**SPONSOR: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**LOCATION: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**PROJECT: ­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

[**DRAFTER’S NOTE** – **Delete DRAFTER’S NOTE prior to contract execution**

Verify that the project number and location are correct for the contract

*THIS CONTRACT* is between *(Organization Name),* Missouri, hereinafter referred to as the "Local Agency", and *(name and address of consulting firm),* hereinafter referred to as the "Engineer".

*INASMUCH* as funds have been made available by the Federal Highway Administration through its *(Indicate Appropriate Federal Program)*, coordinated through the Missouri Department of Transportation, the Local Agency intends to *(specify improvement)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* and requires professional engineering services. The Engineer will provide the Local Agency with professional services hereinafter detailed for the planning, design and construction inspection of the desired improvements and the Local Agency will pay the Engineer as provided in this contract. It is mutually agreed as follows:

[**DRAFTER’S NOTE** – **Delete DRAFTER’S NOTE prior to contract execution**

Develop the Scope of Services for project.

**ARTICLE I – SCOPE OF SERVICES**

**Insert or refer to Attachment A for the Scope of Service specific to this project. The Scope of Service should include PE and/or CE professional services**

**ARTICLE II - DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS:**

**[DRAFTER’S NOTE** – **Delete DRAFTER’S NOTE prior to contract execution**

Insert the DBE Goal and DBE firm(s) information]

A DBE Goal: The following DBE goal has been established for this Agreement. The dollar value of services and related equipment, supplies, and materials used in furtherance thereof which is credited toward this goal will be based on the amount actually paid to DBE firms. The goal for the percentage of services to be awarded to DBE firms is  *%* of the total Agreement dollar value.

B. DBE Participation Obtained by Consultant: The Consultant has obtained DBE participation, and agrees to use DBE firms to complete,  *%* of the total services to be performed under this Agreement, by dollar value. The DBE firms which the Consultant shall use, and the type and dollar value of the services each DBE will perform, is as follows:

DBE FIRM PERCENTAGE

NAME, CONTRACT OF

STREET AND TOTAL $ $ AMOUNT SUBCONTRACT

COMPLETE TYPE OF VALUE OF TO APPLY DOLLAR VALUE

MAILING DBE THE DBE TO TOTAL APPLICABLE TO

ADDRESS SERVICE SUBCONTRACT DBE GOAL TOTAL GOAL

**ARTICLE III-ADDITIONAL SERVICES**

The Local Agency reserves the right to request additional work, and changed or unforeseen conditions may require changes and work beyond the scope of this contract. In this event, a supplement to this agreement shall be executed and submitted for the approval of MoDOT prior to performing the additional or changed work or incurring any additional cost thereof. Any change in compensation will be covered in the supplement.

**ARTICLE IV - RESPONSIBILITIES OF LOCAL AGENCY**

The Local Agency will cooperate fully with the Engineer in the development of the project, including the following:

A. make available all information pertaining to the project which may be in the possession of the Local Agency;

B. provide the Engineer with the Local Agency's requirements for the project;

C. make provisions for the Engineer to enter upon property at the project site for the performance of his duties;

D. examine all studies and layouts developed by the Engineer, obtain reviews by MoDOT, and render decisions thereon in a prompt manner so as not to delay the Engineer;

E. designate a Local Agency's employee to act as Local Agency's Person in Responsible Charge under this contract, such person shall have authority to transmit instructions, interpret the Local Agency's policies and render decisions with respect to matters covered by this agreement (see EPG 136.3);

F. perform appraisals and appraisal review, negotiate with property owners and otherwise provide all services in connection with acquiring all right-of-way needed to construct this project.

**ARTICLE V - PERIOD OF SERVICE**

[**DRAFTER’S NOTE: Delete DRAFTER’S NOTE prior to contract execution**

Completion dates shall be in month/day/year – calendar days are not acceptable]

The Engineer will commence work within two weeks after receiving notice to proceed from the Local Agency. The general phases of work will be completed in accordance with the following schedule:

A. PS&E Approval by MODOT shall be completed on (calendar date – not days)

B. Construction Phase shall be completed 60 days after construction final completion schedule.

The Local Agency will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of the Consultant. Requests for extensions of time shall be made in writing by the Consultant, before that phase of work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested.

