I-06

CITY COUNCIL ACTION REPORT

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DEC - 2009
CITY OF TROY
MANAGER'S OFFICE

December 11, 2009

TO: John Szerlag, City Manager

FROM: Mark Miller, Acting Assistant City Manager/Economic Development Services
Steven J. Vandette, City Engineer

SUBJECT: Ratification of Revised MDOT Subcontract with Hubbell, Roth & Clark, Inc. for Construction Engineering Services for the Reconstruction of Rochester Road from Torpey to Barclay – Project No. 99.203.5

Recommendation:

Staff recommends that City Council ratify the revised MDOT subcontract with Hubbell, Roth & Clark, Inc. (HRC) for construction engineering services for the Rochester Road, Torpey to Barclay widening and reconstruction project.

Background:

By Resolution #2009-11-338-F-8, Troy City Council approved the MDOT subcontract with HRC for construction engineering services for the reconstruction and widening of Rochester Road, from Torpey to Barclay.

The standard MDOT subcontract, as of last August at the start of the consultant selection process, was approved by City Council on November 9, 2009. MDOT has since revised its standard subcontract, which requires City Council ratification.

The revisions to the agreement include the addition of a paragraph to the top of page 2 as well as a revision to section 18a. on page 6 (copies of revisions are attached).

Financial Considerations:

There are no changes in the financial considerations to the city as a result of this ratification.

REVIEWED AND APPROVED:

Lori Grigg Bluhm, City Attorney

G:\Contracts\Contracts - 2009\09-9 Rochester, Torpey to Barclay & Wattles, E & W of Rochester\99.203.5 - Rochester, Torpey to Barclay\Construction Engineering\To CC re CE Ratification_Rochester_r2.doc

WHEREAS, the terms and conditions of the prime contract between the DEPARTMENT and the LOCAL AGENCY for the PROJECT shall be incorporated by reference as part of this subcontract to ensure that if any discrepancies occur between the prime contract and subcontract, the prime contract shall prevail; and

WHEREAS, the parties hereto have reached an understanding as to the scope of the work and 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. Provide the following SERVICES relating to the PROJECT:

   a. Assign a construction engineer and qualified inspection personnel who will be responsible to the PROJECT Engineer at the PROJECT site during the construction of the PROJECT in order to perform required inspection services to assure compliance with approved contract plans and specifications, and perform the day to day activities of the PROJECT.

   b. Field survey information, construction staking services, and soil borings on the PROJECT site and any other field surveys as may be required for effective control of the construction of the PROJECT.

   c. Perform and/or have conducted field checks and laboratory testing of materials and equipment to assure compliance with the contract specifications and requirements of the DEPARTMENT and the FHWA. A portion of the off-site testing work is to be performed in accordance with a subcontractual arrangement between the CONSULTANT and **Professional Service Industries, Inc.**

   d. Such additional engineering and inspection services as may be required by the PROJECT Engineer for satisfactory completion of the PROJECT.

2. Perform all PROJECT work under the direction of the PROJECT Engineer who will be assigned by the LOCAL AGENCY as provided in Section 15.

3. Provide such reports and maintain such records of the PROJECT as are required to document the work to the satisfaction of the PROJECT Engineer, the LOCAL AGENCY, the DEPARTMENT, and the FHWA.

4. Govern all SERVICES by the applicable codes, laws, and standards of the LOCAL AGENCY and the DEPARTMENT and the FHWA.

5. During the performance of the SERVICES herein provided for, be responsible for any loss or damage to the documents, owned by the LOCAL AGENCY while they are in its possession. Restoration of lost or damaged documents shall be at the CONSULTANT'S expense.

for overhead using overhead, and facilities cost of capital using applied rates, set forth hereinbefore, plus a portion of the fixed fee.

The portion of the fixed fee which may be included in progress payments shall be equal to the total fixed fee multiplied by the percentage of the work which has been completed to date of billing.

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. Billings for work submitted later than three (3) months after completion of SERVICES will not be paid. Final payment, including adjustments of direct salary costs, other direct costs and overhead costs, 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 **30** days of the date of the invoice.

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

~~a. Pay the CONSULTANT actual costs plus overhead, as defined herein, incurred for the work completed up to the time of termination, plus an amount determined at the time of termination to compensate the CONSULTANT in full for a normal profit on work completed, as set forth in Section 16. The amounts included for overhead and profit shall be subject to approval by the DEPARTMENT and the FHWA.~~

a. Pay the CONSULTANT actual cost plus overhead, as defined herein, incurred for the work to be terminated up to the time of termination, as set forth in Section 20. The CONSULTANT will also be reimbursed a proportionate share of the fixed fee based on the portion of the project that is completed, as determined by the DEPARTMENT. The DEPARTMENT will receive the work product produced by the CONSULTANT under this Contract up to the time of termination, prior to the CONSULTANT being reimbursed. In no case will the compensation paid to the CONSULTANT for partial completion of the SERVICES exceed the amount the CONSULTANT would have received had the SERVICES been completed.

