



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

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CHRISTOPHER D. CLEMENT, SR.
COMMISSIONER

JEFF BRILLHART, P.E.
ASSISTANT COMMISSIONER

Bureau of Rail & Transit
April 22, 2013

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Transportation to enter into an Agreement with HDR Engineering, Inc., Boston, MA, Vendor #169983, for a total fee not to exceed \$658,316.00, to evaluate the potential development of an extension of commuter rail service operated by the Massachusetts Bay Transportation Authority (MBTA) from Haverhill, MA to Plaistow, NH, effective upon Governor and Council approval, through March 31, 2015. 100% Federal Funds

Funding is available as follows:

04-96-96-963515-3054 FY 2013
Consolidated Federal Aid
046-500463 Eng Consultants Non-Benefit \$658,316.00

EXPLANATION

The Department requires professional planning, engineering, and environmental consultant services to evaluate the potential development of an extension of commuter rail service operated by the MBTA from Haverhill, MA to Plaistow, NH. This project is funded by the Federal Transit Administration (FTA) with Congestion Mitigation and Air Quality (CMAQ) funds and will be undertaken following FTA guidelines. The CMAQ funding for a planning study, engineering, and right of way acquisition has been approved (CMAQ Proj# 10-17 CM). The project will include an environmental assessment of alternative sites for a layover facility and a station track platform as well as a discussion but not a detailed analysis of other transit alternatives such as a commuter bus operation or a transit connection to the existing commuter rail station. Preliminary engineering of layover and station track and platform facilities will be conducted. The project will include production of capital and operating cost estimates and ridership forecasting for the proposed commuter rail extension. The consultant will work closely with the FTA, the Town of Plaistow, City of Haverhill, and stakeholders in the region.

This project was proposed by the Town of Plaistow. The Town and the Department have agreed, through a Memorandum of Understanding approved by the Governor and Council, that the Department will take the lead on implementing this project. This project is currently included in the State's Ten-Year Transportation Improvement Plan (Plaistow 20163).

The consultant selection process employed by the Department for this qualifications-based contract is in accordance with RSAs 21-I:22, 21-I:22-c and 21-I:22-d, all applicable Federal laws and the Department's "Consultant Selection and Service Agreement Procedures" dated December 1999. The Department's Consultant Selection Committee is a standing committee that meets regularly to administer the process and make determinations. The Committee is comprised of the Assistant Director of Project Development (chair), the Chief Project Manager, the Administrators of the Bureaus of Highway Design, Bridge Design, Environment, and Materials and Research, and the Municipal Highways Engineer. In this particular instance, the Administrator of the Bureau of Rail and Transit was also a voting member of the Committee.

The consultant selection process for this qualifications-based contract was initiated by a solicitation for consultant services for Plaistow Commuter Rail Extension. The assignment was listed as a "Project Soliciting for Interest" on the Department's website on November 18, 2011, asking for letters of interest from qualified firms. From the list of firms that submitted letters of interest, the Committee prepared a long and then short list of Consultants on January 12, 2012 for consideration and approval by the Assistant Commissioner. Upon receipt of that approval, three shortlisted firms were notified on January 31, 2012 through a technical "Request For Proposal" (RFP). Committee members individually rated the firms' technical proposals on March 22, 2012 using a written ballot to score each firm on the basis of comprehension of the assignment, clarity of the proposal, capacity to perform in a timely manner, quality and experience of the project manager and the team, previous performance, and overall suitability for the assignment. The individual rankings were then totaled to provide an overall ranking of the three firms, and the Committee's ranking was submitted to the Assistant Commissioner for consideration and approval. Upon receipt of the Assistant Commissioner's approval, the short listed firms were notified of the results and the highest-ranking firm was asked to submit a fee proposal for negotiations.

The long list of ten consultant firms that were considered for this assignment, with the three short-listed firms shown in bold, is as follows:

**Consultant Firm**

The Louis Berger Group, Inc.  
Clough, Harbour & Associates, LLP  
Gove Environmental Services, Inc.  
**HDR Engineering, Inc.**  
Jacobs Engineering Group, Inc.  
**Parsons Brinckerhoff**  
STV  
TranSystems  
URS Corporation  
**Vanasse Hangen Brustlin, Inc.**

**Office Location**

Manchester, NH  
Keene, NH  
Exeter, NH  
**Boston, MA**  
Manchester, NH  
**Manchester, NH**  
Boston, MA  
Boston, MA  
Salem, NH  
**Boston, MA**

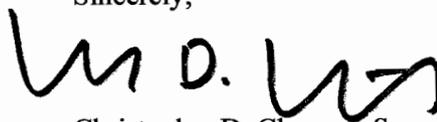
The firm of HDR Engineering, Inc. has been recommended for this contract. This firm has an excellent reputation and has demonstrated their capability to perform the required services. Background information on this firm is attached. HDR Engineering, Inc. has agreed to furnish the required services for a total fee not to exceed \$658,316.00. This is a reasonable fee and is commensurate with the complexity of the project and the scope of engineering and technical services to be furnished.

The funding for this project is 80% Federal funds with 20% State match. Turnpike toll credit is being utilized for New Hampshire's match requirement, effectively using 100% federal funds. The use of Turnpike Toll Credits for this project was approved by the Capital Budget Overview Committee on March 6, 2013 (attached). The Federal funds were approved by the CMAQ Selection Committee and are in an approved Federal Transit Administration (FTA) grant.

This Agreement has been approved by the Attorney General as to form and execution. The Department has verified that the necessary funds are available. Copies of the fully-executed Agreement are on file at the Secretary of State's Office and the Department of Administrative Services, and subsequent to Governor and Council approval will be on file at the Department of Transportation.

It is respectfully requested that authority be given to enter into an Agreement for consulting services as outlined above.

Sincerely,



Christopher D. Clement, Sr.  
Commissioner

# ARCHITECT-ENGINEER QUALIFICATIONS

1. SOLICITATION NUMBER (if any)

## PART II - GENERAL QUALIFICATIONS

(If a firm has branch offices, complete for each specific branch office seeking work.)

2a. FIRM (or branch office) NAME <b>HDR</b>			3. YEAR ESTABLISHED <b>1982</b>	4. DUNS NUMBER <b>78-900-0684 (Engineering) 79-008-9721 (Architecture)</b>
2b. STREET <b>695-Atlantic Avenue</b>			5. OWNERSHIP	
2c. CITY <b>Boston</b>	2d. STATE <b>MA</b>	2e. ZIP CODE <b>02111-2626</b>	a. TYPE <b>Private Corporation</b>	
6a. POINT OF CONTACT NAME AND TITLE <b>Peter E. Reilly, Senior Vice President</b>			b. SMALL BUSINESS STATUS <b>Large Business</b> <span style="float: right;"><i>11-29-12</i></span>	
6b. TELEPHONE NUMBER <b>617.357.7775</b>	6c. E-MAIL ADDRESS <b>peter.reilly@hdrinc.com</b>		HDR	
8a. FORMER-FIRM-NAME(S) (if any) <b>Henningson, Durham &amp; Richardson, Inc. 1951 Henningson Engineering Company, Inc. 1930 Henningson Engineering Company 1917</b>			8b. YR. ESTABLISHED <b>1985</b>	8c. DUNS NUMBER <b>06 866 8805</b>

9. EMPLOYEES BY DISCIPLINE				10. PROFILE OF FIRM'S EXPERIENCE AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS		
a. Function code	b. Discipline	c. No. of employees		a. Profile Code	b. Experience	c. Revenue Index Number (see below)
		(1) FIRM	(2) BRANCH			
02	Administrative	747	5	A04	Air Pollution Control	4
06	Architect	699	10	A06	Airports; Terminals & Hangers; Freight Handling	6
08	CADD Technician	552	2	B02	Bridges	10
12	Civil Engineer	641	12	C15	Construction Management	9
16	Construction Manager	148	1	D01	Dams; (Concrete; Arch)	5
20	Economist	49	5	D02	Dams; (Earth; Rock); Dikes; Levees	8
23	Environmental Engineer	88	1	E09	Enviro. Impact Studies, Assessments, or Statements	10
24	Environmental Scientist	356	1	E12	Environmental Remediation	9
37	Interior Designer	60	2	H07	Highways: Streets; Airfield Paving; Parking Lots	10
47	Planner: Urban/Regional	188	3	I01	Industrial Buildings; Manufacturing Plants	5
52	Sanitary Engineer	237	1	P06	Planning (Site, Installation, and Project)	8
57	Structural Engineer	236	5	P12	Power Generation, Transmission, Distribution	10
58	Technician/Analyst	1,052	10	R03	Railroad: Rapid Transit	10
60	Transportation Engineer	575	5	R11	Rivers: Canals; Waterways; Flood Control	7
99	Management Scientists	58	1	S04	Sewage Collection; Treatment and Disposal	10
99	Public Relations	395	4	S07	Solid Wastes; Incineration; Landfill	9
99	Railroad Experts	61	5	S10	Surveying; Platting; Mapping; Flood Plain Studies	6
				S13	Storm Water Handling & Facilities	7
				T02	Testing & Inspection Services	6
				T03	Traffic & Transportation Engineering	10
	Other Employees	1,957		W02	Water Resources; Hydrology; Ground Water	9
	<b>Total</b>	<b>8,099</b>	<b>73</b>	W03	Water Supply; Treatment and Distribution	10

11. ANNUAL AVERAGE PROFESSIONAL SERVICES REVENUES OF FIRM FOR LAST 3 YEARS (insert revenue index number shown at right)		PROFESSIONAL SERVICES REVENUE INDEX NUMBER	
a. Federal Work	4	1. Less than \$100,000	6. \$2 million to less than \$5 million
b. Non-Federal Work	8	2. \$100,000 to less than \$250,000	7. \$5 million to less than \$10 million
c. Total Work	8	3. \$250,000 to less than \$500,000	8. \$10 million to less than \$25 million
		4. \$500,000 to less than \$1 million	9. \$25 million to less than \$50 million
		5. \$1 million to less than \$2 million	10. \$50 million or greater

## 12. AUTHORIZED REPRESENTATIVE

The foregoing is a statement of facts.

a. SIGNATURE <i>George A. Little</i>	b. DATE <b>5/21/2012</b>
---	-----------------------------

c. NAME AND TITLE  
**George A. Little, PE, CEO**



Ronald D. O'Brien, PE  
HDR Engineering, Inc. – Senior Rail Project Manager

Mr. O'Brien, a Senior Rail Project Manager in HDR's Boston office, has more than 30 years of experience in railroad planning and engineering. He has developed strong management skills and technical knowledge during his assignments as a railroad engineering staff member and/or project manager for numerous railroad engineering-related assignments with major consulting firms, and at Maine Central Railroad and Guilford Rail System. Mr. O'Brien's experience has encompassed working as an authorized representative of the State of Massachusetts directly responsible for administration and direction of over \$100 million of FHWA project funding for rail work associated the Central Artery/Tunnel Project in Boston, Massachusetts. With this unique experience he understands the positions of private, public and federal entities for the development and implementation of federally funded projects.

