PHASE

AGREEMENT FOR SUBCONSULTANT SERVICES

Route       Project

Section       Job No.

County       PTB #

This is an AGREEMENT between      , hereinafter referred to as the CONSULTANT, and      , hereinafter referred to as the SUBCONSULTANT.

The CONSULTANT proposes to engage the SUBCONSULTANT to furnish certain professional services in connection with      , which work is hereinafter referred to as the PROJECT.

The CONSULTANT has authority under their agreement with the Illinois Department of Transportation, hereinafter referred to as the DEPARTMENT, to engage such services, and the SUBCONSULTANT certifies that they are in compliance with Illinois Statutes relating to professional registration of individuals and to corporate practice, if a corporation, for rendering such services.

The SUBCONSULTANT, in signing this AGREEMENT, certifies that they have no financial or other interests in the outcome of this PROJECT.

The CONSULTANT and the SUBCONSULTANT hereby certify that there was compliance with the provisions of the Architectural, Engineering and Land Surveying Qualifications Based Selection Act (Chapter 30 ILCS 535) in the procurement of the services covered by this AGREEMENT.

In consideration of these premises, the parties hereto agree as set forth in the following pages numbered 2 -       inclusive.

This AGREEMENT executed this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 \_\_\_\_\_\_.

This AGREEMENT becomes null if the agreement between the CONSULTANT and the DEPARTMENT is not authorized.

CONSULTANT SUBCONSULTANT

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

Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Please mark the appropriate Legal Status blank below.**

The SUBCONSULTANT certifies that:

1. The number shown on this form is the SUBCONSULTANT’s correct taxpayer identification number (or the SUBCONSULTANT is waiting for a number to be issued to them), and
2. The SUBCONSULTANT is not subject to backup withholding because: (a) the SUBCONSULTANT is exempt from backup withholding, or (b) the SUBCONSULTANT has not been notified by the Internal Revenue Service (IRS) that the SUBCONSULTANT is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified the SUBCONSULTANT that the SUBCONSULTANT is no longer subject to back-up withholding, and
3. The SUBCONSULTANT’s person with signatory authority for this AGREEMENT is a U.S. person (including a U.S. resident alien), and
4. The SUBCONSULTANT is authorized as a legal entity, in accordance with 30 ILCS 500/20-43, to do business in the State of Illinois.

|  |  |
| --- | --- |
| Under penalties of perjury, I certify that |  |

is my federal Taxpayer Identification Number or my Social Security Number, as applicable, and that I am doing business as one of the following (please check one):

|  |  |
| --- | --- |
|  | Corporation |
|  | Individual/Sole Proprietor or Single Member LLC |
|  | Partnership |
|  | Limited Liability Company |
|  | S= Corporation  C= Corporation  P= Partnership |

**USE ONLY FOR PTB 156 and BEFORE**

**SECTION 1 – GENERAL PROVISIONS**

**Incorporation by Reference**. The Illinois Department of Transportation’s Standard Agreement Provisions for Consultant Services, dated January 1, 2001 hereinafter referred to as the STANDARD PROVISIONS are incorporated and made part of this AGREEMENT except as revised and/or deleted or amended hereinafter. The STANDARD PROVISIONS section references are shown in parenthesis.

Whenever the word DEPARTMENT is used in the STANDARD PROVISIONS it shall be construed to mean CONSULTANT and whenever the word CONSULTANT is used, it shall be construed to mean SUBCONSULTANT, except the word DEPARTMENT shall also include the Illinois Department of Transportation in Section 2.14, 2.24, 2.62, 2.63 and 2.64 and 2.65 of said STANDARD PROVISIONS.

**Certifications Required by State and/or Federal Law**. The SUBCONSULTANT certifies that they have read the certifications and assurances described in the STANDARD PROVISIONS and certifies that their signature on the AGREEMENT signature sheet constitutes an endorsement and execution of each certification and assurance as though each was individually signed.

