

LOCAL CONSTRUCTION ENGINEERING SERVICES BOILERPLATE

GENERAL PROVISIONS

TABLE OF CONTENTS

	Page
I. DEFINITIONS .....	2
II. SCOPE OF SERVICES.....	3
A. GENERAL .....	3
B. SERVICES TO BE PERFORMED BY THE MUNICIPALITY .....	3
C. SERVICES TO BE PROVIDED BY THE DEPARTMENT .....	4
D. AGENCY COORDINATION, PUBLIC RELATIONS, AND COOPERATION.....	5
E. MEETINGS AND CONFERENCES .....	5
III. PROSECUTION AND PROGRESS.....	5
A. GENERAL .....	5
B. DELAYS AND EXTENSIONS .....	6
C. TERMINATION OF CONTRACT .....	6
D. SUBLETTING OR ASSIGNMENT OF CONTRACT .....	7
IV. BASIS OF PAYMENT .....	7
A. GENERAL .....	7
B. SERVICE ORDERS, EXTRA SERVICES, OR DECREASED SERVICES .....	8
V. MISCELLANEOUS PROVISIONS .....	8
A. CONSTRUCTION ENGINEERING STANDARDS.....	8
B. REVISION OF SPECIFICATIONS AND PLANS.....	9
C. OWNERSHIP OF DOCUMENTS .....	9
D. CONTINGENT FEES .....	9
E. ACCESS TO RECORDS .....	9
F. LEGAL RELATIONS.....	10
G. NONDISCRIMINATION IN EMPLOYMENT .....	10
H. FEDERAL REQUIREMENTS FOR DISADVANTAGED BUSINESS PROGRAM .....	11
I. EQUAL EMPLOYMENT OPPORTUNITY (All Contracts Exceeding \$10,000) .....	12
J. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (All Contracts Exceeding \$100,000).....	12
K. ERRORS AND OMISSIONS.....	13
L. CONFLICT OF INTEREST.....	13
M. INSURANCE REQUIREMENTS.....	14
N. CERTIFICATION REGARDING LOBBYING .....	15
O. PROCEDURES FOR HANDLING ERRORS AS DESCRIBED IN SECTION V.K.....	15
P. EQUIPMENT ACQUISITION.....	16

I.D. \_\_\_\_\_

## GENERAL PROVISIONS

### I. DEFINITIONS

- (1) "MUNICIPALITY" means a city, village, town, or county.
- (2) "MUNICIPALITY Representative" means the qualified employee or officer of the MUNICIPALITY who has the duties and responsibilities of the "engineer" and "Project Engineer" as used in the State of Wisconsin Department of Transportation Standard Specifications for Highway and Structure Construction, and State of Wisconsin, Department of Transportation Construction and Materials Manual.
- (3) "CONTRACT" means this Construction Engineering Services Contract.
- (4) "Contractor" means the individual, partnership, joint ventures, corporation or agency undertaking the performance of the work designated under the terms of a construction contract.
- (5) "DEPARTMENT" means the Wisconsin Department of Transportation .
- (6) "DEPARTMENT Representative" means the qualified, full-time public employee of the DEPARTMENT in charge of this CONTRACT to monitor MUNICIPALITY compliance with its terms, conditions, and specifications.
- (7) "FHWA" means the Federal Highway Administration.
- (8) "Manual" or "Manuals" means the DEPARTMENT'S Facilities Development Manual and other manuals referenced therein.
- (9) "PROJECT" means the specific section of a highway together with all appurtenances and construction to be performed.
- (10) "Services" means the engineering services, labor, equipment, and materials furnished by MUNICIPALITY in accordance with this CONTRACT.
- (11) "Special Provisions" means the special directions or requirements peculiar to a PROJECT and not otherwise thoroughly or satisfactorily detailed or presented in the Specifications, and which are contained in the construction contract.
- (12) "Specifications" means the Standard Specifications for Highway and Structure Construction of the Wisconsin Department of Transportation, Edition as incorporated in the construction contract.