**Education:**

B.S., Civil Engineering, University of Maine, 1974

**Professional Registrations:**

Professional Engineer: Civil,  
New Hampshire, No. 10830  
Maine, No. 5783

**Years in Industry: 35**

**Relevant projects include:**

**NH State Rail Plan** – Project Manager for the NH State Rail Plan that will evaluate the freight and passenger rail system in the state. It will set priorities for improvements and include recommendations for implementation. The study includes a state-wide Public Involvement program.

**Knowledge Corridor Passenger Rail Study, FRA Grant Application and Final Design Pioneer Valley Planning Commission, MA and MassDOT** Project Manager. HDR provided a comprehensive study of the feasibility for commuter and intercity passenger services on the 49-mile corridor of between Springfield, MA and the VT/MA border owned by Pan Am Railways. MassDOT utilized the results of the Study to support a successful grant from the Federal Railroad Administration (FRA). HDR is currently providing final design services for the Project.

**Rutland Rail Yard Relocation EIS** – Current Project Manager for the development of the EIS for the relocation of the existing rail yard in Rutland, VT;

**Union Station Redevelopment, Springfield, MA** – Current Project Coordinator for the evaluation of rehabilitation opportunities to restore Union Station to service as a multi modal facility. Work includes coordination with CSX Railroad and Amtrak.

**DM&E Railroad Track Extension and Rehabilitation** – Engineering Lead – Boston Office providing engineering support for the design and construction of 280 miles of new freight rail line and rehabilitation of 460 miles of existing track for access to the Powder River Basin Coal deposits.

Prior to joining HDR, Mr. O'Brien worked at Parsons Brinckerhoff on the following projects: **Vermont State Rail and Policy Plan** – Served as Project Manager for the development of the 2007 plan that evaluated freight and passenger operations in Vermont; **VTrans Boston to Montreal High-Speed Rail Corridor Feasibility Study** – Served as Project Manager for an evaluation study conducted for the States of Massachusetts, New Hampshire, and Vermont to identify institutional and policy issues, preliminary ridership projections, creation of train performance calculation modeling, infrastructure inventories, and the initial environmental review for the 329-mile corridor; **Lowell-Nashua Commuter Rail Extension** – Served as Project Manager for preliminary engineering and final design to extend commuter rail service operated by the MBTA, including projections of capital and operating costs and the development of funding options; and the **Central Artery/Tunnel Project** – Served as Rail Project Manager responsible for management of design and interface efforts with public and private stakeholders necessary for the construction of the CA/T project and maintenance of railroad, transit, and bus operations of the MBTA, Amtrak, Conrail (CSX), and the Boston and Maine Railroad.

**PROJECT: Plaistow Commuter Rail**

**DESCRIPTION:** Preliminary Engineering and Environmental services are needed for a commuter rail extension from Haverhill, MA to Plaistow, NH. This project is funded by the Federal Transit Administration (FTA) with Congestion Mitigation and Air Quality (CMAQ) funds and will be undertaken following FTA guidelines. The project will include an environmental assessment of alternative sites for a layover facility and of station track platform facilities. Preliminary engineering of layover and station track and platform facilities will be conducted. The project will include production of capital and operating cost estimates and ridership forecasting for the proposed commuter rail extension. The consultant will work closely with the FTA, the Town of Plaistow, City of Haverhill, and stakeholders in the region. A public involvement component will be included.

**Services Required: R&T, PLAN, ENV**

**SUMMARY**

HDR Engineering, Inc.	2	1	1	1	1	1	1	1	9
Parsons Brinckerhoff	1	2	2	2	2	2	2	2	15
Vanasse Hangen Brustlin, Inc.	3	3	3	3	3	3	3	3	24

**EVALUATION OF TECHNICAL PROPOSALS**

Rating Considerations		W E I G H T		
		HDR Engineering, Inc.	Parsons Brinckerhoff	Vanasse Hangen Brustlin, Inc.
Comprehension of the Assignment	20%	19	19	19
Clarity of the Proposal	20%	19	18	16
Capacity to Perform in a Timely Manner	20%	18	16	15
Quality & Experience of Project Manager/Team	20%	19	18	17
Previous Performance	10%	9	9	9
Overall Suitability for the Assignment*	10%	9	8	8
<b>Total</b>	<b>100%</b>	<b>93</b>	<b>88</b>	<b>84</b>

\*Includes: Proximity to project; usage, quality and experience of subconsultant Department; relationship of firm to municipalities or other third party.

Ranking of Firms: 1. HDR  
2. PB  
3. VHB

Rating Considerations		W E I G H T		
		HDR Engineering, Inc.	Parsons Brinckerhoff	Vanasse Hangen Brustlin, Inc.
Comprehension of the Assignment	20%	19	19	17
Clarity of the Proposal	20%	18	17	16
Capacity to Perform in a Timely Manner	20%	19	18	18
Quality & Experience of Project Manager/Team	20%	19	18	18
Previous Performance	10%	9	8	9
Overall Suitability for the Assignment*	10%	9	9	9
<b>Total</b>	<b>100%</b>	<b>93</b>	<b>89</b>	<b>87</b>

\*Includes: Proximity to project; usage, quality and experience of subconsultant Department; relationship of firm to municipalities or other third party.

Ranking of Firms: 1. HDR  
2. PB  
3. VHB

# EVALUATION OF TECHNICAL PROPOSALS (continued)

Rating Considerations				
	W E I G H T	HDR Engineering, Inc.	Parsons Brinckerhoff	Vanasse Hangen Brustlin, Inc.
Comprehension of the Assignment	20%	19	18	15
Clarity of the Proposal	20%	19	17	16
Capacity to Perform in a Timely Manner	20%	19	17	18
Quality & Experience of Project Manager/Team	20%	19	19	17
Previous Performance	10%	9	8	6
Overall Suitability for the Assignment*	10%	9	8	7
<b>Total</b>	<b>100%</b>	<b>94</b>	<b>87</b>	<b>78</b>

\*Includes: Proximity to project; usage, quality and experience of subconsultant Department; relationship of firm to municipalities or other third party.

- Ranking of Firms:
1. HDR
  2. PB
  3. VHB

Rating Considerations				
	W E I G H T	HDR Engineering, Inc.	Parsons Brinckerhoff	Vanasse Hangen Brustlin, Inc.
Comprehension of the Assignment	20%	18	18	16
Clarity of the Proposal	20%	15	16	10
Capacity to Perform in a Timely Manner	20%	17	15	16
Quality & Experience of Project Manager/Team	20%	15	15	17
Previous Performance	10%	8	8	8
Overall Suitability for the Assignment*	10%	10	9	8
<b>Total</b>	<b>100%</b>	<b>63</b>	<b>68</b>	<b>78</b>

\*Includes: Proximity to project; usage, quality and experience of subconsultant Department; relationship of firm to municipalities or other third party.

- Ranking of Firms:
1. HDR
  2. PB
  3. VHB

Rating Considerations				
	W E I G H T	HDR Engineering, Inc.	Parsons Brinckerhoff	Vanasse Hangen Brustlin, Inc.
Comprehension of the Assignment	20%	20	18	16
Clarity of the Proposal	20%	18	18	16
Capacity to Perform in a Timely Manner	20%	19	16	16
Quality & Experience of Project Manager/Team	20%	20	18	16
Previous Performance	10%	8	8	8
Overall Suitability for the Assignment*	10%	10	8	8
<b>Total</b>	<b>100%</b>	<b>94</b>	<b>86</b>	<b>82</b>

\*Includes: Proximity to project; usage, quality and experience of subconsultant Department; relationship of firm to municipalities or other third party.

- Ranking of Firms:
1. HDR
  2. PB
  3. VHB

Rating Considerations				
	W E I G H T	HDR Engineering, Inc.	Parsons Brinckerhoff	Vanasse Hangen Brustlin, Inc.
Comprehension of the Assignment	20%	18	18	18
Clarity of the Proposal	20%	18	18	17
Capacity to Perform in a Timely Manner	20%	18	18	17
Quality & Experience of Project Manager/Team	20%	17	16	16
Previous Performance	10%	9	9	8
Overall Suitability for the Assignment*	10%	7	9	8
<b>Total</b>	<b>100%</b>	<b>87</b>	<b>88</b>	<b>84</b>

\*Includes: Proximity to project; usage, quality and experience of subconsultant Department; relationship of firm to municipalities or other third party.

- Ranking of Firms:
1. HDR Engineering, Inc.
  2. Parsons Brinckerhoff
  3. Vanasse Hangen Brustlin, Inc.

Rating Considerations				
	W E I G H T	HDR Engineering, Inc.	Parsons Brinckerhoff	Vanasse Hangen Brustlin, Inc.
Comprehension of the Assignment	20%	19	18	16
Clarity of the Proposal	20%	19	17	16
Capacity to Perform in a Timely Manner	20%	19	16	18
Quality & Experience of Project Manager/Team	20%	19	19	17
Previous Performance	10%	9	8	8
Overall Suitability for the Assignment*	10%	9	8	7
<b>Total</b>	<b>100%</b>	<b>94</b>	<b>86</b>	<b>82</b>

\*Includes: Proximity to project; usage, quality and experience of subconsultant Department; relationship of firm to municipalities or other third party.