**ARTICLE VI – STANDARDS**

The Engineer shall be responsible for working with the Local Agency in determining the appropriate design parameters and construction specifications for the project using good engineering judgment based on the specific site conditions, Local Agency needs, and guidance provided in the most current version of EPG 136 LPA Policy. If the project is on the state highway system or is a bridge project, then the latest version of MoDOT’s Engineering Policy Guide (EPG) and Missouri Standard Specifications for Highway Construction shall be used (see EPG 136.7).

**ARTICLE VII - COMPENSATION**

For services provided under this contract, the Local Agency will compensate the Engineer as follows:

A. For design services, including work through the construction contract award stage, the Local Agency will pay the Engineer the actual costs incurred plus a predetermined fixed fee of $\_\_\_\_\_\_\_\_, with a ceiling established for said design services in the amount of

$ \_\_\_\_\_\_\_\_, which amount shall not be exceeded.

[**DRAFTER’S NOTE:** **Delete DRAFTER’S NOTE prior to contract execution**

Does the fixed fee and contract amount match attached cost estimate? Retainage is not allowed]

B. For construction inspection services, the Local Agency will pay the Engineer the

actual costs incurred plus a predetermined fixed fee of $\_\_\_\_\_\_\_\_, with a ceiling

established for said inspection services in the amount of $\_\_\_\_\_\_\_\_, which

amount shall not be exceeded.

[**DRAFTER’S NOTE:** **Delete DRAFTER’S NOTE prior to contract execution**

Does the fixed fee and contract amount match attached cost estimate? Retainage is not allowed]

C. The compensation outlined above has been derived from estimates of cost which are detailed in Attachment B. Any major changes in work, extra work, exceeding of the contract ceiling, or change in the predetermined fixed fee will require a supplement to this contract, as covered in Article III - ADDITIONAL SERVICES.

D. Actual costs in Sections A and B above are defined as:

[**DRAFTER’S NOTE:** **Delete DRAFTER’S NOTE prior to contract execution**

Firm’s must use the MoDOT accepted provisional overhead rates in this section and the rates must be used in the cost estimates]

1. Actual payroll salaries paid to employees for time that they are productively engaged in work covered by this contract, plus

2. An amount estimated at \_\_\_\_% of actual salaries in Item 1 above for payroll additives, including payroll taxes, holiday and vacation pay, sick leave pay, insurance benefits, retirement and incentive pay, plus

3. An amount estimated at \_\_\_\_% of actual salaries in Item 1 above for general administrative overhead, based on the Engineer's system for allocating indirect costs in accordance with sound accounting principles and business practice, plus

4. Other costs directly attributable to the project but not included in the above overhead, such as vehicle mileage, meals and lodging, printing, surveying expendables, and computer time, plus

5. Project costs incurred by others on a subcontract basis, said costs to be passed through the Engineer on the basis of reasonable and actual cost as invoiced by the subcontractors.

E. The rates shown for additives and overhead in Sections VII. D.2 and VII. D.3 above are approximate and will be used for interim billing purposes. Final payment will be based on the actual rates experienced during the period of performance, as indicated by the Engineer's accounting records, and as determined by final audit of the Engineer's records by MoDOT.

F. The payment of costs under this contract will be limited to costs which are allowable under 23 CFR 172 and 48 CFR 31.

G. **METHOD OF PAYMENT** - Partial payments for work satisfactorily completed will be made to the Engineer upon receipt of itemized invoices by the Local Agency. Invoices will be submitted no more frequently than once every two weeks and must be submitted monthly for invoices greater than $10,000. A pro-rated portion of the fixed fee will be paid with each invoice.

H. **PROPERTY ACCOUNTABILITY** - If it becomes necessary to acquire any specialized equipment for the performance of this contract, appropriate credit will be given for any residual value of said equipment after completion of usage of the equipment.

**ARTICLE VIII - COVENANT AGAINST CONTINGENT FEES**

The Engineer warrants that he has not employed or retained any company or person, other than a bona fide employee working for the Engineer, to solicit or secure this agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the Local Agency shall have the right to annul this agreement without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee, plus reasonable attorney's fees.