## II. SCOPE OF SERVICES

### A. GENERAL

- (1) The Services under this CONTRACT shall consist of performing to the satisfaction of the DEPARTMENT all those construction engineering services necessary or incidental to accomplish the CONTRACT consistent with applicable professional standards.
- (2) The MUNICIPALITY shall furnish all materials, equipment, supplies and incidentals other than those designated in writing as to be furnished by the DEPARTMENT.
- (3) The MUNICIPALITY's principal contact with the DEPARTMENT shall be through the DEPARTMENT Representative.
- (4) Since the Services under this CONTRACT are to be financed in whole or in part with federal or state funds, the Services shall be performed in compliance with all applicable federal and state laws and regulations.
- (5) The FHWA may participate in all conferences and reviews.
- (6) At the request of the DEPARTMENT the MUNICIPALITY during the progress of the Services shall furnish information or data relating to the Services under this CONTRACT as may be required by the DEPARTMENT.
- (7) Compliance with all of the foregoing shall be within the purview of this CONTRACT and shall not constitute a basis for additional or extra compensation.

### B. SERVICES TO BE PERFORMED BY THE MUNICIPALITY

The MUNICIPALITY agrees to:

- (1) Attend conferences required to carry out the CONTRACT.
- (2) Designate a Project Engineer and Assistant Project Engineer as necessary.
- (3) Become familiar with the standard construction practices of the DEPARTMENT, the construction plans and contract(s) for the PROJECT, and the DEPARTMENT'S proposed schedule of operations prior to beginning field Services under this CONTRACT.
- (4) Assign a sufficient number of technically qualified and experienced personnel to perform the Services required under this CONTRACT.
- (5) Notify the DEPARTMENT Representative immediately of any unanticipated PROJECT conditions.
- (6) Withdraw any personnel or halt any services no longer required, at the request of the DEPARTMENT, or within a reasonable time after the lack of need becomes apparent to the DEPARTMENT.
- (7) Perform MUNICIPALITY field operations in accordance with OSHA regulations and accepted safety practices.

- (8) Provide for MUNICIPALITY personnel transportation, supplies, materials and incidentals as are needed to accomplish the Services required under the CONTRACT.
- (9) Perform construction surveys and staking, and provide measurements needed by the DEPARTMENT.
- (10) Act as Inspector as provided in the Specifications, Special Provisions, and State of Wisconsin Department of Transportation Construction and Materials Manual.
- (11) Sample or test, or both, materials to be incorporated in the work, and reject work and materials not meeting the Specifications, Special Provisions, or State of Wisconsin Department of Transportation Construction and Materials Manual.
- (12) Make certain that test report records or certificates of compliance have been received, prior to the incorporation of materials in the work, for materials tested off the PROJECT site.
- (13) Keep daily diaries, logs and records consistent with MUNICIPALITY practice as are needed for a record of the CONSULTANT'S progress.
- (14) Measure and compute quantities of all materials incorporated in the work and items of work completed, and maintain an item record account.
- (15) Prepare and submit, such periodic, intermediate and final reports and records as may be required by the DEPARTMENT and as are applicable to the PROJECT.
- (16) Return, upon completion or termination of the CONTRACT, all Specifications, Manuals, guides, written instructions, construction contracts and plans, unused forms and record keeping books, and other documents and materials furnished by the DEPARTMENT. The MUNICIPALITY may be responsible for replacing lost documents or materials at the price determined by the DEPARTMENT.
- (17) Prepare and submit a brief written critique for each individual PROJECT plan.
- (18) Prepare and deliver one copy of the "as-built" or "record" plan to the DEPARTMENT as defined in the State of Wisconsin Department of Transportation Construction and Materials Manual.
- (19) Prepare and submit a certificate of completion to the DEPARTMENT upon completion of the CONTRACT Services.