- Ranking of Firms:
1. HDR
  2. PB
  3. VHB

Rating Considerations				
	W E I G H T	HDR Engineering, Inc.	Parsons Brinckerhoff	Vanasse Hangen Brustlin, Inc.
Comprehension of the Assignment	20%	20	20	20
Clarity of the Proposal	20%	19	19	15
Capacity to Perform in a Timely Manner	20%	20	20	20
Quality & Experience of Project Manager/Team	20%	18	19	18
Previous Performance	10%	10	10	10
Overall Suitability for the Assignment*	10%	10	10	10
<b>Total</b>	<b>100%</b>	<b>95</b>	<b>97</b>	<b>89</b>

\*Includes: Proximity to project; usage, quality and experience of subconsultant Department; relationship of firm to municipalities or other third party.

- Ranking of Firms:
1. PB
  2. HDR
  3. VHB



CAP 13-020

JEFFRY A. PATTISON  
Legislative Budget Assistant  
(603) 271-3161

MICHAEL W. KANE, MPA  
Deputy Legislative Budget Assistant  
(603) 271-3161

State of New Hampshire  
OFFICE OF LEGISLATIVE BUDGET ASSISTANT  
State House, Room 102  
Concord, New Hampshire 03301

RICHARD J. MAHONEY, CPA  
Director, Audit Division  
(603) 271-2785

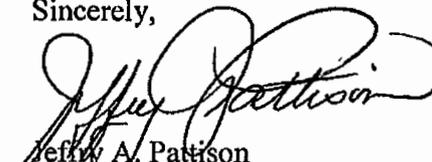
March 6, 2013

Christopher D. Clement, Sr., Commissioner  
Department of Transportation  
John O. Morton Building  
7 Hazen Drive  
Concord, New Hampshire 03302-0483

Dear Commissioner Clement,

The Capital Budget Overview Committee, pursuant to the provisions of RSA 228:12-a, on March 5, 2013, approved the request of the Department of Transportation, to use up to \$131,800 of Turnpike Toll Credit, based on total project costs not to exceed \$659,000 in federal funds, to meet funding match requirements for; the Plaistow Commuter Rail Extension Study, as specified in the request dated February 20, 2013.

Sincerely,

  
Jeffrey A. Pattison  
Legislative Budget Assistant

JAP/pe  
Attachment

Cc: Mark Sanborn, Federal Liaison ✓  
Patrick Herlihy, Director of Aeronautics, Rail and Transit

**RECEIVED**  
COMMISSIONERS OFFICE

MAR - 8 2013

THE STATE OF NEW HAMPSHIRE  
DEPT. OF TRANSPORTATION



THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION

CAP 13-020



CHRISTOPHER D. CLEMENT, SR.  
COMMISSIONER

JEFF BRILLHART, P.E.  
ASSISTANT COMMISSIONER

February 20, 2013

The Honorable David Campbell, Chairman  
Capital Budget Overview Committee  
State House  
Concord, NH 03301

Re: Request for Approval of the Department of Transportation, Toll Credit Match

Dear Chairman Campbell and Honorable Members of the Committee:

Requested Action

Pursuant to the provisions RSA Chapter 228:12-a, Use of Toll Credits, the Department requests the Capital Budget Overview Committee approve the Department of Transportation's use of Toll Credits for the Plaistow Commuter Rail Extension Study. As the total project costs are not to exceed \$659,000 in federal funds, the usage of up to \$131,800 in Toll Credit match is requested.

Explanation

The Department submitted a successful proposal for Congestion Mitigation and Air Quality (CMAQ) funds in the 2010 round of funding, approved on February 28, 2011, to study the extension of MBTA commuter rail from Haverhill, MA to Plaistow, NH. The study will include an environmental finding and design of a layover facility, a passenger station, and track facilities. As part of the evaluation, the following will be reviewed: a review of potential layover facility and passenger station sites, ridership forecasting, capital and operating cost estimation, funding options, and public and stakeholder involvement.

Funds for this agreement are available in the Department's operating budget and are included in the Statewide Transportation Improvement Program (STIP). The Federal funds were approved by the CMAQ Selection Committee and are in an approved Federal Transit Administration (FTA) grant.

Your approval of this resolution is respectfully requested.

Sincerely,

Christopher D. Clement, Sr.  
Commissioner  
Enclosure

**AGREEMENT**

between  
the Town of Plaistow, Town of Atkinson, Rockingham Planning Commission/MPO and  
New Hampshire Department of Transportation  
Regarding the Plaistow Commuter Rail Extension Study

The Plaistow Commuter Rail Project was proposed by the Town of Plaistow and selected for phased study and implementation through the New Hampshire Congestion Mitigation Air Quality program (CMAQ Proj# 10-17CM)). To date, CMAQ funding has been approved for a planning study, engineering, and right of way acquisition to support this project (State Project #20163). The Town and the New Hampshire Department of Transportation (NHDOT) have agreed, through a Memorandum of Understanding approved by the Governor and Council, that the NHDOT will take the lead in implementing the project.

As the first phase of the project the NHDOT will, through a consultant, undertake a study as described in the attached *Summary*. One element of that study will include the identification and evaluation of suitable locations for a commuter rail layover facility. With respect to the identification of sites for the layover facility, the parties to this agreement hereby agree that two sites on the rail corridor are deemed to be infeasible and not locally supportable due to their proximity to sensitive environmental areas and potential incompatibility with existing or planned development. These sites are known as the Westville Homes site, located at 21 Blossom Road in Plaistow and the Penn Box property located at 144 Main Street, Plaistow.

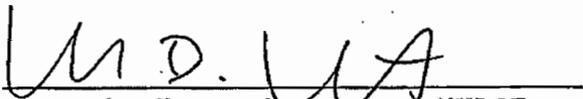
Based on the positions as expressed by the Plaistow Board of Selectmen (see attached letter dated January 10, 2013) and those of the Atkinson Board of Selectmen, and pursuant to this agreement, the NH Department of Transportation will instruct the consultant selected to conduct the study that the above referenced locations are unacceptable as alternative sites for the layover facility. It is further agreed that these sites will not be selected later for construction for a layover facility.

With this condition affirmed, the parties hereby agree to support the expeditious approval of the study agreement and implementation of the scope of work.

Attachments: *Plaistow Commuter Rail Extension Study Summary*  
*Letter from Plaistow Board of Selectmen to Councilor Sununu (01-10-2013)*

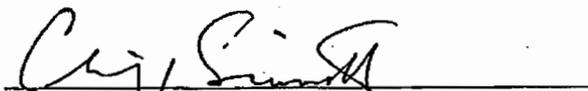
IN WITNESS THEREOF, the above referenced parties have executed this Agreement on the date so indicated:

FOR NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION:

  
Christopher Clement, Commissioner, NHDOT

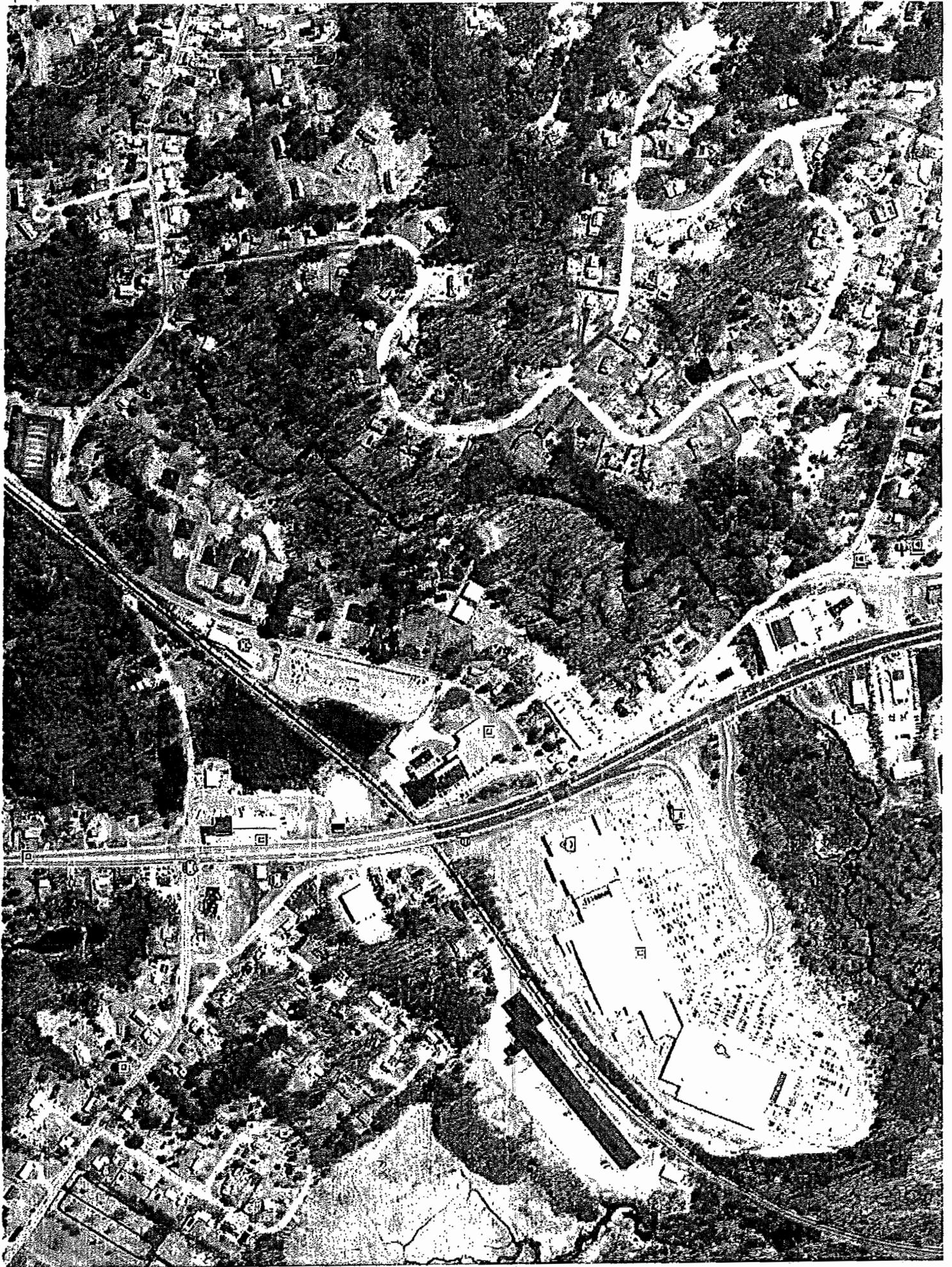
Date 01/15/2013

FOR ROCKINGHAM PLANNING COMMISSION:

  
Cliff Sinnott, Executive Director, RPC

Date 01-14-2013







# State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

January 14, 2013

To Whom It May Concern:

We, the undersigned, taking into consideration the recent agreement between the Dept. of Transportation, Town of Plaistow, the Town of Atkinson, and the Rockingham Planning Commission do hereby rescind our Letter of opposition dated January 7, 2013 concerning the Rail study proposal.

