

MICHIGAN DEPARTMENT OF TRANSPORTATION
KALAMAZOO AREA TRANSPORTATION STUDY
AGREEMENT

JUN 17 2011

This Agreement is made and entered into this date of _____ by and between the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT," and the Kalamazoo Area Transportation Study, hereinafter referred to as the "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.

WITNESSETH:

WHEREAS, pursuant to Title 23 United States Code (USC) 134 and Title 49 USC 1607, as amended, a metropolitan planning organization, hereinafter referred to as the "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

WHEREAS, 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

WHEREAS, 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 the DEPARTMENT, be made available to the MPO; and

WHEREAS, 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 the DEPARTMENT, be made available to the MPO; and

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

WHEREAS, 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, hereinafter referred to as the "UWP," on its own behalf and for the FHWA, the FTA, and/or the DEPARTMENT; and

WHEREAS, the AGENCY desires to have the continuing cooperation of the DEPARTMENT in the UWP, and the DEPARTMENT, 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

WHEREAS, the DEPARTMENT, in cooperation with the FHWA and the FTA, desires to enter into an agreement with the AGENCY;

NOW, THEREFORE, the DEPARTMENT and the AGENCY agree that:

THE AGENCY WILL:

1. PERFORMANCE OF THE UWP

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 (PL). Each year, or biennially with the approval of the FHWA, a UWP will be prepared detailing specific tasks and specific monetary amounts on an annual basis and, upon approval by the official designated MPO and the DEPARTMENT, 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.

The DEPARTMENT, through the DEPARTMENT'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, in total or in part, are financed with funds from the FHWA, the FTA, and/or the DEPARTMENT. The progress of work that involves the FHWA, the FTA, or the DEPARTMENT's participation will be subject to review and inspection at any reasonable time, upon request, by representatives of the DEPARTMENT, the FHWA, or the FTA.

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 ability to obtain program objectives. This disclosure will be accompanied by a statement of action taken or contemplated.

2. DOCUMENT PUBLICATION

Assume the lead or supporting responsibility, as mutually agreed by the AGENCY and the DEPARTMENT, for the development and publication of various documents to be prepared, as described in Title 23 of the Code of Federal Regulations (CFR), Section

450.312. These include the 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

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

Make reasonable efforts toward involving the public in major phases of the metropolitan transportation planning process as specified in 23 USC 134.

5. PROJECT AUTHORIZATIONS AND COMMENCEMENT OF PERFORMANCE

Base actual performance of the specific tasks contained in each year's UWP upon the approval of project authorizations, hereinafter referred to as the "PROJECT AUTHORIZATIONS," setting forth the federal and state funds available for the UWP. 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

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 the DEPARTMENT and for which FHWA, FTA, and/or DEPARTMENT funds are available without the prior written approval of the DEPARTMENT and the FHWA and/or the FTA in the form of a PROJECT AUTHORIZATION and a written transmittal letter.

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

DEPARTMENT funds in the PROJECT AUTHORIZATIONS made available through legislative appropriation are based on projected revenue estimates. The DEPARTMENT may reduce the amount of the PROJECT AUTHORIZATIONS if the revenue actually received is insufficient to support the appropriation under which the PROJECT AUTHORIZATIONS are 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 the DEPARTMENT's representatives, 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, said records to be hereinafter referred to as the "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 the DEPARTMENT 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. The DEPARTMENT or its representative may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.
- d. If any part of the work is subcontracted, the AGENCY will assure compliance with subsections (a), (b), and (c) 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 OMB Circular A-133, incorporated herein by reference as if the same were repeated in full herein.
- b. Audits are to be performed by an independent accounting firm and must conform to the regulations and procedures established by the Office of Management and Budget as specified in 49 CFR, Part 18, and such other regulations and procedures established by the DEPARTMENT, the FHWA, and the FTA. All such audits are subject to review and approval by the DEPARTMENT, 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.
- d. The provisions set forth in Section 8 will be included in all contracts and subcontracts relating to this Agreement.