C. SERVICES TO BE PROVIDED BY THE DEPARTMENT

- (1) The DEPARTMENT agrees to:
  - (a) Make available to the MUNICIPALITY copies of the construction contract(s) and plans, shop drawings, plan revisions, Specifications, Manuals, guides, written instructions and other information and data necessary to enable the MUNICIPALITY to perform the Services under this CONTRACT to the same standards required of the DEPARTMENT'S personnel.
  - (b) Provide for the use of the MUNICIPALITY a supply of the blank diaries, logs, record keeping books and reporting forms necessary for the MUNICIPALITY to perform the

Services under this CONTRACT to the same standards required of the DEPARTMENT'S personnel.

- (c) Provide for laboratory testing of materials requiring off-site testing facilities, and authorize DEPARTMENT to obtain test reports or certificates of compliance for such testing.
- (d) Perform soil borings and subsurface explorations.

#### D. AGENCY COORDINATION, PUBLIC RELATIONS, AND COOPERATION

- (1) Contact and coordination with all affected local, state and federal agencies, including the FHWA; other contractors; the general public; utilities and railroad companies shall be the responsibility of the MUNICIPALITY, except as stated in the following paragraph.
- (2) Efforts shall be made by the MUNICIPALITY to inform and advise abutting property owners affected by PROJECT activities and to advise local authorities, police, fire and emergency services affected by PROJECT activities.
- (3) The MUNICIPALITY shall cooperate fully with the DEPARTMENT; and with local, state and federal agencies including the FHWA, the general public, utilities, railroad companies, and other contractors. Cooperation may include attendance at conferences.

#### E. MEETINGS AND CONFERENCES

- (1) Conferences, as may be necessary for the discussion and review of the Services under this CONTRACT, shall be scheduled between the MUNICIPALITY and the DEPARTMENT. These conferences may include field review of the PROJECT.
- (2) Conferences are in addition to those meetings which are necessary for close coordination during day-to-day progress of the work.

### III. PROSECUTION AND PROGRESS

#### A. GENERAL

- (1) Written order to proceed with the Services on any construction project under this CONTRACT will be given by the DEPARTMENT to the MUNICIPALITY. The DEPARTMENT will not be liable for payment of any Services performed or costs incurred by the MUNICIPALITY prior to the written Authorization.
- (2) Services under this CONTRACT shall commence with attendance at an Operation Planning Conference between the DEPARTMENT and the MUNICIPALITY. Attendees shall include the DEPARTMENT Representative and the MUNICIPALITY Representative and such other persons as may be designated by each party to the CONTRACT. The DEPARTMENT will notify the MUNICIPALITY of the location, date and time and will make necessary arrangements for the conference. Topics for discussion shall include scope of the Contractor's construction operations and anticipated schedule, required staffing by the MUNICIPALITY, lines of communication and authority, equipment needs, standard practices of the MUNICIPALITY, and related subjects.
- (3) The MUNICIPALITY shall conduct the pre-construction conference for the involved utilities and agencies.

