

CCO Form: BR01-FA  
Approved: 7/97 (DPP)  
Revised: 02/11 (AR)  
Modified:

Project Design Consultant Agreement  
Route: \_\_\_\_\_  
County: \_\_\_\_\_  
Job No.: \_\_\_\_\_

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
PROJECT DESIGN CONSULTANT AGREEMENT  
(FEDERAL ASSISTANCE)**

THIS AGREEMENT is entered into by \_\_\_\_\_  
(hereinafter, "Consultant") and the Missouri Highways and Transportation Commission  
(hereinafter, "Commission").

WITNESSETH:

WHEREAS, the Commission has selected the Consultant to perform professional  
services in the preparation of \_\_\_\_\_,  
designated as Job No. \_\_\_\_\_.

NOW, THEREFORE, in consideration of the payments to be made and  
covenants set forth in this Agreement to be performed by the Commission, the  
Consultant hereby covenants and agrees that it shall faithfully perform the professional  
services called for by this Agreement in the manner and under the conditions described  
in this Agreement.

(1) DEFINITIONS: The following definitions apply to these terms, as  
used in this Agreement:

(A) "AASHTO" means the American Association of State Highway and  
Transportation Officials.

(B) "COMMISSION" means the Missouri Highways and Transportation  
Commission, an executive branch agency of state government, which acts by and  
through its director, chief engineer and others in the Missouri Department of  
Transportation (MoDOT).

(C) "CONSULTANT" means the firm providing professional services to the  
Commission as a party to this Agreement.

(D) "CONSULTANT'S REPRESENTATIVE" means the person or persons  
designated in writing by the Consultant to represent that firm in negotiations,  
communications and various other contract administration dealings with the  
Commission's engineers.

(E) "DISADVANTAGED BUSINESS ENTERPRISE (DBE)" means an entity

owned and controlled by a socially and economically disadvantaged individual as defined in 49 C.F.R. Part 26, which is certified as a DBE firm in Missouri by the Commission. Appropriate businesses owned and controlled by women are included in this definition.

(F) "ENGINEER" means the chief engineer or any other authorized representative of the Commission. Where the specific term "chief engineer" is used, it shall mean the chief engineer exclusively.

(G) "FHWA" means the Federal Highway Administration, within the United States Department of Transportation (USDOT), which acts through its authorized representatives.

(H) "SUBCONSULTANT" means any individual, partnership, corporation or joint venture to whom the Consultant, with the written consent of the engineer, subcontracts any part of the professional work under this Agreement but shall not include those entities which supply only materials or supplies to the Consultant.

(I) "SUSPEND" the work means that the work as contemplated herein should be stopped on temporary basis. This work stoppage will continue until such time as the Consultant defaults on the work, or the Commission either decides to terminate the project or reactivate the work under the conditions then existing.

(J) "TERMINATE," in the context of this Agreement, means the cessation or quitting of this contract based upon the action or inaction of the Consultant, or the unilateral cancellation of this Agreement by the Commission.

(K) "WORK" includes all engineering and related services and the furnishing of all equipment, supplies and materials which are required to achieve the broad purposes and general objectives of this Agreement.

(L) "WRONGFUL" shall mean the intentional and willful disregard or violation of the terms and conditions of this Agreement or of the law.

(2) SCOPE OF THE WORK AND SERVICES:

(A) The work covered by this Agreement shall include furnishing the professional, technical, and other personnel and the equipment, material and all other things necessary for the preparation of bridge final design plans.

(B) The specific services to be provided by Consultant are set forth on Exhibit I to this Agreement, titled "Scope of Services," which is attached and made a part of this Agreement.

(3) ADDITIONAL SERVICES: The Commission reserves the right to direct additional work not described in Exhibit I as changed or unforeseen conditions may

require. Such directions by Commission or its engineer shall not be a breach of this Agreement. In this event, a supplemental agreement will be negotiated and executed prior to the Consultant performing the additional or changed work, or incurring any additional cost. Any changes in the maximum compensation and fee, or time and schedule of completion, will be covered in the supplemental agreement.

(4) INFORMATION AND SERVICES PROVIDED BY THE COMMISSION:

(A) The Commission will provide available information of record which is pertinent to this project to the Consultant upon request. In addition, Commission will provide Consultant with the specific items or services set forth on Exhibit II to this Agreement, titled "Services Provided by the Commission," which is attached and made a part of this Agreement.

(B) Consultant shall thoroughly review all information which is provided by Commission concerning the job site, including without limitation, boring logs and subsurface data, pile driving and load testing, utility locations and layout survey data and will immediately advise the engineer in detail of any of that information which Consultant believes is inaccurate or inadequate or would otherwise have an effect on any of its other activities under this Agreement. In such case, the Commission shall provide Consultant with new or verified data or information upon which Consultant is entitled to rely. Consultant shall not be liable for any errors, omissions or deficiencies in Consultant's work resulting from inaccurate or inadequate information furnished by the Commission which inaccuracies are not detected by Consultant.

