City of Troy

CITY COUNCIL ACTION REPORT

January 2, 2007

TO: Phillip L. Nelson, City Manager

FROM: Brian Murphy, Assistant City Manager/Services
Steve Vandette, City Engineer SV

SUBJECT: Subcontract No. 06-5632/S1 with Greenstar & Associates, L.L.C. for Right-of-Way Services for the Reconstruction and Widening of Rochester Road, Barclay to Trinway – Project No. 02.206.5

Background:

- The Rochester Road, Barclay to Trinway reconstruction project requires an estimated $4,000,000 in right-of-way with 80% of the cost to be paid for with Transportation Economic Development Category C funds.
- The City entered into a two-year contract for right-of-way services with Greenstar & Associates, L.L.C. (GA) in accordance with Resolution #2006-04-174.
- Pat Petitto is the owner of GA; is a former city employee in Real Estate & Development; and as of April 1, 2006 has been working for the City as a consultant.
- In order to use a consultant on a federally funded project, as well as to receive reimbursement for the consultant's time, justification for using the consultant is required along with an agreement between the City and the consultant.

Financial Considerations:

- Compensation is based on an hourly rate of $75 per hour, which is commensurate with the rate as previously approved by Resolution #2006-04-174.
- The maximum amount of this subcontract shall not exceed $75,000.
- Funds for the City of Troy's share are included in the 2006-07 Major Road fund, account number 401479.7989.022065 and will also be included in the proposed 2007-08 budget and beyond as the right-of-way phase is a multi-year effort.

Legal Considerations:

- The format and content of the agreement is consistent with the contract approved by Resolution #2006-04-174 and is materially the same as two (2) previous agreements for the John R Road right-of-way phases as approved by the Legal Department and City Council.
- MDOT has approved the format and content of the agreement based on their review of the previously submitted agreements.

Policy Considerations:

- Pat is a former city employee with 30+ years of experience in right-of-way acquisition on city and federally funded projects (Goals I & III)
- Purchase of right-of-way allows the project to proceed to the next phase, including federal funds for the reconstruction and widening of Rochester Road to relieve congestion and provide for a safer road cross section (Goals II & IV)

Options:

- The Council can approve the suggested resolution
- The Council can amend the suggested resolution
- The Council can postpone action pending additional information
- The Council can reject the suggested resolution and direct staff to solicit proposals for these services

Approved for Submittal: _____
Phillip L. Nelson, City Manager

Approved as to Form: _____
Lori Grigg Bluhm, City Attorney

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Subcontract No. 06-5632/S1
Control Section No. EDCF 63544
Job No. 56250
Fed. Project No. EBSL 0763(013)
Fed. Item No. RR5451
Troy Project No. 02.206.5

CITY OF TROY
GREENSTAR & ASSOCIATES, L.L.C
ROCHESTER ROAD, BARCLAY to TRINWAY
RIGHT OF WAY SERVICES CONTRACT
A TED FUNDS CATEGORY C PROJECT

THIS CONTRACT, made and entered into as of this date of _____, 2006, by and between Greenstar & Associates, L.L.C., 4840 N. Adams, Suite 183, Rochester, MI 48306, hereinafter referred to as the "CONSULTANT", and the City of Troy, hereinafter referred to as the "LOCAL AGENCY".

WITNESSETH:

WHEREAS, the LOCAL AGENCY is desirous of proceeding with acquisition of right of way for a road improvement PROJECT within its limits; and

WHEREAS, the LOCAL AGENCY desires to engage the professional services and assistance of the CONSULTANT to perform certain right of way acquisition services and other related work, said work to be hereinafter referred to as the "SERVICES", required in connection with the acquisition of right of way for improvements under the Transportation Economic Development Category C Program, said improvements to be hereinafter referred to as the "PROJECT."

> Right of way acquisition services including title work provision of appraisals, negotiations, closings, maintaining and providing parcel files in acquisition of right of way for Rochester Road, Barclay to Trinway.

WHEREAS, the LOCAL AGENCY has programmed the PROJECT with the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT" for the construction with the use of Transportation Economic Development Category C funds administration by the United States DEPARTMENT of Transportation, Federal Highway Administration, hereinafter referred to as the "FHWA"; and

WHEREAS, the CONSULTANT is willing to render the SERVICES desired by the LOCAL AGENCY for the considerations hereinafter expressed; and

WHEREAS, the parties hereto have reached an understanding regarding the performance of the SERVICES on the PROJECT and desire to set forth this understanding in the form of a written Contract;

NOW THEREFORE, it is hereby agreed by and between the parties hereto that:

THE CONSULTANT SHALL:

1. Perform right of way services, including but not limited to providing title work, appraisals of parcels to be acquired, review of appraisals, negotiations with property owners and preparation of conveyance documents as may be required, attendance at closing, and other similar activities.