- (4) The MUNICIPALITY shall complete the Services under this CONTRACT within the specified time for completion. Time shall not be extended because of any unwarranted or avoidable delay attributable to the MUNICIPALITY, but may be extended by the DEPARTMENT in the event of a delay attributable to the Contractor, MUNICIPALITY or its authorized representatives, or because of unavoidable delay caused by an act of God, act of war, act of government or other conditions beyond the control of the MUNICIPALITY, including "unavoidable delays" as defined in the Specifications. See also III. B. below.
- (5) The MUNICIPALITY shall notify the DEPARTMENT in writing when it has determined the Services under this CONTRACT are completed.
- (6) Unless the CONTRACT has been terminated prior to the completion of the Services, the CONTRACT shall not be considered fulfilled upon completion and acceptance of the Services, or upon final payment therefore, but shall be considered to be in full force and effect for the purposes of requiring the MUNICIPALITY to make revisions or corrections in the Services as are necessary to correct errors in the Services made by the MUNICIPALITY, or for the purposes of having the MUNICIPALITY make revisions in the Services as extra Services at the request of the DEPARTMENT.
- (7) Should the DEPARTMENT deem it necessary for the MUNICIPALITY to render additional services for review of contract items, conditions, claims or litigation matters after completion of the CONTRACT, the MUNICIPALITY agrees to cooperate and render the requested services. These services shall be paid for as extra services in the amount and manner mutually agreed upon by the MUNICIPALITY and the DEPARTMENT.
- (8) A close-out conference shall be at the discretion of the DEPARTMENT, held upon completion of this CONTRACT to evaluate the performance of the MUNICIPALITY. Attendees shall include the DEPARTMENT Representative and MUNICIPALITY Representative, and such other persons as may be designated by each party to the CONTRACT. The DEPARTMENT will notify the MUNICIPALITY of the location, date and time and will make necessary arrangements for the conference. The evaluation shall consider the quality and adequacy of the MUNICIPALITY's Services, extent of corrections, ability to meet schedules, cooperation, substantiation of costs, documentation of claims and related subjects.
- (9) The CONTRACT will be considered completed when the MUNICIPALITY is released by written notice from the DEPARTMENT.

#### B. DELAYS AND EXTENSIONS

Delays caused through no fault of the MUNICIPALITY may be cause for extension of time for completion of the Services. Time extensions may be granted upon proper claim and justification by the MUNICIPALITY. Approved time extensions may be cause for consideration of adjustments in payment. Failure of the MUNICIPALITY to submit a formal written request for an extension of time prior to the expiration of CONTRACT time shall constitute a basis for denying any cost adjustments for reasons of delay.

#### C. TERMINATION OF CONTRACT

- (1) The right is reserved by the DEPARTMENT to terminate all or part of this CONTRACT at any time upon written notice to the MUNICIPALITY. Notice of termination shall be sent not less than ten (10) days in advance of the termination date stated in the notice.

- (2) In the event the CONTRACT is terminated by the DEPARTMENT without fault on the part of the MUNICIPALITY, the MUNICIPALITY shall be paid for the Services rendered and delivered to the DEPARTMENT up to the time of termination as determined by mutual agreement between the MUNICIPALITY and the DEPARTMENT. This agreement shall be executed as an amendment to the CONTRACT.
- (3) In the event the Services of the MUNICIPALITY are terminated by the DEPARTMENT for fault on the part of the MUNICIPALITY, the MUNICIPALITY shall be paid the reasonable value of the Services rendered and delivered to the DEPARTMENT up to the time of termination. The value of the work performed and Services rendered and delivered will be determined by the DEPARTMENT.

#### D. SUBLETTING OR ASSIGNMENT OF CONTRACT

- (1) The MUNICIPALITY shall not sublet or assign all or any part of the Services under this CONTRACT without the prior written approval of the DEPARTMENT. Consent to assign, sublet or otherwise dispose of any portion of the CONTRACT shall not be construed to relieve the MUNICIPALITY of any responsibility for the fulfillment of the CONTRACT.
- (2) All the applicable terms of this CONTRACT remain in force and are a condition to any Services approved to be sublet or assigned.

### IV. BASIS OF PAYMENT

#### A. GENERAL

- (1) Reimbursement for costs will be limited to those which are allowable under applicable federal acquisition regulations and the DEPARTMENT's Facilities Development Manual.
- (2) Payment by the DEPARTMENT for the completed and approved Services rendered under this CONTRACT is intended as full compensation for work performed or services rendered and for all labor, material, supplies, equipment and incidentals necessary to complete the work.
- (3) The MUNICIPALITY shall submit invoices, on the form or format similar to that specified in the DEPARTMENT Facilities Development Manual, not more often than once per month during the progress of the Services, for partial payment on account, for the authorized Services completed to date. The Final invoice shall be submitted to the DEPARTMENT within three months of completion of Services under this CONTRACT.
- (4) Should this CONTRACT contain more than one PROJECT a separate invoice and a separate final statement shall be submitted for each individual PROJECT.
- (5) No payment shall be construed as DEPARTMENT acceptance of unsatisfactory or defective services or improper materials. Final payment of any balance due the MUNICIPALITY will be made within 30 days after its verification by the DEPARTMENT, upon completion of the Services under the CONTRACT and its acceptance by the DEPARTMENT, and upon receipt of the survey notes, records, reports, final estimates, as-built plans, Specifications, Manuals, guides, construction contracts and plans, and other documents required to be returned or to be furnished under this CONTRACT.