**Changes**. If any certification made by the SUBCONSULTANT or term or condition in this AGREEMENT changes, the SUBCONSULTANT must notify the CONSULTANT who will notify the DEPARTMENT in writing within seven days.

**Disclosure Forms**. The Illinois Procurement Code requires that the SUBCONSULTANT submit Form A-Financial Information and Potential Conflicts of Interest Disclosure and Form B – Other Contracts and Procurement Related Information Disclosure with each Agreement.

**Executive Order Number 1 (2007) Regarding Lobbying on Government Procurements.** The SUBCONSULTANT hereby warrants and certifies that they have complied and will comply with the requirements set forth in this Order.

**Records Preservation.** The SUBCONSULTANT shall maintain books and records related to the performance of the CONTRACT and necessary to support amounts charged to the state under the CONTRACT for a minimum of three (3) years from the last action on the CONTRACT. The SUBCONSULTANT further agrees to cooperate fully with any audit and to make the books and records available to the Auditor General, chief procurement officer, internal auditor and/or the DEPARTMENT, and the federal funding entity (when applicable). The SUBCONSULTANT agrees to cooperate fully with any audit conducted by the Auditor General, chief procurement officer, internal auditor, and/or the DEPARTMENT and provide full access to all materials. Failure to maintain the books, records, and supporting documents required by this paragraph shall establish a presumption in favor of the state for the recovery of any funds paid by the state under the CONTRACT for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

**Delinquent Payment**. The SUBCONSULTANT certifies that it, or any affiliate, is not barred from being awarded a contract under 30 ILCS 500. Section 50-11 prohibits a person from entering into a contract with a state agency if it knows or should know that it, or any affiliate, is delinquent in the payment of any debt to the state as defined by the Debt Collection Board. Section 50-12 prohibits a person from entering into a contract with the state agency if it, or any affiliate, has failed to collect and remit Illinois Use Tax on all sales of tangible personal property into the state of Illinois in accordance with the provisions of the Illinois Use Tax Act. The SUBCONSULTANT further acknowledges that the contracting state agency may declare the CONTRACT void if this certification is false or if the SUBCONSULTANT or any affiliate is determined to be delinquent in the payment of any debt to the state during the term of the CONTRACT.

**Felony Convictions.** The SUBCONSULTANT certifies in accordance with 30 ILCS 500/50-10.5 that no officer, director, partner or other managerial agent of the contracting business has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or of a Class 3 or Class 2 felony under the Illinois Security Law of 1953, for a period of five years prior to the date of the AGREEMENT. The SUBCONSULTANT acknowledges that the DEPARTMENT shall declare the CONTRACT void if this certification is false.

**Environmental Protection Act.** The SUBCONSULTANT certifies in accordance with 30ILCS 500/50-14 that the SUBCONSULTANT is not barred from being awarded a contract under this Section. The SUBCONSULTANT acknowledges that the DEPARTMENT may declare the CONTRACT void if this certification is false.

**Prevailing Wages.** Pursuant to the Prevailing Wage Act (820 ILCS 130/et seq.) for Illinois, not less than the prevailing rate of wages as found by the Illinois Department of Labor or determined by the court shall be paid to all laborers, workers, and mechanics performing work under the CONTRACT. During CONTRACT performance, if the prevailing rate of wages is revised, the revised rate shall apply. Prevailing rate of wages are available on the Illinois Department of Labor official website: <http://www.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx>. All other applicable provisions of the Prevailing Wage Act apply, including notice provisions, record retention, and submittal of certified payrolls.

**Disadvantaged Business Enterprise Policy.** Section 2.60 of the STANDARD PROVISIONS is revised, as follows:

The CONSULTANT, SUBCONSULTANT, or recipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this CONTRACT. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of department-assisted contracts. Failure by the CONSULTANT 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 sanctions;
3. Liquidating damages; and/or
4. Disqualification from submitting statements of interest.