We want to make it clear that we will expect to be made aware of any future information or plans concerning the Rail issue to fulfill our obligations to the residents of the Towns of Atkinson and Plaistow.

Handwritten signature of Debra L. DeSimone in cursive.

Representative Debra L. DeSimone

Handwritten signature of William G. Friel in cursive.

Representative William G. Friel

Handwritten signature of Jack Hayes in cursive.

Representative Jack Hayes

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**PREAMBLE**

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1. CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS, ETC.
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3. CERTIFICATION OF CONSULTANT/SUBCONSULTANT
4. CERTIFICATION OF STATE DEPARTMENT OF TRANSPORTATION
5. CERTIFICATION FOR FEDERAL-AID CONTRACTS EXCEEDING \$100,000 IN FEDERAL FUNDS
6. CERTIFICATION OF GOOD STANDING
7. CERTIFICATION OF INSURANCE
8. CERTIFICATION OF AUTHORITY / VOTE
9. FTA FEDERAL CLAUSES (16 PAGES)
10. SIGNATURE PAGE

**AGREEMENT  
FOR PROFESSIONAL SERVICES**

**PREAMBLE**

THIS AGREEMENT made this 30 day of April in the year 2013 by and between the STATE OF NEW HAMPSHIRE, hereinafter referred to as the STATE, acting by and through its COMMISSIONER OF THE DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the COMMISSIONER, acting under Chapter 228 of the Revised Statutes Annotated, and HDR Engineering, Inc., with principal place of business at 8404 Indian Hills Drive, in the City of Omaha, State of Nebraska, and a Massachusetts Regional Office at 695 Atlantic Ave., in the City of Boston, State of Massachusetts, hereinafter referred to as the CONSULTANT, witnesses that:

The Department of Transportation, State of New Hampshire, hereinafter referred to as the DEPARTMENT, proposes to extend MBTA Commuter Rail Service from Haverhill, Massachusetts to Plaistow, New Hampshire.

The DEPARTMENT requires professional services for the planning and engineering work necessary to evaluate the potential development of an extension of commuter rail service operated by the MBTA from Haverhill, Massachusetts to Plaistow, New Hampshire. These services are outlined in the CONSULTANT'S Technical Proposal dated February 29, 2012, and Revised Scope of Work and Fee Proposals dated January 17, 2013, which are hereby adopted by reference and considered to be part of this AGREEMENT.

This AGREEMENT becomes effective upon approval by the Governor and Council.

## ARTICLE I

### **ARTICLE I - DESCRIPTION OF PROFESSIONAL SERVICES TO BE RENDERED**

NOW THEREFORE, in consideration of the undertakings of the parties hereinafter set forth, the DEPARTMENT hereby engages the CONSULTANT, who agrees to render services to the DEPARTMENT which shall include, but not be restricted to, the following items, in accordance with conditions and terms hereinafter set forth:

#### **A. LOCATION AND DESCRIPTION OF PROJECT**

This project involves extending commuter rail service operated by the MBTA from Haverhill, MA to Plaistow, NH.

#### **B. SCOPE OF WORK**

The purpose of this project is to provide the planning and engineering work necessary to evaluate the potential development of an extension of commuter rail service operated by the MBTA from Haverhill, MA to Plaistow, NH. Funding for planning, engineering, and right of way acquisition has been approved through the Congestion Mitigation and Air Quality program to support this project. It has been agreed to by project stakeholders that the DEPARTMENT will take the lead in implementing the project.

Since the project approved for funding by the State's CMAQ Committee is a commuter rail extension, the NEPA alternatives analysis prepared by the CONSULTANT will include a discussion but not a detailed analysis of other transit alternatives such as a commuter bus operation or a transit connection to the existing commuter rail station. The CONSULTANT'S priority is performing the planning and engineering tasks needed to implement the rail extension and support funding requests to complete the project. The tasks to be performed by the CONSULTANT are listed below.

##### **Task 1: Scoping and Public Involvement**

Prepare and circulate a scoping letter for the proposed project to local, state, and federal agencies to notify agencies and solicit comments on the project. Conduct regularly scheduled local official, stakeholder, and public meetings during the preliminary evaluation stage and design of the facilities as needed to maintain public awareness of the project's progress. Conduct a Public Hearing following the availability of the Environmental Assessment (EA) to the public. Prepare and disseminate information to the public on the progress of the project, via the internet, news releases, and other media.

Deliverables:

- Scoping Letter
- Public Involvement Plan Including Public Hearing and Information Documents

##### **Task 2: Perform Environmental Assessment**

Perform an EA for site selection, construction of a layover facility, station track, and station with boarding platform in compliance with the National Environmental Policy Act (NEPA) process. This will include a review of the effects of constructing and operating a layover facility, commuter rail station,

## ARTICLE I

track improvements, and commuter rail operation on the natural environment, historic and cultural resources, and the transportation system. These potential layover and station sites will be reviewed for environmental impacts as well as operational feasibility.

Deliverables:

- Technical Memo or Report on Evaluation of Layover and Station Sites
- Draft Environmental Assessment for NHDOT, Regional, FTA, and Public Review

### Task 3: Perform Preliminary Engineering

Perform the preliminary engineering required for a layover facility, station track, and station with boarding platform for project capital improvements and development of preliminary plans for track improvements and station and layover construction.

Deliverables:

- Preliminary Plans for Layover Facility, Passenger Station with Boarding Platform, and Track Improvements for NHDOT, Regional, and FTA Review

### Task 4: Ridership Forecast

Provide ridership forecasting for an extension of commuter rail service from Haverhill to Plaistow. This will include review of prior ridership estimates prepared by local sponsors, MBTA, and/or the Central Transportation Planning Staff (CTPS). CTPS will develop ridership forecasts using their FTA approved travel demand model or other methodology acceptable to FTA. The project team will develop model inputs consistent with identified alternatives. The forecast process will include identifying impacts on existing rail and bus services; demographic, land use, and economic factors, and alternative operating plans for the proposed commuter rail extension.

Deliverable:

- Ridership Methodology and Forecasts

### Task 5: Capital Cost Estimates

Provide capital cost estimates for the proposed commuter rail extension. This will include a review of budget estimates for capital costs prepared by local project sponsors and/or the MBTA. Capital costs will include construction of station with boarding platform and related facilities, station track and turnouts, construction of the layover facility, and commuter rail equipment required for the proposed service.

Deliverable:

- Capital Financial Plan for Commuter Rail Extension

### Task 6: Operating Cost Estimates

Provide operating cost estimates for the proposed commuter rail extension. This will include a review of the operating cost information provided by MBTA, and provide an operating and maintenance budget for

## ARTICLE I

a ten-year period. Ridership forecasting results will be used to provide an estimate of funding required to sustain the proposed service. Operating cost estimates may be used to support development of an agreement similar to the Pilgrim Partnership between the MBTA and the State of Rhode Island.

Deliverable:

- Operation and Maintenance Financial Plan for Commuter Rail Extension

### Task 7: Coordination with Project Stakeholders

Coordinate project activities and progress with stakeholders including (but not limited to) NHDOT, Town of Plaistow, Town of Atkinson, Rockingham Planning Commission, MBTA, Pan Am Railways, Northern New England Passenger Rail Authority/Amtrak, and neighboring municipalities and planning agencies.

Deliverable:

- Coordination Plan

### Task 8: Development of Operating Agreements

Draft, or assist with drafting, access and operating agreements needed to construct the improvements and operate commuter rail service to Plaistow.

Deliverable:

- Drafts of Access and Operating Agreements

### Task 9: Identify Funding Options

Prepare documents to support applications for funding programs to implement the project, including benefit-cost analysis and New Starts/Small Starts project justification.

Deliverable:

- Funding Options Plan and Supporting Documents to Pursue Funding

## **C. MATERIAL FURNISHED BY THE DEPARTMENT OF TRANSPORTATION**

The DEPARTMENT will furnish any available applicable data to the CONSULTANT, if requested.

## **D. WORK SCHEDULE AND PROGRESS REPORTS**

The CONSULTANT shall begin performance of the services designated in the Contract promptly upon receipt from the DEPARTMENT of a Notice to Proceed and the material to be furnished as herein described. The CONSULTANT shall complete these services without delay unless unable to do so for causes not under the CONSULTANT'S control.

The CONSULTANT'S sequence of operation and performance of the work under the terms of this AGREEMENT shall be varied at the direction of the DEPARTMENT to give priority in critical areas so that schedules and other STATE commitments, either present or future, can be met.

The CONSULTANT shall develop an acceptable reporting system capable of indicating project status on at least a monthly basis for all critical activities of the project. Monthly progress reports shall

## ARTICLE I

be submitted by the CONSULTANT to the DEPARTMENT, giving the percentage of completion of the work required by this AGREEMENT. These monthly progress reports shall be received by the DEPARTMENT by the 10th day of each month.

