

**MICHIGAN DEPARTMENT OF TRANSPORTATION**  
**BAY COUNTY BOARD OF COMMISSIONERS**  
**MASTER AGREEMENT**

This Agreement is made and entered into this date of \_\_\_\_\_ by and between the Michigan Department of Transportation (MDOT) and the Bay County Board of Commissioners (AGENCY) for the purpose of fixing the rights and obligations of the parties in agreeing to participate in a continuing cooperative comprehensive metropolitan transportation planning process.

Recitals:

Pursuant to Title 23 United States Code (USC) 134 and Title 49 USC 1607, as amended, a metropolitan planning organization (MPO) will be designated for each urbanized area with a population of more than fifty thousand (50,000) by agreement between the governor and the units of general purpose local governments to carry out the transportation planning process; and

The governor of the State of Michigan and the units of general purpose local government have agreed that the AGENCY will be the designated MPO to receive federal and/or state funds that may become available for metropolitan transportation planning activities; and

Pursuant to Title 23 USC, certain Federal Highway Administration (FHWA) funds are to be made available to the MPO, and certain other FHWA funds may, at the discretion of MDOT, be made available to the MPO; and

Pursuant to Title 49 USC, certain Federal Transit Administration (FTA) funds are to be made available to the MPO, and certain other FTA funds may, at the discretion of MDOT, be made available to the MPO; and

Certain State of Michigan funds allocated to MDOT may be made available to the MPO for planning purposes, with or without MPO matching funds; and

The AGENCY is authorized and qualified to design and conduct a continuing comprehensive cooperative metropolitan transportation planning process, to be described in a unified work program (UWP) on its own behalf and for the FHWA, the FTA, and/or MDOT; and

The AGENCY desires to have the continuing cooperation of MDOT in the UWP, and MDOT, having an interest in the development of the UWP as it relates to transportation planning in metropolitan areas, is willing to cooperate with the AGENCY; and

MDOT, in cooperation with the FHWA and the FTA, desires to enter into an agreement with the AGENCY.

MDOT and the AGENCY agree that:

## **1. PERFORMANCE OF THE UWP**

The AGENCY will perform and carry out the duties and obligations necessary to the performance of the Section 134 Metropolitan Planning Process as described in the UWP, as financed by Metropolitan Planning Funds. Each year, or biennially with the approval of the FHWA, a UWP will be prepared that details specific tasks and specific monetary amounts that, upon approval by the official designated MPO and MDOT, will by reference be made a part of this Agreement as Exhibit A or a yearly supplement thereto and will be labeled to indicate the time period involved.

MDOT, through MDOT's staff representative, reserves the right to advise on and approve of each UWP and the basic study methods, procedures, and analytical techniques to be applied in carrying out those portions of each UWP that are financed in whole or in part with funds from the FHWA, the FTA, and/or MDOT. The progress of work that involves FHWA, FTA, and/or MDOT participation will be subject to review and inspection at any reasonable time, upon request, by representatives of the FHWA, FTA, and/or MDOT.

Events that have a significant impact on the UWP will be reported as soon as they become known. The types of events or conditions that require reporting include problems, delays, or adverse conditions that will materially affect the AGENCY's ability to obtain program objectives. This disclosure will be accompanied by a statement of action taken or contemplated.

## **2. DOCUMENT PUBLICATION**

The AGENCY will assume the lead or supporting responsibility, as mutually agreed by the AGENCY and MDOT, for the development and publication of various documents to be prepared, as described in Title 23 of the Code of Federal Regulations (CFR) Part 450, Subpart C. These include the Metropolitan Transportation Plan, the Transportation Improvement Program, the UWP, the Transit Development Plan, the State Implementation Plan, and other publications documenting the results of the planning process as shown in the UWP.

### **3. COMMITTEE PARTICIPATION**

The AGENCY will maintain policy and technical committee structures that will ensure that the decision-making process involves participation by local units of government and officials of agencies that administer or operate major modes or systems of transportation acting in a coordinated manner.

### **4. PUBLIC PARTICIPATION**

The AGENCY will make reasonable efforts to involve the public in major phases of the metropolitan transportation planning process, as specified in 23 USC 134.

### **5. PROJECT AUTHORIZATIONS AND COMMENCEMENT OF PERFORMANCE**

The AGENCY will perform the specific tasks contained in each year's UWP upon receipt of approved project authorizations (PROJECT AUTHORIZATIONS) that set forth the federal and state funds available for the UWP and written transmittal letters from MDOT. Approval is subject to specific activities and cost estimates being approved by the FHWA and the FTA for each fiscal year.

### **6. ESTIMATED COSTS AND PARTICIPATION**

The AGENCY will not incur costs in excess of the estimated total yearly cost of those portions of each UWP participated in by the FHWA, the FTA, and/or MDOT and for which FHWA, FTA, and/or MDOT funds are available without the prior written approval of MDOT and the FHWA and/or the FTA in the form of a PROJECT AUTHORIZATION and a written transmittal letter.

