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New Hampshire DOT
Department of Transportation

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

Victoria F. Sheehan
Commissioner

William Cass, P.E.
Assistant Commissioner

Bureau of Construction
April 9, 2021

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Transportation to enter into an Agreement with John Turner Consulting, Inc., North Hampton, NH, Vendor #158313, in the amount of $1,950,000.00 to provide on-call construction engineering and inspection services for various transportation projects statewide, effective upon Governor and Council approval, through April 30, 2024.

Funds to support this request are available in the following account in State FY 2021, and is contingent upon the availability and continued appropriation of funds in FY 2022, FY 2023 and FY 2024, with the ability to adjust encumbrances between State Fiscal Years through the Budget Office, if needed and justified:

04-096-96-963515-3054	FY 2021	FY 2022	FY 2023	FY 2024
Consolidated Federal Aid				
046-500464 Gen Consultants Non-Benefit	$210,800.00	$632,400.00	$632,400.00	$474,400.00

The Consolidated Federal Fund, AU 3054, is utilized at this time to encumber funds for this request. Actual funding sources will be determined by each particular project assignment or task order issued as a result of this request.

EXPLANATION

The Department requires professional construction engineering and inspection consultant services for various transportation projects located throughout the state. Contracts with four consultant firms are needed to supplement the Bureau of Construction's staff in order to increase its capacity to address construction inspection needs on single or multiple construction projects. The additional staffing is essential to ensure the contractor's compliance with the Department's plans, proposal and specifications. Typical assignments may include the Consultant's personnel performing inspection, measuring, testing and documentation of construction activities performed by the Contractor on bridge construction, roadway construction, resurfacing, pavement rehabilitation, and other types of projects. Utilizing Consultant personnel to administer construction contracts under the direct supervision of Department personnel is also envisioned.

Three construction engineering and inspection consultant contracts recently expired on March 31, 2021.

Firm	Contract Authority	Expenditures
Greenman-Pederson	$1,950,000	$1,543,360
WSP USA, Inc	$1,950,000	$1,351,413
John Turner Consulting	$1,950,000	$ 888,508

The Department is seeking approval for a total of four, on-call construction engineering and inspection consultant contracts to replace those that have expired. These on call contracts are pass through agreements. Costs incurred under this contract authority will be charged to the specific projects associated with project assignments or task orders made under this contract.

Firm	Contract Authority
Greenman-Pederson	$1,950,000
McFarland-Johnson	$1,950,000
John Turner Consulting	$1,950,000
WSP USA, Inc	$1,950,000

Three contracts have provided adequate coverage over the last few contract cycles. A fourth contract was added to provide construction inspection services for locally administered projects. This service is being offered to municipalities who may not have the resources to provide inspection services (through contract or other means) for municipally managed projects being funded through DOT programs (State Aid Bridge, TAP, CMAQ, etc.).

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, 21-I:22-d, 228:4 and 228:5-a, and all applicable Federal laws and the Department's "Policies and Procedures for Consultant Contract Procurement, Management, and Administration" dated August 25, 2017. 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.

The consultant selection process for this qualifications-based contract was initiated by a solicitation for consultant services for four (4) Statewide On-Call Construction Engineering and Inspection Services contracts. The assignment was listed as a "Project Soliciting for Interest" on the Department's website on February 27, 2020, 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 April 9, 2020 for consideration and approval by the Assistant Commissioner. Upon receipt of that approval, seven shortlisted firms were notified on July 21, 2020 through a technical "Request For Proposal" (RFP). Committee members individually rated the firms' technical proposals on September 10, 2020 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, and overall suitability for the assignment. (A compilation of the completed individual rating ballots and the ranking summary form is attached.) The individual rankings were then totaled to provide an overall ranking of the seven 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 four (4) highest-ranking firms were asked to submit a fee proposal for negotiations.

The long list of seven (7) consultant firms that were considered for this assignment, with all seven of the short-listed firms shown in bold, is as follows:

Consultant Firm	*Office Location*
DuBois & King	**Laconia, NH**
Greenman-Pedersen, Inc.*	**Bedford, NH**
Hoyle, Tanner & Associates, Inc.	**Manchester, NH**
JTC (John Turner Consulting, Inc.)*	**North Hampton, NH**
Kleinfelder Northeast, Inc.	**Manchester, NH**
McFarland Johnson, Inc.*	**Concord, NH**
WSP USA*	**Merrimack, NH**

(* Selected firms)

The firm of John Turner Consulting, Inc. has been recommended for one of the four on-call engineering and inspection services contracts. This firm has an excellent reputation and has demonstrated their capability to perform the required services. Background information on this firm is attached.