- e. Agencies expending a total of Five Hundred Thousand Dollars (\$500,000.00) or more in federal funds from one or more funding sources in their fiscal year will comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised and amended.

The agency will submit two copies of:

The Reporting Package

The Data Collection Form

The management letter to the agency, if one is issued by the audit firm

The OMB Circular A-133 audit must be submitted to the address below in accordance with the time frame established in the circular, as revised or amended.

- f. Agencies expending more than One Dollar (\$1.00) but less than Five Hundred Thousand Dollars (\$500,000.00) in federal funds must submit a letter to the DEPARTMENT advising that an OMB Circular A-133 audit was not required. The letter will indicate the applicable fiscal year, the amount of federal funds spent, the name(s) of the DEPARTMENT federal programs, and the Catalog of Federal Domestic Assistance (CFDA) grant number(s). This information must also be submitted to the address below.
- g. Address: Michigan Department of Transportation
Bureau of Transportation Planning
Statewide Transportation Planning Division
P.O. Box 30050
Lansing, MI 48909
- h. Agencies must also comply with applicable state laws and regulations relative to audit requirements.
- i. Agencies will not charge audit costs to the DEPARTMENT's federal programs that are not in accordance with the OMB Circular A-133 requirements.
- j. All agencies are subject to the federally-required monitoring activities, which may include limited scope reviews and other on-site monitoring.

9. BILLINGS AND PROGRESS REPORTS

Submit monthly billing and progress reports to the DEPARTMENT on work accomplished on the UWP. At the option of the AGENCY, by written notification to the DEPARTMENT's staff representative, quarterly billings and progress reports may be submitted in lieu of monthly submissions subject to the prior written approval of the DEPARTMENT. Progress reports will be in a form and manner acceptable to the

DEPARTMENT. A billing and progress report will be submitted not later than thirty (30) days after the end of each billing period. A final billing will be submitted not later than sixty (60) 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 the DEPARTMENT.

The AGENCY agrees that the costs reported to the DEPARTMENT 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

Submit 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 and save harmless the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT, 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, 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, the DEPARTMENT, 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.

The DEPARTMENT will not be subject to any obligations or liabilities by contractors of the AGENCY or its 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 DEPARTMENT, the Michigan State Transportation Commission, 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 DEPARTMENT, the Michigan State Transportation Commission, 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.

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.

THE DEPARTMENT WILL:

12. APPRAISAL OF UWP

Through the DEPARTMENT'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, in total or in part, are financed with funds from the FHWA, the FTA, or the DEPARTMENT.

13. DEPARTMENT STAFF REPRESENTATIVE

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

14. DOCUMENT APPROVAL

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

15. CONSIDERATION OF TRANSPORTATION SYSTEMS

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

16. REIMBURSABLE COSTS

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 OMB Circular A-87, 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 the DEPARTMENT 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 travel in relation to the UWP will be on an actual cost basis, in accordance with AGENCY policy.
- c. The AGENCY will not be paid for costs attributable to correction of errors and omissions occasioned by the AGENCY.

17. 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, act as billing agent for the AGENCY and present said billings to the FHWA or the FTA for payment. Upon receipt of reimbursement from the FHWA or the FTA, the DEPARTMENT will promptly forward said reimbursement to the AGENCY.

IT IS FURTHER AGREED THAT:

18. AUDIT

In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this Agreement or questions the allowability of an item of expense, the DEPARTMENT 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 the Department 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 the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "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 the DEPARTMENT. 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 the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT 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 the DEPARTMENT determines that an overpayment has been made to the AGENCY, the AGENCY will repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the AGENCY fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the AGENCY agrees that the DEPARTMENT will deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT 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 the DEPARTMENT 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 the DEPARTMENT's decision only as to any item of expense the disallowance of which was disputed by the AGENCY in a timely filed RESPONSE.

19. INCREASE IN COSTS

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

20. ADDITIONAL COSTS

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 the DEPARTMENT 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.