The total cost reimbursable by MDOT to the AGENCY for the conduct of the UWP will be set forth in the UWP.

MDOT funds in the PROJECT AUTHORIZATIONS made available through legislative appropriation are based on projected revenue estimates. MDOT may reduce the amount of any PROJECT AUTHORIZATION if the revenue actually received is insufficient to support the appropriation under which the PROJECT AUTHORIZATION is made. In the event that funding is not provided pursuant to annual state legislation, there will not be a program or PROJECT AUTHORIZATIONS for that year.

In that portion of the UWP to be participated in by the FHWA and the FTA, the transfer of funds between individual major areas of the UWP will not increase or decrease an individual major work area by more than twenty percent (20%) of the total estimate for a major area without the prior written approval of the FHWA, the FTA, and MDOT, as applicable. Major areas are defined as being combinations of work items as set forth in the UWP.

## **7. ACCOUNTS AND RECORDS**

- a. The AGENCY will establish and maintain accurate records, in accordance with generally accepted accounting principals, of all expenses incurred for which payment is sought or made under this Agreement (RECORDS). Separate accounts will be established and maintained for all costs incurred under this Agreement.
- b. The AGENCY will maintain the RECORDS for at least three (3) years from the date of final payment made by MDOT under this Agreement. In the event of a dispute with regard to the allowable expenses or any other issue under this Agreement, the AGENCY will 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. MDOT or its representative may inspect, copy, scan, or audit the RECORDS at any reasonable time after giving reasonable notice.
- d. If any part of the work is subcontracted, the AGENCY will assure compliance with subsections (a), (b), (c), and (d) above for all subcontracted work.

## **8. AUDIT OF ACCOUNTS AND RECORDS**

- a. The AGENCY will require audits to be made to determine, at a minimum, the fiscal integrity of financial transactions and reports and the compliance with laws, regulations, and administrative requirements. Audits will be scheduled in accordance with the requirements of 2 CFR Part 200, including Subpart F – Audit Requirements, as amended.
- b. Audits are to be performed by an independent accounting firm and must conform to the regulations and procedures established by the federal Office of Management and Budget as set forth in 49 CFR Part 18, as amended, 2 CFR Part 200, as amended, and such other regulations and procedures established by MDOT, the FHWA, and the FTA. All such audits are subject to review and approval by MDOT, the FHWA, the FTA, and the Office of Inspector General.
- c. UWP records are to be kept available in accordance with 49 CFR Part 18, as amended.
- d. Audit and Inspection. The AGENCY will comply with the Single Audit Act of 1984, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 USC 7501-7507), and the requirements of 2 CFR Part 200, including Subpart F – Audit Requirements, as amended, and the provisions of 1951 PA 51,

MCL 247-660h, as applicable, that are in effect at the time of Agreement award with regard to audits.

- i. Agencies expending a total of Seven Hundred Fifty Thousand Dollars (\$750,000.00) or more in federal funds from one or more funding sources in their fiscal year must have a single audit conducted for that year. The Seven Hundred Fifty Thousand Dollars (\$750,000.00) threshold represents all federal funding sources. This is in accordance with the Single Audit Act of 1984, as amended, and 2 CFR Part 200 Subpart F, as amended.
- ii. Agencies expending less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) in federal funds must submit a letter to MDOT advising that a single audit was not required. The letter will indicate the applicable fiscal year, the amount of federal funds spent, the name(s) of the MDOT federal programs, and the Catalog of Federal Domestic Assistance (CFDA) grant number(s). This information must be submitted to the address in paragraph (iv) below.
- iii. Agencies must complete their single audits electronically through the Federal Audit Clearinghouse website (<http://harvester.census.gov/fac/>). Users are instructed to create an online report ID and then to complete Form SF-SAC prior to submitting their reporting packages. The audit will be completed and submitted electronically within thirty (30) days after receipt of the agency's report(s) or within nine (9) months after the end of the agency's fiscal year, whichever is earlier.
- iv. Agencies must also submit one (1) paper copy of the completed Form SF-SAC and reporting package within the same time frame set forth in paragraph (iii) above to the address(es) below:

Michigan Department of Transportation  
Financial Operations Division  
Budget, Outreach and Program Support Section  
P. O. Box 30050  
Lansing, MI 48909

With a copy to:

Michigan Department of Transportation  
Bureau of Transportation Planning  
Statewide Transportation Planning Division  
P.O. Box 30050  
Lansing, MI 48909

- v. Agencies will also comply with applicable state laws and regulations relative to audit requirements.
  - vi. Agencies will not charge audit costs to MDOT's federal programs that are not in accordance with the aforementioned 2 CFR Part 200 requirements.
  - vii. All agencies are subject to the federally-required monitoring activities, which may include limited scope reviews and other on-site monitoring.
- e. The provisions set forth in subsections (a), (b), (c), and (d) above will be included in all contracts and subcontracts relating to this Agreement.