John Turner Consulting, Inc. has agreed to furnish the on-call services for a time and materials fee not to exceed $1,950,000.00. The hourly costs and material and equipment expenses are commensurate with the complexity and the scope of the professional and technical services to be furnished. No new tasks may be assigned after the above-noted completion date, however, completion of previously assigned work begun prior to the completion date shall be allowed, subject to the written mutual agreement of both parties, which shall include a revised date of completion.

This Agreement (Statewide On-Call Construction Engineering and Inspection Services 16441H) 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,

Victoria F. Sheehan

Victoria F. Sheehan
Commissioner

Attachments

V2

State of New Hampshire

Department of Transportation

Construction Engineering / Inspection Contract Expenditures

Consultant: Greenman-Pedersen — Contract: 16441D

CONTRACT EXPENDITURES As Of: 3/8/2021

Contract Start Date:	4/1/2018	Contract Value:	$1,950,000.00
Contract End Date:	3/31/2021	Total Amount Paid:	$1,543,369.94
Time Remaining (approx.):	0.8 Months	Remaining Balance:	$406,630.06
Percent Time Complete:	97.9%	Percent Money Spent:	79.1%

Reg Hours Paid:	$1,217,358.71
OT Hours Paid:	$227,261.50
Mileage Paid:	$108,769.09
Direct Expenses:	$3,958.27

Consultant: WSP USA, Inc. — Contract: 16441F

CONTRACT EXPENDITURES As Of: 2/12/2021

Contract Start Date:	4/1/2018	Contract Value:	$1,950,000.00
Contract End Date:	3/31/2021	Total Amount Paid:	$1,351,413.13
Time Remaining (approx.):	1.5 Months	Remaining Balance:	$598,586.87
Percent Time Complete:	95.7%	Percent Money Spent:	69.3%

Reg Hours Paid:	$1,218,233.39
OT Hours Paid:	$60,838.89
Mileage Paid:	$71,081.39
Direct Expenses:	$1,259.46

Consultant: John Turner Consulting, Inc. — Contract: 16441E

CONTRACT EXPENDITURES As Of: 1/6/2021

Contract Start Date:	4/11/2018	Contract Value:	$1,950,000.00
Contract End Date:	3/31/2021	Total Amount Paid:	$888,508.04
Time Remaining (approx.):	2.8 Months	Remaining Balance:	$1,061,491.96
Percent Time Complete:	92.3%	Percent Money Spent:	45.6%

Reg Hours Paid:	$726,837.50
OT Hours Paid:	$100,650.38
Mileage Paid:	$61,020.16
Direct Expenses:	$0.00

STATEWIDE ON-CALL
CONSTRUCTION ENGINEERING AND INSPECTION SERVICES
16441H

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STATEWIDE ON-CALL
CONSTRUCTION ENGINEERING AND INSPECTION SERVICES
16441H

AGREEMENT
FOR PROFESSIONAL SERVICES

PREAMBLE

THIS AGREEMENT made this 26th day of March in the year 2021 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 John Turner Consulting, Inc., with principal place of business at 44 Lafayette Road, Unit 6 in the Town of North Hampton, State of New Hampshire, hereinafter referred to as the CONSULTANT, witnesses that

The Department of Transportation, State of New Hampshire, hereinafter referred to as the DEPARTMENT, requires on-call engineering and technical design services for various highway projects located throughout the STATE. These services are outlined in the CONSULTANT'S technical proposal dated September 4, 2020 and fee proposal dated January 25, 2021, 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 Construction Engineering and/or Inspection (hereinafter referred to as **CE&I**) 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. GENERAL

The Consultant agrees to render services to the DEPARTMENT including, but not limited to, tasks set forth in this AGREEMENT under Article I, Section B - Scope of Work, which are considered to be an outline of the required work in a general manner and should not be construed as being a final detail list of all work required of the CONSULTANT. The CONSULTANT shall perform all work under this AGREEMENT in accordance with NHDOT Policies and standard practices.

B. SCOPE OF WORK

1. **Definitions**

Consultant: An individual or firm that will furnish CE&I services.

Project: The specific section of the highway together with all appurtenances to be constructed under the contract.

Engineer: The Assistant Commissioner of the DEPARTMENT, who is responsible for engineering supervision of the construction, acting directly or through his/her duly authorized representatives.

Department Supervisor: An individual deemed appropriate within the DEPARTMENT to whom the CONSULTANT'S inspector reports directly.

Project Assignment Letter: An Assignment Letter is a written agreement signed by both the CONSULTANT and the DEPARTMENT that assigns Consultant personnel to a project or multiple projects, sets forth his/her duties, specifies location, starting date, expected duration and identifies the Department Supervisor.

CE&I: Services provided by CONSULTANT personnel who monitor and document contractor's work performed on DEPARTMENT construction projects for conformance with the plans and specifications.

