

**MICHIGAN DEPARTMENT OF TRANSPORTATION**  
**TERMS AND CONDITIONS FOR**  
**REAL ESTATE SERVICES**

These Terms and Conditions for Real Estate Services set forth the standard requirements that govern Real Estate services contracts issued and administered by the Michigan Department of Transportation (MDOT).

**1. Definitions**

**Contract** Means the Real Estate services contract between MDOT and the Consultant.

**Exhibit A** Means Exhibit A of the Contract.

**Services** Means the professional work set forth in the Contract between MDOT and the Consultant.

2. Each Contract will define the scope of work, the effective date (on which the Consultant may begin work), the expiration date (on which the work must be completed), the maximum compensation for the work, and the basis of payment. The Contract will detail the specific Services being ordered and describes and locates the individual ownership involved.
3. Consultant will not perform services that are not included in the Scope of Services or Exhibit A of the Contract. The Consultant acknowledges that MDOT employees, do not have the authority to verbally assign work to the Consultant. In the event that any MDOT employee attempts to assign work under the Contract that is not included in the Scope of Services in Exhibit A, the Consultant will refuse to do any such work and will contact MDOT's Contract Administrator
4. The Consultant will perform all Services in conformity with MDOT's applicable standards, including these Terms and Conditions.
5. The Consultant will furnish all data, equipment, and materials not otherwise provided for the performance of the Services.

6. With regard to audits and record-keeping,
  - a. The Consultant will establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under the Contract (RECORDS). Separate accounts will be established and maintained for all costs incurred under the Contract.
  - b. The Consultant will maintain the RECORDS for at least three (3) years from the date of final payment made by MDOT under the Contract. In the event of a dispute with regard to the allowable expenses or any other issue under the Contract, the Consultant will thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.
  - c. MDOT or its representative may inspect, scan, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.
  - d. If any part of the work is subcontracted, the Consultant will assure compliance with subsections (a), (b), and (c) above for all subcontracted work.
7. If MDOT discloses its confidential information to the Consultant, the Consultant will maintain such information as confidential. Information provided by MDOT will be deemed confidential if it is marked confidential or stated in writing to be confidential. The above obligations of confidentiality will not apply to:
  - a. Information for which MDOT gives prior written permission for publication or use.
  - b. Information that is required to be disclosed based on court order.

A violation of this provision will be considered a breach of the Contract, and MDOT may terminate the Contract under the provisions of Section 15(b).

News releases pertaining to the Contract or the Services to which it relates will not be made without prior written approval from MDOT, and then only in accordance with explicit instructions from MDOT. News releases made without MDOT's approval will be considered a breach of the Contract, and MDOT may terminate the Contract under the provisions of Section 15(b).
8. The Consultant will Submit billings to MDOT for the performance of the Services as follows:
  - a. The billings for Services on a WORK ITEM basis will be in accordance with the WORK ITEM costs set forth in the RFP and as incorporated in the contract for such work.

- b. Such billings will be submitted to MDOT within thirty (30) days of the end of any month in which the Consultant incurred costs except as follows: No billing will be in an amount less than \$1,000 unless it is a final billing; however, the Consultant will submit at least one billing at the end of each quarter year even if that billing is less than \$1,000. Billings are not to be submitted more frequently than once per month for this Contract. All such billings will be labeled sequentially by Progress Billing Number or labeled as Final Billing. The final billing must be for actual allowable costs incurred.
  - c. The billings for Services on a WORK ITEM basis will not be submitted more often than once per month for the contract. Each billing for Services will be submitted promptly, no more than sixty (60) days after the completion of the Services for that billing. All billings for Services provided prior to September 30 of any year must be received by MDOT prior to October 10 of that year or a significant delay in payment will occur.
  - d. The final billing for the Services must be received within sixty (60) days of completion of the Services. MDOT may close the Contract after the sixty (60) days have passed, and any costs due the Consultant may not be reimbursed until completion of the audit by MDOT. If an audit is not required, or if insufficient information is provided during the audit, the costs may be denied by MDOT.
  - e. The Consultant agrees that the costs reported to MDOT for this Contract will represent only those items that are properly chargeable in accordance with this Contract. The Consultant also hereby certifies that it has read the contract terms and has made itself aware of the applicable laws, regulations, and terms of this Contract that apply to the reporting of costs incurred under the terms of this Contract.
9. MDOT will provide the Consultant access to MDOT standards and information in its possession and related to the Services that the Consultant specifically requests, except for such standards and information as the Consultant is specifically required to provide for including any documents or information for work listed in the Contract.
10. MDOT will make payment to the Consultant in accordance with the following:
- a. Compensation for the Services will be on a unit price per unit of work basis.
  - b. Payments will be subject to audit and will be made no more frequently than once a month.
  - c. The Consultant will not be paid for costs attributable to correction of errors and omissions by the Consultant.