**ARTICLE IX - SUBLETTING, ASSIGNMENT OR TRANSFER**

No portion of the work covered by this contract, except as provided herein, shall be sublet or transferred without the written consent of the Local Agency. The subletting of the work shall in no way relieve the Engineer of his primary responsibility for the quality and performance of the work. It is the intention of the Engineer to engage subcontractors for the purposes of: *(list sub-consultant(s) and services, such as surveying, foundation borings and tests, abstracts of title, archaeological studies, material testing).*

**Sub-Consultant Name Address Services**

**[DRAFTER’S NOTE:** **Delete DRAFTER’S NOTE prior to contract execution**

Insert all sub-consultants here and obtain the Management Representation and Certification form from the prime and sub-consultants not listed in the Approved Annual Financial Pre-Qualification List. The FHWA Order requires contractor certification of the cost used to establish indirect cost rates in accordance with the applicable cost principles contained in the Federal Acquisition Regulations for engineering and design-related service contracts funded with Federal-aid highway program funding and administered by state departments of transportation, local public agencies, and other grantees. If the firm uses an overhead rate to bill, the Management Representation Certification is required.

**ARTICLE X - PROFESSIONAL ENDORSEMENT**

All plans, specifications and other documents shall be endorsed by the Engineer and shall reflect the name and seal of the Professional Engineer endorsing the work. By signing and sealing the PS&E submittals the Engineer of Record will be representing to MoDOT that the design is meeting the intent of the federal aid programs.

**ARTICLE XI - RETENTION OF RECORDS**

The Engineer shall maintain all records, survey notes, design documents, cost and accounting records, construction records and other records pertaining to this contract and to the project covered by this contract, for a period of not less than three years following final payment by FHWA. Said records shall be made available for inspection by authorized representatives of the Local Agency, MoDOT or the federal government during regular working hours at the Engineer's place of business.

**ARTICLE XII - OWNERSHIP OF DOCUMENTS**

Plans, tracings, maps and specifications prepared under this contract shall be delivered to and become the property of the Local Agency upon termination or completion of work. Basic survey notes, design computations and other data prepared under this contract shall be made available to the Local Agency upon request. All such information produced under this contract shall be available for use by the Local Agency without restriction or limitation on its use. If the Local Agency incorporates any portion of the work into a project other than that for which it was performed, the Local Agency shall save the Engineer harmless from any claims and liabilities resulting from such use.

**ARTICLE XIII - TERMINATION**

The Local Agency may terminate the contract at any time by giving written notice. If the contract is terminated because the project is abandoned or postponed by the Local Agency, the Engineer will be paid for actual expenses incurred up to the date of termination, plus a pro-rated portion of the fixed fee.

If the contract is terminated due to the Engineer's services being unsatisfactory in the judgment of the Local Agency, or if the Engineer fails to prosecute the work with due diligence, the Local Agency may procure completion of the work in such manner as it deems to be in the best interest of the Local Agency. The Engineer will be responsible for any excess cost in addition to that provided for in this contract or any damages the Local Agency may sustain by reason of the termination of this contract due to unsatisfactory performances or prosecution.

**ARTICLE XIV - DECISIONS UNDER THIS CONTRACT**

The Local Agency will determine the acceptability of work performed under this contract, and will decide all questions which may arise concerning the project. The Local Agency's decision shall be final and conclusive.

**ARTICLE XV - SUCCESSORS AND ASSIGNS**

The Local Agency and the Engineer agree that this contract and all contracts entered into under the provisions of this contract shall be binding upon the parties hereto and their successors and assigns.

**ARTICLE XVI - COMPLIANCE WITH LAWS**

The Engineer shall comply with all federal, state, and local laws, ordinances, and regulations applicable to the work, including Title VII of the Civil Rights Act of 1964 and non-discrimination clauses incorporated herein, and shall procure all licenses and permits necessary for the fulfillment of obligations under this contract.

**ARTICLE XVII - RESPONSIBILITY FOR CLAIMS AND LIABILITY**

The Engineer agrees to save harmless the Local Agency, MoDOT and FHWA from all claims and liability due to his negligent acts or the negligent acts of his employees, agents or subcontractors.

**ARTICLE XVIII - NONDISCRIMINATION**

The Engineer, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color or national origin in the selection and retention of subcontractors. The Engineer will comply with Title VII of the Civil Rights Act of 1964, as amended. More specifically, the Engineer will comply with the regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation, as contained in 49 CFR 21 through Appendix H and 23 CFR 710.405 which are herein incorporated by reference and made a part of this contract. In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Engineer's obligations under this contract and the regulations relative to non-discrimination on the ground of color, race or national origin.