(5) RESPONSIBILITY OF CONSULTANT:

(A) The Consultant shall comply with the most recent and applicable state and federal laws and regulations governing this work. Consultant shall provide the work in accordance with the current criteria and requirements established and adopted by the Commission; and if none are expressly established in this Agreement, currently published manuals and policies of the Commission and FHWA which shall be furnished by the Commission upon request and, absent the foregoing, manuals and policies of AASHTO.

(B) Without limiting the foregoing, design criteria and project planning will be in accordance with the information set out in Exhibit II.

(C) Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of designs, drawings, specifications, and other services furnished under this Agreement. Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services caused by Consultant's or Subconsultant's acts, errors and omissions or negligent performance.

(D) All plans, specifications, and other documents shall be endorsed by the

Consultant and shall reflect the name and seal of the professional engineer endorsing the work who must be registered in the State of Missouri.

(E) Neither the Commission's review, approval or acceptance of, or payment for, any services required under this Agreement will be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement, and the Consultant shall be and remains liable to the Commission in accordance with applicable state and federal law for the damages to the Commission caused by the Consultant's acts, errors and omissions or negligent performance of any of the services furnished under this Agreement.

(F) Consultant shall cooperate fully with the Commission and its engineers, consultants and contractors on adjacent projects, and with municipalities and local government officials, public utility companies, and others as may be directed by the engineer. This shall include attendance at meetings, discussions, and hearings as requested by the Commission. The FHWA shall have access to the work and shall be furnished information as FHWA may require.

(6) NO SOLICITATION WARRANTY: The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that it 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 Agreement. For breach or violation of this warranty, the Commission will have the right to annul this Agreement without liability, or in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee, plus costs of collection including reasonable attorney's fees.

(7) DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS:

(A) DBE Goal: The following DBE goal has been established for this contract. The dollar value of work, supplies, and services which is credited toward this goal will be based on the amount actually paid to DBE firms. The goal for the amount of work to be awarded to DBE firms is \_\_\_\_\_ percent (\_\_\_\_%) of the total contract price.

(B) Consultant's Certification Regarding Disadvantaged Business Enterprise: The Consultant's signature on this contract constitutes the execution of all DBE certifications which are a part of this contract.

1. Policy: It is the policy of the USDOT and the Commission 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 insure that DBE's have the maximum opportunity to participate in the performance of this contract and any subcontract financed in whole or in part with federal funds. In this regard the Consultant shall take all necessary and reasonable steps to insure that DBE's have the maximum opportunity to compete for and perform contracts. 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 subcontract.

3. Banking Services: The Consultant is encouraged to use the services of banks owned and controlled by socially and economically disadvantaged individuals.

4. Geographic Area for Solicitation of DBE's: The Consultant shall seek DBE's in the same geographic area in which the solicitation for subcontracts and materials is made. If the Consultant cannot meet the goals using DBE's from this geographic area, the Consultant shall, as a part of the effort to meet the goal, expand the search to a reasonably wider geographic area.

5. 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 an eligible DBE, the total dollar value of the contract or subcontract awarded to the DBE is counted toward the goal.

B. The Consultant may count toward the DBE goal a portion of the total dollar value of a subcontract 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 contract work. A DBE is considered to perform a commercially useful function when the DBE is responsible for the execution of a distinct element of the work of a contract and the carrying out of the responsibilities by actually performing, managing and supervising the work involved and providing the work product.

D. The Consultant may count toward the DBE goal sixty percent (60%) of its expenditures for materials and supplies required under a contract and obtained from a DBE regular dealer, and one hundred percent (100%) of such expenditures to a DBE manufacturer.

(I) A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies

required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question.

(II) A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products, need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.

(III) A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Consultant (i.e., a supplier who produces goods from raw materials or substantially alters them before resale).

E. A Consultant may count toward the DBE goal the following expenditures to DBE firms that are not regular dealers or manufacturers:

(I) The 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 the Commission to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(II) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves), when the hauler or trucker is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Commission to be reasonable and not excessive as compared with fees customarily allowed for similar services.

6. 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 the Commission.

7. Verification of DBE Participation: Prior to final payment by the Commission, the Consultant shall file a list with the Commission showing the DBEs used and the work performed. The list shall show the actual dollar amount paid to each DBE that is applicable to the percentage participation established in this contract. Failure on the part of the Consultant to achieve the DBE participation specified in this contract may result in sanctions being imposed on the Commission for noncompliance with 49 C.F.R. Part 26 and/or TEA-21. If the total DBE participation is less than the contract goal stated by the Commission, the Commission may sustain damages, the exact extent of which would be difficult or impossible to ascertain. Therefore, in order to

liquidate such damages, the monetary difference between the amount of the contract goal and 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 contract is awarded with less than the contract goal stated above by the Commission, that lesser amount shall become the contract goal 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 contract goal is not met.