2. **General Description**

The CONSULTANT shall provide services to the DEPARTMENT in all facets of CE&I in accordance with the DEPARTMENT'S plans, specifications, standards, procedures and manuals. The CONSULTANT may also be asked to provide technical assistance in all phases of

stormwater management from pre-construction through final acceptance of a project. Section 3, subsection d, provides a more comprehensive list of project duties.

The DEPARTMENT will assign the CONSULTANT to the individual project or multiple projects requiring services.

The CONSULTANT shall perform CE&I services as included in the Project Assignment Letter or as directed by the Engineer. The CONSULTANT shall supply its own vehicles to provide the services outlined below for each project. For the protection of traffic, all vehicles used on the project shall be equipped with amber flashing lights visible from 360 degrees around the vehicle. The flashing light system shall be in continuous operation while the vehicle is on any part of the traveled lanes, shoulders or ramps within the construction zone. All drivers of vehicles used on the project shall be furnished with written instructions concerning the manner of operation of these vehicles regarding traffic safety requirements. Specifically, these instructions shall warn against stopping on travel portions of the roadway, passing other vehicles, and using median crossovers. All work performed by the CONSULTANT shall conform to all applicable NHDOT Local, State, and Federal Health and Safety Rules and Regulations.

3. **Detailed Scope of Work**

a. Scope

This work consists of providing qualified personnel for CE&I for highway and bridge construction projects as required by the Engineer.

This work consists of providing qualified personnel for construction surveying services, including construction layout and verification.

This work will consist of services for individual projects or multiple projects throughout the State.

Only CONSULTANT personnel actually working on the project site (performing project duties) are eligible for compensation under the AGREEMENT.

CONSULTANT personnel may be utilized for other associated duties not specifically included in this AGREEMENT. Requests for Specialty Services will be made in writing by the Department Supervisor to the CONSULTANT.

b. Staffing

The CONSULTANT'S personnel assigned to a project must have prior experience in the areas of work that they are to perform. Personnel assigned to a project will be subject to prior review and approval by the DEPARTMENT. This review and approval process may include but not be limited to a personal interview.

ARTICLE I

Personnel, as defined below and as identified in the technical proposal, shall not be replaced on the project without DEPARTMENT approval.

The CONSULTANT shall provide sufficient trained personnel to adequately and competently perform the requirements of this AGREEMENT. The CONSULTANT'S personnel assigned to a particular project shall perform all work in accordance with the conditions and terms of this AGREEMENT. Any person employed by the CONSULTANT who, in the opinion of the Engineer, does not perform his/her work in a proper and skillful manner, is intemperate or disorderly, or for any other reason, at the written request of the Engineer shall be removed immediately. Any personnel so removed will not be eligible for work at any other project under this AGREEMENT.

The CONSULTANT shall provide personnel available to work whatever schedule is set forth in the Project Assignment Letter or as the Engineer directs upon prior notice. CONSULTANT personnel shall be directed to check-in with the Department Supervisor at the start and end of each workday, unless otherwise directed in writing by the Department Supervisor. This check-in will include telling the Department Supervisor the start of work time and end of work time for that day.

Employment of CONSULTANT personnel may be terminated at any time their services are no longer required. The DEPARTMENT reserves the right to reassign personnel to various projects as needed.

Compensation for time worked under terms of this AGREEMENT shall begin and end at a specified Project Office. Travel and per diem policies are outlined in Article II.

The CONSULTANT shall comply with all applicable Federal, State, and local laws and regulations while performing work for the DEPARTMENT.

All CONSULTANT personnel must be prequalified by the DEPARTMENT prior to being utilized under this AGREEMENT. Copies of certification documents and experience summaries must be submitted for each individual being proposed by the CONSULTANT as part of the DEPARTMENT approval process.

When the CONSULTANT proposes to add personnel in addition to those approved under this AGREEMENT they should do so in writing to the DEPARTMENT with certification documents and experience summaries included. A revised listing of all personnel utilized under the AGREEMENT will be provided for each such request in the format shown in Appendix A.

ARTICLE I

The DEPARTMENT reserves the right, with prior notification to the CONSULTANT, to direct the assignment and reassignment, of personnel as deemed necessary to provide services to meet the requirements of the DEPARTMENT.

The DEPARTMENT reserves the right to reject any CONSULTANT Personnel at any time for reasonable cause.

c. Minimum Eligibility Requirements

For purposes of this section, Engineer refers to an individual with a Bachelor of Science Degree in Civil Engineering or related field and Technician refers to an individual with an Associates Degree in Civil Engineering Technology or related field and/or related construction experience acceptable to the DEPARTMENT. Personnel provided by the CONSULTANT shall identify with the following Classifications:

Technician Inspector - Level I

Must meet one of the following criteria:

Associates Degree in Civil Engineering Technology or related field and have a minimum of one year of construction inspection experience.