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.

SUBCONTRACT NO. _____
CONTROL SECTION NO. STUL 63459
JOB NO. 104678A
FED. PROJECT NO. _____
FED. ITEM NO. _____

City of Troy

Hubbell, Roth & Clark, Inc.

CONSTRUCTION ENGINEERING CONTRACT

A **Surface Transportation** PROJECT

THIS CONTRACT, made and entered into as of this date of _____, by and between **Hubbell, Roth & Clark, Inc.**, Consulting Engineers, of **Pontiac**, Michigan, hereinafter referred to as the "CONSULTANT," and the **City of Troy**, hereinafter referred to as the "LOCAL AGENCY."

WITNESSETH:

WHEREAS, the LOCAL AGENCY is planning to **construct** 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 construction engineering and inspection services and other related work, said work to be hereinafter referred to as the "SERVICES," required in connection with the construction of the following **transportation** improvements under the **Surface Transportation Program**, said improvements to be hereinafter referred to as the "PROJECT:"

> "**1.09 miles of road reconstruction for Rochester Road, from Torpey to north of Barclay with concrete pavement, curb and gutter, driveways, storm sewers, sanitary sewer, water main, hot mix asphalt, pavement markings and other related work**;" and

WHEREAS, the LOCAL AGENCY has programmed the PROJECT with the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT," for construction with the use of **Surface Transportation Program** Funds administered 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 CONSULTANT was selected utilizing a qualifications based selection (QBS) process; and

WHEREAS, the terms and conditions of the prime contract between the DEPARTMENT and the LOCAL AGENCY for the PROJECT shall be incorporated by reference as part of this subcontract to ensure that if any discrepancies occur between the prime contract and subcontract, the prime contract shall prevail; and

WHEREAS, the parties hereto have reached an understanding as to the scope of the work and 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. Provide the following SERVICES relating to the PROJECT:

   a. Assign a construction engineer and qualified inspection personnel who will be responsible to the PROJECT Engineer at the PROJECT site during the construction of the PROJECT in order to perform required inspection services to assure compliance with approved contract plans and specifications, and perform the day to day activities of the PROJECT.

   b. Field survey information, construction staking services, and soil borings on the PROJECT site and any other field surveys as may be required for effective control of the construction of the PROJECT.

   c. Perform and/or have conducted field checks and laboratory testing of materials and equipment to assure compliance with the contract specifications and requirements of the DEPARTMENT and the FHWA. A portion of the off-site testing work is to be performed in accordance with a subcontractual arrangement between the CONSULTANT and **Professional Service Industries, Inc.**

   d. Such additional engineering and inspection services as may be required by the PROJECT Engineer for satisfactory completion of the PROJECT.

2. Perform all PROJECT work under the direction of the PROJECT Engineer who will be assigned by the LOCAL AGENCY as provided in Section 15.

3. Provide such reports and maintain such records of the PROJECT as are required to document the work to the satisfaction of the PROJECT Engineer, the LOCAL AGENCY, the DEPARTMENT, and the FHWA.

4. Govern all SERVICES by the applicable codes, laws, and standards of the LOCAL AGENCY and the DEPARTMENT and the FHWA.

5. During the performance of the SERVICES herein provided for, be responsible for any loss or damage to the documents, owned by the LOCAL AGENCY while they are in its possession. Restoration of lost or damaged documents shall be at the CONSULTANT'S expense.

6. Furnish qualified personnel to assist the PROJECT engineer in solving field problems, when so requested.

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

8. 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 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 their 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.

9. Have in its employ a sufficient number of qualified employees available to complete the SERVICES in accordance with the schedule for construction and completion of the PROJECT upon the authorization to proceed with the SERVICES as outlined herein.

10. Show evidence of Workers' Compensation Insurance, said insurance to be as required by law.

11. Commence work on the PROJECT as set forth in and following execution of this contract only upon receipt of written notice from the PROJECT Engineer.

12. Provide a working office at the PROJECT site or in the vicinity of the PROJECT acceptable to the LOCAL AGENCY for adequate performance of the SERVICES to be provided under this Contract.

13. Furnish the LOCAL AGENCY and the DEPARTMENT a set of as built plans

and records of the PROJECT upon completion thereof.

14. Submit billings to the LOCAL AGENCY as set forth in Section 17.

THE LOCAL AGENCY WILL:

15. Assign a PROJECT Engineer who shall be the Publicly Employed Professional Engineer in responsible charge of the PROJECT.