8. Documentation of Good Faith Efforts to Meet the DBE Contract

Goal: The DBE contract goal established by the Commission is stated above in Subsection (7)(A). The Consultant must document the good faith efforts it made to achieve that DBE contract goal, if the agreed percentage specified in Paragraph (7)(B)(9) is less than the percentage stated in Subsection (7)(A). Good faith efforts to meet this DBE goal 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 and subcontracting opportunities.

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

C. Provided written notice to a reasonable number of specific DBEs that their interest in the contract 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.

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

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

G. Negotiated in good faith with interested DBEs, not 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 department or 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.

9. DBE Participation Obtained by Consultant: The Consultant has obtained DBE participation, and agrees to use DBE firms to complete, zero percent (0%) of the total contract work, by dollar value. The DBE firms which the Consultant shall use, and the type and dollar value of the work each DBE will perform, is as follows:

<u>DBE FIRM NAME</u>	<u>TOTAL \$</u>	<u>CONTRACT PERCENTAGE</u>	<u>AMOUNT OF CONTRACT</u>
<u>STREET AND</u>	<u>VALUE OF</u>	<u>APPLY</u>	<u>DOLLAR VALUE</u>
<u>COMPLETE</u>	<u>TYPE OF</u>	<u>TO TOTAL</u>	<u>APPLICABLE TO</u>
<u>MAILING ADDRESS</u>	<u>DBE WORK</u>	<u>CONTRACT</u>	<u>DBE GOAL TOTAL GOAL</u>

10. Consultant Certification of Good Faith Efforts to Obtain DBE Participation: If the Consultant's agreed DBE contract goal as specified in Paragraph (7)(B)(9) is less than the Commission's contract goal given in Subsection (7)(A), 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 the Commission in Subsection (7)(A):

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(8) SUBCONTRACTING AND SUBCONSULTANTS:

(A) The Consultant agrees that except for those firms and for those services listed below, there shall be no transfer of engineering services performed under this Agreement without the proper written consent of the Commission. Subletting, assignment, or transfer of the services or any part thereof to any other corporation, partnership, or individual is expressly prohibited. Any violation of this clause will be deemed cause for termination of this Agreement.

EXCEPTIONS

<u>Firm Name</u>	<u>Complete Address</u>	<u>Nature of Services</u>
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[List firms or write "N/A"]

(B) The Consultant agrees, and shall require the selected Subconsultants, to maintain books, documents, papers, accounting records, and other evidence pertaining to direct costs and expenses incurred under the Agreement and to make such materials available at their offices at reasonable times at no charge to the Commission and their designees and/or representatives during the Agreement period and for three (3) years from the date of final payment under the Agreement, for inspection by the Commission or any of its authorized representatives (or any authorized representative of the federal government), and copies thereof shall be furnished.

(C) Unless waived or modified by the Commission, the Consultant agrees to require, and shall provide evidence to the Commission, that those Subconsultants shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance, for not less than the period of services under such subcontract agreements, and in not less than the following amounts:

1. Commercial General Liability: \$500,000 per person up to \$3,000,000 per occurrence;

2. Automobile Liability: \$500,000 per person up to \$3,000,000 per occurrence; and

3. Worker's Compensation in accordance with the statutory limits; and Employer's Liability: \$1,000,000.

(D) The subletting of the services will in no way relieve the Consultant of its primary responsibility for the quality and performance of the services to be performed hereunder and the Consultant shall assume full liability for the services performed by its Subconsultants.

(E) The payment for the services of any Subconsultants will be reimbursed at cost by the Commission in accordance with the submitted invoices for such services, as set forth in Section (9), titled "Fees and Payments."

(F) The Consultant agrees to furnish a list of any Commission-approved DBE Subconsultants under this Agreement upon the request of the Commission.

(G) The Consultant agrees that any agreement between the Consultant and any Subconsultant shall be an actual cost plus fixed fee agreement if the amount of the agreement between the Consultant and Subconsultant exceeds twenty-five thousand dollars (\$25,000).

(9) FEES AND PAYMENTS:

(A) The amount to be paid to the Consultant by the Commission as full remuneration for the performance of all services called for in this Agreement will be on the basis of the Consultant's actual cost plus a fixed fee of \$\_\_\_\_\_, except that the combined costs and fee will not exceed a maximum amount payable of \$\_\_\_\_\_ which is shown in Exhibit III, titled "Estimate of Cost," attached hereto. Payment under the provisions of this Agreement is limited to those costs incurred as restricted by Commission reimbursement policy and in accordance with generally accepted accounting principles, to the extent that they are considered necessary to the execution of the item of work.