2. Govern all SERVICES by the applicable codes and practices of the LOCAL AGENCY and the DEPARTMENT and the FHWA.

3. Submit for approval by the LOCAL AGENCY the fully executed purchase agreement or request for approval of unconditioned offer and condemnation authorization.

4. Submit original documents including but not limited to appraisals, title commitments and documentation, review appraisals, negotiators' logs, and such other activities that are required to be performed and documented by Federal, State, and local statutes and regulations pertaining to the SERVICES.

5. During the preparation of the documents, make such changes and revisions in said plans and supporting material as are considered necessary and desirable by the LOCAL AGENCY and the DEPARTMENT.

6. During negotiations, make all corrections and alterations in the acquisition plans for the PROJECT as may be deemed necessary by the LOCAL AGENCY and the DEPARTMENT as a result of errors or omissions. The CONSULTANT and the LOCAL AGENCY specifically agree that in the event problems arise that may be the result of errors and/or omissions by the CONSULTANT or due to a failure of the CONSULTANT to otherwise perform in accordance with this Contract, that the CONSULTANT will be held responsible with no cost to the LOCAL AGENCY or in accordance with any agreement reached by the LOCAL AGENCY'S dispute resolution process, if applicable.

7. Be available at additional reasonable charges for additional consulting and assistance to the LOCAL AGENCY and counsel, should condemnation be required, said consulting and assistance to include reappraisal of the parcel or parcels to the date of taking.

8. During the performance of the SERVICES, be responsible for any loss or damage to documents belonging to the LOCAL AGENCY while they are in

its possession. Restoration of lost or damaged documents shall be at the CONSULTANT'S expense.

9. Attend conferences and make trips to the offices of the LOCAL AGENCY and to the site of the work to confer with representatives of the LOCAL AGENCY or the DEPARTMENT or the FHWA as may be necessary in the carrying out of the work under this Contract.

10. Follow standard accounting practices and permit representatives of the LOCAL AGENCY and the DEPARTMENT and the FHWA to audit and inspect its PROJECT books and records at any reasonable time. Such records are to be kept available for three (3) years from the date of the final payment for work conducted under this Contract.

    a. The CONSULTANT shall establish and maintain accurate RECORDS, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this Contract, said RECORDS to be hereinafter referred to as the "RECORDS." Separate accounts shall be established and maintained for all costs incurred under this Contract.

    b. The CONSULTANT shall maintain the RECORDS for at least three (3) years from the date of final payment of federal aid or state aid made by the DEPARTMENT to the LOCAL AGENCY under this Contract. In the event of a dispute with regard to the allowable expenses or any other issue under this Contract, the CONSULTANT shall thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

    c. The DEPARTMENT, or its representative, may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.

    d. If any part of the work is subcontracted, the CONSULTANT shall assure compliance with subsections (a), (b), and (c) above for all subcontracted work.

11. Have in its employ a sufficient number of qualified employees available to complete the SERVICES within two (2) years of execution of this Contract, unless an extension of time is granted as provided in Section 29.

12. Permit the LOCAL AGENCY, the DEPARTMENT, the FHWA, and other public agencies interested in the plans and designs for the PROJECT to have full access thereto during the process of the SERVICES being performed thereon.

13. Have their professional endorsement upon all plans, specifications, estimates, and engineering data furnished by the LOCAL AGENCY.

14. Provide evidence of Workers' Compensation Insurance, said insurance to be as required by law or if sole proprietor, provide workers compensation insurance release.

15. Commence SERVICE as set forth in this Contract only upon receipt of written notice from the LOCAL AGENCY PROJECT manager that the CONSULTANT'S SERVICES are desired.

16. Submit billings to the LOCAL AGENCY, as hereinafter set forth in Section 19.

THE LOCAL AGENCY SHALL:

17. Furnish for the use of the CONSULTANT, the DEPARTMENT'S standards for the SERVICES and such other information as may be needed in a particular instance.