- d. Reimbursement for costs incurred is subject to the cost criteria set forth in 48 CFR, Federal Acquisition Regulations, Part 31, incorporated herein by reference as if the same were repeated in full herein.
11. MDOT funds in the Contract made available through legislative appropriations are based on projected revenue estimates. MDOT may reduce the amount of the Contract if the revenue actually received is insufficient to support the appropriation under which the Contract is made.
12. The parties will consider the Services to be complete when accepted by MDOT. Such acceptance by MDOT is not intended to nor does it relieve the Consultant of any of its obligations and responsibilities herein.
13. Any change in the scope, character, or term of the Contract or in the maximum amount of the Contract will only be by award of a prior written amendment to the Contract by the parties. The maximum dollar amount of the Contract will not be increased without an accompanying and comparable increase in the Scope of Services.
14. The Consultant's signature on the Contract constitutes the Consultant's specific agreement that all provisions of the Contract, including these Terms and Conditions, unless otherwise amended, are continued through any time period for which the Contract is extended by way of a time extension amendment. Any such extension will not operate as a waiver by MDOT of any of its rights herein set forth.
15. MDOT may terminate the Contract for convenience or cause, as set forth below, before the Services are completed. Written notice of termination will be sent to the Consultant. The Consultant will be reimbursed in accordance with the following:
  - a. **Termination for Convenience:**

If MDOT terminates the Contract for convenience, MDOT will give the Consultant written notice of such termination thirty (30) days prior to the date of such termination, and the Consultant will be reimbursed for all costs incurred up to receipt of said Notice of Termination. Such reimbursement will be as set forth in Section 10. MDOT will receive the work product produced by the Consultant under the Contract up to the time of termination, prior to the Consultant being reimbursed. In no case will the compensation paid to the Consultant for partial completion of Services exceed the amount the Consultant would have received had the Services been completed.
  - b. **Termination for Cause:**

In the event the Consultant fails to complete any of the Services in a manner satisfactory to MDOT, and/or discloses MDOT's confidential information, in violation of the provisions of Section 7, and/or makes any public relations

communications and/or products that are intended for an external audience without prior written approval from MDOT, as set forth in Section 44, MDOT may terminate the Contract for cause. Written notice of termination will be sent to the Consultant. The Consultant will be reimbursed as follows:

The Consultant will be reimbursed for Services completed up to receipt of said Notice of Termination. MDOT may pay a proportional share for the work product. The value of such partially completed work product will be determined by MDOT based on actual costs incurred up to the estimated value of the work product received by MDOT, as determined by MDOT. MDOT will receive the work product produced by the Consultant under the Contract up to the time of termination, prior to the Consultant being reimbursed. In no case will the compensation paid to the Consultant for partial completion of the Services exceed the amount the Consultant would have received had the Services been completed.

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

16. The Consultant agrees to fully complete the described assignment and furnish same to MDOT, it being fully understood and agreed by the parties hereto that in the event the Consultant shall fail to do so, MDOT shall: (a) without the necessity of notice, terminate the services of said Consultant without incurring any liability for payment for services submitted after said due date, or (b) shall deduct, as liquidation of damages, a sum of money equal to one-third of one percent (1/3 of 1%) per calendar day for the first fifteen days and after the fifteenth day the amount shall be increased to one percent (1%) per calendar day of the total fee if the performance of the work is delayed beyond the due date the same may be done with respect to the individual parcels until the described assignment is fully completed and furnished to MDOT. Upon written request by the Consultant, an extension of time may be granted by MDOT in writing, in the event the Consultant has not received from the MDOT proper information needed to complete the assignment. In the event other extenuating circumstances occur, the time may be similarly extended at MDOT's sole discretion. Any liquidated damages assessed under this paragraph may be withheld from any money payable to the Consultant under this or any other contract with MDOT.
17. The Consultant specifically agrees that MDOT retains the right to audit the RECORDS of the Consultant. Any adjustments that result from any such audits are specifically limited to those costs incurred that are reimbursed on an actual cost basis.

