

**STANDARD AGREEMENT
PROVISIONS FOR
LAND ACQUISITION SERVICES**

April 12, 2012

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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 ONE: 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 AGREEMENT

The legal instrument or negotiated CONTRACT defining the obligations and considerations of the signatory parties. The term "AGREEMENT" (also known as contract) includes all addendums.

1.02 APPROVING PARTY

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

1.03 AUTHORITY TO PROCEED

The initial written authorization from the DEPARTMENT to the CONSULTANT to proceed with the SERVICES.

1.04 BUREAU CHIEF

The DEPARTMENT'S officer named in the AGREEMENT who must approve any CHANGE or additional SERVICES Authorization.

1.05 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 addendum.

1.06 COMPENSATION

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

1.07 CONSTRUCTION PLAN REVIEW

Review of construction plans provided to the CONSULTANT by the DEPARTMENT to identify possible problems or conflicts between the plans and the right of way plats and/or plans. The PROJECT MANAGER will provide written notice of any problems or conflicts to the district land acquisition engineer/manager.

1.08 CONSULTANT

The individual or firm providing land acquisition SERVICES as a party to the AGREEMENT.

1.09 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 (Also known as AGREEMENT).

1.10 CRITICAL MILESTONE

Target dates set up in the WORK ORDERS for the completion of major work items such as appraisals, appraisal reviews, wavier valuations, offer letters, relocation plans or addendums, replacement housing computations, 60-day letters, condemnation referral packages, parcels signed, parcels cleared, parcels completed, title work and warrants requested.

1.11 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.

1.12 DEPARTMENT

The Department of Transportation of the State of Illinois.

1.13 DIRECTOR

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

1.14 ERROR

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

1.15 FHWA

The Federal Highway Administration of the United States Department of Transportation (DOT). FAPG is Federal-Aid Policy Guide.

1.16 FIXED FEE

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

1.17 KEY PERSONNEL

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

1.18 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.

1.19 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.

1.20 PROGRESS REPORT

A written report to the district land acquisition engineer/manager indicating the status of the critical milestones set up in the WORK ORDERS. The schedule for submittal of the report will be determined in the WORK ORDERS.

1.21 PROJECT

The proposed development which is the subject of the SERVICES stipulated in the AGREEMENT.

1.22 PROJECT KICKOFF MEETING

Meeting to be held at the district office for the purposes of introductions of the DEPARTMENT and CONSULTANT staffs and SUBCONSULTANTS, discussion of the scope and schedule of the project, and to answer questions of any of the parties.

1.23 PROJECT MANAGER

The duly authorized representatives of the DEPARTMENT and the CONSULTANT charged with the day-to-day administration of the terms of the AGREEMENT.

1.24 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.

1.25 PROJECT STATUS MEETING

Meeting between the PROJECT MANAGER and district land acquisition personnel to discuss status of project in general and including any specific issues affecting the CONSULTANT'S ability to meet the milestones.

1.26 PROJECT TIME LINE

A timeline provided by the PROJECT MANAGER of all acquisition activities required to meet the project's given deadline including the critical milestones dates and the names of the staff and SUBCONSULTANTS that will be used.

1.27 PROPOSAL/IFB

The CONSULTANT'S written communication expressing their desire to be considered for selection of SERVICES advertised in the TRANSPORTATION PROCUREMENT BULLETIN.

1.28 QUALITY ASSURANCE

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

1.29 QUALITY CONTROL

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

1.30 RECORD DOCUMENTS

The documents, signed and/or 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.

1.31 REGIONAL ENGINEER

The Individual of the DEPARTMENT who has jurisdiction over the SERVICES of a State's District.

1.32 SCOPE OF SERVICES

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

1.33 SERVICES

SERVICES provided by a CONSULTANT or on their behalf in the performance of studies, surveys, assessments, evaluations, consultations, inspections, scheduling, sequencing, training, appraisals, review appraisals, negotiation documents, associated title work, relocation documents, and/or land surveys.

1.34 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.

1.35 SUBCONSULTANT

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

1.36 TOTAL AGREEMENT AMOUNT

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

1.37 TRANSPORTATION PROCUREMENT BULLETIN

The official Notice of the DEPARTMENT'S need for land acquisition services.

1.38 UPPER LIMIT OF COMPENSATION

The total COMPENSATION in Actual Cost and Direct Labor Multiple AGREEMENTS which cannot be exceeded without revising the AGREEMENT.

1.39 WORK 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 TWO: PERSONNEL REQUIREMENTS

2.01 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.

2.02 ENDORSEMENT OF DOCUMENTS

The CONSULTANT will endorse all final draft reports, plans, right-of-way plats, appraisals, title documents, and relocation documents. 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.