21. SUBCONTRACTING

The AGENCY will not subcontract any portion of an approved UWP except with the prior written consent of the DEPARTMENT. Approval by the DEPARTMENT, the FHWA, and/or the FTA of subcontract work identified in the UWP provides initial authorization for the AGENCY to utilize the services of a consultant. However, the detailed work program associated with the subcontract must be reviewed and accepted by the DEPARTMENT prior to the award of the subcontract. 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 the DEPARTMENT's written consent to subcontract.

The AGENCY will obtain the DEPARTMENT's written consent 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 Less than State Transportation Commission Policy Amount for Third-Party Contracts:

The AGENCY will submit a written request to the DEPARTMENT'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 Greater than State Transportation Commission Policy Amount for Third-Party Contracts:

The AGENCY will submit a written request to the DEPARTMENT'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 the DEPARTMENT 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 the DEPARTMENT.

Consent to sublet 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.

22. 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 the DEPARTMENT. 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 the DEPARTMENT. 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 the DEPARTMENT semi-annually in the format set forth in Appendix G, dated July 2010, attached hereto and made a part hereof, or any other format acceptable to the DEPARTMENT.

23. 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 the DEPARTMENT for reimbursement. Incurred costs that are not reimbursable by the FHWA or the FTA will be the sole responsibility of the AGENCY.

24. FEDERAL LAWS AND REGULATIONS

All applicable federal, state, and local laws, regulations, and ordinances are incorporated into and made a part of this Agreement, and the parties will comply therewith.

25. EXECUTIVE COMMITTEE REPRESENTATION

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

26. NONDISCRIMINATION, DBE, AND ENVIRONMENTAL REQUIREMENTS

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

- 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 March 2010, 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 March 2010, attached hereto and made a part hereof.
- c. The AGENCY will carry out the applicable requirements of the DEPARTMENT’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 1, 2005, 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 DEPARTMENT-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.

27. REPORTS AND PUBLICATION

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.

- a. Prior to such publication, the AGENCY will submit all manuscripts for the review and approval of the DEPARTMENT and review by the FHWA or the FTA. Such review and acceptance is for the DEPARTMENT’s own purposes and does not relieve the AGENCY from claims arising out of such publication.
- b. In the event the parties fail to agree on a final draft of a manuscript, the DEPARTMENT may publish independently 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.

- c. Any publication will give proper credit to all parties in this Agreement for the cooperative character of the UWP.

28. REPORT LANGUAGE

All reports published by the DEPARTMENT or by the AGENCY will contain the following statement in the credit line if the DEPARTMENT or the FHWA or the FTA does not subscribe to the findings:

“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.”

29. PUBLICATION OF FUNDAMENTAL WORK

The foregoing terms (as set forth in Sections 27 and 28) do not preclude the publication by the AGENCY of results of any UWP work that is in the nature of fundamental or general principals. Manuscripts in this category will be submitted to the DEPARTMENT and the FHWA or the FTA for approval prior to publication.

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 the DEPARTMENT, the FHWA, the FTA, and/or 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 the DEPARTMENT 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. The DEPARTMENT 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.*; MSA 17.458(22) *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. The DEPARTMENT 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 cost of such equipment by the DEPARTMENT 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 DEPARTMENT 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 the DEPARTMENT and the FHWA or the FTA.
- d. The AGENCY will furnish to the DEPARTMENT a certification stating that the equipment has not been included under indirect costs.

34. ENVIRONMENTAL

For agreements in excess of One Hundred Thousand Dollars (\$100,000.00):

- 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/or 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 Services under this Agreement.
- c. The AGENCY will promptly notify the DEPARTMENT 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 Section 1630.2 of the Americans with Disabilities Act, Title 42, USC 12101, will, solely by reason of their disabilities, be excluded from the 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 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 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, incorporated herein by reference as if the same were repeated in full herein, 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 the DEPARTMENT will not be construed as a warranty or assumption of liability on the part of the DEPARTMENT. It is expressly understood and agreed that any such approvals, acceptances, reviews, and inspections are for the sole and exclusive purposes of the DEPARTMENT, 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 the DEPARTMENT will not relieve the AGENCY of its obligations hereunder, nor are such approvals, acceptances, reviews and inspections by the DEPARTMENT 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 the DEPARTMENT.