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

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

MDOT will make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If MDOT determines that an overpayment has been made to the Consultant, the Consultant will repay that amount to MDOT or reach agreement with MDOT on a repayment schedule within thirty (30) days after the date of an invoice from MDOT. If the Consultant fails to repay the overpayment or reach agreement with MDOT on a repayment schedule within the thirty (30) day period, the Consultant agrees that MDOT will deduct all or a portion of the overpayment from any funds then or thereafter payable by MDOT to the Consultant under the Contract or any other agreement or payable to the Consultant under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by MDOT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The Consultant expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest MDOT's decision only as to any item of expense the disallowance of which was disputed by the Consultant in a timely filed RESPONSE.

18. All questions that may arise as to the quality and acceptability of work, the manner of performance and rate of progress of the work, and the satisfactory and acceptable fulfillment of the terms of this Contract issued hereunder will be decided by MDOT.

19. The Consultant agrees to provide, and will require its subconsultants to provide, access by MDOT to all data, reports, documents, and work in process pertaining to any Contract herein provided for at any reasonable time.
20. All project documents prepared by the Consultant or borrowed from MDOT by the Consultant, including tracings, drawings, estimates, specifications, field notes, photographs, negatives, and investigative studies are the property of MDOT. All project documents will be returned to MDOT prior to the final payment being made. Restoration of lost or damaged documents will be at the Consultant's expense.
21. No portion of the Services, as herein defined, will be assigned. No portion of the Services, as herein defined, will be sublet, except with the prior written consent of MDOT. Consent to sublet any portion of the Services will not be construed to relieve the Consultant of any responsibility or obligation under or for the fulfillment of the Contract. All contracts, including amendments with subconsultants, in excess of Twenty Five Thousand Dollars (\$25,000.00) will be submitted to MDOT for approval prior to award and will contain all applicable provisions of the Contract. Any such approvals will not be construed as a warranty of the subconsultant's qualifications, professional standing, ability to perform the work being subcontracted, or financial integrity.
22. The Consultant agrees to pay each subconsultant for the satisfactory completion of work associated with the subcontract no later than ten (10) calendar days from the receipt of each payment the Consultant receives from MDOT. The Consultant agrees further to return retainage payments to each subconsultant within ten (10) calendar days after the subconsultant's work is satisfactorily completed. Any delay or postponement from these time frames may occur only upon receipt of written approval from MDOT. These requirements are also applicable to all sub-tier subconsultants and will be made a part of all subcontract agreements.

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

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

23. With regard to non-discrimination and DBE requirements,
  - a. In connection with the performance of Services under the Contract, the Consultant (hereinafter in Appendix A referred to as the "contractor") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts" as set forth in Appendix A, dated June 2011, attached hereto and made

a part hereof. This provision will be included in all subcontracts relating to the Contract.

- b. During the performance of the Contract, the Consultant, for itself, its assignees, and its successors in interest (hereinafter in Appendix B referred to as the “contractor”) agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6, and the Regulations of the Department of Transportation (49 CFR Part 21) issued pursuant to said Act, including Appendix B, dated June 2011, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to the Contract.
  - c. Consultant will carry out the applicable requirements of MDOT’s DBE program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C, dated October 2, 2014, attached hereto and made a part hereof.
24. Public Act 533 of 2004 requires that payments under the Contract be processed by electronic funds transfer (EFT). The Consultant is required to register to receive payments by EFT at the SIGMA Vendor Self Service (VSS) website ([www.michigan.gov/SIGMAVSS](http://www.michigan.gov/SIGMAVSS)).
25. The Consultant specifically agrees that in the performance of the Services herein enumerated, by itself, or by an approved subconsultant, or by anyone acting in its behalf, it will comply with any and all state, federal, and local statutes, ordinances, and regulations and will obtain all permits that are applicable to the entry into and the performance of the Contract.
26. In addition to the protection afforded by any policy of insurance, the Consultant agrees to indemnify, defend, and save harmless the State of Michigan, the Michigan State Transportation Commission, MDOT, the FHWA, and all officers, agents, and employees thereof:
- a. From any and all claims by persons, firms, or corporations for labor, services, materials, or supplies provided to the Consultant in connection with the Consultant’s performance of the Services, and
  - b. From any and all claims for injuries to or death of any and all persons, for loss of or damage to property, for environmental damage, degradation, response and cleanup costs, and for attorney fees and related costs arising out of, under, or by reason of the Consultant’s performance of the Services under the Contract, except claims resulting from the sole negligence or willful acts or omissions of said indemnitee, its agents, or its employees.