**ARTICLE XIX - ATTACHMENTS**

The following exhibits are attached hereto and are hereby made part of this contract:

Attachment A – Scope of Service

Attachment B - Estimate of Cost

Attachment C - Breakdown of Overhead Rates

Attachment D - Certification Regarding Debarment, Suspension, and Other

Responsibility Matters - Primary Covered Transactions.

Attachment E - Certification Regarding Debarment, Suspension, and Other

Responsibility Matters - Lower Tier Covered Transactions.

Attachment F - Certification Regarding Debarment, Suspension, and Other

Responsibility Matters - Lower Tier Covered Transactions.

Executed by the Engineer this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 19\_\_.

Executed by the County/City this \_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 19\_\_.

**FOR: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ COUNTY/CITY, MISSOURI**

County Commission

**BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Presiding Commissioner

ATTEST: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

County Clerk

**FOR: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, INC.**

**BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Title

ATTEST: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I hereby certify under Section 50.660 RSMo there is either: (1) a balance of funds, otherwise unencumbered, to the credit of the appropriation to which the obligation contained herein is chargeable, and a cash balance otherwise unencumbered, in the Treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation contained herein; or (2) bonds or taxes have been authorized by vote of the people and there is a sufficient unencumbered amount of the bonds yet to be sold or of the taxes levied and yet to be collected to meet the obligation in case there is not a sufficient unencumbered cash balance in the treasury.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

COUNTY ACCOUNTING OFFICER

COUNTY AUDITOR - 1st and 2nd Class Counties

COUNTY CLERK - 3rd and 4th Class Counties

## 

**ATTACHMENT A**

**Scope of Services**

[INSERT SCOPE OF SERVICES]

## ATTACHMENT B

**ESTIMATE OF COST**

**DESIGN PHASE** Rate

Hours (Salary Only) Cost

*Surveying*

Registered Land Surveyor \_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_

Rodman \_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_

*Preliminary Design*

Partner \_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_

Engineer \_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_

Technician \_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_

*Final Design*

Partner \_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_

Engineer \_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_

Technician \_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_

Typist \_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_

SUBTOTAL \_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_

*[DRAFTER’s NOTE: do the Hours x Rate = cost?*

*Are the subtotal added correctly?]*

*[DRAFTER’s NOTE: the overhead rate listed must be the accepted provisional overhead rate determined by MoDOT through the annual financial pre-qualification process]*

*Payroll Overhead (Est. at \_\_\_\_% X SUBTOTAL))*  \_\_\_\_\_\_

*General and Admin. Overhead (Est. at \_\_\_\_% X SUBTOTAL))*  \_\_\_\_\_\_

TOTAL LABOR & OVERHEAD \_\_\_\_\_\_

*Fixed Fee(Percent X TOTAL LABOR & OVERHEAD)* \_\_\_\_\_\_

TOTAL LABOR, OVERHEAD & FIXED FEE \_\_\_\_\_\_

*Other Direct Costs*

Travel, \_\_\_ trips @ \_\_\_\_\_ miles X \_\_\_\_\_IRS Rate \_\_\_\_\_\_

Per Diem (cannot exceed maximum per diem rates per Federal Travel

Regulations) \_\_\_\_\_\_

Computer Time \_\_\_\_\_\_

Printing \_\_\_\_\_\_

*[DRAFTER’s NOTE: If the sub-consultant(s) cost are close to $25,000, they must develop a cost plus fixed fee breakout of those costs and if not pre-qualified, include documentation to support the overhead rate used in the cost estimate.]*

*Subcontract Pass-Through Costs (Identify by Name \*\*indicates DBE firm(s))*

Surveying \_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_

Borings \_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_

Archaeological Study \_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_

SUBTOTAL DIRECT COSTS \_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_

**TOTAL FOR DESIGN PHASE** \_\_\_\_\_\_

**CONSTRUCTION PHASE**

Rate

Hours (Salary Only) Cost

*Engineer Inspector*  \_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_

SUBTOTAL \_\_\_\_\_\_

*[DRAFTER’s NOTE: do the Hours x Rate = cost?*

*Are the subtotal added correctly?]*

*[DRAFTER’s NOTE: the overhead rate listed must be the accepted provisional overhead rate determined by MoDOT through the annual financial pre-qualification process]*