2.03 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 a license or registration, and further shall employ only well qualified persons in responsible charge of any elements of the SERVICES, all subject to DEPARTMENT's 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. 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. The CONSULTANT'S failure to comply with this section may result in termination of the AGREEMENT and/or loss of ability to do work with the DEPARTMENT.

2.04 QUALITY ASSURANCE AND QUALITY CONTROL (QA/QC) PLAN

The CONSULTANT'S QUALITY ASSURANCE and QUALITY CONTROL (QA/QC) shall consist of planned and systematic procedures to provide with adequate confidence that the land acquisition process is followed according to policy and law with a system for maintaining desired standards of the product.

2.05 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.

2.06 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 this 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.

2.07 COVENANT OF INTEREST

The CONSULTANT covenants that CONSULTANT has no public or private interest and shall not acquire directly or indirectly any such interest which would conflict in any manner with the performance of its SERVICES under the AGREEMENT.

2.08 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.

SECTION THREE: SERVICE REQUIREMENTS

3.01 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.

3.02 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) CONSULTANTS are responsible for the faithful performance of the CONTRACT and shall have internal monitoring procedures and processes as set forth in their proposed work plan to ensure compliance.

The DEPARTMENT reserves the right to monitor and track CONSULTANT'S performance over the course of the CONTRACT. The information gathered may be used in administration of the CONTRACT, and may be used when evaluating the CONSULTANT in future procurements.

In appropriate circumstances, the DEPARTMENT and the CONSULTANT will work together to develop a performance evaluation with conditions, milestones, requirements, or timetables that must be met before additional steps may be taken, or payment is due.

The CONSULTANT shall cooperate with the DEPARTMENT in this monitoring and tracking activity, which may require that CONSULTANT report progress and problems (with proposed resolutions), provide records of its performance, allow random inspections of its facilities, participate in scheduled meetings and provide management reports as requested by the DEPARTMENT.

- c) The CONSULTANT may be required to meet with DEPARTMENT staff to discuss the progress of SERVICES accomplished to date and the proposed direction the study will take during 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 twelve months after this specified completion date.

The request for an adjustment must be made in writing after the twelve 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.

3.03 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; including attendance at meetings, discussions and hearings as requested by the DEPARTMENT. The FHWA shall have access to all information on the SERVICES and be furnished information as their interests may require.

3.04 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.

3.05 RIGHT TO ENTER

In accordance with DEPARTMENT practices, the CONSULTANT will notify all property owners of intent to enter for land acquisition services 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.

3.06 SUBLETTING, ASSIGNMENT OR TRANSFER

- a) Neither this AGREEMENT nor any portion of the SERVICES under this 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 its primary responsibility for the performance and accuracy of the SERVICES.
- b) SUBCONSULTANTS must be approved in accordance with the DEPARTMENT requirements. For specialized SERVICES that are required but which do not fall into the areas of approval of the DEPARTMENT, a firm not approved may be used with DEPARTMENT'S 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 its 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.

3.07 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 DEPARTMENT deems appropriate.

3.08 PUBLIC UTILITIES

- a) The CONSULTANT shall make no commitments binding upon the DEPARTMENT.
- b) The DEPARTMENT will conduct all negotiations with utilities and railroads. The CONSULTANT will participate in such negotiations when requested by the DEPARTMENT. These provisions do not apply to construction engineering SERVICES 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.

3.09 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 apply appropriate care to the performance of the professional SERVICES and the preparation of all SERVICE products called for in this AGREEMENT. The CONSULTANT shall be governed by that degree of care, knowledge, skill, and diligence that other reputable members of the profession would ordinarily exercise under like circumstances within the State of Illinois.
- c) Acceptance of the SERVICES will not relieve the CONSULTANT of the responsibility for subsequent correction or of his/her liability for loss or damage resulting therefrom. In the event any dispute 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.

3.10 INSURANCE OTHER THAN PROFESSIONAL LIABILITY

CONSULTANT shall, at all times during the term and any renewals, maintain and provide a Certificate of Insurance naming the State as additional insured for all required bonds and insurance. Certificates may not be modified or canceled until at least 30 days notice has been provided to the State. CONSULTANT shall provide: (a) General

Commercial Liability-occurrence form in amount of \$1,000,000 per occurrence (Combined Single Limit Bodily Injury and Property Damage) and \$2,000,000 Annual Aggregate; (b) Auto Liability, including Hired Auto and Non-owned Auto, (Combined Single Limit Bodily Injury and Property Damage) in amount of \$1,000,000 per occurrence; and (c) Worker's Compensation Insurance in amount required by law. Insurance shall not limit CONSULTANT'S obligation to indemnify, defend, or settle any claims.