16. For and in consideration of the SERVICES rendered by the CONSULTANT as set forth in this contract, pay the CONSULTANT on the basis of actual cost plus a fixed fee (profit) amount which shall not exceed **One million two hundred forty one thousand forty two dollars and ninety five cents ($1,241,042.95)**. The fixed fee (profit) shall be the amount of **One hundred twenty two thousand two hundred fifty dollars and five cents ($122,250.05)**, which amount is included in the total amount of **One million two hundred forty one thousand forty two dollars and ninety five cents ($1,241,042.95)**, as shown in Exhibit "A," attached hereto and made a part hereof.

Actual costs for SERVICES work required and performed will be determined in accordance with the following terms, subject to the cost criteria set forth in the Federal Acquisition Regulations, 48 CFR, Part 31:

a. Direct Salary Costs: Actual labor costs of personnel performing the SERVICES work. This cost will be based on the employees actual hourly rate of pay and the actual hours of performance on the PROJECT as supported by employee time records.

b. Direct Costs: Actual costs of materials and services, other than salaries, as may be required hereunder but which are not normally provided as a part of the overhead of the CONSULTANT. All actual costs shall be itemized and certified as paid to specifically named firms or individuals, and shall be supported by proper receipts.

c. Overhead (Indirect Costs): A pro-rated portion of the actual overhead incurred by the CONSULTANT during performance of the PROJECT work. The amount of overhead payment, including payroll overhead, will be calculated as a percentage of all direct labor costs related to staff personnel and members of the firm. Overhead shall include those costs, which because of their incurrence for common or joint objectives, are not readily subject to treatment as a direct cost. The provisional overhead rate, which will be applied to direct labor costs for progress payments, is set forth in Exhibit A.

It is agreed that the use of the provisional rate set forth in Exhibit A sets neither a minimum nor maximum to the actual overhead costs to be paid the CONSULTANT. Any overpayments or under payments made to the CONSULTANT for SERVICES performed resulting from usage of the provisional overhead rate, will be corrected in the first billing submitted subsequent to the CONSULTANT'S calculation of an actual overhead rate

for the financial year end applicable to the reported direct labor cost. The audit at the completion of this contract, or at such time as this contract is terminated, will verify the propriety of reported overhead.

Facilities Cost of Capital: A pro-rated portion of the actual facilities cost of capital incurred by the CONSULTANT during work is reimbursable only if the estimated facilities cost of capital was specifically identified in the cost proposal for this work (Exhibit A).

d. Travel and Subsistence: Actual costs in accordance with and not to exceed the amounts set forth in the State of Michigan Standardized Travel Regulations, incorporated herein by reference as if the same were repeated in full herein.

e. Fixed Fee (Profit): In addition to the payments for direct and overhead costs as hereinbefore provided, the LOCAL AGENCY agrees to pay the CONSULTANT a fixed amount for profit for the SERVICES performed. It is agreed and understood that such amount will constitute full compensation to the CONSULTANT for profit and will not vary because of any differences between the estimated cost and the actual cost for work performed, except that in the event this contract is terminated, payment of a fixed fee (profit) in respect to the PROJECT shall be in an amount which can be established by the CONSULTANT from its accounts and records and subject to the provisions of Section 18.

f. Subconsultant Costs: Actual costs of subconsultants performing SERVICES under this Contract. Amounts for fixed fees paid by the CONSULTANT to the subconsultant will not be considered an actual cost of the CONSULTANT, but will be considered a part of the fixed fee of the CONSULTANT.

g. Those costs incurred by the CONSULTANT in the utilization of the subcontracted services of **Professional Service Industries, Inc.** shall be excluded from the calculation of the CONSULTANT'S percentage of SERVICES completed, as set forth in Section 17a., but will be reimbursed by the LOCAL AGENCY. Payment by the LOCAL AGENCY will be made directly to the CONSULTANT. The PROJECT cost attributable to **Professional Service Industries, Inc.** is estimated to be **Two thousand five hundred ninety six dollars and seventy six cents ($2,596.76)**.

The maximum amount, including the fixed fee (profit), hereinbefore set forth in this Section, shall not be exceeded except by the execution of an amendment to this contract by and between the parties hereto and with approval by the DEPARTMENT and the FHWA. Payment shall be made as hereinafter set forth.

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

a. Progress payments may be made for reimbursement of amounts earned to date and shall include direct costs, other direct costs, calculated amounts

for overhead using overhead, and facilities cost of capital using applied rates, set forth hereinbefore, plus a portion of the fixed fee.

The portion of the fixed fee which may be included in progress payments shall be equal to the total fixed fee multiplied by the percentage of the work which has been completed to date of billing.

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. Billings for work submitted later than three (3) months after completion of SERVICES will not be paid. Final payment, including adjustments of direct salary costs, other direct costs and overhead costs, 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 **30** days of the date of the invoice.