(B) The Consultant's actual costs shall include the hourly salary of each

associate and employee, salary-related expenses, general overhead, and direct non-salary costs as allowed by 48 C.F.R. Part 31, the Federal Acquisition Regulations (FAR), and 23 C.F.R. Part 172, Administration of Engineering and Design Related Service Contracts. The hourly salary of each associate and employee is defined as the actual productive salaries expended to perform the work. The other billable costs for the project are defined as follows:

1. Salary-related expenses are additions to payroll cost for holidays, sick leave, vacation, group insurance, worker's compensation insurance, social security taxes (FICA), unemployment insurance, disability taxes, retirement benefits and other related items.

2. General overhead cost additions are for administrative salaries (including non-productive salaries of associates and employees), equipment rental and maintenance, office rent and utilities, office maintenance, office supplies, insurance, taxes, professional development expenses, legal and audit fees, professional dues and licenses, use of electronic computer for accounting and other related items.

3. Direct non-salary costs incurred in fulfilling the terms of this Agreement, such as but not limited to travel and subsistence, subcontract services, reproductions, computer charges, materials and supplies, and other related items, will be charged at actual cost without any override or additives.

4. The additions to productive salaries for Paragraphs (9)(B)(1) and (2) will be established based on the latest audit. If an audit determines that overhead has increased or decreased during the course of the work, the Consultant shall notify the Commission and utilize the latest audited data as the basis for interim payments and adjust overhead for prior periods. Upon completion of the work outlined under this Agreement, the final payment for these items will be based on accounting records of the Consultant incurred during the period of this Agreement. If, however, the Consultant's overhead has remained reasonably uniform during the period of this Agreement, the Consultant's latest audited rates may be accepted as a basis for establishing final payment for payrolls earned in the last fiscal year.

5. The property and equipment used on this project such as automotive vehicles, inspection equipment, office equipment, etc., shall be owned, rented, or leased by the Consultant, and charges will be made to the project for the use of such property at the rate established by company policies and practices. Approval of the Commission will be required prior to acquisition of reimbursable special equipment.

(C) The Consultant shall submit an invoice for services rendered to the Commission not more than once every month. A graphic progress report indicating the current status of the work shall be submitted along with each invoice. Upon receipt of the invoice and progress report, the Commission, will, as soon as practicable, pay the Consultant for the services rendered, including the proportion of the fixed fee earned as reflected by the estimate of the portion of the services completed as shown by the

progress report, less partial payments previously made. The payment, other than the fixed fee, will be subject to final audit of actual expenses during the period of this Agreement.

(10) PERIOD OF SERVICE:

(A) The work, and if more than one, then each phase, shall be completed in accordance with the schedule contained in Exhibit IV of this Agreement.

(B) The Commission 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 the work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested. Such extension of time shall be the sole allowable compensation for all such delays, except as otherwise provided in Section (3) for additional/changed work and differing/unforeseen conditions.

(C) The Consultant and Commission agree that time is of the essence, and the Consultant and Commission will be required to meet the schedules in this Agreement. In the event of delays due to unforeseeable causes beyond the control of and without fault or negligence of the Consultant, no claim for damages shall be made by either party. The anticipated date of completion of the work, including review time, is stated in Exhibit IV of this Agreement. An extension of time shall be the sole allowable compensation for any such delays, except as otherwise provided in Section (3) for additional/changed work and differing/unforeseen conditions.

(D) As used in this provision, the term "delays due to unforeseeable causes" includes only the following:

1. War or acts of war, declared or undeclared;
2. Flooding, earthquake, or other major natural disaster preventing Consultant from performing necessary work at the project site, or in Consultant's offices, at the time such work must be performed;
3. The discovery on the project site of differing site condition, hazardous substances, or other condition which, in the sole judgment of the Engineer, justifies a suspension of the work or necessitates modifications of the project by the Consultant;
4. Court proceedings;
5. Changes in work or extra work.

(E) This Agreement may be extended by means of a supplemental

agreement mutually agreeable to both parties.

(11) SUSPENSION, CANCELLATION OR TERMINATION:

(A) Without being in breach hereof, the Consultant's services under this Agreement, or any part of them, may be suspended, canceled or terminated by the Commission, with or without cause, upon giving to Consultant at least fifteen (15) days prior written notice of the effective date thereof. The Consultant shall not accelerate performance of services during the fifteen (15) day period without the express written request of the Commission.

(B) Should the Agreement be suspended or terminated for the convenience of the Commission, the Commission will pay to the Consultant its costs as set forth in Subsection (9)(B), including actual hours expended prior to such suspension or termination and direct costs as defined in this Agreement for services performed by the Consultant, a proportional amount of the fixed fee based upon an estimated percentage of Agreement completion, plus reasonable costs incurred by the Consultant in suspending or terminating the services. The payment will make no other allowances for damages or anticipated fees or profits. In the event of a suspension of the services, the Consultant's compensation and schedule for performance of services hereunder shall be equitably adjusted upon resumption of performance of the services.