39. TERMINATION

The DEPARTMENT 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 the DEPARTMENT terminates this Agreement for convenience, the DEPARTMENT 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 16, but not to exceed the amount set forth in the UWP. The DEPARTMENT 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 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 services in a manner satisfactory to the DEPARTMENT, the DEPARTMENT 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. The DEPARTMENT may pay a proportional share for a partially completed work product. The value of such partially completed work product will be determined by the DEPARTMENT based on actual costs incurred up to the estimated value of the work product received by the DEPARTMENT, as determined by the DEPARTMENT. Such actual costs will be as set forth in Section 16, but not to exceed the amount set forth in the UWP. The DEPARTMENT 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 the DEPARTMENT is necessitated by any wrongful breach, failure, default, or omission by the AGENCY, the DEPARTMENT 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 the DEPARTMENT, for any and all damages and costs incurred or sustained by the DEPARTMENT 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, the DEPARTMENT 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 Contract & Payment Express website (www.cpexpress.state.mi.us).

41. ASSIGNMENT OF ANTITRUST RIGHTS

With regard to claims based on goods or services that were used to meet the AGENCY's obligation to the DEPARTMENT 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 the DEPARTMENT due to any violation

of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - .788, excluding Section 4a, to the State of Michigan or the DEPARTMENT.

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 the DEPARTMENT with regard to claims based on goods or services that were used to meet the AGENCY's obligation to the DEPARTMENT under this Agreement due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - .788, excluding Section 4a, to the State of Michigan or the DEPARTMENT as a third-party beneficiary.

The AGENCY shall notify the DEPARTMENT 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 the DEPARTMENT under this Agreement may have occurred or is threatened to occur. The AGENCY shall also notify the DEPARTMENT 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 the DEPARTMENT under this Agreement.

42. TERM OF AGREEMENT

Upon award, this Agreement will be in effect from October 1, 2011 through September 30, 2014.

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 the DEPARTMENT 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 the DEPARTMENT with this Agreement, as applicable.

IN WITNESS WHEREOF, the parties have caused this Agreement to be awarded.

KALAMAZOO AREA TRANSPORTATION STUDY

By: Thomas Swial
Title: Chairperson, Policy Committee

By: _____
Title: _____

MICHIGAN DEPARTMENT OF TRANSPORTATION

By: Laura J. Mastu
Title: Department Director

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

The Michigan Department of Transportation has a responsibility to ensure that contractors comply with federal contracting requirements, including equal opportunity requirements, and to assist in and cooperate with Federal Highway Administration (FHWA) programs to ensure that equal opportunity is afforded to all. In connection with the performance of work under this contract, the contractor, for itself, its assignees, and its successors in interest (hereinafter referred to as 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.

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 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.

Furthermore, on any federally-assisted contract, the contractor and subcontractor shall comply with the equal employment opportunity provisions of 23 CFR Subpart D--Construction Contract Equal Employment Opportunity Compliance Procedures, 49 CFR Part 21--Non-Discrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964, Executive Order 11246, Title VII of the Civil Rights Act of 1964 (Title VII), Public Act 220 of 1976, and Public Act 453 of 1976.

2. 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, 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.
3. 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.

4. 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.
5. 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.
6. 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.
7. 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.
8. The contractor agrees to cooperate with the Department's Project Manager or designee and the Department's Equal Employment Opportunity Officer to resolve any complaints brought against the contractor or any subcontractor on any federally assisted project or program by an employee, applicant for employment, or employee of the Department, regardless of whether or not the employee is employed by the contractor, subcontractor, or the Department, or is an applicant for employment, alleging prohibited discrimination. Prohibited discrimination includes, but is not limited to, sexual harassment, racial discrimination, and other protected categories set forth under Title VII and Public Act 453 of 1976.