## **9. BILLINGS AND PROGRESS REPORTS**

The AGENCY will submit monthly billings and progress reports to MDOT for work accomplished on the UWP. At the option of the AGENCY, by written notification to MDOT's staff representative, quarterly billings and progress reports may be submitted in lieu of monthly submissions, subject to prior written approval from MDOT. Progress reports will be submitted in a form and manner acceptable to MDOT. A billing and a progress report will be submitted no later than sixty (60) days after the end of each billing period. A final billing will be submitted no later than ninety (90) days after completion of the UWP and will be labeled as the final billing. The initial billing will not be reimbursed until after the approval date indicated in the PROJECT AUTHORIZATION transmittal letter as prepared and submitted by MDOT.

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

## **10. FINAL REPORT**

The AGENCY will submit to MDOT a final performance report covering the UWP accomplishments not later than ninety (90) days following the end of the UWP time period.

## **11. INDEMNIFY AND SAVE HARMLESS**

In addition to the protection afforded by any policy of insurance, the AGENCY agrees to indemnify, defend, and save harmless the State of Michigan, the Michigan State Transportation Commission, MDOT, the FHWA, the FTA, and all officers, agents, and employees thereof:

- a. From any and all claims by persons, firms, or corporations for labor, services, materials, or supplies provided to the AGENCY in connection with the AGENCY's performance under this Agreement; and
- b. From any and all claims for injuries to or death of any and all persons, for loss of or damage to property, for environmental damage or degradation, for response and clean-up costs, and for attorney fees and related costs arising out of, under, or by reason of the AGENCY's performance under this Agreement, except claims resulting from the sole negligence or willful acts or omissions of said indemnitee, its agents, or its employees; and
- c. Against all claims, suits, costs, damages, and expenses that the State of Michigan, the Michigan State Transportation Commission, MDOT, the FHWA, and/or the FTA may sustain by reason of any scandalous, libelous, or unlawful matter obtained or alleged to be contained in the work, or any infringement or violation by the work of any copyright or property right.

MDOT will not be subject to any obligations or liabilities by contractors of the AGENCY or their subcontractors or any other person not a party to the Agreement without its specific consent and notwithstanding its concurrence in or approval of the award of any contract or subcontract or the solicitation thereof.

It is expressly understood and agreed that the AGENCY will take no action or conduct that arises either directly or indirectly out of its obligations, responsibilities, and duties under this Agreement that results in claims being asserted against or judgments being imposed against the State of Michigan, the Michigan State Transportation Commission, MDOT, the FHWA, and/or the FTA, as applicable.

In the event that the same occurs, it will be considered as a breach of this Agreement, thereby giving the State of Michigan, the Michigan State Transportation Commission, MDOT, the FHWA, and/or the FTA a right to seek and obtain any necessary relief or remedy, including, but not limited to, a judgment for money damages.

## **12. INSURANCE**

The AGENCY will provide, at UWP cost, public liability, property damage, and workers' compensation insurance, insuring as they may appear all claims that may arise out of the AGENCY's operations under this Agreement.

## **13. MDOT STAFF REPRESENTATIVE**

MDOT will provide a MDOT staff representative to assist or otherwise advise the AGENCY in the performance of its transportation planning responsibilities as provided herein.

**14. APPRAISAL OF UWP**

MDOT will, through MDOT's staff representative, reserve the right to advise and recommend changes to each task and activity appearing in the UWP and the basic study methods, procedures, and analytical techniques to be applied in carrying out those portions of each UWP that are financed in whole or in part with funds from the FHWA, the FTA, or MDOT.

**15. DOCUMENT APPROVAL**

MDOT will develop and maintain appropriate procedures to reflect the various responsibilities of document review and approval at the state and federal levels.

**16. CONSIDERATION OF TRANSPORTATION SYSTEMS**

MDOT will recognize the AGENCY's transportation system plans in its programming of projects, especially those identified in the Transportation Improvement Program.

**17. REIMBURSABLE COSTS**

MDOT will reimburse the AGENCY for all actual direct and indirect costs properly chargeable in accordance with this Agreement and eligible for federal reimbursement under the provisions of 2 CFR Part 200, subject to the following conditions:

- a. Computer Services - Use of computer services will be at regularly established rates, which will not be in excess of rates charged to other users. Payment will be for exact charges, without markup. Increases will not result in costs to MDOT exceeding the total yearly costs set forth in Exhibit A or the yearly supplement thereto.
- b. Travel and Subsistence - An estimate of foreseeable travel will be included in each UWP. Reimbursement for UWP-related travel will be on an actual cost basis, in accordance with State of Michigan travel policy.
- c. The AGENCY will not be paid for costs arising from the correction of errors and omissions attributable to the AGENCY.