OR

High School Diploma and minimum of five years of construction inspection experience.

Technician Inspector - Level II

Must meet one of the following criteria:

Associates Degree in Civil Engineering Technology or related field and have a minimum of five years of construction inspection experience.

OR

High School Diploma and minimum of ten years of construction inspection experience.

Technician Inspector - Level III

Must meet one of the following criteria:

Associates Degree in Civil Engineering Technology or related field and have a minimum of eight years of construction inspection experience.

OR

High School Diploma and minimum of thirteen years of construction inspection experience.

ARTICLE I

AND (applies to both above criteria)

Must have physical highway or bridge construction inspection experience on a NH Department of Transportation project and practical application with the procedures of the DEPARTMENT and with the NHDOT **Standard Specifications for Road and Bridge Construction.** Must also have experience using the DEPARTMENT'S Construction Management System.

Engineer Inspector – Level I

Must meet the following criteria:

Bachelor of Science Degree in Civil Engineering or related field and a minimum of one year of construction inspection experience.

Engineer Inspector – Level II

Must meet the following criteria:

Bachelor of Science Degree in Civil Engineering or related field and a minimum of five years of construction inspection experience.

Engineer Inspector – Level III

Must meet the following criteria:

Bachelor of Science Degree in Civil Engineering or related field and a minimum of eight years of construction inspection experience.

Must be a Registered Professional Engineer (PE) Licensed to practice in the State of New Hampshire.

Must have physical highway or bridge construction inspection experience on a NH Department of Transportation project and practical application with the procedures of the DEPARTMENT and with the NHDOT **Standard Specifications for Road and Bridge Construction.** Must also have experience using the DEPARTMENT'S Construction Management System.

Environmental Inspector

Must meet the following criteria:

Bachelor of Science Degree in Civil Engineering, Environmental Studies or related field and have 3 years of experience or knowledge of highway and bridge construction operations.

Must be a Certified Erosion Sediment and Storm Water Inspector (CESSWI) and /or a Certified Professional Erosion and Sediment Control Specialist CPESC).

ARTICLE I

d. Project Duties

The CONSULTANT'S personnel are required, and shall be qualified, to perform inspection, documentation, testing and other Construction Engineering activities throughout the various stages of the project, including, but not limited, to the following areas:

1. Production, hauling and placement of highway related materials.
2. Soil or rock excavations, and soil or rock fill construction.
3. Roadway base, subbase, and slope construction, including checking line and grade.
4. Drainage work, including pipe and structure installation, ditchline grading, detention/retention area construction, etc.
5. Utility construction for sewer, water, electricity, gas, etc.
6. Storm Water Pollution Prevention Plan (SWPPP) review and analysis.
7. Erosion control product evaluation.
8. Erosion and sediment control Best Management Practices (BMP's).
9. Construction of traffic signs, traffic pavement markings and symbols, and traffic signal installations.
10. Bridge and building demolition.
11. Paving, resurfacing, pavement repair and rehabilitation.
12. Guardrail, fence and other linear barriers.
13. Land clearing and landscaping.
14. Bridge substructure, including foundation preparation work, and bridge superstructure work.
15. Non-bridge structures such as retaining walls, overhead signs, soundwalls, sidewalks, etc.
16. Traffic control procedures and devices.
17. Project Schedule review and analysis including CPM schedules
18. Construction survey layout and verification

e. Certifications/Training

The DEPARTMENT may require that the CONSULTANT'S personnel be certified (or be able to obtain certification within a reasonable time frame) or have training by the North East Transportation Technician Certification Program (NETTCP), the National Institute for Certification in Engineering Technologies (NICET), or the American Concrete Institute (ACI). The areas of concentration would be Hot Mix Asphalt (HMA) Paving Inspection, Soils and Aggregate Inspection/testing and Concrete Inspection/testing.

ARTICLE I

CONSULTANT personnel performing storm water management duties may be required to be a Certified Professional Erosion and Sediment Control Specialist (CPESC).

f. Equipment

Equipment furnished by the CONSULTANT shall include but not be limited to:

1. Personal Protective Equipment (PPE's) including but not limited to: hard hats, Type II (minimum, type III recommended at night) reflective vests, gloves, coveralls, safety glasses, hearing protection, steel-toed work boots, rain gear. All PPE's shall meet minimum OSHA and ANSI standards.
2. Windows based laptop or tablet for daily use to document project in iPDWeb, Bluebeam Studio, Citrix, other software packages as needed, and any incidental Department access to our network. Device shall have an active SIM card for internet connectivity or a mobile hotspot with adequate coverage within consultant's assigned project (s). Data plan for SIM card or mobile hotspot shall be unlimited data usage.
3. Smart phone or IPhone with adequate coverage within their assigned project (s) with unlimited minutes, text and data service. Any accessories required to maintain cellular phone.
4. Survey grade equipment capable of providing accurate survey layout and field verification.
5. Scientific calculators
6. Drafting Tools
7. Measuring tapes, rulers
8. Hand levels

g. Cooperation and Records

The CONSULTANT agrees to cooperate fully with the DEPARTMENT and to maintain and protect complete construction records at the project field office and/or the Bureau of Construction for review, use and approval at all times. These records, upon request, shall be transferred to the custody of the DEPARTMENT when the CONSULTANT has completed the assignment.

