost criteria of the Federal Acquisition Regulations less direct compensation.

- (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 productive payroll 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 Non-Salary Costs are actual and reasonable non-salary costs incurred specifically in fulfilling the terms of the AGREEMENT, such as:
- (1) Travel, food and lodging, including automotive equipment rentals, fuel, maintenance, tolls, mileage or per diem paid by the CONSULTANT for personal expenses of only their own employees in accordance with their normal company policy, but excluding such costs outside Illinois, unless specifically authorized in writing by the DEPARTMENT.
 - (2) Communications, including telephone, facsimile, telegraph, postage, parcel post, airfreight and package express.
 - (3) Reproductions including photographs, prints and offset work.
 - (4) Outside professional SERVICE and laboratory charges, including those for surveys, photogrammetry, soils investigations and tests and other charges for engineers, surveyors, lawyers, sociologists, economists, model makers, architects, scientists and other specialists. These charges must be authorized in advance by the DEPARTMENT to be reimbursable (see Section 2.24).
 - (5) Electronic computer charges including those for computers and related equipment operated by the CONSULTANT and those for outside computer SERVICES. Rates for computers and related equipment operated by the CONSULTANT shall be in accordance with established rates charged to outside clients for similar SERVICES, except that such rates shall be billed at cost (no profit) since the CONSULTANT'S profit is covered in the FIXED FEE. If the

CONSULTANT uses an outside computer SERVICE, their net charges shall be used in the CONSULTANT'S billing.

- (6) Special equipment if authorized in writing by the DEPARTMENT and materials required for and used solely in the fulfillment of the AGREEMENT. The CONSULTANT shall deliver all such equipment and material to the DEPARTMENT upon completion of the SERVICES.
 - (7) Special insurance for the PROJECT if requested in writing by the DEPARTMENT.
 - (8) Rental charges for equipment owned by the CONSULTANT at their established rates, reduced by the portion of the rate which is profit and less any portion charged elsewhere to the indirect costs.
- d) 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 such as uncollectible charges, advertising, amusement, entertainment, contributions, donations, interest on borrowed money, and the like. 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.
- e) Indirect salary costs are the actual wages paid to all employees of the CONSULTANT for SERVICES not directly chargeable to individual clients plus the same related costs as previously outlined in direct salary costs if not included in the direct cost, such as:
- (1) Wages paid for preparation of proposals.
 - (2) Severance wages paid to employees.
 - (3) Wages paid for negotiating (not promoting) new business.
 - (4) Research and development wages. This cost is primarily the salaries of the CONSULTANT'S personnel in the development of new computer programs and labor saving devices. Eligible costs will be as defined in subpart 31.205-18 of the Federal Acquisition Regulations.
 - (5) Training and education wages. This cost consists of salaries paid employees while attending classes at accredited colleges or universities for post graduate work in subjects related to the CONSULTANT'S practice. Also included in this category is attendance at meetings and seminars conducted by both recognized technical/professional organizations and in-house personnel.
 - (6) General office administration and supervisory salaries.
 - (7) Salaries in connection with the recruitment of employees.
 - (8) Salaries paid to furnish access to or copies of records as required in Section 2.70 of these STANDARD PROVISIONS, if not reimbursed by the client.
 - (9) Salaries of principals for time actively engaged in the preparation of proposals and preagreement negotiation (not promotion) of new business.

- f) Indirect non-salary costs are all non-salary costs of the CONSULTANT'S business operations eligible for COMPENSATION (Section 2.86(c)) not directly chargeable to individual clients, such as:
- (1) Travel, food and lodging (see direct non-salary costs).
 - (2) Communications, including telephone, telegraph, postage, parcel post, etc.
 - (3) Reproduction costs, including blueprinting, photography, photostats, etc.
 - (4) Computer costs in connection with research and development, bookkeeping, new business negotiation and the preparation of proposals. These charges shall be made in the same manner as outlined under direct non-salary costs, (Section 2.86c(5)). Eligible research and development costs will be as defined in subpart 31.205-18 of the Federal Acquisition Regulations.
 - (5) Professional Service Cost. This includes costs of professional services rendered by members of a particular profession such as legal and accounting, which are necessary to the proper operation of the business, but whom are not members of the CONSULTANT'S staff.
 - (6) Sundry taxes levied by Federal, State and Local agencies exclusive of Federal Income Tax.
 - (7) Premiums of all business insurance, other than those included in direct costs to clients.
 - (8) Office supplies.
 - (9) Rent, heat, power, light and janitorial services.
 - (10) Licenses and dues in technical and professional organizations.
 - (11) Maintenance and repair of office equipment.
 - (12) Rentals of equipment (see Direct Non-Salary Costs).
 - (13) Costs of meetings, conferences and in-house training.
 - (14) Library expense, including technical books, magazines, journals and supplies in connection with education and training.
 - (15) Cost of duplicating records as required by Section 2.70 of these Standard Provisions.
 - (16) Relocation costs for employees.
 - (17) Depreciation.
 - (18) Recruiting expense including advertising agency fees and travel and subsistence incidental thereto.
 - (19) Life insurance premiums in lieu of additional compensation for key employees and principals, provided the beneficiary is the employee's estate or their relative

and is not the CONSULTANT or another key employee or principal of the CONSULTANT.

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