**Compensation of Principal and Project Manager.** Section 2.86 (b)(3), paragraph 2 of the STANDARD PROVISIONS is revised as follows: The maximum total compensation for staff working in the capacities of project manager and principal specified in the AGREEMENT is $70.00 per hour ($145,600 annually) that may be charged directly to the CONTRACT. All other classifications are limited to the maximum total compensation of $60.00 per hour ($124,800 annually) that may be charged directly to the CONTRACT.

**Partial Payments/Invoices.** Construction Engineering Agreements may include a provision for mobilization. If mobilization has been negotiated with the SUBCONSULTANT as part of the method of payment, the mobilization shall be made and recovered in accordance with the provisions of this subsection. The mobilization amount negotiated shall be no more than 3% of the labor upper limit of compensation specified in Section 4 of the Prime Agreement. Upon execution of the AGREEMENT, the SUBCONSULTANT may invoice for the mobilization amount. Half of the mobilization amount shall be shown as a deduction from the invoice at 25% of the project’s completion. The remainder of the mobilization amount shall be shown as a deduction from the invoice for 50% of the project’s completion.

**Key Personnel**. The SUBCONSULTANT’S personnel identified in the CONSULTANT’S statement of interest are considered essential to the completion of the PROJECT. For purposes of administering Section 2.12 of the STANDARD PROVISIONS, the SUBCONSULTANT’S key personnel are listed below:

|  |  |  |
| --- | --- | --- |
| **Classification** | **Name** | **Location** |
|  |  |  |

**Method of Payment.**

The Methods of Payment shall be as stated in Section 2.80 of the STANDARD PROVISIONS, except the Fixed Fee portion of the Cost Plus Fixed Fee method will be determined as specified in Section 4 of the AGREEMENT.

For all projects advertised in PTB 144 and later, and for all supplemental agreements received on or after June 13, 2007 wherein the SUBCONSULTANT will be compensated using the Cost-Plus-Fixed-Fee method of compensation, the compensation is computed using the following formula:

Compensation = DL+DC+OH+FF. DL is the total Direct Labor, DC is the total Direct Cost, OH is the total Overhead and FF is the Fixed Fee.

The Fixed Fee (FF) is: (0.37+ R)DL, where R is the advertised Complexity Factor and DL is the total Direct Labor costs.

**Efficiency Factor and Pay for Performance.** Section 2.83 and 2.84 of the STANDARD PROVISIONS will not apply.

The SUBCONSULTANT shall invoice the prime CONSULTANT, not the DEPARTMENT’S Liaison Person, as provided in Section 2.81 of said STANDARD PROVISIONS. The CONSULTANT shall promptly pay the SUBCONSULTANT’S invoice upon receipt of payment from the DEPARTMENT.

**USE ONLY FOR WORK ORDERS**

**Work Orders.** The SUBCONSULTANT, at the request of the CONSULTANT, shall submit a cost estimate for their portion of the work order cost estimate.

**USE ONLY FOR NON-FEDERALLY FUNDED JOBS**

**State Board of Elections.** The SUBCONSULTANT certifies that they have registered as a business entity with the State Board of Elections and acknowledges a continuing duty to update the registration pursuant to the Procurement Code (30 ILCS 500/20-160). Further, the SUBCONSULTANT acknowledges that all contracts between state agencies and a business entity that do not comply with this section shall be voidable under Section 50-60 of the Procurement Code (30 ILCS 500/50-60).

**Confidential or Proprietary Information.** Additional confidentiality requirements applicable to consultant agreements providing program oversight responsibility:

**Confidentiality.**  SUBCONSULTANT and SUBCONSULTANT provided personnel shall not disclose or permit disclosure of any confidential or proprietary information to any person, and shall take all actions necessary to avoid such disclosure and otherwise to maintain the confidentiality of the confidential or proprietary information. SUBCONSULTANT shall inform all personnel provided in accordance with this AGREEMENT of the obligations under this section, and shall provide to the DEPARTMENT a signed assurance from all affected personnel that they have read this requirement and that they agree to abide by the same. SUBCONSULTANT and SUBCONSULTANT provided personnel (hereinafter “SUBCONSULTANT”) will not at any time use any confidential or proprietary information for the direct or indirect benefit of any person including the SUBCONSULTANT except such use that is solely in furtherance of the performance of this AGREEMENT and limited to the term thereof.