h. Post Project Assistance

The CONSULTANT shall be available to assist the DEPARTMENT in the processing of any Project claims or lawsuits arising from Project(s) to which the CONSULTANT is assigned hereunder until the CONTRACTOR'S acceptance of the final estimate. This work effort would be considered a continuation of the project assignment.

ARTICLE I

C. MATERIALS FURNISHED BY THE DEPARTMENT OF TRANSPORTATION

The DEPARTMENT will furnish materials to the CONSULTANT, such as Plans, Standard Specifications, Special Provisions, Construction Manual and any available information pertinent to the CONSULTANT'S assignment.

D. WORK SCHEDULE

1. This AGREEMENT period begins on the date of approval by the Governor and Council.
2. The CONSULTANT shall complete the services without delay unless unable to do so for causes not under its control.
3. CONSULTANTS employed under the terms of this AGREEMENT shall be available to begin work within one week of the receipt of a Project Assignment Letter.
4. Close coordination between the CONSULTANT and the DEPARTMENT shall be maintained at all times.
5. A project conference between the Department Supervisor and the CONSULTANT may be required as determined by the Engineer before the assigned work is started to insure that the CONSULTANT is in compliance with the DEPARTMENT'S requirements. Lead-time required to perform all necessary checks prior to the start of operations shall be agreed upon.

E. CONSULTANT AUTHORITY

1. The CONSULTANT shall notify the Department Supervisor and the Contractor immediately of any workmanship or materials that do not conform to specifications.
2. The CONSULTANT shall notify the Department Supervisor and the Contractor immediately of any imminent safety issues.
3. The CONSULTANT shall not authorize additional work or the elimination of work.
4. The CONSULTANT shall not authorize any Change Orders.
5. The CONSULTANT shall not authorize any progress payments made to the Contractor.
6. The CONSULTANT shall not commit the DEPARTMENT to any additional expenditure of funds.

J. DATE OF COMPLETION

The date of completion for the professional services rendered under this AGREEMENT is April 30, 2024, unless terminated earlier upon the depletion of the total amount payable under this AGREEMENT, or extended as allowed by the following provision:

No new tasks may be assigned after the above noted completion date, however, the CONSULTANT shall complete any tasks begun prior to the completion date, but not yet completed, in accordance with the methods of compensation specified in Article II and all other applicable portions and contractual

requirements of this Agreement. This shall be subject to the written mutual agreement of both parties, which shall include a revised Date of Completion to allow completion of the previously assigned work.

ARTICLE II

ARTICLE II - COMPENSATION OF CONSULTANT FOR ON-CALL SERVICES

A. AGREEMENT 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 the combined total cost of all work, expenses, and profit for Task Orders issued under this AGREEMENT, an amount not to exceed **$1,950,000.00**. (The CONSULTANT shall note that no payments will be made for work, expenses, or profit, whether authorized or not, exceeding the **$1,950,000.00** total amount.)

B. METHOD OF COMPENSATION FOR ENGINEERING TASK ORDERS

The method of compensation for Engineering Services Task Orders issued under this agreement will either be a **Cost-Plus-Fixed-Fee** format with method of payment as described in Section C, below, or a **Lump-Sum** format with method of payment as described in Section D, below.

C. COST-PLUS-FIXED-FEE FORMAT

1. **Task Order Cost Development** - The negotiated not-to-exceed cost of each cost-plus-fixed-fee format Task Order will be computed as follows:

   Labor Costs [hours x average rates* + indirect cost rate x (hours x rates)]
   + Fixed Fee (negotiated amount)
   + Direct Expenses (estimated amount)
   + Subconsultant Costs (estimated amount or lump sum)
   = Negotiated Task Order Cost

   * The average rates are the Average NHDOT Allowed Rates from the most-current version of the **Salary Rate Table** (see Article I Section C - Staffing).

2. **Task Order Cost Reimbursement** - 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 for each Task Order (except as otherwise herein provided) an amount equal to the sum of the following costs (a)+(b)+(c)+(d)+(e):

   a. Actual salaries* approved by the DEPARTMENT paid to 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.