- (6) The DEPARTMENT has the equitable right to set off against any sum due and payable to MUNICIPALITY under this CONTRACT, any amount the DEPARTMENT determines the MUNICIPALITY owes the DEPARTMENT, whether arising under this CONTRACT or under any other CONTRACT or otherwise.
- (7) All documents and evidence pertaining to costs incurred under this CONTRACT will be available for inspection during normal business hours in the MUNICIPALITY'S office for a period of three (3) years following final CONTRACT payment.
- (8) The MUNICIPALITY may be subject to the single audit standards as described in the OMB Circular A133.

#### B. SERVICE ORDERS, EXTRA SERVICES, OR DECREASED SERVICES

- (1) Written orders regarding the Services may be given by the DEPARTMENT. Properly approved written orders that change the scope of Services in this CONTRACT, or increase or decrease the quantity of labor or materials or the expense of the Services, shall not annul or void this CONTRACT.
- (2) The MUNICIPALITY must proceed with the Services as directed by furnishing the necessary labor, equipment, materials and professional services to complete the Services within the time limits specified in the Service order schedules or as adjusted by written agreement of the parties.
- (3) If in the MUNICIPALITY'S opinion the orders involve Services not included in the terms or scope of this CONTRACT or would require the discarding or redoing of Services which were based upon earlier direction or approvals, the MUNICIPALITY must notify the DEPARTMENT in writing of its opinion if it desires extra compensation.
- (4) Such notification shall include the justification for the claim for extra compensation requested.
- (5) The DEPARTMENT will review the MUNICIPALITY'S submittal and, if acceptable, approve a change order as an amendment to this CONTRACT. Services under a change order shall not proceed until so authorized by the DEPARTMENT by written CONTRACT amendment.
- (6) If the DEPARTMENT orders a decrease in MUNICIPALITY Services, as provided in Section II.D.(2) of the CONTRACT, the cost of the DEPARTMENT personnel and services will be shown in the order and the order will also direct an appropriate pro rata reduction, in the Fixed Fee and other CONTRACT amounts.

#### V. MISCELLANEOUS PROVISIONS

##### A. CONSTRUCTION ENGINEERING STANDARDS

- (1) All Services under the CONTRACT shall be performed in accordance with the current standard practices of the DEPARTMENT as contained in the Specifications, Special Provisions, Manuals, guides and written instructions and shall be consistent with generally accepted professional practice.

- (2) No variation will be permitted except by written order of the DEPARTMENT.

#### B. REVISION OF SPECIFICATIONS AND PLANS

- (1) The DEPARTMENT may, by written notice and without invalidating this CONTRACT, require changes in the Specifications, construction contract plans or Special Provisions resulting in the revision or abandonment of Services already performed by the MUNICIPALITY or resulting in Services by the MUNICIPALITY not contemplated in the CONTRACT.
- (2) Claims by the MUNICIPALITY for compensation for Services resulting from these revisions shall be submitted and processed in accordance with Section IV.B. above.