**18. REIMBURSEMENT TO THE AGENCY FOR COSTS INCURRED**

Upon receipt and approval of billings for federal reimbursement for work performed by the AGENCY with respect to the UWP, MDOT will act as billing agent for the AGENCY and will present said billings to the FHWA or the FTA for reimbursement. Payments to the AGENCY will be scheduled to coincide with the receipt of the



reimbursement from FHWA. Payments of FTA funds are processed weekly, prior to the monthly billings to FTA.

## **19. AUDIT**

In the event that an audit performed by or on behalf of MDOT indicates an adjustment to the costs reported under this Agreement or questions the allowability of an item of expense, MDOT will promptly submit to the AGENCY a Notice of Audit Results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to the AGENCY at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the AGENCY will (a) respond in writing to the responsible Bureau of MDOT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense, and (c) submit to MDOT a written explanation as to any questioned or no opinion expressed item of expense (RESPONSE). The RESPONSE will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the AGENCY may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by MDOT. The RESPONSE will refer to and apply the language of the Agreement. The AGENCY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes MDOT to finally disallow any items of questioned or no opinion expressed cost.

MDOT will make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If MDOT determines that an overpayment has been made to the AGENCY, the AGENCY will repay that amount to MDOT or reach agreement with MDOT on a repayment schedule within thirty (30) days after the date of an invoice from MDOT. If the AGENCY fails to repay the overpayment or reach agreement with MDOT on a repayment schedule within the thirty (30) day period, the AGENCY agrees that MDOT will deduct all or a portion of the overpayment from any funds then or thereafter payable by MDOT to the AGENCY under this Agreement or any other agreement or payable to the AGENCY under the terms of 1951 PA, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by MDOT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The AGENCY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest MDOT's decision only as to

any item of expense the disallowance of which was disputed by the AGENCY in a timely filed RESPONSE.

**20. INCREASE IN COSTS**

Any changes or additions to those portions of each UWP participated in by MDOT, the FHWA, and/or the FTA that will cause an increase in yearly total costs will require the prior written approval of MDOT, the FHWA, and/or the FTA and the processing of a revised PROJECT AUTHORIZATION and written transmittal letter.

**21. ADDITIONAL SERVICES**

Additional specialized services to be performed by the AGENCY after approval of the PROJECT AUTHORIZATION and not set forth in the UWP will require approval by MDOT and the FHWA or the FTA in the form of a revision to that UWP and, if applicable, a revised PROJECT AUTHORIZATION, budget, and written transmittal letter.

**22. SUBCONTRACTING**

The AGENCY will not subcontract any portion of an approved UWP without the prior written consent of MDOT. Specialized services (those items not ordinarily furnished by the AGENCY) and subcontract work should be itemized in the UWP to the extent that they are determinable and will be approved as part of the UWP. Proposed subcontracts not included in the current UWP will require an amendment to the UWP prior to the AGENCY requesting MDOT's written consent to subcontract.

The AGENCY will obtain MDOT's written approval for all subcontracts, including amendments, that individually or in combination are in accordance with the following dollar amount thresholds, prior to the AGENCY signing said subcontracts. The AGENCY will not enter into multiple subcontracts of lesser amounts for the purpose of avoiding such approval process.

- a. Dollar Amount of Subcontract Is Less Than State Transportation Commission Policy Amount for Third-Party Contracts:

The AGENCY will submit a written request to MDOT's staff representative. The written request will include the purpose of the subcontract, the dollar amount, the time frame, the name of the third party, and a narrative that describes the process used to select the third-party contractor.

- b. Dollar Amount of Subcontract Is Greater Than State Transportation Commission Policy Amount for Third-Party Contracts:

The AGENCY will submit a written request to MDOT's staff representative. The written request will include the unsigned third-party contract, the purpose of the subcontract, the dollar amount, the time frame, the name of the third party, and a summary of the selection process used to procure the third-party contractor.

All subcontracts, including amendments, will contain all applicable provisions of this Agreement. Any approvals by MDOT will not be construed as a warranty of the subcontractor's qualifications, professional standing, ability to perform the work being subcontracted, or financial integrity. The AGENCY will transmit copies of all signed subcontracts to MDOT.

Consent to subcontract any portion of the UWP, as herein noted, will not be construed to relieve the AGENCY of any responsibility or obligation under or for the fulfillment of this Agreement.

The AGENCY will perform with its own forces and/or by subcontract with other public agencies not less than fifty percent (50%) of the total UWP amount, excluding specialized services.