18. For and in consideration of the SERVICES rendered by the CONSULTANT as set forth in this Contract, pay the CONSULTANT on an hourly basis at a rate of $75 per hour. This rate shall remain firm for the 2006 calendar year. Thereafter the hourly rate will be increased at a rate not to exceed the difference in the Consumer Price index between the current year (as close to 12 months as possible) and the previous year as calculated on the CPI Inflation Calculator available on the Bureau of Labor Statistics website www.BLS.gov/cpi/home.htm with the exception that annual rate increases shall not exceed three (3) percent. The CPI Inflation Calculator uses the average Consumer Price Index for a given year.

    a. The maximum amount of this Contract shall not exceed Seventy-Five Thousand Dollars ($75,000.00) except by the execution of an amendment to the Contract by and between the parties hereto and with approval by the DEPARTMENT and the FHWA. Payment shall be made as set forth hereinafter.

19. Make payments to the CONSULTANT in accordance with the following procedures:

    a. Progress payments may be made for reimbursement of amounts earned to date.

    b. Partial payments will be made upon the submission by the CONSULTANT of a billing, accompanied by properly completed reporting forms and such other evidence of progress as may be

required by the LOCAL AGENCY. Partial payments shall be made only once a month.

c. Final billing under this Contract shall be submitted in a timely manner but not later than three (3) months after completion of the SERVICES. Billing for work submitted later than three (3) months after completion of SERVICES will not be paid. Final payment will be made upon completion of audit by the LOCAL AGENCY and/or as appropriate, by representatives of the DEPARTMENT and the FHWA. In the event such audit indicates an overpayment, the CONSULTANT will repay the LOCAL AGENCY within sixty (60) days of the date of the invoice.

20. If SERVICES, or any part thereof, are terminated before completion, pay the CONSULTANT as follows:

a. Pay the CONSULTANT actual cost, as defined herein, incurred for the work to be terminated up to the time of termination, plus an amount determined at the time of termination to compensate the CONSULTANT in full for work completed, as set forth in Section 19, subject to approval by the DEPARTMENT and the FHWA.

b. In no case shall the compensation paid to the CONSULTANT for SERVICES, or any part thereof, exceed the amount the CONSULTANT would receive had the SERVICES or the terminated portion thereof been completed.

IT IS FURTHER AGREED THAT:

21. Approval of this Contract by the DEPARTMENT in no way obligates the DEPARTMENT for any costs or other responsibilities, except as fiscal agent for the FHWA with respect to making federal funds available for the SERVICES performed by the CONSULTANT for the LOCAL AGENCY.

22. Upon completion or termination of this Contract, all documents prepared by the CONSULTANT, including tracings, drawings, estimates, specification, field notes, investigations, studies, etc., as instruments of SERVICE shall become the property of the LOCAL AGENCY.

23. No portion of the PROJECT work, hereto before defined, shall be sublet, assigned, or otherwise disposed of except as herein provided or with the prior written consent of the LOCAL AGENCY and approval by the DEPARTMENT and the FHWA. Consent to sublet, assign or otherwise dispose of any portion of the SERVICES shall not be construed to relieve the CONSULTANT of any responsibility for the fulfillment of this Contract.

24. All questions which may arise as to the quality and acceptability of work, the manner of performance and rate of progress of the work, and the interpretation of plans and specifications shall be decided by the LOCAL AGENCY'S PROJECT Manager. All questions as to the satisfactory and acceptable fulfillment of the terms of this Contract shall be decided by the LOCAL AGENCY.

25. Any change in SERVICES to be performed by the CONSULTANT involving extra compensation must be authorized in writing by the LOCAL AGENCY and approved by the DEPARTMENT and the FHWA prior to the performance thereof by the CONSULTANT and requires an amendment to this Contract.

26. In addition, the CONSULTANT shall comply with, and shall require any contractor or subcontractor to comply with, the following:

    a. In connection with the performance of this Contract, the CONSULTANT (hereinafter in Appendix "A" referred to as the "Contractor") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in Appendix "A" attached hereto and made a part hereof.

    b. During the performance of this Contract, the CONSULTANT for itself, its assignees, and successors in interest (hereinafter in Appendix "B" referred to as the "Contractor"), agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a – 1975d, and 2000a – 2000h-6, and the Regulations of the United States DEPARTMENT of Transportation (49 CFR Part 21) issued pursuant to said Act, including Appendix "B" attached hereto and made a part hereof.

    c. The parties hereto further agree that they accept the DEPARTMENT'S Minority Business Enterprises/Women's Business Enterprises (MBE/WBE) Program with respect to the PROJECT and will abide by the provisions set forth in Appendix "C" attached hereto and made a part hereof, being an excerpt from Title 42 CFR Part 23, more specifically 23.43(a)(1) and (2) thereof.