      * In accordance with DEPARTMENT policy, the maximum direct-labor rate allowed for all positions under this AGREEMENT, including subconsultants, shall be $60.00 per hour unless a waiver to the salary cap has been specifically approved for specialty services.

   b. Overhead costs applicable to the direct salary costs. The audited indirect cost rate of **202.35%**, as submitted to and approved by the DEPARTMENT, will be applied to the direct

salary costs. The CONSULTANT agrees that the indirect cost rate shall be extended at that rate for the duration of the Contract in accordance with 23 CFR 172.11 (b)(1)(vi). An overtime premium of one and one half times the direct labor rate for non-exempt employees working beyond the standard 40 hours per workweek may be allowed for special circumstances when approved by the DEPARTMENT in writing in advance. The overhead portion of non-exempt employees' salary rates shall not be adjusted. Engineers are not eligible for overtime premium rates.

c. A fixed fee amount based on the estimated risk to be borne by the CONSULTANT [maximum 10.00% of Labor Costs (including overhead costs)] for profit and non-reimbursed costs. Shall be paid based on percentage of work completed of the Task Order.

d. 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 Regulation (Subpart 31.205-46) and in the Federal Travel Regulation. Mileage and per diem costs shall be subject to approval by the DEPARTMENT.

e. Reimbursement for actual cost of subconsultants.

The actual amount payable under each category (a), (b), (d), and (e) will be estimated for each Task Order and shall be changed only upon mutual agreement of the DEPARTMENT and CONSULTANT. The fixed fee (c) shall only change when there has been a significant increase or decrease in the scope of work. The estimated amounts for (a), (b), (d), and (e) and the actual amount for (c) are listed in the Fee Summary section of the Authorization to Proceed for each Task Order.

3. **Task Order Limitation of Costs** – The total amount to be paid for any Task Order shall not exceed the sum of the amounts shown in the Task Order Fee Summary limits contained in the Authorization to Proceed Letter. It is expected that the CONSULTANT agrees to use best efforts to perform the work specified in the Task Order Scope of Work and all obligations under this contract within such limiting amount.

4. **Task Order Payments** - Monthly payments on account may be made upon submission of invoices by the CONSULTANT to the DEPARTMENT. The CONSULTANT shall follow the DEPARTMENT'S Standardized Invoicing format. The fixed fee shall be invoiced during the billing period based upon the overall percent complete calculated within the approved progress

report found in the DEPARTMENT'S Standardized Invoicing.

D. LUMP-SUM FORMAT

1. **Task Order Cost** - The negotiated total amount of each lump-sum format Task Order will be considered full compensation for all services for the Task Order performed to the satisfaction of the DEPARTMENT. Said lump-sum amount includes all labor, overhead, profit (maximum 15.00% of total labor + total overhead; based on the estimated risk to be borne by the CONSULTANT), direct expenses, and subconsultant costs. The lump-sum amount may only be adjusted (increased or decreased) if there is a significant change in the scope or character of the work, as determined by the DEPARTMENT. Any change to the lump-sum amount shall be documented in writing by a DEPARTMENT Bureau-level amendment.

E. METHOD OF COMPENSATION FOR CE&I TASK ORDERS

The method of compensation for CE&I Services Task Orders issued under this agreement will be Specific Rates of Pay (**The Contract Labor Rates for the Specific Rates of Pay format including overhead and profit.**)

The following costing items are incorporated as part of this AGREEMENT:

1. **Task Order Cost** - The negotiated not-to-exceed cost of each Specific Rates of Pay format Task Order will be based on the types of labor classifications required along with the number of labor hours negotiated for each labor classification multiplied by the corresponding contract labor rate, and the other factors (direct expenses and subconsultant costs) as follows:

   Labor Costs (Sum of negotiated hours x contract labor rates)
   + Direct Expenses (estimated amount)
   + Subconsultant Costs (estimated amount or lump sum)
   = Task Order Cost

2. **Contract Labor Rates** – The contract labor rates will be a firm-fixed-price for the duration of the AGREEMENT. The contract labor rates will be the total hourly wage for each labor classification including overhead, profit, and escalation of labor adjustment, as follows:

   a. Direct Labor Rate ($/hr)
   + b. Direct Labor Rate x Overhead Rate (%)
   + c. (a.+b.) x 1.08* x 1.0303**
   = Contract Labor Rate.($/hr)

   *Profit Rate
   **Escalation of Labor Adjustment Rate (Effective Contract Rate from Salary Rate Calculation)

In accordance with DEPARTMENT policy, the maximum direct labor rate allowed for all labor classifications under this AGREEMENT shall be $60.00 per hour for the life of the Contract.