*Payroll Overhead (Est. at \_\_\_\_% X SUBTOTAL))*  \_\_\_\_\_\_

*General and Admin. Overhead (Est. at \_\_\_\_% X SUBTOTAL))*  \_\_\_\_\_\_

TOTAL LABOR & OVERHEAD \_\_\_\_\_\_

*Fixed Fee (Percent X TOTAL LABOR & OVERHEAD)* \_\_\_\_\_\_

TOTAL LABOR, OVERHEAD AND FIXED FEE \_\_\_\_\_\_

*Other Direct Costs*

Travel, \_\_\_ trips @ \_\_\_\_\_ miles X \_\_\_\_\_IRS Rate \_\_\_\_\_\_

Per Diem (cannot exceed the maximum per diem rates in effect at the time of

Travel as set forth in the Federal Travel Regulations) \_\_\_\_\_\_

Lab Testing Fees \_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_

*[DRAFTER’s NOTE: If the sub-consultant(s) cost are close to $25,000, they must develop a cost plus fixed fee breakout of those costs and if not pre-qualified, include documentation to support the overhead rate used in the cost estimate.]*

*Subcontract Pass-Through Costs (Identify by Name \*\*indicates DBE firm(s))*

SUBTOTAL DIRECT COSTS \_\_\_\_\_\_\_ \_ \_\_\_\_\_\_ \_\_\_\_\_\_

**TOTAL FOR CONSTRUCTION PHASE** \_\_\_\_\_\_

*[DRAFTER’s NOTE: the overhead rate listed must be the accepted provisional overhead rate determined by MoDOT through the annual financial pre-qualification process]*

## ATTACHMENT C

**OVERHEAD RATE BREAKDOWN**

**FOR YEAR 20\_\_\_\_**

# DIRECT LABOR BASE $\_\_\_\_\_\_\_

**PAYROLL ADDITIVES**

(list individual components) % DIRECT

LABOR

$\_\_\_\_\_\_\_ \_\_\_\_\_\_%

$\_\_\_\_\_\_\_ \_\_\_\_\_\_%

$\_\_\_\_\_\_\_ \_\_\_\_\_\_%

$\_\_\_\_\_\_\_ \_\_\_\_\_\_%

*Total Payroll Additives* $\_\_\_\_\_\_\_ *\_\_\_\_\_\_%*

**GENERAL AND ADMINISTRATIVE OVERHEAD**

(list individual components)

$\_\_\_\_\_\_\_ \_\_\_\_\_\_%

$\_\_\_\_\_\_\_ \_\_\_\_\_\_%

$\_\_\_\_\_\_\_ \_\_\_\_\_\_%

*Total General and Administrative Overhead $\_\_\_\_\_\_\_ \_\_\_\_\_\_%*

**TOTAL OVERHEAD** $\_\_\_\_\_\_\_ \_\_\_\_\_\_%

Less Unallowable Items (itemize) $\_\_\_\_\_\_\_ \_\_\_\_\_\_%

*TOTAL ALLOWABLE OVERHEAD \_\_\_\_\_\_%*

**\* Overhead percentages should be taken out to 2 decimal places**

**ATTACHMENT D**

**CERTIFICATION REGARDING DEBARMENT,**

**SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -**

**PRIMARY COVERED TRANSACTIONS**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction" provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to check the Nonprocurement List at the Excluded Parties List System.

https://www.epls.gov/epls/search.do?page=A&status=current&agency=69#A.

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

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**ATTACHMENT E**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List at the Excluded Parties List System.

https://www.epls.gov/epls/search.do?page=A&status=current&agency=69#A.

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

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Attachment F**

**Disadvantage Business Enterprise Contract Provisions**

1. Policy: It is the policy of the U.S. Department of Transportation and the Local Agency that businesses owned by socially and economically disadvantaged individuals (DBE's) as defined in 49 C.F.R. Part 26 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Thus, the requirements of 49 C.F.R. Part 26 and Section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21) apply to this Agreement.

2. Obligation of the Consultant to DBE's: The Consultant agrees to assure that DBEs have the maximum opportunity to participate in the performance of this Agreement and any subconsultant agreement financed in whole or in part with federal funds. In this regard the Consultant shall take all necessary and reasonable steps to assurethat DBEs have the maximum opportunity to compete for and perform services. The Consultant shall not discriminate on the basis of race, color, religion, creed, disability, sex, age, or national origin in the performance of this Agreement or in the award of any subsequent subconsultant agreement.

3. Geographic Area for Solicitation of DBEs: The Consultant shall seek DBEs in the same geographic area in which the solicitation for other subconsultants is made. If the Consultant cannot meet the DBEgoal using DBEs from that geographic area, the Consultant shall, as a part of the effort to meet the goal, expand the search to a reasonably wider geographic area.