**Ownership.** SUBCONSULTANT acknowledges and agrees that all confidential or proprietary information is the exclusive property of the DEPARTMENT or entities providing information to the DEPARTMENT. SUBCONSULTANT agrees to disclose fully the use and purpose of the use of any confidential or proprietary information to DEPARTMENT when requested by the DEPARTMENT. SUBCONSULTANT shall immediately, upon demand by DEPARTMENT, return all confidential or proprietary information and all copies in his/her possession, custody or control to DEPARTMENT.

**Definitions**. For purposes of this AGREEMENT “confidential or proprietary information” shall mean any and all present and future knowledge or information of any type, regardless of the manner of storage, relating to the operations and programs of the DEPARTMENT or any of its divisions, including without limitation, all types of information stored in DEPARTMENT data bases. Confidential or proprietary information does not include information or knowledge which the DEPARTMENT identifies as available for unrestricted public use. For purposes of this AGREEMENT, a “person” shall include individuals, partnerships, trusts, corporations or any other form of association or entity.

**Breach by Consultant.** In the event of a breach or threatened breach by the SUBCONSULTANT of the provisions of this AGREEMENT, the DEPARTMENT shall be entitled to an injunction restraining SUBCONSULTANT from disclosing or using confidential or proprietary information or from rendering any services to any person using confidential or proprietary information provided in breach of this AGREEMENT. Nothing herein shall be construed as prohibiting the DEPARTMENT from pursuing any other remedies available to the DEPARTMENT for such breach or threatened breach, including recovery of damages from SUBCONSULTANT. This provision shall survive any termination of this AGREEMENT.

**Nondiscrimination (Civil Rights Act of 1964).** Section 2.64(a) of the Standard Provisions is revised to read: Title 49, Code of Federal Regulations, Part 26.

**UsDOT 1050.2A, Appendix E.** During the performance of this CONTRACT, the SUBCONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "SUBCONSULTANT") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities;

• Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

• The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42U.S.C. §460 I), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

• Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);

• Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);

• Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

• The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

• Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;

• The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

• Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

• Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

• Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**USE ONLY FOR PTB 157 and AFTER**

**SECTION 1 - GENERAL PROVISIONS**

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**Certifications Required by State and/or Federal Law**. The SUBCONSULTANT certifies that they have read the certifications and assurances described in the STANDARD PROVISIONS and certifies that their signature on the AGREEMENT signature sheet constitutes an endorsement and execution of each certification and assurance as though each was individually signed.

**Changes**. If any certification made by the SUBCONSULTANT or term or condition in this AGREEMENT changes, the SUBCONSULTANT must notify the CONSULTANT who will notify the DEPARTMENT in writing within seven days.

**Disclosure Forms**. The Illinois Procurement Code requires that the SUBCONSULTANT submit Form A-Financial Information and Potential Conflicts of Interest Disclosure and Form B – Other Contracts and Procurement Related Information Disclosure with each Agreement.

**Executive Order Number 1 (2007) Regarding Lobbying on Government Procurements.** The SUBCONSULTANT hereby warrants and certifies that they have complied and will comply with the requirements set forth in this Order.

**Lobbyist Disclosure.** Section 50-38 of the Illinois Procurement Code requires that any bidder or offeror on a state contract that hires a person required to register under the Lobbyist Registration Act to assist in obtaining a contract shall:

1. Disclose all costs, fees, compensation, reimbursements, and other remunerations paid or to be paid to the lobbyist related to the CONTRACT,
2. Not bill or otherwise cause the state of Illinois to pay for any of the lobbyist’s costs, fees, compensation, reimbursements, or other remuneration, and
3. Sign a verification certifying that none of the lobbyist’s costs, fees, compensation, reimbursements, or other remuneration were billed to the state.