ARTICLE II

INSPECTION SERVICES CONTRACT LABOR RATES (PER HOUR)

Classification	Hourly Rate
Engineer Inspector - Level III	$ 136.51
Engineer Inspector – Level II	$ 99.22
Engineer Inspector – Level I	$ 71.70
Technician Inspector – Level III	$ 102.54
Technician Insp. – Level III **(OT Rate*)**	$ 120.68
Technician Inspector – Level II	$ 95.95
Technician Insp. – Level II **(OT Rate*)**	$ 112.92
Technician Inspector – Level I	$ 66.25
Technician. Insp. – Level I **(OT Rate*)**	$ 77.97
Environmental Inspector	$ 127.71
Environmental Inspector **(OT Rate*)**	$ 150.30

* The Contract Labor Rates in the above table shall apply for any 24 hours of the day. Any overtime hours worked beyond the standard 40 hours per week will be reimbursed in following manner:

Engineer Inspectors – Engineer Inspectors shall receive straight time for all hours worked.

Technician Inspectors – Technician Inspectors shall receive a rate of time and one half of their Direct Labor Rate. Overhead rate and profit shall not be adjusted.

Environmental Inspectors - Environmental Inspectors shall receive a rate of time and one half of their Direct Labor Rate. Overhead rate and profit shall not be adjusted.

The CONSULTANT shall not work overtime without prior approval of the DEPARTMENT.

4. **Overhead Factor** - The negotiated overhead factor for **CE&I/field work (161.72%)** shall remain fixed at that rate for the life of the Contract and shall not be subject to change as a result of a final audit.
5. **Profit** - The rate for profit and non-reimbursed costs shall remain fixed at that rate for the life of the AGREEMENT. The negotiated rate for profit for this AGREEMENT is **8.0%**.
6. **Direct Expenses** - Direct expenses shall not exceed $50,000.00 per year and shall be reimbursed at actual cost. Reimbursable direct expense items include work 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 whether performed by the CONSULTANT or other parties and shall be billed at actual cost. Cell phones and any associated charges will not be reimbursable as a direct expense under this AGREEMENT. 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.

F. SUBCONSULTANT SUPPORTING SERVICES

Subconsultant firms were not negotiated as part of this AGREEMENT.

G. INVOICING and PAYMENT

Payments on account of the fee for services rendered under this AGREEMENT will be made by the DEPARTMENT based on a completely itemized, project-by-project bill submitted on a monthly or other approved basis by the CONSULTANT. The CONSULTANT shall also submit with the itemized bill, DEPARTMENT approved backup weekly time sheets for each employee showing the charges by project and signed by a DEPARTMENT representative.

H. RECORDS - REPORTS

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 AGREEMENT period and for three (3) years from the date of final voucher payment for examination by the STATE, Federal Highway Administration, or other authorized representatives of the Federal Government, and copies thereof shall be furnished if requested. Applicable cost principles are contained in the Federal Acquisition Regulation (FAR) in Title 48 of the Code of Federal Regulations (Subpart 31.2 and Subpart 31.105).

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 costs.

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 Article II, Section A – Agreement General Fee. All Subconsultant costs may also be subject to audit by the STATE and Federal Governments.

ARTICLE III - GENERAL PROVISIONS

A. HEARINGS, ETC.

(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 all applicable AASHTO and ASTM standard test methods as well as the provisions of the Design Manuals, Standard Specifications for Road and Bridge Construction, and Standard Plans for Road and Bridge Construction of the DEPARTMENT; A Policy on Geometric Design of Highways and Streets and LRFD Bridge Design Specifications of the American Association of State Highway and Transportation Officials (AASHTO), 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 FHWA - CONFERENCES - INSPECTIONS

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

The locations available for inspection by STATE and Federal Highway Administration representatives will vary according to project assignments.

It is further mutually agreed that any party, including the duly-authorized representatives of the Federal Highway Administration, 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 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, employee, 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. <u>REVISIONS TO REPORTS, PLANS OR DOCUMENTS</u>

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, after its written approval thereof, 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,
2. When applicable, if during the term of this AGREEMENT, a revision of the alignment is ordered 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, after approval by the DEPARTMENT of the final contract plans or documents, the CONSULTANT shall be ordered in writing by the DEPARTMENT to make revisions, or to perform services other than those necessary in order 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. <u>ADDITIONAL SERVICES</u>

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 of 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. <u>OWNERSHIP OF PLANS</u>

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 may be 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.

2. Claims and Indemnification

   a. Non-Professional Liability Indemnification

ARTICLE IV

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.

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 he cannot comply with one or more of the completion dates specified in this AGREEMENT, 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.

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 or the Federal Highway 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 or the Federal Highway 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 as it or the Federal Highway 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 or the Federal Highway 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 AGREEMENT 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.

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 and the Federal Highway 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).