3.11 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.

3.12 RESPONSIBILITY FOR CLAIMS AND LIABILITY - PROPERTY DAMAGES

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.

3.13 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.

3.14 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) Land Acquisition Policies and Procedures Manual
 - 2) Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

3.15 TAXES, ROYALTIES AND EXPENSES

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

3.16 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 3.09.

3.17 REVISIONS TO SERVICES

- 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 DEPARTMENT.

3.18 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:
 - i. To be paid in the above-described manner.
 - ii. To be paid their actual identifiable costs properly allocable to the DEPARTMENT for SERVICES done under the terms of the AGREEMENT, including a reasonable proportion of the profit on the completed part of the SERVICES and AGREEMENT closing costs.
 - iii. Termination notice at least 15 days in advance of the effective date of termination may also be given in writing by the CONSULTANT if completion of the SERVICES is delayed to the extent and for the reasons stated in Section 3.02d. 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.
- c) 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.

SECTION FOUR: RECORDS AND DOCUMENTS

4.01 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 postprocessing 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 TRANSPORTATION PROCUREMENT 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.

4.02 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.

4.03 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.

SECTION FIVE: LEGAL OBLIGATIONS

5.01 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.

5.02 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; 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.

5.03 NEGOTIATIONS

Section 50-15 of the Illinois Procurement Code provides, in pertinent part that: 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.

5.04 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.

5.05 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.

5.06 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.

5.07 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.

5.08 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.

5.09 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.

5.10 BID RIGGING/BID ROTATING

Section 33E-11 of the Criminal Code of 1961 provides: that every bid submitted to and public contract executed pursuant to such bid by the State or a unit of local government shall contain a certification by the prime CONSULTANT that the prime CONSULTANT is not barred from contracting with any unit of State or local government as a result of a violation of either Section 33E-3 or 33E-4 of the Code. The state and units of local government shall provide appropriate forms for such certification. A CONSULTANT who makes a false statement, material to the certification, commits a Class 3 felony.

A violation of Section 33E-3 would be represented by a conviction of the crime of bidrigging 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 bidrotating 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.

5.11 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.

5.12 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.

5.13 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.

5.14 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.

5.15 AMENDMENTS:

The CONTRACT may be amended in writing from time to time by mutual consent of the parties. All amendments to the CONTRACT must be in writing and fully executed by the parties.

5.16 COST PRINCIPLES

The CONSULTANT shall be responsible for utilizing the appropriate provisions contained in Title 48, Code of Federal Regulations, subpart 31, as amended (Contract Cost Principles and Procedures) with respect to all costs associated with supplies and/or services the CONSULTANT provides to the DEPARTMENT pursuant to the terms of this CONTRACT. The CONSULTANT shall also maintain a proper accounting system in accordance with generally accepted accounting standards or DEPARTMENT directives. Information regarding the cost principles in Title 48, Code of Federal Regulations, subpart 31 (Contract Cost Principles and Procedures) may be viewed at the following website: http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/31.htm#PO_0

5.17 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.

5.18 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 26, 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:
 - i. Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or
 - ii. Cancellation, termination or suspension of the AGREEMENT, in whole or in part.
- 6) Incorporation of Provisions: The CONSULTANT shall include Section 2.64c(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.

5.19 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 underutilized.
- 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.

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.

5.20 BACKGROUND CHECK

Whenever the State deems it reasonably necessary for security reasons, the State may conduct, at its expense, criminal and driver history background checks of CONSULTANTS and SUBCONSULTANTS officers, employees or agents. CONSULTANT or SUBCONSULTANT shall reassign immediately any such individual who, in the opinion of the State, does not pass the background checks.

SECTION SIX: METHODS OF PAYMENT

6.01 PAYMENT METHODS

One or more of the following methods of COMPENSATION for LAND ACQUISITION SERVICES have been specified where applicable in the AGREEMENT.

- a) UNIT PRICE: Payment (rate) per item or unit including profit. Partial payments can be based on a completed amount subject to the total AGREEMENT amount for the CONSULTANT.
- b) SPECIFIC HOURLY RATE plus FIXED FEE: Payment for actual hours worked at the rates for each item (henceforth known as SHR) plus Fixed Fee; where Fixed Fee is 14½ % of the negotiated SHR. Item Rates are submitted by the firm in the proposal, negotiated with the DEPARTMENT and listed in the contract.

All rates include Direct Salary Costs, Indirect Salary Costs, Indirect Non-Salary Costs, Direct Non-Salary Costs, Related Travel, Subsistence and other costs. The TOTAL AGREEMENT AMOUNT to the CONSULTANT cannot be exceeded.