### **E. SUBMISSION OF REPORTS, PLANS AND DOCUMENTS**

Electronic and hard copies of all submissions identified as deliverables in Article I.A – Scope of Work shall be provided

### **F. DATE OF COMPLETION**

In accordance with the Governor and Council Resolution authorizing this AGREEMENT, the date of completion for the professional services rendered under this AGREEMENT is March 31, 2015.

## ARTICLE II

### **ARTICLE II - COST PLUS FIXED FEE COMPENSATION OF CONSULTANT**

#### **A. GENERAL FEE**

In consideration of the terms and obligations of this AGREEMENT, the STATE, through the DEPARTMENT, hereby agrees to pay and the CONSULTANT agrees to accept as full compensation for all services rendered to the satisfaction of the DEPARTMENT under this AGREEMENT (except as otherwise herein provided) an amount equal to the sum of the following costs:

1. Actual salaries\* approved by the DEPARTMENT paid technical and other employees by the CONSULTANT, including salaries to principals, for the time such employees are directly utilized on work necessary to fulfill the terms of this AGREEMENT. A list of those personnel working on the project with their classifications and current salary rates shall be submitted to the DEPARTMENT for approval. The rates of any additional personnel working on the project, if any, shall require written approval of the DEPARTMENT prior to working on the project. The CONSULTANT shall submit classifications and rates for any additional personnel a minimum of 14 days prior to using the additional personnel.

\*In accordance with DEPARTMENT policy, the maximum direct-labor rate allowed for all positions under this AGREEMENT shall be \$50.00 per hour unless a waiver to the salary cap has been specifically approved for specialty services.

2. Costs that are directly applicable to the salaries, salary burden, and direct and indirect costs, including administration costs. These costs may be applied to only straight time salary extensions where overtime is employed. These amounts shall be based on actual costs to the CONSULTANT for such items during the period of the AGREEMENT and those allowable in accordance with the applicable cost principles contained in Federal Acquisition Regulations Subpart 31.2 and Subpart 31.105. Further, any overtime required for this project shall have the prior written approval of the DEPARTMENT.
3. A fixed fee amount as shown in Article II, Section B for profit and non-reimbursed costs.
4. Reimbursement for direct expenses, including work performed by other parties, such as borings, laboratory tests, field survey, special electronic computer services, services of other specialists, printing, photogrammetry, traffic counts, reproductions and travel not included in normal overhead expenses. The reimbursable costs for mileage and for per diem (lodging and meals) shall be that allowed by the CONSULTANT'S established policy but shall not exceed that allowed in the Federal Acquisition Regulations (Subpart 31.205-46) and in the Federal Travel Regulations. The General Services Administration (GSA), Regulation 41 CFR Part 301-4, specifies the FTR automobile mileage reimbursement. Mileage and per diem costs shall be subject to approval by the DEPARTMENT.

## ARTICLE II

All costs as described in the foregoing paragraphs are to be determined by actual records kept during the term of the AGREEMENT which are subject to audit by the STATE and Federal Governments. The final payment and all partial payments made may be adjusted to conform to this final audit. In no case will any adjustments exceed the total amount to be paid shown in the following paragraph and in Article II, Section C.1. All Subconsultant costs may also be subject to audit by the STATE and Federal Governments.

The total amount to be paid under this AGREEMENT shall not exceed \$658,316.00, the sum of the amounts shown in Article II, Section B (which amount is based on the CONSULTANT'S fee and manhour estimates of January 17, 2013), except by agreement of all parties made after supplemental negotiations. Should circumstances beyond the control of the CONSULTANT require extension of the time of completion more than one (1) year, the general fee may be renegotiated; however, the fixed fee (b) shall not change for reasons of work duration alone. The fixed fee (b) shall only change when there has been a significant increase or decrease in the scope of work outlined in this AGREEMENT.

All salaries and increases thereof paid to technical or other employees assigned to this project shall be the result of a company-wide evaluation of all employees and shall not be restricted to employees assigned to this project.

If, in the opinion of the DEPARTMENT, any salary or increase thereof of engineering or technical personnel assigned to this project is unreasonable, it shall notify the CONSULTANT of its opinion with regard thereto and request the CONSULTANT to justify said salary or increase thereof. In the event that the CONSULTANT furnishes justification satisfactory to the DEPARTMENT for said salary or increase thereof, then such salary or increase thereof shall be approved as a payroll expense.

The DEPARTMENT shall have the right to exercise the power of review and approval of salary increases thereof, for a period of thirty (30) days after the submission of a monthly invoice by the CONSULTANT. Unless the DEPARTMENT notifies the CONSULTANT in writing during the thirty-day period that such salary increase thereof is, in its opinion, unreasonable, such lack of notice shall constitute approval of said salary increase thereof from the first day of the preceding month.

The DEPARTMENT shall have the right, at the time of audit, to review all items charged to overhead on this project. If, in the opinion of the DEPARTMENT, such payment is unreasonable, the CONSULTANT shall be required to justify such payment or payments before they will be approved as direct or indirect cost.

The CONSULTANT shall maintain adequate cost records for all work performed under this AGREEMENT. All records and other evidence pertaining to cost incurred shall be made available at all reasonable times during the contract period and for three (3) years from the date of final voucher payment for examination by the STATE and copies thereof shall be furnished if requested.

ARTICLE II

**B. SUMMARY OF FEES**

The STATE, through the DEPARTMENT, hereby agrees to pay and the CONSULTANT agrees to accept as full compensation the following:

- a. Actual CONSULTANT'S salaries\*, costs applicable to actual salaries, salary burden (direct and indirect) and administrative costs attributable to overhead, the sum of which is estimated at \$471,372.00. For billing purposes, salary burden and overhead costs are currently estimated at 165.00% of actual salaries.
- b. A fixed fee to cover profit and non-reimbursed costs at \$47,137.00.
- c. Reimbursement for direct, out-of-pocket expenses estimated at \$6,950.00.
- d. Reimbursement for actual cost\* of subconsultants estimated as follows:
  - Fort Hill/Viking Associates \$30,700.00.
  - Hoyle, Tanner & Associates \$10,969.00.
  - Normandeau Associates \$29,928.00.
  - LTK Engineering \$36,507.00.
  - Independent Archaeological Consulting \$14,385.00.
  - Historic Documentation Company \$10,368.00.

The actual amount payable under each category (a), (c) and (d) is only estimated and shall be changed only upon mutual agreement of the DEPARTMENT and CONSULTANT.

\*In accordance with DEPARTMENT policy, the maximum direct-labor rate allowed for all positions under this AGREEMENT shall be \$50.00 per hour unless a waiver to the salary cap has been specifically approved for specialty services.

**C. LIMITATION OF COSTS**

- 1. Costs incurred against this AGREEMENT shall not exceed \$658,316.00 unless otherwise authorized. The CONSULTANT shall give the DEPARTMENT a ninety (90)-day written notice when it appears that this limit will be exceeded.
- 2. It is expected that the total cost to the STATE shall be the cost set forth under Article II, Section A, and the CONSULTANT agrees to use his best commercially available efforts to perform the work specified in the AGREEMENT and all obligations under this contract within such limiting amount.
- 3. The STATE shall not be obligated to reimburse the CONSULTANT for costs incurred in excess of the limiting amount set forth in Article II, Section A.
- 4. Change orders issued under this contract shall not be considered an authorization to the CONSULTANT to exceed the limiting amount set forth in the Summary in the absence of a statement in the change order, or other contract modifications, increasing the limiting amount.

## ARTICLE II

### D. PAYMENTS

Payments on account of services rendered under this AGREEMENT shall be made as follows:

1. Monthly payments on account may be made upon written request of the CONSULTANT. Detailed vouchers shall include certification of manhours of effort by employee classification and actual salaries and other costs incurred accompanied by satisfactory evidence of work performed during the period. Actual salaries paid and percentage factor shown in Article II, Section B, part (a) as well as for all approved subconsultants, including those listed in part (d) of Section B, shall be used until such time as true costs of salary burden and overhead are fixed by audit. At that time, payments shall be adjusted to agree with the percentage factors as determined by audit for the period in which the work was performed, as approved by the DEPARTMENT. The fixed fee shall be invoiced during the billing period based upon the overall percent complete of the project's scope of work as approved by the DEPARTMENT.
2. The CONSULTANT shall submit a final voucher upon completion of services required by this AGREEMENT, which includes any unbilled portion of the allowable costs or fixed fee and adjustments, if necessary, for audited actual costs and deliver all required plans, documents and records.

**ARTICLE III**

**ARTICLE III - GENERAL PROVISIONS**

**A. HEARINGS**

(Not applicable to this AGREEMENT)

**B. CONTRACT PROPOSALS**

(Not applicable to this AGREEMENT)

## ARTICLE IV

### **ARTICLE IV - STANDARD PROVISIONS**

#### **A. STANDARD SPECIFICATIONS**

The CONSULTANT agrees to follow the provisions of the American Railway Engineering and Maintenance-of-Way Association (AREMA) Manual for Railway Engineering, the Design Manuals, Standard Specifications for Road and Bridge Construction, and Standard Plans for Road and Bridge Construction of the DEPARTMENT; pertinent Specifications of the American Association of State Highway and Transportation Officials (AASHTO), and guidance published by the Federal Transit Administration for alternatives analysis and amendments thereto, and/or other professional codes or standards applicable to the services to be performed under this AGREEMENT. When a publication (including interim publications) is specified, it refers to the most recent date of issue in effect at the time of execution of this AGREEMENT.

#### **B. REVIEW BY STATE AND FTA/FRA - CONFERENCES - INSPECTIONS**

It is mutually agreed that all portions of the work covered by this AGREEMENT shall be subject to the inspection by duly-authorized representatives of the STATE and Federal Transit Administration, United States Department of Transportation, at such time or times as the STATE or FTA deems appropriate.