### **23. PROMPT PAYMENT**

The AGENCY agrees to pay each subcontractor for the satisfactory completion of work associated with the subcontract no later than ten (10) calendar days from the receipt of each payment the AGENCY receives from MDOT. This requirement is also applicable to all sub-tier subcontractors and will be made a part of all subcontract agreements.

This prompt payment provision is a requirement of 49 CFR Part 26, as amended, and does not confer third-party beneficiary right or other direct right to a subcontractor against MDOT. This provision applies to both Disadvantaged Business Enterprise (DBE) and non-DBE subcontractors.

The AGENCY further agrees that it will comply with 49 CFR Part 26, as amended, and will report any and all DBE subcontractor payments to MDOT semi-annually in the format set forth in Appendix G, dated September 2015, attached hereto and made a part hereof, or any other format acceptable to MDOT.

### **24. FHWA AND FTA PARTICIPATION**

Certain funding under this Agreement is contingent on participation from year to year by the FHWA or the FTA in costs incurred by the AGENCY in the performance of the UWP. No obligation for such costs not reimbursable by the FHWA or the FTA will be knowingly entered into and billed to MDOT for reimbursement. Incurred costs that are not reimbursable by the FHWA or the FTA will be the sole responsibility of the AGENCY.

## **25. COMPLIANCE WITH LAWS AND REGULATIONS**

The AGENCY specifically agrees that in the performance of the tasks under the PROJECT AUTHORIZATIONS, by itself, by an approved subcontractor, or by anyone acting on its behalf, it will comply with any and all state, federal, and local statutes, ordinances, and regulations and will obtain all permits applicable to the entry into and performance of this Agreement.

## **26. EXECUTIVE COMMITTEE REPRESENTATION**

The Director of MDOT or his/her delegate will be a member of the MPO's Policy Committee, which provides policy to the MPO.

## **27. NONDISCRIMINATION, DBE, AND ENVIRONMENTAL REQUIREMENTS**

The AGENCY will comply with and will require any contractor or subcontractor to comply with the following requirements:

- a. In connection with the performance of the Agreement, the AGENCY (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, dated June 2011, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to this Agreement.
- b. During the performance of this Agreement, the AGENCY, for itself, its assignees, and its 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 USC 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, dated June 2011, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to this Agreement.
- c. The AGENCY will carry out the applicable requirements of MDOT's Disadvantaged Business Enterprise (DBE) program and 49 CFR Part 26, including, but not limited to, those requirements set forth in Appendix C, dated October 2, 2014, attached hereto and made a part hereof, with respect to the UWP, said UWP allowing the AGENCY to operate under the provisions of its own MDOT-approved DBE program.
- d. The AGENCY will make achieving environmental justice a part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse

human health or environmental affects of its programs, policies, and activities on minority populations and low income populations.

**28. REPORTS AND PUBLICATION**

- a. If any results of those portions of the UWP participated in by the FHWA or the FTA are published by the AGENCY, costs of publication may be included as a participating cost.
- b. Prior to such publication, the AGENCY will submit all manuscripts for review and approval by MDOT and for review by the FHWA or the FTA. Such review and acceptance is for MDOT's own purposes and does not relieve the AGENCY from any claims arising out of such publication.
- c. In the event the parties fail to agree on a final draft of a manuscript, MDOT may publish independently the results of those portions of the UWP participated in by the FHWA or the FTA but will set forth in such publication the AGENCY's nonconcurrence if so desired by the AGENCY.
- d. Any federally required publication, or as indicated by the MDOT Program Manager, will give proper credit to all parties in this Agreement for the cooperative character of the UWP.

**29. REPORT LANGUAGE**

All reports published by MDOT or by the AGENCY will contain the following statement in the credit line:

*“The contents of this \_\_\_\_\_ (report) reflect the view of \_\_\_\_\_ (the author), who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official view or policies of \_\_\_\_\_ (the name of nonconcurring party). This \_\_\_\_\_ (report) does not constitute a standard, specification, or regulation.”*

**30. OWNERSHIP OF DATA**

Ownership of data collected hereunder will be vested in the AGENCY, with full rights of free access and use thereto guaranteed to MDOT, the FHWA, the FTA, and all other participating agencies.

**31. PATENT RIGHTS AND COPYRIGHTS**

Patent rights and copyrights will be the property of the AGENCY. The AGENCY will obtain the written approval of MDOT prior to submitting applications in the name of the AGENCY for copyrights or patents on any papers, reports, forms, or other materials that are a part of the AGENCY work as above noted under this Agreement, said approval being necessary before, during, and after the performance of said work by the AGENCY with respect to this Agreement. MDOT and the FHWA and/or the FTA reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use the work for governmental purposes.