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

a. Pay the CONSULTANT actual cost plus overhead, as defined herein, incurred for the work to be terminated up to the time of termination, as set forth in Section 20. The CONSULTANT will also be reimbursed a proportionate share of the fixed fee based on the portion of the project that is completed, as determined by the DEPARTMENT. The DEPARTMENT will receive the work product produced by the CONSULTANT under this Contract up to the time of termination, prior to the CONSULTANT being reimbursed. In no case will the compensation paid to the CONSULTANT for partial completion of the SERVICES exceed the amount the CONSULTANT would have received had the SERVICES been completed.

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:

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

20. 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.

21. 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 Engineer. All questions as to the satisfactory and acceptable fulfillment of the terms of this contract shall be decided by the LOCAL AGENCY.

22. 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.

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, the CONSULTANT will be held responsible with no cost to the LOCAL AGENCY or in accordance with the LOCAL AGENCY'S dispute resolution process if applicable.

23. 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 the PROJECT under 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 and will require a similar covenant on the part of any contractor or subcontractor employed in the performance of this contract.

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 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B," attached hereto and made a part hereof and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.

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 C.F.R. Part 23, more specifically 23.43(a)(1) and (2) thereof.

24. 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 he 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.

25. 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.

26. No charges or claims for damages shall be made by the CONSULTANT for delays or hindrances from any cause whatsoever during the progress 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.

27. 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.

28. The CONSULTANT agrees to obtain the necessary liability insurance, acceptable to the LOCAL AGENCY, naming the **City of Troy**, the Michigan State Transportation Commission, and the Michigan Department of Transportation as insured, and to provide the

LOCAL AGENCY with evidence of said insurance, and to indemnify and save harmless the LOCAL AGENCY, 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.

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

30. The CONSULTANT'S signature on this Contract constitutes the CONSULTANT'S certification of "status" under penalty of 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 29, and applies to the CONSULTANT (referred to in Appendix A of 49 CFR Part 29 as "the prospective primary participant").

The CONSULTANT is responsible for obtaining the same certification from all subcontractors under this contract by inserting the following paragraph in all subcontracts:

> "The subcontractor's signature on this Contract constitutes the subcontractor's certification of 'status' under penalty of 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 "B," is Appendix B of 49 CFR, Part 29."

This certification is required of all subcontractors, testing laboratories, and other lower tier participants with which the CONSULTANT enters into a written arrangement for the procurement of goods or services provided for in this Contract.

31. 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.

32. 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.

CONSULTANT

BY: Walter R. Adl
TITLE: Vice Pres.

BY: _____
TITLE:

City of Troy

BY: _____
TITLE: **Mayor – Louise E. Schilling**

BY: _____
TITLE: **City Clerk – Tonni L. Bartholomew**

SUBCONTRACT NO. _____
CONTROL SECTION NO. STUL 63459
JOB NO. 104678A
FED. PROJECT NO. _____
FED. ITEM NO. _____

CERTIFICATION

I hereby certify that I am **Walter H. Alix** and a duly authorized representative of the firm of **Hubbell, Roth & Clark, Inc.**, whose address is **2001 Centerpoint, Suite 109, Pontiac, MI 48341** 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 that a bona fide employee working solely for me or the above **Hubbell, Roth & Clark, Inc.**) 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 contact, 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 **Hubbell, Roth & Clark, Inc.**) 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.

12/11/09
Date

Walter H. Alix
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 following:

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 is 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 interest of the United States.

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

General Requirements for Recipients

Excerpts from USDOT Regulation
49 CFR, Part 23, Section 23.43

A. Policy: It is the policy of the Department that MBE as defined in 49 CFR, Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the MBE requirements of 49 CFR, Part 23, apply to this contract.

B. MBE Obligation: The recipient or its contractor agrees to ensure that MBE as defined in 49 CFR, Part 23, has the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR, Part 23, to ensure that MBE has the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of departmentally-assisted contracts.

C. If, as a condition of assistance, the recipient has submitted and the department has approved a minority business enterprise affirmative action program which the recipient agrees to carry out, this program is incorporated into this financial assistance agreement by reference. This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance agreement. Upon notification to this recipient of its failure to carry out the approved program, the Department shall impose such sanctions as noted in 49 CFR, Part 23, Subpart E, which sanctions may include termination of the agreement or other measures that may affect the ability of the recipient to obtain future departmental, financial assistance.

D. The Department hereby advises each recipient, contractor, or subcontractor that failure to carry out the requirements set forth in Section 23.43(a) 49 CFR, Part 23, shall constitute a breach of contract, and after the notification of the USDOT, may result in termination of the agreement or contract by the Department or such remedy as the Department 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 judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
   (c) Are not presently 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

ATTACHMENT B
(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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March 9, 1989