(C) The Consultant shall remain liable to the Commission for any claims or damages occasioned by any failure, default, error or omission in carrying out the provisions of this Agreement during its life, including those giving rise to a termination for non-performance or breach by Consultant. This liability shall survive and shall not be waived, or stopped by final payment under this Agreement.

(D) The Consultant shall not be liable for errors or omissions contained in documents which are incomplete as a result of a suspension or termination where Consultant is deprived of the opportunity to complete Consultant's work.

(13) OWNERSHIP OF REPORTS AND DOCUMENTS: All drawings and documents prepared in performance of this Agreement shall be delivered to and become the property of the Commission upon suspension, abandonment, cancellation, termination or completion of work. Basic survey notes, design computations, and other data prepared under this Agreement shall be made available for use by the Commission without further compensation and without restriction or limitation on their use. If the Commission incorporates any portion of the work into a project other than that for which it was performed, it shall be deemed the work of the Commission, and Commission shall remove the Consultant's name, seal, endorsement and all other indices of authorship. The Commission shall not be liable to further compensate Consultant for such use.

(13) DECISIONS UNDER THIS AGREEMENT AND DISPUTES:

(A) The Commission will determine the acceptability of the drawings,

specifications, and estimates, and all other work product to be furnished, and will decide the questions that may arise relative to the proper performance of this Agreement. The determination of acceptable work product may occur following final payment, and as late as during the construction of the project.

(B) The engineer will make a final decision concerning all questions which may arise as to the quality, quantity, and acceptability of work performed by Consultant and as to the rate of progress of the work if that decision has a reasonable basis in fact and is not contrary to law.

(C) If Consultant has a claim against Commission which in any way arises out of the provisions of this Agreement or the performance or non-performance thereunder, written notice of such claim must be made in triplicate within sixty (60) days of the Consultant's receipt of final payment. The notice of claim shall be personally delivered or sent by certified mail to the office of the Secretary to the Commission in Jefferson City, Missouri. The notice of claim shall contain an itemized statement showing completely and fully the items and amounts forming the basis of the claim.

(D) Any claim or an item of any claim not included in the notice of claim and itemized statement, or any claim which is included but not clearly defined and specifically set out and itemized, or any claim not filed within the time and in the manner provided by this provision, shall be forever waived, and shall neither constitute the basis of nor be included in any legal action, counterclaim, set-off, or arbitration, against the Commission.

(E) The claims procedure in Subsections (13)(C) and (D) do not apply to any claims of Commission against Consultant. Further, any claims of Commission against Consultant under this Agreement are not waived or stopped by the claims procedure in Subsections (13)(C) and (D).

(14) SUCCESSORS AND ASSIGNS: Commission and the Consultant agree that this Agreement and all agreements entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.

(15) INDEMNIFICATION RESPONSIBILITY:

(A) The Consultant agrees to save harmless the Commission and the FHWA from all liability, losses, damages, and judgments for bodily injury, including death, and property damage to the extent due to the Consultant's negligent acts, errors, or omissions in the services performed or to be performed under this Agreement, including those negligent acts, errors, or omissions of the Consultant's employees, agents, and Subconsultants.

(B) The Consultant shall be responsible for the direct damages incurred by the Commission as result of the negligent acts, errors, or omissions of the Consultant or anyone for whom the Consultant is legally responsible, and for any losses or costs to

repair or remedy construction as a result of such negligent acts, errors or omissions; provided, however, the Consultant shall not be liable to the Commission for such losses, costs, repairs and/or remedies which constitute betterment of or an addition of value to the construction or the project.

(C) Neither the Commission's review, approval or acceptance of, or payment for, any services required under this Agreement, nor the termination of this Agreement prior to its completion, will be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement. This indemnification responsibility survives the completion of this Agreement, as well as the construction of the project at some later date, and remains as long as the construction contractor may file or has pending a claim or lawsuit against the Commission on this project arising out of the Consultant's services hereunder.

(16) INSURANCE:

(A) The Consultant shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in full force and effect to protect the Consultant from claims under Worker's Compensation Acts, claims for damages for personal injury or death, and for damages to property arising from the negligent acts, errors, or omissions of the Consultant and its employees, agents, and Subconsultants in the performance of the services covered by this Agreement, including, without limitation, risks insured against in commercial general liability policies.

(B) The Consultant shall also maintain professional liability insurance to protect the Consultant against the negligent acts, errors, or omissions of the Consultant and those for whom it is legally responsible, arising out of the performance of professional services under this Agreement.