MDOT will not be subject to any obligations or liabilities by consultants of the Consultant or their subconsultants or any other person not a party to the contract without its specific



consent and notwithstanding its concurrence with or approval of the award of any contract or subcontract or the solicitation thereof.

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

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

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

The certification that is outlined as a part of these Terms and Conditions as Attachment A is Appendix A of 49 CFR Part 29 and applies to the Consultant (referred to in Appendix A as "the prospective primary participant").

The Consultant is responsible for obtaining the same certification from all subconsultants under the Contract by inserting the following paragraph in all subcontracts:

"The subconsultant's signature on this Contract constitutes the subconsultant's certification of 'status' under penalty of perjury under the laws of the United States with respect to 49 CFR Part 29, as amended and as relocated to 2 CFR Part 1200, pursuant to Executive Order 12549. The certification included as a part of this Contract as Attachment B is Appendix B of 49 CFR Part 29."

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

28. For contracts in excess of One Hundred Thousand Dollars (\$100,000.00):
  - a. The Consultant's signature on the Contract constitutes the Consultant's certification that to the best of his or her knowledge and belief 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, 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, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b. 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 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 will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," pursuant to Section 1352, Title 31 USC, in accordance with its instructions.
  - c. The Consultant will require that the language of this certification be included in the award documents for all third-party agreements (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients will certify and disclose accordingly.
  - d. 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 USC. Any person who fails to file the required certification will be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00) for each such failure.
29. In accordance with 1980 PA 278, MCL 423.321 et seq., the Consultant, in the performance of the Contract, will not enter into a contract with a subconsultant, manufacturer, or supplier listed in the register maintained by the United States Department of Labor of employers who have been found in contempt of court by a federal court of appeals on not less than three (3) occasions involving different violations during the preceding seven (7) years for failure to correct an unfair labor practice, as prohibited by Section 8 of Chapter 372 of the National Labor Relations Act, 29 USC 158. MDOT may void the Contract if the name of the Consultant or the name of a subconsultant, manufacturer, or supplier utilized by the Consultant in the performance of the Contract subsequently appears in the register during the performance of the Contract.
30. For contracts in excess of One Hundred Fifty Thousand Dollars (\$150,000.00):
- a. The Consultant stipulates that any facility to be utilized in the performance of the Contract, unless such Contract is exempt under the Clean Air Act, as amended (42 USC 7401 *et seq.*, as amended, including Pub. L. 101-549), and under the Clean Water Act, as amended (33 USC 1251 *et seq.*, as amended, including Pub. L. 100-4), and/or under Executive Order 11738 and regulations in implementation thereof (40 CFR Part 15), is not listed on the date of Contract award on the U.S.

Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR Part 15.20.