### **32. UNFAIR LABOR PRACTICES**

In accordance with 1980 PA 278, MCL 423.321 *et seq.*, the AGENCY, in the performance of this Agreement, will not enter into a contract with a subcontractor, manufacturer, or supplier listed in the register maintained by the United States Department of Labor of employers who have been found in contempt of court by a federal court of appeals on not less than three (3) separate occasions involving different violations during the preceding seven (7) years for failure to correct an unfair labor practice, as prohibited by Section 8 of Chapter 372 of the National Labor Relations Act, 29 USC 158. MDOT may void this Agreement if the name of the AGENCY or the name of a subcontractor, manufacturer, or supplier utilized by the AGENCY in the performance of this Agreement subsequently appears in the register during the performance of this Agreement.

### **33. EQUIPMENT**

Major items of equipment purchased for use on the UWP may be included in the UWP as direct costs. Participation in the costs of such equipment by MDOT and the FHWA or the FTA will be limited to the amount of depreciation during the period of use on the UWP as ascertained at the completion of the study. Eligibility for MDOT and FHWA or FTA participation are based on the following:

- a. The equipment is not of a nature normally used or required in the AGENCY's regular operations.
- b. The equipment is required for and will be used primarily on work related to the UWP.
- c. The cost of the equipment is considered to be reasonable by MDOT and the FHWA or the FTA.
- d. The AGENCY will furnish to MDOT a certification stating that the equipment has not been included under indirect costs.

### **34. ENVIRONMENTAL**

For agreements in excess of One Hundred Fifty Thousand Dollars (\$150,000.00):

- a. The AGENCY stipulates that any facility to be utilized in the performance of this Agreement, unless such agreement is exempt under the Clean Air Act, as amended (42 USC 7401 *et seq.*, as amended, including Pub. L. 101-549), and under the Clean Water Act, as amended (33 USC 1251 *et seq.*, as amended, including Pub. L. 100-4), and/or under Executive Order 11738 and regulations in implementation thereof (40 CFR Part 15), is not listed on the date of agreement award on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities Pursuant to 40 CFR 15.20.
- b. The AGENCY agrees to comply with all the requirements of the Clean Air Act and the Clean Water Act and all regulations and guidelines listed thereunder related to the AGENCY and the work under this Agreement.
- c. The AGENCY will promptly notify MDOT and the U.S. EPA, Assistant Administrator for Enforcement, of the receipt of any communication from the Director, the Office of Federal Activities, or the EPA indicating that a facility to be utilized for this Agreement is under consideration to be listed on the EPA List of Violating Facilities.
- d. The AGENCY agrees to include or cause to be included the requirements of the preceding three paragraphs, (a), (b), and (c) in every nonexempt subcontract.

### **35. INDIVIDUALS WITH DISABILITIES**

The AGENCY agrees that no otherwise qualified individuals with disabilities in the United States, as defined in the Americans with Disabilities Act, 42 USC 12101 *et seq.*, as amended, and regulations in implementation thereof (29 CFR Part 1630), will, solely by reason of their disabilities, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving benefits under this Agreement.

### **36. CERTIFICATION**

The AGENCY's signature on this Agreement constitutes the AGENCY's certification of "status" under penalty of perjury under the laws of the United States with respect to 49 CFR Part 29, as amended and as relocated to 2 CFR Part 1200, pursuant to Executive Order 12549.

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

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

*“The subcontractor’s signature on this Agreement constitutes the subcontractor’s certification of ‘status’ under penalty of perjury under the laws of the United States with respect to 49 CFR Part 29, as amended and as relocated to 2 CFR Part 1200, pursuant to Executive Order 12549. The certification included as a part of this Agreement 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 AGENCY enters into a written arrangement for the procurement of goods or services provided for in this Agreement.

### **37. LOBBYING**

If the AGENCY receives federal funds in excess of One Hundred Thousand Dollars (\$100,000.00), the AGENCY must submit the certification statement contained in 49 CFR Part 20, Appendix A, as part of its final UWP. If non-federal funds are used for lobbying purposes by other than a regular employee of the AGENCY, the disclosure form in 49 CFR Part 20, Appendix B, must be submitted as part of its final UWP.

### **38. APPROVALS, REVIEWS, AND INSPECTIONS**

Any approvals, acceptances, reviews, and inspections of any nature by MDOT will not be construed as a warranty or assumption of liability on the part of MDOT. It is expressly understood and agreed that any such approvals, acceptances, reviews, and inspections are for the sole and exclusive purposes of MDOT, which is acting in a governmental capacity under this Agreement, and that such approvals, acceptances, reviews, and inspections are a governmental function incidental to the performance of the UWP under this Agreement.

Any such approvals, acceptances, reviews, and inspections by MDOT will not relieve the AGENCY of its obligations hereunder, nor are such approvals, acceptances, reviews and inspections by MDOT to be construed as a warranty as to the propriety of the AGENCY’s performance but are undertaken for the sole use and information of MDOT.