(C) The Consultant's insurance coverage shall be for not less than the following limits of liability:

1. Commercial General Liability: \$500,000 per person up to \$3,000,000 per occurrence;
2. Automobile Liability: \$500,000 per person up to \$3,000,000 per occurrence;
3. Worker's Compensation in accordance with the statutory limits; and Employer's Liability: \$1,000,000; and
4. Professional ("Errors and Omissions") Liability: \$1,000,000, each claim and in the annual aggregate.

(D) In lieu of the minimum coverage stated in (16)(C)(1) and (C)(2), above, the Consultant may obtain insurance at all times in an amount equal to the Commission

sovereign immunity caps as stated in Section 537.600 RSMo and subsequently adjusted by the Missouri Department of Insurance. If the statutory limit of liability for a type of liability specified in this section is repealed or does not exist, the Consultant shall obtain insurance with the minimum coverage stated in (16)(C)(1) and (C)(2), above.

(E) The Consultant shall, upon request at any time, provide the Commission with certificates of insurance evidencing the Consultant's commercial general or professional liability ("Errors and Omissions") policies and evidencing that they and all other required insurance are in effect as to the services under this Agreement.

(F) Any insurance policy required as specified in Section (16) shall be written by a company which is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State of Missouri.

(17) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, Consultant agrees as follows:

(A) Civil Rights Statutes: The Consultant shall comply with all state and federal statutes related to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, *et seq.*), as well as with any applicable titles of the Americans With Disabilities Act (42 U.S.C. §12101, *et seq.*). In addition, if the Consultant is providing services or operating programs on behalf of the Commission or MoDOT, the Consultant shall comply with all applicable provisions of the "Americans with Disabilities Act."

(B) Administrative Rules: The Consultant shall comply with USDOT rules relative to nondiscrimination in federally-assisted programs of the USDOT (49 C.F.R. Part 21) which rules are incorporated herein by reference and made a part of this Agreement.

(C) Nondiscrimination: The Consultant shall not discriminate on the grounds of race, color, religion, national origin, sex, age, disability, or veteran status of any individual in the selection and retention of subconsultants, including the procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) The Solicitation For Subcontracts, Including the Procurements of Material and Equipment: These assurances which concern nondiscrimination also apply to the subconsultants and suppliers of the Consultant. In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract (including procurement of materials or equipment), each potential subconsultant or supplier shall be notified by the Consultant of the requirements of this Agreement relative to nondiscrimination on the grounds of the race, color, religion,

national origin, sex, age, disability, or veteran status of any individual.

(E) Information and Reports: Consultant shall provide all information and reports required by this Agreement, or orders and instructions 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 Commission or the USDOT to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information which is required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Commission or the USDOT as appropriate, and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event that the Consultant fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including but not limited to:

1. Withholding of payments to Consultant under this Agreement until Consultant and its subconsultant(s) comply; or
2. The cancellation, termination or suspension of this Agreement, in whole or in part; or both.

(G) Incorporation of Provision: The Consultant shall include these nondiscrimination provisions in every subcontract it makes relating to this project, including the procurement of materials and lease of equipment, unless exempted by federal law, or USDOT regulations or instructions. The Consultant shall take such action with respect to any subcontract or procurement as the Commission or USDOT may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided that in the event the Consultant becomes involved or is threatened with litigation with a subconsultant or supplier as a result of such direction, the Consultant may request the United States to enter into such litigation to protect the interests of the United States. The Consultant shall take the acts which may be required to fully inform itself of the terms of, and to comply with, said state and federal laws.

(18) EXECUTIVE ORDER:

(A) The Consultant shall comply with all the provisions of Executive Order 07-13, issued by the Honorable Matt Blunt, Governor of Missouri, on the sixth (6th) day of March, 2007. This Executive Order, which promulgates the State of Missouri's position to not tolerate persons who contract with the state engaging in or supporting illegal activities of employing individuals who are not eligible to work in the United States, is incorporated herein by reference and made a part of this Agreement. By signing this Agreement, the Consultant hereby certifies that any employee of the Consultant assigned to perform services under this Agreement is eligible and authorized

to work in the United States in compliance with federal law. In the event the Consultant fails to comply with the provisions of Executive Order 07-13, or in the event the Commission has reasonable cause to believe that the Consultant has knowingly employed individuals who are not eligible to work in the United States in violation of federal law, the Commission reserves the right to impose such contract sanctions as it may determine to be appropriate, including but not limited to contract cancellation, termination or suspension in whole or in part or both.

(B) The Consultant shall include the above-provision concerning said Executive Order within every subcontract. The Consultant shall take such action with respect to any subcontract as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance.

(19) APPROVAL: This Agreement is made and entered into subject to the approval of the FHWA. There shall be no liability whatsoever for any cost or loss to the Consultant on the part of the Commission if the FHWA does not approve this Agreement.