- b. The Consultant agrees to comply with all the requirements of the Clean Air Act and the Clean Water Act and all regulations and guidelines listed thereunder related to the Consultant and the Services under the Contract.
  - c. The Consultant will promptly notify MDOT and the U.S. EPA, Assistant Administrator for Enforcement, of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities.
  - d. The Consultant agrees to include or cause to be included the requirements of the preceding three (3) paragraphs, (a), (b), and (c), in every nonexempt subcontract.
31. The Consultant agrees that no otherwise qualified individuals with disabilities in the United States, as defined in the Americans with Disabilities Act, 42 USC 12101 *et seq.*, as amended, and regulations in implementation thereof (29 CFR Part 1630), will, solely by reason of their disabilities, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving benefits under the Contract.
32. The Consultant agrees that it will not volunteer, offer, or sell its services to any litigant against MDOT with respect to any Services it has agreed to perform for MDOT under the Contract, provided that this provision will not apply either when the Consultant is issued a valid subpoena to testify in a judicial or administrative proceeding or when the enforcement of this provision would cause the Consultant to be in violation of any Michigan or federal law.
33. The Consultant agrees not to accept real estate related assignments on other parcels on this project from any person, firm, or organization other than MDOT for the duration of the project, until all parcels are settled, from which this contracted work arose, unless prior consent in writing is obtained from MDOT.
34. Any approvals, reviews, or inspections of any nature by MDOT will not be construed as warranties or assumptions of liability on the part of MDOT. It is expressly understood and agreed that any such approvals are for the sole and exclusive purposes of MDOT, which is acting in a governmental capacity under the Contract, and that such approvals are a governmental function incidental to the Services under the Contract.

Any approvals, reviews, or inspections by MDOT will not relieve the Consultant of its obligations hereunder, nor are such approvals, reviews, or inspections by MDOT to be construed as warranties as to the propriety of the Consultant's performance, but are undertaken for the sole use and information of MDOT.

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

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

36. The Consultant will notify MDOT if it becomes aware that an antitrust violation with regard to claims based on goods or services that were used to meet the Consultant's obligation to MDOT under the Contract may have occurred or is threatened to occur. The Consultant will also notify MDOT if it becomes aware of any person's intent to commence, or of commencement of, an antitrust action with regard to claims based on goods or services
37. The Consultant warrants that it has not employed or retained any company or person, other than bonafide employees working solely for the Consultant, to solicit or secure the Contract and that it has not paid or agreed to pay any company or person, other than bonafide employees working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract. For breach or violation of this warranty, MDOT will have the right to void the Contract without liability and receive reimbursement for all compensation paid under the Contract or, at its discretion, to deduct from the contract compensation or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
38. The Consultant will not engage on a full-time, part-time, or other basis during the period of the Contract any professional or technical personnel who are in the employ of the FHWA or MDOT, except regularly retired employees, without the knowledge and consent of the employer of such person.
39. The parties agree that the Consultant and any agents and employees of the Consultant, in the performance of the Services under the Contract, will act in an independent capacity and are not officers or employees of the State of Michigan.
40. In addition, the Consultant agrees to provide consulting services and pretrial preparations, appear in court, give testimony, and attend conferences and meetings, if determined to be necessary, regarding the Services. The Consultant will be subject to the direction of MDOT and an Assistant Attorney General. The Consultant agrees that billings for the Services (if any) will be submitted upon a form to be supplied by MDOT detailing hourly itemized

charges in accordance with the per hour rate authorized and the state standardized travel regulations.

41. The Consultant and MDOT mutually agree that while MDOT cannot, pursuant to Section 2164 of the Revised Judicature Act, promise in advance to pay the Consultant any sum in excess of Twelve Dollars (\$12.00) per day as witness fee, the Assistant Attorney handling the judicial proceedings will ask the court to permit it to pay the Consultant for such appearance as a witness at the per hour rate for actual time of each court appearance, plus travel time and state standardized travel expenses, as authorized. The Consultant agrees to submit hourly itemized expenses upon a form supplied by MDOT.
42. The Consultant warrants that, as the responsible Consultant submitting proposals provided for the Contract, he/she has not, directly or indirectly, entered into any agreements, participated in any collusion, or otherwise taken any action in restraint of submitting an independent estimate of fees for this Contract.
43. The Consultant, during the performance of any Services herein provided for, is responsible for any loss or damage of documents belonging to MDOT while they are in its possession. Restoration of lost or damaged documents will be at the Consultant's expense.
44. Any public relations communications and/or products pertaining to the Contract or the Services hereunder that are intended for an external audience will not be made without prior written approval from MDOT, and then only in accordance with explicit instructions from MDOT. Examples of public relations communications and/or products may include the following:
  - a. Use of the MDOT logo;
  - b. Brochures, flyers, invitations, programs, or any other printed materials intended for an external audience;
  - c. Postings on social media sites or websites;
  - d. New or updated video, digital versatile disk (DVD), or video sharing productions;
  - e. Exhibits or presentations.