#### C. OWNERSHIP OF DOCUMENTS

- (1) Upon completion or termination of this CONTRACT the originals of all plans, Specifications, Manuals, guides, written instructions, copies of the construction contract, unused forms and recordkeeping books, and other written data and information furnished to the MUNICIPALITY by the DEPARTMENT for the performance of the CONTRACT, and all survey notes, diaries, reports, records, estimates, as-built or record plans, and other information and data collected or prepared by the MUNICIPALITY in the performance of this CONTRACT shall be properly arranged and delivered to the DEPARTMENT, and shall become the property of the DEPARTMENT.
- (2) Documents collected or prepared by the MUNICIPALITY in the performance of this contract may be used without restriction by the DEPARTMENT for any public purpose. Any such use shall be without compensation or liability to the MUNICIPALITY.

#### D. CONTINGENT FEES

The MUNICIPALITY warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for the MUNICIPALITY, to secure this CONTRACT, and that it has not paid or agreed to pay any company or person, other than a bonafide employee working solely for the MUNICIPALITY, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this CONTRACT. For breach or violation of this warranty the DEPARTMENT shall have the right to terminate this CONTRACT without liability.

#### E. ACCESS TO RECORDS

- (1) The MUNICIPALITY and subcontractors to the MUNICIPALITY if any, agree to maintain for inspection by the DEPARTMENT, FHWA and others all books, documents, papers, accounting records and other evidence pertaining to all costs incurred under this CONTRACT and to make such materials available at their respective offices at all reasonable times during the life of the CONTRACT and for three (3) years from the date of final payment under the CONTRACT, and to furnish copies thereof if requested.
- (2) If more than a nominal number of copies are requested, the additional copies shall be furnished at the expense of the requesting agency or person.

## F. LEGAL RELATIONS

- (1) The MUNICIPALITY shall become familiar with, and shall at all times observe and comply with, all applicable federal, state and local laws, ordinances and regulations.
- (2) In carrying out the provisions of this CONTRACT or in exercising any power or authority granted to the MUNICIPALITY, DEPARTMENT or FHWA there shall be no personal liability upon the authorized representatives of the MUNICIPALITY, DEPARTMENT and the FHWA, it being understood that in such matters they act as agents and representatives of those agencies.
- (3) The MUNICIPALITY shall be responsible for any and all damages to property or persons arising out of a negligent act, error and/or omission in the MUNICIPALITY'S performance of the Services under this CONTRACT.
- (4) The MUNICIPALITY shall indemnify, and save harmless, the DEPARTMENT and the FHWA and all of their officers, agents and employees on account of any damages to persons or property resulting from negligence of the MUNICIPALITY in connection with performance and completion of the Services covered by the CONTRACT.

## G. NONDISCRIMINATION IN EMPLOYMENT

- (1) In connection with the performance of Services under this CONTRACT, the MUNICIPALITY, for itself, its assignees, and successors in interest, agrees not to discriminate against any employee or applicant because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wisconsin Statute Section 51.01(5), sexual orientation as defined in Wisconsin Statute Section 111.32(13m), or national origin. This provision shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the MUNICIPALITY further agrees to take affirmative action to ensure equal employment opportunities. The MUNICIPALITY agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the DEPARTMENT, setting forth the provisions of this nondiscrimination clause.
- (2) The MUNICIPALITY, for itself, its assignees, and successors in interest, agrees to comply with the following "Acts" and "Regulations," respectively, relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this CONTRACT; including but not limited to:
  - (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); 49 CFR Part 21; and 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
  - (b) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
  - (c) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
  - (d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

- (e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
  - (f) Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123 ), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
  - (g) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - (h) Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
  - (i) The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - (j) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - (k) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
  - (l) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).
- (3) The MUNICIPALITY with regard to the Services performed by it after award and prior to completion of this CONTRACT, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The MUNICIPALITY will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the CONTRACT covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- (4) In all solicitations either by competitive bidding or negotiation made by the MUNICIPALITY for SERVICES to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the MUNICIPALITY of the MUNICIPALITY'S obligations under this CONTRACT and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- (5) The MUNICIPALITY will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the DEPARTMENT or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a MUNICIPALITY is in the exclusive possession of another who fails or refuses to furnish the information, the MUNICIPALITY will so certify to the DEPARTMENT or the FHWA, as appropriate, and

will set forth what efforts it has made to obtain the information.