4. Determination of Participation Toward Meeting the DBE Goal: DBE participation shall be counted toward meeting the goal as follows:

A. Once a firm is determined to be a certified DBE, the total dollar value of the subconsultant agreement awarded to that DBE is counted toward the DBEgoal set forth above.

B. The Consultant may count toward the DBE goal a portion of the total dollar value of a subconsultant agreement with a joint venture eligible under the DBE standards, equal to the percentage of the ownership and control of the DBE partner in the joint venture.

C. The Consultant may count toward the DBE goal expenditures to DBEs who perform a commercially useful function in the completion of services required in this Agreement. A DBE is considered to perform a commercially useful function when the DBE is responsible for the execution of a distinct element of the services specified in the Agreement and the carrying out of those responsibilities by actually performing, managing and supervising the services involved and providing the desired product.

D. A Consultant may count toward the DBE goal its expenditures to DBE firms consisting of fees or commissions charged for providing a bona fide service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of this Agreement, provided that the fee or commission is determined by MoDOT’s External Civil Rights Division to be reasonable and not excessive as compared with fees customarily allowed for similar services.

E. The Consultant is encouraged to use the services of banks owned and controlled by socially and economically disadvantaged individuals.

5. Replacement of DBE Subconsultants: The Consultant shall make good faith efforts to replace a DBE Subconsultant, who is unable to perform satisfactorily, with another DBE Subconsultant. Replacement firms must be approved by MoDOT’s External Civil Rights Division.

6. Verification of DBE Participation: Prior to final payment by the Local Agency, the Consultant shall file a list with the Local Agency showing the DBEs used and the services performed. The list shall show the actual dollar amount paid to each DBE that is applicable to the percentage participation established in this Agreement. Failure on the part of the Consultant to achieve the DBE participation specified in this Agreement may result in sanctions being imposed on the Commission for noncompliance with 49 C.F.R. Part 26 and/or Section 1101(b) of TEA-21. If the total DBE participation is less than the goal amount stated by the MoDOT’s External Civil Rights Division, liquidated damages may be assessed to the consultant.

Therefore, in order to liquidate such damages, the monetary difference between the amount of the DBEgoal dollar amountand the amount actually paid to the DBEs for performing a commercially useful function will be deducted from the Consultant's payments as liquidated damages. If this Agreement is awarded with less than the goal amount stated above by MoDOT’s External Civil Rights Division, that lesser amount shall become the goal amount and shall be used to determine liquidated damages. No such deduction will be made when, for reasons beyond the control of the Consultant, the DBE goal amount is not met.

7. Documentation of Good Faith Efforts to Meet the DBE Goal: The Agreement goal established by MoDOT’s External Civil Rights Division. The Consultant must document the good faith efforts it made to achieve that DBE goal, if the agreed percentage specified is less than the percentage stated. Good faith efforts to meet this DBE goal amount may include such items as, but are not limited to, the following:

A. Attended a meeting scheduled by the Department to inform DBEs of contracting or consultingopportunities.

B. Advertised in general circulation trade association and socially and economically disadvantaged business directed media concerning DBE subcontracting opportunities.

C. Provided written notices to a reasonable number of specific DBEs that their interest in a subconsultant agreement is solicited in sufficient time to allow the DBEs to participate effectively.

D. Followed up on initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested in subconsulting work for this Agreement.

E. Selected portions of the services to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down subconsultant agreements into economically feasible units to facilitate DBE participation).

F. Provided interested DBEs with adequate information about plans, specifications and requirements of this Agreement.

G. Negotiated in good faith with interested DBEs, andnot rejecting DBEs as unqualified without sound reasons, based on a thorough investigation of their capabilities.

H. Made efforts to assist interested DBEs in obtaining any bonding, lines of credit or insurance required by the Commissionor by the Consultant.

I. Made effective use of the services of available disadvantaged business organizations, minority contractors' groups, disadvantaged business assistance offices, and other organizations that provide assistance in the recruitment and placement of DBE firms.

8. Good Faith Efforts to Obtain DBE Participation: If the Consultant's agreed DBE goal amount as specified is less than the established DBEgoal given, then the Consultant certifies that the following good faith efforts were taken by Consultant in an attempt to obtain the level of DBE participation set by MoDOT’s External Civil Rights.