### **39. TERMINATION**

MDOT may terminate this Agreement for convenience or cause, as set forth below, before the services are completed. Written notice of termination will be sent to the AGENCY. The AGENCY will be reimbursed in accordance with the following:

a. **Termination for Convenience:**



If MDOT terminates this Agreement for convenience, MDOT will give the AGENCY written notice of such termination thirty (30) days prior to the date of such termination, and the AGENCY will be reimbursed for all costs incurred for work accomplished on the UWP up to receipt of the notice of termination. Such reimbursement will be as set forth in Section 17 but will not exceed the amount set forth in the UWP. MDOT will receive the work product produced by the AGENCY under this Agreement up to the time of termination, prior to the AGENCY being reimbursed. In no case will the compensation paid to the AGENCY for partial completion of the services exceed the amount the AGENCY would have received had the services been completed.

**b. Termination for Cause:**

In the event the AGENCY fails to complete any of the work on the UWP in a manner satisfactory to MDOT, MDOT may terminate this Agreement. Written notice of termination will be sent to the AGENCY. The AGENCY will be reimbursed as follows:

The AGENCY will be reimbursed for all costs incurred for work accomplished on the UWP up to receipt of the notice of termination. MDOT may pay a proportional share for a partially completed work product. The value of such partially completed work product will be determined by MDOT based on actual costs incurred up to the estimated value of the work product received by MDOT, as determined by MDOT. Such reimbursement will be as set forth in Section 17 but will not exceed the amount set forth in the UWP. MDOT will receive the work product produced by the AGENCY under this Agreement up to the time of termination, prior to the AGENCY being reimbursed. In no case will the compensation paid to the AGENCY for partial completion of the services exceed the amount the AGENCY would have received had the services been completed.

In the event that termination by MDOT is necessitated by any wrongful breach, failure, default, or omission by the AGENCY, MDOT will be entitled to pursue whatever remedy is available to it, including, but not limited to, withholding funds or off-setting against funds owed to the AGENCY under this Agreement, as well as any other existing or future contracts or agreements between the AGENCY and MDOT, for any and all damages and costs incurred or sustained by MDOT as a result of its termination of this Agreement due to the wrongful breach, failure, default, or omission by the AGENCY. In the event of termination of this Agreement, MDOT may procure the professional services from other sources and hold the AGENCY responsible for any damages or excess costs occasioned thereby.

**40. ELECTRONIC FUNDS TRANSFER**

Public Act 533 of 2004 requires that payments under this Agreement and all PROJECT AUTHORIZATIONS hereunder be processed by electronic funds transfer (EFT). The AGENCY is required to register to receive payments by EFT at the SIGMA Vendor Self Service (VSS) website ([www.michigan.gov/SIGMAVSS](http://www.michigan.gov/SIGMAVSS)).

#### **41. ASSIGNMENT OF ANTITRUST RIGHTS**

With regard to claims based on goods or services that were used to meet the AGENCY's obligation to MDOT under this Agreement, the AGENCY hereby irrevocably assigns its right to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or MDOT due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - 445.788, excluding Section 4a, to the State of Michigan or MDOT.

The AGENCY shall require any subcontractors to irrevocably assign their rights to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or MDOT with regard to claims based on goods or services that were used to meet the AGENCY's obligation to MDOT under this Agreement due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - 445.788, excluding Section 4a, to the State of Michigan or MDOT as a third-party beneficiary.

The AGENCY shall notify MDOT if it becomes aware that an antitrust violation with regard to claims based on goods or services that were used to meet the AGENCY's obligation to MDOT under this Agreement may have occurred or is threatened to occur. The AGENCY shall also notify MDOT if it becomes aware of any person's intent to commence, or of commencement of, an antitrust action with regard to claims based on goods or services that were used to meet the AGENCY's obligation to MDOT under this Agreement.

#### **42. TERM OF AGREEMENT**

Upon award, this Agreement will be in effect from October 1, 2020 through September 30, 2023.

**43. AWARD**

This Agreement will become binding on the parties and of full force and effect upon signing by the duly authorized representatives of the AGENCY and MDOT and upon adoption of a resolution approving said Agreement and authorizing the signature(s) thereto of the respective representative(s) of the AGENCY, a certified copy of which resolution will be sent to MDOT with this Agreement, as applicable.

BAY COUNTY BOARD OF COMMISSIONERS

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

MICHIGAN DEPARTMENT OF TRANSPORTATION



By: \_\_\_\_\_  
Title: Department Director



**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 Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any 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 will 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 ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any 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; treatment; 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 shall, 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 its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.
6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.