This information, along with all supporting documents, shall be filed with the agency awarding the CONTRACT and with the Secretary of State. The chief procurement officer shall post this information, together with the CONTRACT award notice, in the online Procurement Bulletin.

Pursuant to Subsection (c) of this Section, no person or entity shall retain a person or entity to attempt to influence the outcome of a procurement decision made under the Procurement Code for compensation contingent in whole or in part upon the decision or procurement. Any person who violates this subsection is guilty of a business offense and shall be fined not more than $10,000.

The SUBCONSULTANT acknowledges that it is required to disclose the hiring of any person required to register pursuant to the Illinois Lobbyist Registration Act (25 ILCS 170) in connection with this CONTRACT.

**Communication Disclosure.** Disclose the name and address of each lobbyist and other agent of the bidder or offeror who has communicated, is communicating, or may communicate with any state officer or employee concerning the bid or offer. This disclosure is a continuing obligation and must be promptly supplemented for accuracy throughout the process and throughout the term of the CONTRACT.

**Records Preservation.** The SUBCONSULTANT shall maintain books and records related to the performance of the CONTRACT and necessary to support amounts charged to the state under the CONTRACT for a minimum of three (3) years from the last action on the CONTRACT. The SUBCONSULTANT further agrees to cooperate fully with any audit and to make the books and records available to the Auditor General, chief procurement officer, internal auditor and/or the DEPARTMENT, and the federal funding entity (when applicable). The SUBCONSULTANT agrees to cooperate fully with any audit conducted by the Auditor General, chief procurement officer, internal auditor, and/or the DEPARTMENT and provide full access to all materials. Failure to maintain the books, records, and supporting documents required by this paragraph shall establish a presumption in favor of the state for the recovery of any funds paid by the state under the CONTRACT for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

**Delinquent Payment**. The SUBCONSULTANT certifies that it, or any affiliate, is not barred from being awarded a contract under 30 ILCS 500. Section 50-11 prohibits a person from entering into a contract with a state agency if it knows or should know that it, or any affiliate, is delinquent in the payment of any debt to the state as defined by the Debt Collection Board. Section 50-12 prohibits a person from entering into a contract with the state agency if it, or any affiliate, has failed to collect and remit Illinois Use Tax on all sales of tangible personal property into the state of Illinois in accordance with the provisions of the Illinois Use Tax Act. The SUBCONSULTANT further acknowledges that the contracting state agency may declare the CONTRACT void if this certification is false or if the SUBCONSULTANT or any affiliate is determined to be delinquent in the payment of any debt to the state during the term of the contract.

**Felony Convictions.** The SUBCONSULTANT certifies that it is not barred from being awarded a contract under 30 ILCS 500/50-10. Section 50-10 prohibits a SUBCONSULTANT from entering into a contract with the DEPARTMENT if the SUBCONSULTANT has been convicted of a felony and five years have not passed from the completion of the sentence for that felony. The SUBCONSULTANT further acknowledges that the chief procurement officer may declare the CONTRACT void if this certification is false.

The SUBCONSULTANT certifies that it is not barred from being awarded a contract under 30 ILCS 500/50-10.5. Section 50-10.5 prohibits a SUBCONSULTANT from entering into a contract with the DEPARTMENT if the SUBCONSULTANT, or any officer, director, partner, or other managerial agent of the SUBCONSULTANT has been convicted within the last five years of a felony under the Sarbanes-Oxley Act of 2002 or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953 or is in violation of Subsection (e). The SUBCONSULTANT further acknowledges that the chief procurement officer shall declare the CONTRACT void if this certification is false.

**Environmental Protection Act.** The SUBCONSULTANT certifies that it is not barred from being awarded a contract under 30 ILCS 50/50-14. Section 50-14 prohibits a SUBCONSULTANT from entering into a contract with the DEPARTMENT if the SUBCONSULTANT has been found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act within the last five years. The SUBCONSULTANT further acknowledges that the chief procurement officer may declare the CONTRACT void if this certification is false.