27. The CONSULTANT warrants that it has not employed or retained any company or person other than bona fide employees working solely for the CONSULTANT, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award, or making of this Contract. For breach or violation of this warranty, the LOCAL AGENCY shall have the right to annul this

Contract without liability, or at its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts or contingent fee.

28. The CONSULTANT specifically agrees that in the performance of SERVICES herein enumerated by it, or by an approved subcontractor, or anyone acting in its behalf, they will, to the best of their professional knowledge and ability, comply with any and all applicable state, federal and local statutes, ordinances and regulations.

29. No charges or claims for damages shall be made by the CONSULTANT for delays or hindrances from any cause whatsoever during the process of any portions of the SERVICES specified in this Contract, except as hereinafter provided.

    In case of a substantial delay on the part of the LOCAL AGENCY in providing to the CONSULTANT either the necessary information or approval to proceed with the work, resulting, through no fault of the CONSULTANT, in delays of such extent as to require the CONSULTANT to perform its work under changed conditions not contemplated by the parties, the LOCAL AGENCY will consider supplemental compensation limited to increased costs incurred as a direct result of such delays. Any claim for supplemental compensation must be in writing and accompanied by substantiating data. Authorization of such supplemental compensation shall be by an amendment to this Contract subject to prior approval by the DEPARTMENT and the FHWA.

    When delays are caused by circumstances or conditions beyond the control of the CONSULTANT as determined by the LOCAL AGENCY, the CONSULTANT shall be granted an extension of time for such reasonable period as may be mutually agreed upon between the parties, it being understood, however, that the permitting of the CONSULTANT to proceed to complete the SERVICES, or any part of them, after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the LOCAL AGENCY of any of its rights herein set forth.

30. In case the CONSULTANT deems extra compensation will be due it for work or materials not clearly covered in this Contract, or not ordered by the LOCAL AGENCY as a change, or due to changed conditions, the CONSULTANT shall notify the LOCAL AGENCY in writing of its intention to make claim for such extra compensation before beginning such work. Failure on the part of the CONSULTANT to give such notification will constitute a waiver of the claim for such extra compensation. The filing of such notice by the CONSULTANT shall not in any way be construed to establish the validity of the claim. Such extra compensation shall be

provided only by amendment to this Contract with approval of the DEPARTMENT and the FHWA.

31. Indemnification and Insurance: The CONSULTANT shall not commence work until the certificate of insurance required under this paragraph has been delivered to the LOCAL AGENCY. All insurance carriers must be acceptable to the LOCAL AGENCY and licensed and admitted to do business in the State of Michigan. A new certificate of insurance shall be provided to the LOCAL AGENCY each year at the time of policy renewal.

1. Workers' Compensation Insurance. The CONSULTANT shall procure and maintain during the life of this Contract, Workers' Compensation Insurance, including employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan. If CONSULTANT is a sole proprietor, workers compensation release must be provided.

2. Commercial General Liability Insurance. The CONSULTANT shall procure and maintain during the life of the Contract, Commercial General Liability insurance on an "Occurrence Basis" with limits of liability not less than $1,000,000 per occurrence, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations Liability; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable. Coverage should include terrorist liability.

3. Motor Vehicle Liability. The CONSULTANT shall procure and maintain during the life of this Contract Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, with limits of liability of not less than $1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

4. Umbrella Liability Insurance. The CONSULTANT shall procure and maintain during the life of this Contract Umbrella Liability Insurance with limits of liability of not less than $1,000,000 per occurrence.

5. Professional Liability Insurance. The CONSULTANT shall procure and maintain during the life of this Contract, Professional liability insurance, issued on an "occurrence basis" or "claims made basis", with limits of liability of not less than $1,000,000 per occurrence/aggregate, or per claim/aggregate if on a "claims made basis". If written on a "claims made basis", the policy must continue for a period of two (2) years following the termination or end date of the contract. Whether on an "occurrence basis"

or a "claims made basis", the policy shall include: a) per contract aggregate and b) deletion of all contractual liability exclusions and/or provisions.