- (6) In the event of the MUNICIPALITY'S noncompliance with the Nondiscrimination provisions of this CONTRACT, the DEPARTMENT will impose such CONTRACT sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - (a) Withholding payments to the MUNICIPALITY under the CONTRACT until the MUNICIPALITY complies; and/or
  - (b) Cancelling, terminating, or suspending the CONTRACT, in whole or in part.
- (7) The MUNICIPALITY will include the provisions of paragraphs one through seven of this Section V.G. entitled "Nondiscrimination in Employment" in every subcontract, including procurements of materials and leases of equipment, unless exempt under Wisconsin law or by the Acts, Regulations, and directives issued pursuant thereto. The MUNICIPALITY will take action with respect to any subcontract or procurement as the DEPARTMENT or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the MUNICIPALITY becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the MUNICIPALITY may request the DEPARTMENT to enter into any litigation to protect the interests of the State. In addition, the MUNICIPALITY may request the United States to enter into the litigation to protect the interests of the United States.

#### H. FEDERAL REQUIREMENTS FOR DISADVANTAGED BUSINESS PROGRAM

- (1) Disadvantaged Businesses (DB) as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the DB requirements of 49 CFR Part 23 apply to this CONTRACT.
- (2) The CONSULTANT agrees to ensure that Disadvantaged Businesses as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of any subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard the MUNICIPALITY shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged businesses have the maximum opportunity to compete for and perform subcontracts. The MUNICIPALITY shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts. Failure to carry out the requirements of this provision shall constitute a breach of contract and may result in termination of this CONTRACT by the MUNICIPALITY, DEPARTMENT, or both, or other such remedy as the DEPARTMENT deems appropriate.

#### I. EQUAL EMPLOYMENT OPPORTUNITY (All Contracts Exceeding \$10,000)

During the performance of this CONTRACT, the MUNICIPALITY, for itself, its assignees, and successors in interest, agrees as follows:

- (1) The MUNICIPALITY will, in all solicitations or advertisements for employees placed by or on behalf of the MUNICIPALITY, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- (2) The MUNICIPALITY will comply with all provisions of Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- (3) The MUNICIPALITY will furnish all information and reports required by Executive Order 11246 and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the DEPARTMENT, FHWA, and the United States Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulation, and orders.
- (4) The MUNICIPALITY will include the provisions of this Section entitled "Equal Employment Opportunity" in every subcontract in excess of \$10,000.

J. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (All Contracts Exceeding \$100,000)

- (1) The MUNICIPALITY stipulates that any facility to be utilized in the performance of this CONTRACT, unless such CONTRACT is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR Part 15), is not listed, on the date of CONTRACT award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities Pursuant to 40 CFR 15.20.
- (2) The MUNICIPALITY agrees to comply with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
- (3) The MUNICIPALITY shall promptly notify the DEPARTMENT and the U.S. EPA Assistant Administrator for Enforcement of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for this CONTRACT is under consideration to be listed on the EPA List of Violating Facilities.
- (4) The MUNICIPALITY agrees to include or cause to be included the requirements of the preceding three paragraphs (1), (2), (3), in every nonexempt subcontract.

K. ERRORS AND OMISSIONS

- (1) The MUNICIPALITY shall be responsible for the accuracy of the Services performed by the MUNICIPALITY under the CONTRACT, and shall promptly make necessary revisions or corrections to its Services resulting from its negligent acts, its errors or its omissions without additional compensation. The MUNICIPALITY shall give immediate attention to these revisions or corrections to prevent or minimize delay to the PROJECT.
- (2) The MUNICIPALITY shall be responsible to the DEPARTMENT for any losses to or costs to repair or remedy construction as a result of MUNICIPALITY's negligent acts, errors, or omissions.