**Bribery.** The SUBCONSULTANT certifies that it is not barred from being awarded a contract under 30 ILCS 500/50-5. Section 50-5 prohibits a SUBCONSULTANT from entering into a contract with the DEPARTMENT if the SUBCONSULTANT has been convicted of bribery or attempting to bribe an officer or employee of the state of Illinois, or if the SUBCONSULTANT has made an admission of guilt of such conduct which is a matter of record. The SUBCONSULTANT further acknowledges that the chief procurement officer may declare the CONTRACT void if this certification is false.

**Multi-year Contracts.** Section 50-2 of the Illinois Procurement Code provides that every person that has entered into a multi-year contract and every SUBCONSULTANT with a multi-year subcontract shall certify, by July 1 of each fiscal year covered by the CONTRACT after the initial fiscal year, to the responsible chief procurement officer whether it continues to satisfy the requirements of Article 50 pertaining to the eligibility for a contract award. If a consultant or SUBCONSULTANT is not able to truthfully certify that it continues to meet all requirements, it shall provide with its certification a detailed explanation of the circumstances leading to the change in certification status. A consultant or SUBCONSULTANT that makes a false statement material to any given certification required under Article 50 is, in addition to any other penalties or consequences prescribed by law, subject to liability under the Whistleblower Reward Act for submission of a false claim.

**Prevailing Wages.** Pursuant to the Prevailing Wage Act (820 ILCS 130/et seq.) for Illinois, not less than the prevailing rate of wages as found by the Illinois Department of Labor or determined by the court shall be paid to all laborers, workers, and mechanics performing work under the CONTRACT. During CONTRACT performance, if the prevailing rate of wages is revised, the revised rate shall apply. Prevailing rate of wages are available on the Illinois Department of Labor official website: <http://www.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx>. All other applicable provisions of the Prevailing Wage Act apply, including notice provisions, record retention, and submittal of certified payrolls.

**Disadvantaged Business Enterprise Policy.** Section 2.60 of the STANDARD PROVISIONS is revised, as follows:

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1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidating damages; and/or
4. Disqualification from submitting statements of interest.

**OPTION FOR PTB 166 AND AFTER!**

**Training/Apprenticeship Programs**. The CONSULTANT and all CONSULTANT’s SUBCONSULTANTS must participate in applicable apprenticeship and training programs approved by and registered with the United States Department of Labor's Bureau of Apprenticeship and Training for all on-site construction related activities, including material testing and drilling, performed by laborers, workers and mechanics. For purposes of this AGREEMENT, engineers, architects and land surveyors are considered “professional services” as defined in Section 30-15 of the Procurement Code and are not considered laborers, workers or mechanics. With respect to material testing and drilling, these requirements do not apply where the work is performed in a county without a prevailing wage classification for material testing as provided by the Illinois Prevailing Wage Act, 820 ILCS 130/1 et seq.

**Compensation of Principal and Project Manager.** Section 2.86 (b)(3), paragraph 2 of the STANDARD PROVISIONS is revised as follows: The maximum total compensation for staff working in the capacities of project manager and principal specified in the AGREEMENT is $70.00 per hour ($145,600 annually) that may be charged directly to the CONTRACT. All other classifications are limited to the maximum total compensation of $60.00 per hour ($124,800 annually) that may be charged directly to the CONTRACT.

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|  |  |  |
| --- | --- | --- |
| **Classification** | **Name** | **Location** |
|  |  |  |

**Method of Payment.**

The Methods of Payment shall be as stated in Section 2.80 of the STANDARD PROVISION, except the Fixed Fee portion of the Cost Plus Fixed Fee method will be determined as specified in Section 4 of the AGREEMENT.