The location of the office where the work will be available for inspection by STATE and Federal representatives is 695 Atlantic Ave, Boston, MA.

It is further mutually agreed that any party, including the duly-authorized representatives of the FTA, may request and obtain conferences, visits to the site, and inspection of the work at any reasonable time.

#### **C. EXTENT OF CONTRACT**

##### **1. Contingent Nature of AGREEMENT**

Notwithstanding anything in this AGREEMENT to the contrary, all obligations of the STATE, including, without limitation, the continuance of payments, are contingent upon the availability and continued appropriation of funds, and in no event shall the STATE be liable for any payments in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the STATE shall have the right to terminate this AGREEMENT.

##### **2. Termination**

The DEPARTMENT shall have the right at any time, and for any cause, to terminate the work required of the CONSULTANT by this AGREEMENT by written notice of such termination provided to the CONSULTANT by the DEPARTMENT, and, in the event of such a termination of this AGREEMENT without fault on the part of the CONSULTANT, the CONSULTANT shall be entitled to compensation for all work theretofore satisfactorily performed, pursuant to

## ARTICLE IV

this AGREEMENT, such compensation to be fixed, insofar as possible, based upon the work performed prior to termination. If no contract or contracts for construction of the project contemplated by this AGREEMENT is (are) entered into within two (2) years after satisfactory completion of the services outlined in Article I, all of the services contemplated by this AGREEMENT shall be deemed to have been completed.

It shall be a breach of this AGREEMENT if the CONSULTANT shall fail to render timely the services required under this AGREEMENT, in accordance with sound professional principles and practices, to the reasonable satisfaction of the DEPARTMENT, or shall be in such financial condition as to be unable to pay its just debts as they accrue, or shall make an assignment for the benefit of creditors, or shall be involved in any proceeding, voluntary or involuntary, resulting in the appointment of a receiver or trustee over its affairs, or shall become dissolved for any cause. In the event of the happening of any one or more of the foregoing contingencies, or upon the substantial breach of any other provisions of this AGREEMENT by the CONSULTANT, its officers, agents, employees, and subconsultants, the DEPARTMENT shall have the absolute right and option to terminate this AGREEMENT forthwith, and, in addition, may have and maintain any legal or equitable remedy against the CONSULTANT for its loss and damages resulting from such breach or breaches of this AGREEMENT; provided, however, that as to all plans, drawings, tracings, estimates, specifications, reports, proposals, sketches, diagrams, and calculations, together with all material and data theretofore furnished to the DEPARTMENT by the CONSULTANT, of a satisfactory nature in accordance with this AGREEMENT, which plans, drawings, tracings, etc., are of use to the DEPARTMENT, the CONSULTANT shall be entitled to a credit, based on the contract rate for the work so performed in a satisfactory manner and of use and benefit to the DEPARTMENT.

### **D. REVISIONS TO REPORTS, PLANS OR DOCUMENTS**

The CONSULTANT shall perform such additional work as may be necessary to correct errors in the work required under the AGREEMENT caused by errors and omissions by the CONSULTANT without undue delays and without additional cost to the DEPARTMENT.

Furthermore, prior to final approval of plans, specifications, estimates, reports, or documents by the DEPARTMENT, the CONSULTANT shall make such revisions of them as directed by the DEPARTMENT, without additional compensation therefor, except as hereinafter provided:

1. If the DEPARTMENT shall require changes to the plans or documents that revise engineering or other factors specifically approved, thereby necessitating revisions of the contract plans or documents, or,

## ARTICLE IV

2. When applicable, if during the term of this AGREEMENT, a revision of the alignment is ordered by the DEPARTMENT to the extent that the revised alignment will lie completely or partially outside the limit of the survey data plotted by the CONSULTANT (this does not apply to those adjustments and refinements to the alignments anticipated under the scope of work), or,
3. If the CONSULTANT shall be ordered in writing by the DEPARTMENT to make revisions, or to perform services other than those included in the CONSULTANT'S scope of work, including but not limited to any additional services necessary to adapt said plans, reports, or documents to conditions observed during field inspections and encountered during construction; the CONSULTANT shall be entitled to compensation therefor in accordance with Article II, Section B, such compensation to be in addition to the fee specified in Article II, Section A, for its original work on the plans, reports or documents.

### **E. ADDITIONAL SERVICES**

If, during the term of this AGREEMENT, additional professional services are required due to a revision in the limits of the project, or it becomes necessary to perform services not anticipated during negotiation, the DEPARTMENT may, in writing, order the CONSULTANT to perform such services, and the CONSULTANT shall be paid a fee in accordance with the provisions of Article II, Section B.

If, during the term of this AGREEMENT, additional professional services are performed by the CONSULTANT due to the fact that data furnished by the DEPARTMENT are not usable or applicable, the STATE will, upon written approval by the DEPARTMENT, reimburse the CONSULTANT for such additional design services in accordance with the provisions of Article II, Section B.

If additional services are performed by the CONSULTANT through its own acts, which are not usable or applicable to this project, the cost of such additional services shall not be reimbursable.

### **F. OWNERSHIP OF PLANS**

All data, plans, drawings, tracings, estimates, specifications, proposals, sketches, diagrams, calculations, reports, or other documents collected, prepared, or undertaken either manually or electronically by the CONSULTANT under the provisions of this AGREEMENT, immediately shall become the property of the DEPARTMENT, and, when completed, shall bear the CONSULTANT'S endorsement. The CONSULTANT shall surrender to the DEPARTMENT, upon demand at any time, or submit to its inspection, any data, plan, drawing, tracing, estimate, specification, proposal, sketch, diagram, calculation, report, or document which shall have been collected, prepared, or undertaken by the CONSULTANT pursuant to this AGREEMENT, or shall have been hitherto furnished to the CONSULTANT by the DEPARTMENT. The CONSULTANT shall have the right, with the written approval of the DEPARTMENT, to use any of the data prepared by it and hitherto delivered to the DEPARTMENT at any later stage of the project contemplated by this AGREEMENT.

## ARTICLE IV

### **G. SUBLETTING**

The CONSULTANT shall not sublet, assign, or transfer any part of the CONSULTANT'S services or obligations under this AGREEMENT without the prior approval and written consent of the DEPARTMENT.

All subcontracts shall be in writing and those exceeding \$10,000 shall contain all provisions of this AGREEMENT, including "Certification of CONSULTANT/Subconsultant". For subconsultants working on wetland evaluations, mapping, noise studies, and air-quality studies, the minimum limits of their professional liability (errors and omissions) insurance coverage shall be not less than \$1,500,000 in the aggregate. If coverage is claims made, the period to report claims shall extend for not less than three years from the date of substantial completion of the construction contract. No retention (deductible) shall be more than \$25,000. A copy of each subcontract shall be submitted for the DEPARTMENT'S files.

### **H. GENERAL COMPLIANCE WITH LAWS, ETC.**

The CONSULTANT shall comply with all Federal, STATE, and local laws and ordinances applicable to any of the work involved in this AGREEMENT and shall conform to the requirements and standards of STATE, municipal, railroad, and utility agencies whose facilities and services are directly affected by the construction of this project. The services shall be performed so as to cause minimum interruption to said facilities and services.

### **I. BROKERAGE**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the STATE shall have the right to annul this Contract without liability, or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

### **J. CONTRACTUAL RELATIONS**

#### **1. Independent Contractor**

The CONSULTANT agrees that its relation to the STATE is as an independent contractor and not as an agent or employee of the STATE.

## ARTICLE IV

### 2. Claims and Indemnification

#### a. Non-Professional Liability Indemnification

The CONSULTANT agrees to defend, indemnify and hold harmless the STATE and all of its officers, agents, and employees from and against any and all claims, liabilities, or suits arising from (or which may be claimed to arise from) any (i) acts or omissions of the CONSULTANT or its subconsultants in the performance of this AGREEMENT allegedly resulting in property damage or bodily injury, and/or, (ii) misconduct or wrongdoing of the CONSULTANT or its subconsultants in the performance of this AGREEMENT.

#### b. Professional Liability Indemnification

The CONSULTANT agrees to defend, indemnify and hold harmless the STATE and all of its officers, agents, and employees from and against any and all claims, liabilities, or suits arising from (or which may be claimed to arise from) any negligent acts or omissions of the CONSULTANT or its subconsultants in the performance of professional services covered by this AGREEMENT.

- c. These covenants shall survive the termination of the AGREEMENT. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the STATE, which immunity is hereby reserved by the STATE.

### 3. Insurance

#### a. Required Coverage

The CONSULTANT shall, at its sole expense, obtain and maintain in force the following insurance:

1. Commercial or comprehensive general liability insurance, including contractual coverage, for all claims of bodily injury, death, or property damage, in policy amounts of not less than \$250,000 per occurrence and \$2,000,000 in the aggregate (STATE to be named as an additional insured); and
2. comprehensive automobile liability insurance covering all motor vehicles, including owned, hired, borrowed, and non-owned vehicles, for all claims of bodily injury, death, or property damage, in policy amounts of not less than \$500,000 combined single limit; and
3. professional liability (errors and omissions) insurance coverage of not less than \$2,000,000 in the aggregate. If coverage is claims made, the period to report claims shall extend for not less than three years from the date of substantial completion of the construction contract. No retention (deductible) shall be more than \$75,000; and
4. workers' compensation and employer's liability insurance as required by law.

## ARTICLE IV

### b. Proof of Insurance

The policies described in paragraph (a) of this section and Section G shall be in the standard form employed in the STATE, issued by underwriters licensed or approved by the Department of Insurance of the STATE. Each policy shall contain a clause prohibiting cancellation or modifications of the policy earlier than 30 days, or 10 days in cases of non-payment of premium, after written notice thereof has been received by the STATE. The CONSULTANT shall provide to the STATE a certificate of insurance evidencing the required coverages, retention (deductible), and cancellation clause prior to submittal of the AGREEMENT to Governor and Council for approval and shall have a continuing duty to provide new certificates of insurance as the policies are amended or renewed.