A violation of this provision constitutes a breach of the Contract, and MDOT may terminate the Contract under the provisions of Section 15(b).

45. Any and all documents referenced in these Terms and Conditions for Real Estate Services are hereby incorporated by reference and made a part hereof, as if attached hereto.
46. The Consultant will comply with all federal, state, and local laws and ordinances applicable to the work.

47. In case of any discrepancies between the body of the Contract and any exhibits hereto, the body of the Contract will govern. In case of any discrepancy between the Contract and these Terms and Conditions, the Contract will govern.

**APPENDIX A**  
**PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS**

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.
6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.

7. The contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor, as well as the contractor itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.
9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

Revised June 2011



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

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

1. **Compliance with Regulations:** For all federally assisted programs, the contractor shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contractor covers a program set forth in Appendix B of the Regulations.
3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment:** All solicitations made by the contractor, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential subcontractor or supplier of the contractor’s obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined to be pertinent by the Department or the United States Department of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the contractor is in the exclusive possession of another who fails or refuses to furnish the required information, the contractor shall certify to the Department or the USDOT, as appropriate, and shall set forth the efforts that it made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor’s noncompliance with the nondiscrimination provisions of this contract, the Department shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:
  - a. Withholding payments to the contractor until the contractor complies; and/or
  - b. Canceling, terminating, or suspending the contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor shall include the provisions of Sections (1) through (6) in every subcontract, including procurement of material and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Department or the USDOT may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event a contractor becomes involved in or is threatened with litigation from a subcontractor or supplier as a result of such direction, the contractor may request the Department to enter into such litigation to protect the interests of the state. In addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Revised June 2011

**APPENDIX C**  
**Assurances that Recipients and Contractors Must Make**  
**(Excerpts from US DOT Regulation 49 CFR § 26.13)**

- A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

**APPENDIX G**

Michigan Department  
Of Transportation  
0165 (09/15)

**PRIME CONSULTANT STATEMENT OF DBE SUBCONSULTANT PAYMENTS**

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

PRIME CONSULTANT NAME	DBE % REQUIRED	CONTRACT / AUTH NO.	BILLING PERIOD TO	INVOICE NUMBER	SUBMITTAL DATE
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IS THIS PRIME FIRM MDOT-DBE CERTIFIED? <input type="checkbox"/> YES <input type="checkbox"/> NO	IS THIS THE FINAL INVOICE? <input type="checkbox"/> YES <input type="checkbox"/> NO
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CERTIFIED DBE SUBCONSULTANT	SERVICES / WORK PERFORMED	TOTAL SUBCONTRACT AMOUNT	TOTAL INVOICED TO DATE	DEDUCTIONS	ACTUAL AMOUNT PAID TO DATE	DBE AUTHORIZED SIGNATURE (FINAL PAYMENT REPORT ONLY)	DATE
		\$	\$				
		\$	\$				
		\$	\$				
		\$	\$				
		\$	\$				
		\$	\$				
		\$	\$				
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		\$	\$				
		\$	\$				
		\$	\$				
		\$	\$				
		\$	\$				

IF THE DBE % PROPOSED WAS NOT ATTAINED, PLEASE INCLUDE THE REASON

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

PRIME CONSULTANT NAME	TITLE	SIGNATURE	DATE
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COMMENTS

## INSTRUCTIONS

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

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

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

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

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

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

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

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

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

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

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

Be sure to sign, title and date this statement.

### **MDOT PAYMENT ANALYST:**

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

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

Attachment A  
(This is a reproduction of Appendix A of 49 CFR Part 29)  
**Certification Regarding Debarment, Suspension, and Other  
Responsibility Matters -- Primary Covered Transactions**

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from

the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
  - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - d. Have not within a three year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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

## ATTACHMENT B

[This is a reproduction of Appendix B of 49 CFR Part 29]  
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY,  
AND VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS

### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction”, “debarred”, “suspended”, “ineligible”, “lower tier covered transaction”, “participant”, “person”, “primary covered transaction”, “principal”, “proposal”, and “voluntarily excluded”, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which



it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Telephone No. (517) 335-2513 or (517) 335-2514).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.