(20) ACTIONS: No action may be brought by either party hereto concerning any matter, thing or dispute arising out of or relating to the terms, performance, non-performance or otherwise of this Agreement except in the Circuit Court of Cole County, Missouri. The parties agree that this Agreement is entered into at Jefferson City, Missouri, and substantial elements of its performance will take place or be delivered at Jefferson City, Missouri, by reason of which Consultant consents to venue of any action against it in Cole County, Missouri. Consultant shall cause this provision to be incorporated in all of its agreements with, and to be binding upon, all Subconsultants of Consultant in the performance of this Agreement.

(21) AUDIT OF RECORDS: For purpose of an audit, Consultant shall maintain all those records relating to this Agreement, including but not limited to invoices, payrolls, bills, receipts, etc. These records must be available at all reasonable times at no charge to the Commission and/or its designees or representatives during the period of this Agreement and any extension, and for three (3) years from the date of final payment made under this Agreement. If the Commission has notice of a potential claim against the Consultant and/or the Commission based on Consultant's work under this Agreement, the Consultant upon written request by the Commission shall retain and preserve its records until the Commission has advised the Consultant in writing that the disputed claim is resolved.

(22) NOTICE TO THE PARTIES: All notices or communications required by this Agreement shall be made in writing, and shall be effective upon receipt by the Commission or Consultant at their respective addresses of record. Letters or other documents which are prepared in 8.5 x 11 inch format may be delivered by facsimile. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document. Either party may change its address of

record by written notice to the other party.

(A) Notice to Commission: Notices to Commission shall be addressed and delivered to the following engineer, who is here designated by the Commission as its primary authorized engineer for administration, interpretation, review, and enforcement of this Agreement and the work of the Consultant hereunder:

[Addressee Name]  
[Addressee Title]  
Missouri Department of Transportation  
[Street Address and P.O. Box, if any]  
[City], Missouri [Zip Code]  
Telefax No.: [Give Number]  
Telephone No.: [Give Number]

The Commission reserves the right to substitute another person for the individual named at any time, and to designate one or more other engineers to have authority to act upon its behalf generally or in limited capacities, as the Commission may now or hereafter deem appropriate. Such substitution or designations shall be made by the chief engineer in a written notice to the Consultant.

(B) Notice To Consultant: Notices to Consultant shall be addressed and delivered to Consultant's representative, as follows:

[Addressee Name]  
[Addressee Title]  
Missouri Department of Transportation  
[Street Address and P.O. Box, if any]  
[City], Missouri [Zip Code]  
Telefax No.: [Give Number]  
Telephone No.: [Give Number]

The Consultant reserves the right to substitute another person for the individual named at any time, and to designate one or more Consultant's Representatives to have authority to act upon its behalf generally or in limited capacities, as the Consultant may now or after this Agreement takes effect deem appropriate. Such substitutions or designations shall be made by the Consultant's principal, president, or chief executive officer in a written notice to the Commission.

(23) ACCURACY OF WORK:

(A) The Consultant shall be responsible for the accuracy of the work, and shall promptly make necessary revisions or corrections resulting from its and its Subconsultants' wrongful or negligent acts or omissions, without any additional compensation. The acceptance of the work by the Commission will not relieve the Consultant of the responsibility for subsequent correction of any such acts, errors or omissions, or for the clarification of any ambiguities.

(B) At any time during construction of the Commission project associated with this Agreement or during any phase of work performed by others on said project that is based upon data, plans, designs, or specifications provided by the Consultant, the Consultant shall confer with the Commission and its engineers when necessary for the purpose of interpreting the information secured from, and to correct any errors or omissions made by, the Consultant or its Subconsultants. The Consultant shall prepare any data, plans, designs, or specifications needed to correct such errors or omissions without added compensation, even though final payment may have been received by Consultant. The Consultant must give immediate attention to these changes so there will be a minimum of delay to the construction contractor.

(C) If wrongful or negligent acts or omissions are made by the Consultant in any phase of the work, which may require correction by additional field or office work, Consultant will be promptly notified and will be required to perform such additional work as may be necessary to correct these wrongful or negligent acts or omissions without undue delay and without additional cost to the Commission.

(D) The Consultant shall be responsible for any damages incurred by Commission, directly or indirectly, as result of the negligent or wrongful acts, errors or omissions of Consultant or any of Consultant's Subconsultants; and for any losses as a result of such acts, errors or omissions. Acceptance of the work will not relieve Consultant of the responsibility for subsequent correction of any such acts, errors or omissions, or of Consultant's liability for any loss or damage resulting therefrom.