For all projects advertised in PTB 144 and later, and for all supplemental agreements received on or after June 13, 2007 wherein the SUBCONSULTANT will be compensated using the Cost-Plus-Fixed-Fee method of compensation, the compensation is computed using the following formula:

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The Fixed Fee (FF) is: (0.37+ R)DL, where R is the advertised Complexity Factor and DL is the total Direct Labor costs.

**Efficiency Factor and Pay for Performance.** Section 2.83 and 2.84 of the STANDARD PROVISIONS will not apply.

The SUBCONSULTANT shall invoice the prime CONSULTANT, not the DEPARTMENT’S Liaison Person, as provided in Section 2.81 of said STANDARD PROVISIONS. The CONSULTANT shall promptly pay the SUBCONSULTANT’S invoice upon receipt of payment from the DEPARTMENT.

**USE ONLY FOR WORK ORDERS**

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**Confidential or Proprietary Information.** Additional confidentiality requirements applicable to consultant agreements providing program oversight responsibility:

**Confidentiality.**  SUBCONSULTANT and SUBCONSULTANT provided personnel shall not disclose or permit disclosure of any confidential or proprietary information to any person, and shall take all actions necessary to avoid such disclosure and otherwise to maintain the confidentiality of the confidential or proprietary information. SUBCONSULTANT shall inform all personnel provided in accordance with this AGREEMENT of the obligations under this section, and shall provide to the DEPARTMENT a signed assurance from all affected personnel that they have read this requirement and that they agree to abide by the same. SUBCONSULTANT and SUBCONSULTANT provided personnel (hereinafter “SUBCONSULTANT”) will not at any time use any confidential or proprietary information for the direct or indirect benefit of any person including the SUBCONSULTANT except such use that is solely in furtherance of the performance of this AGREEMENT and limited to the term thereof.

**Ownership.** SUBCONSULTANT acknowledges and agrees that all confidential or proprietary information is the exclusive property of the DEPARTMENT or entities providing information to the DEPARTMENT. SUBCONSULTANT agrees to disclose fully the use and purpose of the use of any confidential or proprietary information to DEPARTMENT when requested by the DEPARTMENT. SUBCONSULTANT shall immediately, upon demand by DEPARTMENT, return all confidential or proprietary information and all copies in his/her possession, custody or control to DEPARTMENT.

**Definitions**. For purposes of this AGREEMENT “confidential or proprietary information” shall mean any and all present and future knowledge or information of any type, regardless of the manner of storage, relating to the operations and programs of the DEPARTMENT or any of its divisions, including without limitation, all types of information stored in DEPARTMENT data bases. Confidential or proprietary information does not include information or knowledge which the DEPARTMENT identifies as available for unrestricted public use. For purposes of this AGREEMENT, a “person” shall include individuals, partnerships, trusts, corporations or any other form of association or entity.

**Breach by Consultant.** In the event of a breach or threatened breach by the SUBCONSULTANT of the provisions of this AGREEMENT, the DEPARTMENT shall be entitled to an injunction restraining SUBCONSULTANT from disclosing or using confidential or proprietary information or from rendering any services to any person using confidential or proprietary information provided in breach of this AGREEMENT. Nothing herein shall be construed as prohibiting the DEPARTMENT from pursuing any other remedies available to the DEPARTMENT for such breach or threatened breach, including recovery of damages from SUBCONSULTANT. This provision shall survive any termination of this AGREEMENT.

**Nondiscrimination (Civil Rights Act of 1964).** Section 2.64(a) of the Standard Provisions is revised to read: Title 49, Code of Federal Regulations, Part 26.

**UsDOT 1050.2A, Appendix E.** During the performance of this CONTRACT, the SUBCONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "SUBCONSULTANT") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities;

• Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

• The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42U.S.C. §460 I), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

• Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);

• Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);

• Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

• The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

• Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;

• The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

• Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

• Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

• Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**SECTION 2 - SCOPE OF WORK**

The SUBCONSULTANT agrees to perform, at the direction of the CONSULTANT, the services described below:

**SECTION 3 - PROJECT SCHEDULE**

For purposes of administering Section 2.21d of the STANDARD PROVISIONS, the fee was negotiated anticipating that the work would be completed by      , which includes review time by the DEPARTMENT.