### 4. No Third-Party Rights

It is not intended by any of the provisions of the AGREEMENT to make the public, or any member thereof, a third-party beneficiary of the AGREEMENT, or to authorize anyone not a party to this AGREEMENT to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract. The duties, obligations, and responsibilities of the parties to this AGREEMENT with respect to third parties shall remain as imposed by law. No portion of this AGREEMENT shall be understood to be a waiver of the STATE'S sovereign immunity.

### 5. Construction of AGREEMENT

This AGREEMENT is executed in a number of counterparts, each of which is an original and constitutes the entire AGREEMENT between the parties. This AGREEMENT shall be construed according to the laws of the STATE.

## **K. AGREEMENT MODIFICATION**

The assignment of the CONSULTANT, generally established by the scope of work in this AGREEMENT, shall not be modified in any way without prior approval of the Governor and Council.

## **L. EXTENSION OF COMPLETION DATE(S)**

If, during the course of the work, the CONSULTANT anticipates that one or more of the completion dates specified in this AGREEMENT cannot be met, it shall be the CONSULTANT'S responsibility to notify the DEPARTMENT in writing at least ninety (90) days prior to the completion date(s) in question. The CONSULTANT shall state the reasons that a completion date(s) cannot be met and request a revised date(s) for consideration by the DEPARTMENT.

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### **M. TITLE VI (NONDISCRIMINATION OF FEDERALLY-ASSISTED PROGRAMS)**

#### **COMPLIANCE**

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- (1) **Compliance with Regulations:** The CONSULTANT shall comply with Title VI of the Civil Rights Act of 1964 regulations relative to nondiscrimination in federally-assisted programs of the DEPARTMENT, such regulations entitled Title 49 Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the REGULATIONS), and which are herein incorporated by reference and made a part of this AGREEMENT.
- (2) **Nondiscrimination:** The CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, religion, age, sex, handicap, sexual orientation, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment specific to this project. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.
- (3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment specific to the project, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this AGREEMENT and the REGULATIONS relative to nondiscrimination on the grounds of race, color, religion, age, sex, handicap, sexual orientation, or national origin.
- (4) **Information and Reports:** The CONSULTANT shall provide all information and reports required by the REGULATIONS or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the DEPARTMENT, the Federal Transit Administration, or the Federal Railroad Administration to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the DEPARTMENT, the Federal Transit Administration or Federal Railroad Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the CONSULTANT'S noncompliance with nondiscrimination provisions of this AGREEMENT, the DEPARTMENT shall impose sanctions

## ARTICLE IV

as it or the Federal Transit Administration or Federal Railroad Administration may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies; and/or
  - (b) cancellation, termination, or suspension of the AGREEMENT, in whole or in part.
- (6) The CONSULTANT shall take such action with respect to any subcontract or procurement as the DEPARTMENT, Federal Transit Administration or Federal Railroad Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the DEPARTMENT to enter into such litigation to protect the interests of the STATE, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- (7) 23 CFR 710.405(b) and Executive Order 11246 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented in Department of Labor REGULATIONS (41 CFR Part 60), shall be applicable to this AGREEMENT and any subagreements hereunder.
- (8) Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (1) through (7) in every subcontract, including procurements of materials and leases of equipment specific to the project, unless exempt by the REGULATIONS, or directives issued pursuant thereto.

In accordance with EXECUTIVE ORDER 11246, the DEPARTMENT has the authority and responsibility to notify the Office of Federal Contract Compliance Programs of the United States Department of Labor if they become aware of any possible violations of Executive Order 11246 and 41 CFR Part 60. The Office of Federal Contract Compliance Programs is solely responsible for determining compliance with Executive Order 11246 and 41 CFR Part 60 and the CONSULTANT should contact them regarding related compliance issues.

### **N. DISADVANTAGED BUSINESS ENTERPRISE POLICY REQUIREMENTS**

1. Policy. It is the policy of the United States Department of Transportation (USDOT) to ensure nondiscriminatory opportunity for Disadvantaged Business Enterprises (DBE's), as defined in 49 Code of Federal Regulations (CFR) Part 26, to participate in the performance of agreements and any subagreements financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.

## ARTICLE IV

2. Disadvantaged Business Enterprise (DBE) Obligation. The STATE and its CONSULTANTS agree to ensure nondiscriminatory opportunity for disadvantaged business enterprises, as defined in 49 CFR Part 26, to participate in the performance of agreements and any subagreements financed in whole or in part with Federal funds. In this regard, the STATE and its CONSULTANTS shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the opportunity to compete for and perform work specified in the agreements. The STATE and its CONSULTANTS shall not discriminate on the basis of race, color, religion, age, sex, handicap, sexual orientation, or national origin in the award and performance of agreements financed in whole or in part with Federal funds.
3. Sanctions for Non-Compliance. The CONSULTANT is hereby advised that failure of the CONSULTANT, or any Subconsultant performing work under this AGREEMENT, to carry out the requirements set forth in paragraphs 1 and 2 above, shall constitute a breach of agreement and, after the notification of the United States Department of Transportation, may result in termination of this AGREEMENT by the STATE or such remedy as the STATE deems appropriate.

### **O. DOCUMENTATION**

The CONSULTANT shall document the results of the work to the satisfaction of the DEPARTMENT, the Federal Transit Administration, and Federal Railroad Administration. This shall include preparation of progress reports, plans, specifications, and estimates and similar evidences of attainment of objectives called for in this AGREEMENT.

### **P. CLEAN AIR AND WATER ACTS**

If the amount of the AGREEMENT or subcontract thereunder exceeds \$100,000, the CONSULTANT or subconsultant shall comply with applicable standards, orders, or requirements issued under Section 306 of the Federal Clean Air Act (43 U.S.C. 1857(h)), Section 508 of the Federal Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. The CONSULTANT or subconsultant shall report violations to the FHWA and to the U. S. Environmental Protection Agency Assistant Administrator for Enforcement (EN-329).

## **Federal Clauses**

## **Fly America Requirements**

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

## **Energy Conservation**

All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)  
Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

## **Clean Water**

All Contracts and Subcontracts over \$100,000

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

## **Lobbying**

Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

## **Access to Records and Reports**

Applicability – As shown below. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO

contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

### **Federal Changes**

All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

### **Clean Air**

1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

2) Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

## **No Government Obligation to Third Parties**

Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **Program Fraud and False or Fraudulent Statements or Related Acts**

Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **Termination**

Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$100,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a

strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from

contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

## **Government Wide Debarment and Suspension (Non Procurement)**

Applicability – Contracts over \$25,000

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractors, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the recipient. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the recipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **Contracts Involving Federal Privacy Act Requirements**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## **Civil Rights Requirements**

All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act (1975), as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (1990), 42 USC 12132, and 49 USC 5332, contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. Contractor shall also comply with applicable Federal implementing regulations and other requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42

USC 2000e, and 49 USC 5332, contractor shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, contractor shall comply with any implementing requirements FTA may issue.

(b) Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act (1967), as amended, 29 USC 623 and 49 USC 5332, contractor shall refrain from discrimination against present and prospective employees for reason of age. Contractor shall also comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, contractor shall comply with the requirements of US Equal Employment Opportunity Commission (EEOC), Regulations to Implement Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR 1630, pertaining to employment of persons with disabilities. Contractor shall also comply with any implementing requirements FTA may issue.

(3) Contractor shall include these requirements in each subcontract financed in whole or in part with FTA assistance, modified only if necessary to identify the affected parties.

### **Breaches and Dispute Resolution**

All contracts over \$100,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## Patent and Rights Data

Research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual, or to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

### Contracts Involving Experimental, Developmental or Research Work.

A. Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work: (1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information. The term "subject data" does not include financial reports, cost analyses and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added: (a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution. (b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party. 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and 2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA. (c) When FTA awards Federal assistance for experimental, developmental or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects. (d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save and hold harmless the Federal Government, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights or right of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government. (e) Nothing contained in this clause on rights in data

shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent. (f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c) and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work. (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental or research work financed in whole or in part with Federal assistance provided by FTA. (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401. (4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental or research work financed in whole or in part with Federal assistance provided by FTA.

**B. Patent Rights** - The following requirements apply to each contract involving experimental, developmental or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental or research work financed in whole or in part with Federal assistance provided by FTA.

### **Disadvantaged Business Enterprise**

Contracts over \$3,000 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor 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 this contract. 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 municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

#### **Incorporation of Federal Transit Administration (FTA) Terms**

All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

#### **Other Federal Requirements**

The following requirements are not federal clauses.

#### **Full and Open Competition**

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

#### **Prohibition Against Exclusionary or Discriminatory Specifications**

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

#### **Conformance with ITS National Architecture**

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 etseq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

### **Notification of Federal Participation**

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

### **Interest of Members or Delegates to Congress**

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

### **Ineligible Contractors and Subcontractors**

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

### **Other Contract Requirements**

To the extent not inconsistent with foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

### **Compliance with Federal Regulations**

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **Real Property**

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 29 CFR 18.31, 49 CFR 24 Subpart B, FTA Circular 5010.1D, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **Access to Services for Persons with Limited English Proficiency**

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

### **Environmental Justice**

The Recipient agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

### **Environmental Protections**

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

### **Geographic Information and Related Spatial Data**

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

### **Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only**

Non Federal entities that expend \$500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, Audits of States, Local Governments, and Non Profit Organizations. Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than \$500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in '3052.215(a), but records must be available for review or audit by appropriate officials of the Federal and State agencies.