(E) If any lawsuit or court proceeding of any kind is brought against Commission or Consultant, or both of them, which alleges any liability or responsibility of either Commission or Consultant, or both of them, for any damages, loss, injury or death suffered by another, or as a result of a claim brought by a contractor for the Commission, which suit or action, or defense or counterclaim to such suit or action, directly or indirectly alleges that this work was wrongfully or negligently performed or failed in performance by Consultant or its Subconsultants under this Agreement; then the Consultant and its Subconsultants, and their agents, employees and designates, shall appear as needed at all court or related hearings, trials, discovery depositions; and shall give written or oral testimony, and respond in full to all legal discovery requests; and shall reasonably assist the Commission in preparing the Commission's own defense; and shall participate to the extent reasonably required by the Commission or court in said lawsuit or action. For these services the Consultant and its Subconsultants, and their agents, employees and designates, shall receive no payment or reimbursement for their costs whatsoever from the Commission, its contractors, or their agents, employees, attorneys, or other representatives unless the Commission successfully defends such claim and is awarded the costs of Consultant's services.

(F) In the event that any lawsuit or court proceeding of any kind brought against the Commission does not directly or indirectly allege a claim relating to the performance of the Consultant, or the failure of the Consultant to perform, any

assistance given to the Commission by Consultant will be compensated at any amount or rate negotiated between the Commission and the Consultant and the scope of services shall be set forth in a supplemental agreement.

(24) MISCONDUCT CERTIFICATIONS: Under penalty of perjury, false declaration, and any other applicable consequences pursuant to state and federal law, the Consultant by signing this Agreement hereby certifies, unless expressly noted by submission of written exceptions, that the Consultant and its principals (any person associated with the Consultant in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any other administrative position): (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal, state or local governmental entity; (2) have not been indicted, convicted, or had a civil judgment rendered against them in any matter involving fraud or official misconduct within the past three years; and (3) have not had any public transactions terminated for cause or default in the last three years. If there are any exceptions to this certification, the Consultant shall submit those exceptions in writing, and these exceptions will be considered in determining whether to procure professional services from the Consultant. The Consultant shall not execute a subcontract for services under this Agreement with any business or person the Consultant knows to be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by a federal agency unless authorized by the Commission.

(25) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Consultant shall comply with all local, state and federal laws and regulations which govern the performance of this Agreement.

(26) CONFIDENTIALITY: The Consultant agrees that Consultant's work under this Agreement is a confidential matter between the Consultant and Commission. The Consultant shall not disclose any aspect of Consultant's work under this Agreement to any other person, corporation, governmental entity or news media without the prior approval of the Commission's engineer. Any disclosure pursuant to a lawful request to the Commission under Chapter 610, RSMo. 1994, shall not constitute a breach of this Agreement. The content and extent of any authorized disclosure shall be coordinated fully with and under the direction of the Commission's engineer, in advance.

(27) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the Consultant.

(28) SEVERABILITY AND SURVIVAL:

(A) Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Commission and the Consultant.

(B) All express representations, indemnifications, or limitations of liability made or given in this Agreement will survive the completion of all services by the Consultant under this Agreement or the termination of this Agreement for any reason.

(29) PAYMENT BOND: In the event that any subconsultants are used to supply at least twenty five thousand dollars (\$25,000) worth of materials and/or labor not within the scope of environmental assessment services or licensed professional services as defined by chapter 327, RSMo, the Consultant shall require any such subconsultants to provide laborers and materialmen with adequate bond security. Payment bonds shall be executed by any such subconsultants with the subconsultant as principal and a surety company authorized to do business in the State of Missouri as surety, and any agent executing the same on behalf of a subconsultant or surety company must attach a current Power of Attorney setting forth sufficient execution authority. Said payment bonds must be acceptable to the Commission to cover all materials used, all labor performed, and all insurance premiums necessary to comply with Section 107.170, RSMo, and must be provided to the Commission prior to the performance of such subconsultant services under this Agreement.

(30) CERTIFICATION ON LOBBYING: Since federal funds are being used for this agreement, the consultant's signature on this agreement constitutes the execution of all certifications on lobbying which are required by 49 C.F.R. Part 20 including Appendix A and B to Part 20. Consultant agrees to abide by all certification or disclosure requirements in 49 C.F.R. Part 20 which are incorporated herein by reference.

(31) ATTACHMENTS: The following Exhibits and other documents are attached to and made a part of this Agreement:

- (A) Exhibit I: Scope of Services.
- (B) Exhibit II: Services provided by the Commission
- (C) Exhibit III: Estimate of Cost
- (D) Exhibit IV: Period of Service

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective proper officials.

Executed by the Consultant the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Executed by the Commission the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION**

**[INSERT CONSULTANT NAME HERE]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST: (Commission seal)

ATTEST: (Consultant seal, if existing)

\_\_\_\_\_  
Secretary to the Commission

By: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Commission Counsel

By: \_\_\_\_\_

Title: \_\_\_\_\_