The work shall be completed and delivered to the DEPARTMENT through the CONSULTANT as set forth below or in the attached Project Schedule.

**SECTION 4 – COMPENSATION**

**Compensation**. The SUBCONSULTANT shall receive payment for completing the work required of them in accordance with Section 2.86 of the STANDARD PROVISIONS subject to the Total Agreement Amount not to exceed $ as set forth in the table below:

The method of compensation is Cost Plus Fixed Fee.

The complexity factor for this PROJECT is      .

**OPTION FOR PHASE II JOB**

|  |  |
| --- | --- |
| **SUBCONSULTANT** | **AMOUNT** |
|  |  |
| PHASE II LABOR | |
| (PAYROLL & OVERHEAD) | $ |
|  |  |
| PHASE III LABOR\* |  |
| (PAYROLL & OVERHEAD) | $ |
|  |  |
| FIXED FEE | $ |
| DIRECT COSTS | $ |
|  |  |
| **TOTAL AGREEMENT AMOUNT** | **$** |
|  |  |

\*Note:  Phase III hours are negotiated as a separate item and those funds can be used only for the intended functions.  They may not be used for direct labor on other negotiated tasks.

**OPTION FOR PHASE I & III JOBS**

|  |  |
| --- | --- |
| **SUBCONSULTANT** | **AMOUNT** |
|  |  |
| LABOR (PAYROLL & OVERHEAD) | $ |
| FIXED FEE | $ |
| DIRECT COSTS | $ |
|  |  |
| **TOTAL AGREEMENT AMOUNT** | **$** |
|  |  |

**OPTION FOR DIRECT COSTS**

ALLOWABLE DIRECT COSTS FOR THIS AGREEMENT ARE:

|  |  |
| --- | --- |
| Direct Cost | Rate |
|  |  |

**Provisional Rate.** A provisional rate for fringe benefit and overhead has been used for the interim to establish the Total Agreement Amount. When invoicing the department the SUBCONSULTANT **may** use the most current approved overhead rate if the rate is higher than the established rate and **must** use the most current approved overhead rate if the rate is lower than the established rate. At the conclusion of the PROJECT, the actual additive rate for fringe benefit and overhead will be determined by the DEPARTMENT’S audit. If the audited rate(s) differ from the provisional rate, for the final audit, the audited rate(s) will be applied to the audited payroll in that fiscal year.

**Upper Limits.** Within the total AGREEMENT amount, there are separate upper limits for labor (payroll and overhead), fixed fee and direct costs that cannot be exceeded. The SUBCONSULTANT is to invoice at the actual cost up to these upper limits. The DEPARTMENT will only reimburse direct costs included in the AGREEMENT.

**Modification/Amendments**. The compensation may be increased or decreased by subsequent agreement between the parties if there is a major change in the scope, character or complexity of the work.

The compensation may also be adjusted under the terms of Section 2.21 of the STANDARD PROVISIONS, except for the fixed fee, if the work extends more than six months beyond the anticipated date of completion. The SUBCONSULTANT will be reimbursed the adjusted rates (payroll, fringe benefit and overhead) for only that part of the work remaining to be completed at the time he/she submits a written request.

**SECTION 5 - OBLIGATIONS & PAYMENTS**

**Available Funds/General Assembly**. Obligations of the STATE shall cease immediately without penalty or further payment being required if, in any fiscal year, the Illinois General Assembly or federal funding source fails to appropriate or otherwise make available funds for this CONTRACT.

**Consultant Payments**. The CONSULTANT, upon payment by the STATE, shall pay all the monies due the SUBCONSULTANT(s) and/or vendor(s).

**Consultant Address**. The SUBCONSULTANT will use the address listed below for all billing, invoicing and receiving payment(s) from the CONSULTANT.