L. CONFLICT OF INTEREST

- (1) The MUNICIPALITY warrants it 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 the Services under this CONTRACT.

- (2) The MUNICIPALITY shall not employ any person currently employed by the DEPARTMENT for any Services included under the provisions of the CONTRACT.

## M. INSURANCE REQUIREMENTS

- (1) The MUNICIPALITY shall maintain the following types and limits of commercial insurance in force until such time as all work under or incidentals to the contract have been completed.

<b>Type of Insurance</b>	<b>Minimum Limits required *</b>
(a) Commercial General Liability Insurance; shall be endorsed to include completed operations and blanket contractual liability coverage.	\$1 Million Combined Single Limits per Occurrence, may be subject to an Annual Aggregate Limit of not less than \$2 Million.
(b) Worker's Compensation and Employer's Liability Insurance	Worker's Compensation: Statutory Limits  Employer's Liability: Bodily Injury by Accident - \$100,000 Each Accident Bodily Injury by Disease \$500,000 Each Accident \$100,000 Each Employee
(c) Commercial Automobile Liability Insurance; shall cover all MUNICIPALITY owned, non-owned and hired vehicles used in carrying out the contract.	\$1 Million - Combined Single Limits per occurrence
(d) Architect's and Engineers Errors and Omissions Insurance **	\$1 Million - Each Claim, may be subject to an Annual Aggregate Limit of \$1 Million

\* *These requirements may be satisfied either through primary insurance coverage or through excess/umbrella insurance policies.*

\*\* *This insurance requirement applies only to engineering services and is waived for non-engineering services. Engineering services are defined as project management, construction management and inspection, feasibility studies, preliminary engineering, design engineering, surveying mapping and architectural related services.*

- (2) An Insurance Certificate, (or Certificates) showing the MUNICIPALITY is covered by the above required types and amounts of insurance shall be furnished to the DEPARTMENT prior to the performance of any services under this CONTRACT.
- (3) A 60 day notice of cancellation or change in coverage shall be required. All coverage shall be placed with insurance companies licensed to do business in the State of Wisconsin with an A.M. Best rating of A - or better. The DEPARTMENT reserves the right to require other coverage and limits as described in the special provisions of this CONTRACT.
- (4) The above insurance requirements shall apply with equal force whether the work under this CONTRACT is performed by the MUNICIPALITY, a subcontractor of the MUNICIPALITY, or by any entity employed directly or indirectly by either party.

- (5) Any exceptions to the above insurance requirements requires approval from the Statewide Consulting Engineer. The approval must be reflected in the special provisions of the CONTRACT.

#### N. CERTIFICATION REGARDING LOBBYING

MUNICIPALITY certifies that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the MUNICIPALITY, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the CONSULTANT shall complete and submit **standard form-LOLL, "Disclosure Form to Report Lobbying,"** in accordance with its instructions.

#### O. PROCEDURES FOR HANDLING ERRORS AS DESCRIBED IN SECTION V. K.

- (1) The DEPARTMENT may recover those additional costs incurred by the DEPARTMENT and FHWA as the result of errors determined to be the responsibility of MUNICIPALITY as described in Section V. K.

Each MUNICIPALITY error and the facts about the error will be reviewed by the DEPARTMENT to establish responsibility for additional costs incurred as a result of a particular MUNICIPALITY error in accordance with the MANUAL.

- (2) When the DEPARTMENT pursues reimbursement, the MUNICIPALITY will be notified of the decision and options for repayment. The DEPARTMENT's options listed in priority order are:
  - a. Repayment in full.
  - b. Deductions from other payments due and payable to the CONSULTANT by equitable right of set off.
  - c. Legal action by the MUNICIPALITY, DEPARTMENT or both to collect the costs.

d. Any combination of the above

P. EQUIPMENT ACQUISITION

Equipment charged as a direct cost to this CONTRACT will be subject to rules for equipment purchased under grants to local subrecipients as outlined at 49 CFR 18.32.