7. The contractor shall 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 itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State 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, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan 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 Michigan 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 Michigan Civil Rights Commission to participate in such proceedings.
9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

Revised June 2011

**APPENDIX B**  
**TITLE VI ASSURANCE**

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

1. **Compliance with Regulations:** For all federally assisted programs, the contractor shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment 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 contractor covers a program set forth in Appendix B of the Regulations.
3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment:** All solicitations made by the contractor, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential subcontractor or supplier of the contractor’s obligations under the 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 facilities as may be determined to be pertinent by the Department or the United States Department of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the contractor is in the exclusive possession of another who fails or refuses to furnish the required information, the contractor shall certify to the Department or the USDOT, as appropriate, and shall set forth the efforts that it 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 Department shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:
  - a. Withholding payments to the contractor until the contractor complies; and/or
  - b. Canceling, terminating, or suspending the contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor shall include the provisions of Sections (1) through (6) in every subcontract, including procurement of material 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 Department or the USDOT 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 from a subcontractor or supplier as a result of such direction, the contractor may request the Department to enter into such litigation to protect the interests of the state. In addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Revised June 2011

**APPENDIX C**  
**Assurances 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, subrecipient 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, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanction;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.



**APPENDIX G**

Michigan Department  
Of Transportation  
0165 (09/15)

**PRIME CONSULTANT STATEMENT OF DBE SUBCONSULTANT PAYMENTS**

Information required in accordance with 49 CFR Section 26.37 to monitor progress of the prime consultant in meeting contractual obligations to DBEs

PRIME CONSULTANT NAME	DBE % REQUIRED	CONTRACT / AUTH NO.	BILLING PERIOD TO	INVOICE NUMBER	SUBMITTAL DATE
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IS THIS PRIME FIRM MDOT-DBE CERTIFIED? <input type="checkbox"/> YES <input type="checkbox"/> NO	IS THIS THE FINAL INVOICE? <input type="checkbox"/> YES <input type="checkbox"/> NO
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CERTIFIED DBE SUBCONSULTANT	SERVICES / WORK PERFORMED	TOTAL SUBCONTRACT AMOUNT	TOTAL INVOICED TO DATE	DEDUCTIONS	ACTUAL AMOUNT PAID TO DATE	DBE AUTHORIZED SIGNATURE (FINAL PAYMENT REPORT ONLY)	DATE
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		\$	\$				
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		\$	\$				
		\$	\$				
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IF THE DBE % PROPOSED WAS NOT ATTAINED, PLEASE INCLUDE THE REASON

**AS THE AUTHORIZED REPRESENTATIVE OF THE ABOVE PRIME CONSULTANT, I STATE THAT, TO THE BEST OF MY KNOWLEDGE, THIS INFORMATION IS TRUE AND ACCURATE**

PRIME CONSULTANT NAME	TITLE	SIGNATURE	DATE
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COMMENTS

## INSTRUCTIONS

### **PRIME CONSULTANT OR AUTHORIZED REPRESENTATIVE:**

This statement reports the actual dollar amounts of the project cost earned by and paid to DBE subconsultants. Complete and submit to the Payment Analyst with each billing and within 20 days of receipt of final payment. Some forms may be blank if no payment was made since the previous billing.

For "Contract No., Authorization No.," and "Job No." as appropriate, use the numbers assigned by MDOT.

For "Period Covered," report the calendar days covered by the billing.

For "Services Work Performed" report the main service performed by the subconsultant during the reporting period.

For "Total Contract Amount" report the total amount of the contract between the prime consultant and the subconsultant.

For "Cumulative Dollar Value of Services Completed" report the total amount the subconsultant has earned since beginning this project.

For "Deductions," report deductions made by the prime consultant to the subconsultant's "Cumulative Dollar Value of Services Completed" for retainage, bond or other fees, materials, services or equipment provided to the subconsultant according to mutual, prior agreement (documentation of such agreement may be required by MDOT).

For "Actual Amount Paid to Date," report cumulative actual payments made to the subconsultant for services completed.

For "Actual Amount Paid During this Report Period" report actual payments made to the subcontractor for services during this reporting period.

"Provide "DBE Authorized Signature" for final payment only.

Be sure to sign, title and date this statement.

### **MDOT PAYMENT ANALYST:**

Complete "Comments" if necessary, sign date and forward to the Office of Business Development within seven (7) days of receipt.

MDOT Office of Business Development  
P.O. Box 30050  
Lansing, Michigan 48909  
Questions about this form? Call Toll-free, 1-866-DBE-1264

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 prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, 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 proposed for debarment under 48 CFR part 9, subpart 9.4, 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 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, 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 by any Federal department or agency;
  - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - d. Have not within a three year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[60 FR 33042, 33064, June 26, 1995]

## ATTACHMENT B

[This is a reproduction of Appendix B of 49 CFR 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 modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which

it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (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.

[Federal Register Doc. 88-11561 Filed 5-25-88; 8:45 a.m.]

March 9, 1989