9. The contractor shall comply with 23 CFR Subpart D and Executive Order 11246, and as such, the contractor or subcontractor shall conduct a prompt, thorough, and fair investigation of all complaints brought forward under Title VII and Public Act 453 of 1976, in cooperation with the Department's Equal Employment Opportunity Officer.
10. The contractor shall provide a written report detailing the findings of the investigation to the Department's Project Manager and Equal Employment Opportunity Officer when the complaint made against the contractor is by a Department employee or by an applicant for employment. The Department's Equal Employment Opportunity Officer shall review the report for compliance with 23 CFR Subpart D. It is the Department's intent to correct any current acts and prevent any future acts of discrimination arising out of a Title VII or Public Act 453 of 1976 complaint. Title VI complaints will be addressed through the Contractor Compliance Section in the Department's Office of Business Development.
11. The contractor shall include or incorporate by reference the provisions of all applicable covenants set forth in Sections 1 through 10 above in all subcontracts and purchase orders 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.

Application:

1. On any federally assisted contract, the contractor and subcontractor agree to comply with the equal employment opportunity provisions of 23 CFR Subpart D, 49 CFR Part 21, Executive Order 11246, Title VII, Public Act 220 of 1976, and Public Act 453 of 1976.
2. FHWA responsibilities under 23 CFR Part 230.405: The FHWA has the responsibility to ensure that contractors meet contractual equal opportunity requirements under Title 23 USC and to provide guidance and direction to states in the development and implementation of a program to ensure compliance with equal employment opportunity requirements.
3. FHWA Order 4710.8 clarifies that the Office of Federal Contract Compliance Programs of the Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and its implementing regulations.
4. Failure of the Department to discharge the responsibilities set forth in 23 CFR Part 230.405(b)(1) may result in the U.S. Department of Transportation taking any or all of the following actions (see 23 CFR Part 630, Subpart C, Appendix A):
 - i) canceling, terminating, or suspending the federal aid project agreement in whole or in part;

- ii) refraining from extending any further assistance to the Department for the program under which the failure or refusal occurred until satisfactory assurance of compliance is received from the Department; and
- iii) referring the case to the appropriate federal agency for legal proceedings.

Revised March 2010

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.

Furthermore, on any federally assisted contract, the contractor and subcontractor shall comply with the equal employment opportunity provisions of 23 CFR Subpart D--Construction Contract Equal Employment Opportunity Compliance Procedures, 49 CFR Part 21--Non-Discrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964, Executive Order 11246, Title VII of the Civil Rights Act of 1964, Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), and Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act).

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 Federal Highway Administration 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 Federal Highway Administration, 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 Federal Highway Administration 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 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 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 March 2010

(Revised October 1, 2005)

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.

Appendix G

Prime Consultant Statement of DBE Sub-Consultant Payments

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

PRIME CONSULTANT CHECK IF PRIME IS MDOT-DBE CERTIFIED AUTHORIZATION NO. CONTRACT NO.

BILLING PERIOD: Check if Final Payment JOB NO.

| CERTIFIED DBE SUBCONSULTANT | SERVICES WORK PERFORMED | TOTAL CONTRACT AMOUNT | CUMULATIVE DOLLAR VALUE OF SERVICES COMPLETED | DEDUCTIONS | ACTUAL AMOUNT PAID TO DATE | ACTUAL AMOUNT PAID DURING THIS REPORTING PERIOD | DBE AUTHORIZED SIGNATURE (Final Payment Report Only) | DATE |
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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'S AUTHORIZED REPRESENTATIVE (signature) TITLE DATE/MO/DO

FOR MDOT USE ONLY

COMMENTS:

SPECIAL NOTE: "Prime Consultant or Authorized Representative" refers to recipients of federal funds as defined at 49 Code of Federal Regulations Part 26

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