### **Catalog of Federal Domestic Assistance (CFDA) Identification Number**

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

### **CFDA number for the Federal Transportation Administration**

A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

## **Federal Certifications**

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, Peter E. Reilly, hereby certify  
(Name and title of official)

On behalf of HDR Engineering, Inc that:  
(Name of Bidder/Company Name)

- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

*This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.*

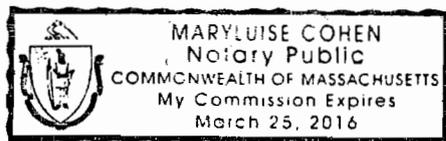
*The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.*

Name of Bidder/Company Name HDR Engineering, Inc

Type or print name Peter E. Reilly

Signature of authorized representative Peter E. Reilly Date 4/30/13

Signature of notary and SEAL Marylise Cohen



**GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

49 CFR Part 29, Executive Orders 12549, 12689, and 31 U.S.C. 6101 (Contracts over \$25,000)

**Background and Applicability**

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, Debarment and Suspension, Executive Order 12689, Debarment and Suspension, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

**Suspension and Debarment**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the recipient. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the recipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Contractor HDR Engineering, Inc.

Signature of Authorized Official Peter E. Reilly Date 4/30/13

Name and Title of Contractor's Authorized Official Peter E. Reilly, Sr. Vice President

Attachment 1

**CERTIFICATION WITH REGARD TO THE PERFORMANCE OF  
PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO  
THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS**

The CONSULTANT X, proposed subconsultant \_\_\_\_\_, hereby certifies that it has X, has not \_\_\_\_\_, participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Order 11246 and that it has X, has not \_\_\_\_\_, filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

HDR Engineering, Inc.  
(Company)

By: Peter B. Reilly  
Peter B. Reilly, Sr. Vice President  
(Title)

Date: 4/30/13

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by consultants and proposed subconsultants only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime consultants and subconsultants who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such consultant submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

(Revised: June, 1980) **NOTE: TO BE COMPLETED BY CONSULTANT WHEN SIGNING AGREEMENT.**

*Attachment 2*

**CONSULTANT DISCLOSURE STATEMENT  
FOR PREPARATION OF  
ENVIRONMENTAL EVALUATIONS**

I hereby affirm that I have read and reviewed the Council on Environmental Quality (CEQ) regulation [40 CFR 1506.5(C)] and related guidance issued by CEQ and that pursuant thereto this firm has no financial or other interest in the outcome of this project.

I further hereby affirm that the information provided herein is true and correct and acknowledge that any knowingly false statement or false representation as to any material part contained herein may subject me to a fine and/or imprisonment, pursuant to pertinent provisions of the United States Code.

4/30/13

(Date)

*Peter Ulinich*

(Signature)

Attachment 3

CERTIFICATION OF CONSULTANT/SUBCONSULTANT

I hereby certify that I am the Sr. Vice President and duly-authorized representative of the firm of HDR Engineering, Inc. and that neither I nor the above firm I here represent has:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the Contract:

I/WE do also, under penalty of perjury under the laws of the United States, certify that, except as noted below, the company or any person associated therewith in the capacity of (owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of Federal funds): (a) is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency; (b) has not been suspended, debarred, voluntarily excluded or determined ineligibility by any Federal agency within the past three years; (c) does not have a proposed debarment pending; and (d) has not been indicted, convicted or had a civil judgment rendered against (it) by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

except as here expressly stated (if any):

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted, indicate below to whom it applies, the initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

I acknowledge that this certificate is to be furnished to the State Department of Transportation and the Federal Highway Administration, U. S. Department of Transportation, in connection with this Contract involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

4/30/13

(Date)

*Pete Clardy*

(Signature)

Attachment 4

**CERTIFICATION OF STATE DEPARTMENT OF TRANSPORTATION**

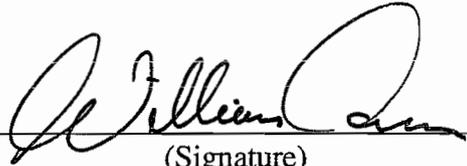
William J. Cass, P.E.  
Director of Project Development  
NH DOT

I hereby certify that I am the \_\_\_\_\_ of the Department of Transportation of the State of New Hampshire, and the above consulting firm or its representatives has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Contract, to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind:

except as here expressly stated (if any):

5/6/13  
(Date)

  
(Signature)

*Attachment 5*

**CERTIFICATION FOR FEDERAL-AID CONTRACTS  
EXCEEDING \$100,000 IN FEDERAL FUNDS**

The prospective participant certifies, by signing and submitting this agreement, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower-tier subcontracts which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Attachment 10

IN WITNESS WHEREOF the parties hereto have executed this AGREEMENT on the day and year first above written.

Consultant

WITNESS TO THE CONSULTANT

By: Maureen Coe  
Notary Public

Dated: 4/30/13

CONSULTANT

By: Peter Smith  
Sr. Vice President  
(TITLE)

Dated: 4/30/13

Department of Transportation

WITNESS TO THE STATE OF NEW HAMPSHIRE

By: Michelle Dwyer

Dated: 5/6/13

THE STATE OF NEW HAMPSHIRE

By: William J. Cass  
William J. Cass, P.E.  
Director of Project Development  
NH DOT  
DOT COMMISSIONER

Dated: 5/6/13

Attorney General

This is to certify that the above AGREEMENT has been reviewed by this office and is approved as to form and execution.

Dated: 5/10/13

By: [Signature]  
Assistant Attorney General

Secretary of State

This is to certify that the GOVERNOR AND COUNCIL on \_\_\_\_\_ approved this AGREEMENT.

Dated: \_\_\_\_\_

Attest:  
By: \_\_\_\_\_  
Secretary of State

**CERTIFICATE**

The undersigned hereby certifies that she is the Assistant Secretary of HDR Engineering, Inc., a Nebraska corporation (the "Corporation"), and that, as such, has custody of the minute books of the Corporation, and that, by Consent and Agreement of the Board of Directors dated January 1, 2013, the following resolution was unanimously adopted:

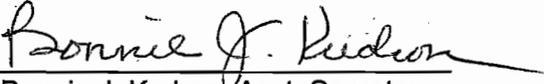
**"RESOLVED**, that effective immediately, and until June 20, 2013, or until termination of said individual from the Corporation, or until rescission by the Corporation's Board of Directors, whichever occurs first, the following individuals are hereby granted the nondelegable authority to execute or approve on behalf of the Corporation, contracts for engineering services and architectural services incidental to engineering services to be rendered by the Corporation, . . . , or releases of claim or lien in connection with such services, such contracts or releases so executed or approved shall be binding upon the Corporation:

. . . Peter E. Reilly – Senior Vice President . . ."

The undersigned further certifies that the foregoing resolution has been spread in full upon the minute books of the Corporation and is in full force and effect.

DATED April 30, 2013.

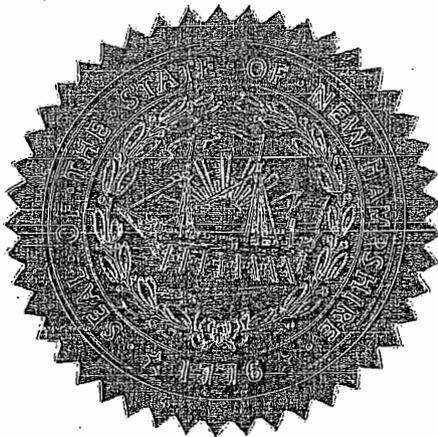
(CORPORATE SEAL)

  
Bonnie J. Kudron, Asst. Secretary

State of New Hampshire  
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that HDR ENGINEERING, INC. a(n) Nebraska corporation, is authorized to transact business in New Hampshire and qualified on June 17, 1985. I further certify that all fees and annual reports required by the Secretary of State's office have been received.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 1<sup>st</sup> day of May, A.D. 2013

A handwritten signature in cursive script, appearing to read "Wm Gardner".

William M. Gardner  
Secretary of State





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
6/1/2013 5/6/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies, LLC-1 Kansas City 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000	CONTACT NAME:		
	PHONE (A/C, No, Ext):	FAX (A/C, No):	
INSURED 1014392 HDR ENGINEERING, INC. 8404 INDIAN HILLS DRIVE OMAHA, NE 68114-4049	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Hartford Fire Insurance Company		19682
	INSURER B : St. Paul Fire and Marine Insurance Company		24767
	INSURER C : Sentinel Insurance Company, Ltd.		11000
	INSURER D : Zurich American Insurance Company		16535
	INSURER E :		
INSURER F :			

COVERAGES HDRIN01 CERTIFICATE NUMBER: 12338119 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	Y	Y	37CSEBU0950	6/1/2012	6/1/2013	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CONTRACTUAL LIAB GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY	N	N	37CSEBU0951 (AOS) 37CSEBU0952 (HI) 37MCPQU1160 (MA)	6/1/2012	6/1/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000
	<input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS						BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
B	UMBRELLA LIAB EXCESS LIAB			ZUP-10R64084-12-NF (EXCLUDES PROF. LIAB)	6/1/2012	6/1/2013	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y	91WEOH1000	7/1/2012	7/1/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	ARCH & ENG PROFESSIONAL LIABILITY	N	N	EOC9260026-05	6/1/2012	6/1/2013	PER CLAIM: \$2,000,000 AGGREGATE: \$2,000,000.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
PLAISTOW COMMUTER RAIL EXTENSION STUDY, X-A0002(031), 20163. STATE OF NEW HAMPSHIRE IS NAMED AS ADDITIONAL INSURED ON GENERAL LIABILITY AS PER WRITTEN CONTRACT, ON A PRIMARY, NON-CONTRIBUTORY BASIS. WAIVER OF SUBROGATION APPLIES WHERE ALLOWABLE BY LAW. 30 DAYS NOTICE OF CANCELLATION APPLIES, 10 DAYS NOTICE FOR NON-PAYMENT OF PREMIUM.

CERTIFICATE HOLDER CANCELLATION See Attachment

12338119  
 THE STATE OF NEW HAMPSHIRE  
 BUREAU OF FINANCE AND CONTRACTS  
 JOHN O MORTON BUILDING ATTN: MICHELLE DROUIN  
 7 HAZEN DRIVE - PO BOX 483  
 CONCORD NH 03302-0483

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



POLICY DEDUCTIBLES: GENERAL LIABILITY = \$100,000 OCCURRENCE;  
AUTO LIABILITY = \$100,000; PROFESSIONAL LIABILITY = \$50,000.