6. Additional Insured. Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be Additional Insureds: "The City of Troy, the Michigan State Transportation Commission, and the Michigan Department of Transportation all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employers and volunteers thereof. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess."

7. Cancellation Notice. Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following: "It is understood and agreed that Sixty (60) days Advance Written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to City of Troy, 500 West Big Beaver Road, Troy, Michigan 48084."

8. If any of the above coverages expire during the term of the Contract, the CONSULTANT shall deliver renewal certificates and/or policies to the City of Troy at least ten (10) days prior to the expiration date. Failure to comply with the insurance requirements contained in this agreement shall constitute a material violation and breach of the agreement and may result in termination of the agreement.

To the fullest extent permitted by law, CONSULTANT agrees to defend, pay in behalf of, indemnify and hold harmless the City of Troy, its elected and appointed officials, employees and volunteers and others working in behalf of the City of Troy against any and all claims, demands, suits, or loss, including all costs and attorneys fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Troy, its elected and appointed officials, employees, volunteers or others working in behalf of the City of Troy by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Contract as well as to indemnify and save harmless the Michigan State Transportation Commission, and the DEPARTMENT, their officers, agents and employees from any and all claims and losses occurring or resulting to any person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the CONSULTANT in the performance of this contract.

32. This Contract shall be terminated upon advisement to the CONSULTANT by the LOCAL AGENCY that its SERVICES are completed and accepted.

33. The CONSULTANT'S signature on this Contract constitutes the CONSULTANT'S certification of "status" under penalty or perjury under the laws of the United States in respect to 49 CFR Part 29 pursuant to Executive Order 12549.

    The certification, which is included as a part of this Contract as Attachment "A," is Appendix A of 49 CFR Part 229, and applies to the CONSULTANT (referred to in Appendix A of 49 CFR Part 29 as "the prospective primary participant").

34. The CONSULTANT hereby agrees that the costs reported to the LOCAL AGENCY for this Contract shall represent only those items which are properly chargeable in accordance with this Contract. The CONSULTANT also hereby certifies that it has read the Contract terms and has made itself aware of the applicable laws, regulations, and terms of this Contract that apply to the reporting of costs incurred under the terms of this Contract.

35. Upon execution of this Contract by the parties hereto, the same shall become binding on the parties hereto and their successors and assigns, until such time as all work contemplated hereunder is complete, or until such time as this Contract is terminated by mutual consent of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals by their duly authorized agents and representatives the day and year first above written.

GREENSTAR & ASSOCIATES, L.L.C

By: Patricia A. Petitto
Patricia A. Petitto

CITY OF TROY

By: _____
Louise Schilling
Its: Mayor

By: _____
Tonni L. Bartholomew
Its: City Clerk

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CERTIFICATION

I hereby certify that I am Patricia A. Petitto and a duly authorized representative of the firm of Greenstar & Associates, L.L.C., whose address is 4840 N. Adams, Suite 183, Rochester, MI 48306 and that neither I nor the above firm I here represent has:

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Greenstar & Associates, L.L.C.) to solicit or secure this contract.

(b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or

(c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Greenstar & Associates, L.L.C.) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

except as here expressly stated (if any):

I acknowledge that this certification is to be furnished to the Michigan Department of Transportation in connection with this contract involving participation of state and/or federal funds, and is subject to applicable state and federal laws, both criminal and civil.

1/2/07
Date

Patricia A. Petitto
Signature

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.

2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.

3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.

6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.

7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.

8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.

9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

March, 1998

APPENDIX B

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 27, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or natural origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Michigan Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Michigan Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Michigan Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

   (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or

   (b) Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs 1 through 6 of every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Michigan Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Michigan Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

Assurance that Recipients and Contractors Must Make
(Excerpts from US DOT Regulation 49 CFR 26.13)

A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

> The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

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

ATTACHMENT A

(This is a reproduction of Appendix A of 49 CFR Part 29)

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification in addition to other remedies available to the federal government, the department or agency may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposed," and "voluntarily excluded" as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules impending Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally processed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency may terminate this transaction for cause or default.

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

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
   - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
   - B. Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or preforming a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
   - C. Are not presently indicated for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
   - D. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

March 9, 1989

(This is a reproduction of Appendix B of 49 C.F.R. Part 29)

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

Instructions for Certification

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

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

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

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

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

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

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Telephone No. (517) 335-2513 or (517) 335-2514).

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

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

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

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

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

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