ATTACHMENT A

Special Contract Provisions for COVID-19

The CONSULTANT acknowledges and agrees that this AGREEMENT was entered into following the coronavirus disease 2019 (COVID-19) outbreak. The CONSULTANT agrees that to the extent the COVID-19 outbreak, or any federal, state or local orders, regulations, rules, restrictions, or emergency declarations relating to COVID-19, disrupt, delay, or otherwise impact the Scope of Services to be performed by the CONSULTANT as set forth in Article I of this AGREEMENT, any such disruption, delay, or other impact was foreseeable at the time this AGREEMENT was entered into by the Parties and does not excuse the Contractor's performance under this AGREEMENT. The CONSULTANT agrees that any such impact, including any disruption to supply chains, workforce reductions, delays or interruptions in performance, or other effects on businesses, are not the fault of the STATE and the CONSULTANT may not seek damages against the STATE for any such impacts.

If the CONSULTANT experiences or anticipates any such COVID-19-related impacts to this AGREEMENT, the CONSULTANT shall immediately notify the DEPARTMENT'S Contract Manager. In the event of any COVID-19-related impact or anticipated impact to this AGREEMENT, the Contract Manager shall have the right to temporarily modify, substitute, or decrease the services, without the approval of the Governor and Executive Council, upon giving written notice to the CONSULTANT. The STATE'S right to modify includes, but is not limited to the right to modify service priorities, including how and when services are delivered, and expenditure requirements under this AGREEMENT so as to achieve compliance therewith, provided such modifications are within the Scope of Services and cost limitations of this AGREEMENT. By exercising any of the rights described within this subsection, the STATE does not waive any of its right under this AGREEMENT.

In the event that a modification by the STATE under this subsection would result in a permanent reduction of services that cannot be supplemented during the remaining term of this AGREEMENT with either replacement or substituted services of substantially similar value, the Parties shall submit a formal amendment to this AGREEMENT with a commensurate reduction in the price. This amendment will require the approval of the Governor and Executive Council. In order to facilitate reconciliation of services performed under this AGREEMENT, the CONSULTANT shall submit weekly reports detailing the following for any service not fully performed pursuant to the terms of the AGREEMENT:

1) The services required to be performed under the terms of this AGREEMENT as written;
2) The services actually performed;
3) Any replacement or substituted services performed with reference to the associated unperformed contracted services.

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 ✓, proposed subconsultant ____, hereby certifies that it has ✓, 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 ✓, 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.

John Turner Consulting, Inc.
(Company)

By: _____

President
(Title)

Date: 3/26/2021

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.

3/26/2021
(Date)

(Signature)

Attachment 3

CERTIFICATION OF CONSULTANT/SUBCONSULTANT

I hereby certify that I am the President and duly-authorized representative of the firm of John Turner Consulting, P.C., 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.

3/26/2021
(Date)

(Signature)

Attachment 4

CERTIFICATION OF STATE DEPARTMENT OF TRANSPORTATION

I hereby certify that I am the Director of Project Development 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):

March 29, 2021
(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 6

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

Consultant

WITNESS TO THE CONSULTANT

By: Rebecca Rapuzzo
Asst Controller

Dated: 3/26/21

CONSULTANT

By: _____

President
(TITLE)

Dated: 3-26-2021

Department of Transportation

WITNESS TO THE STATE OF NEW HAMPSHIRE

By: Phyllis C. Jouvelakas

_____

Dated: March 29, 2021

THE STATE OF NEW HAMPSHIRE

By: _____

Director of Project Development
for **DOT COMMISSIONER**

Dated: March 29, 2021

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: 5/6/21

By: Allison B. Feinstein
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

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Certificate of Authority # 1 *(Corporation, Non-Profit Corporation)*

Corporate Resolution

I, Shannthussey-Mandlin hereby certify that I am duly elected Clerk/Secretary/Officer of
(Name)
John Turner Consulting Inc. I hereby certify the following is a true copy of a vote taken at
(Name of Corporation)

a meeting of the Board of Directors/shareholders, duly called and held on March 26, 2021

at which a quorum of the Directors/shareholders were present and voting.

VOTED: That John D. Turner / President (may list more than one person) is
(Name and Title)

duly authorized to enter into contracts or agreements on behalf of

John Turner Consulting Inc. with the State of New Hampshire and any of
(Name of Corporation)

its agencies or departments and further is authorized to execute any documents

which may in his/her judgment be desirable or necessary to effect the purpose of

this vote.

I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of the date of the contract to which this certificate is attached. This authority **remains valid for thirty (30)** days from the date of this Corporate Resolution. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person(s) listed above currently occupy the position(s) indicated and that they have full authority to bind the corporation. To the extent that there are any limits on the authority of any listed individual to bind the corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

DATED: 3/26/2021 **ATTEST:** Shannthussey-Mandlin
(Name & Title)
Corporate 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 JOHN TURNER CONSULTING, INC. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on October 03, 1997. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: **279565**

Certificate Number: **0005339843**

IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 5th day of April A.D. 2021.

William M. Gardner

Secretary of State

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 03/26/2021

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 have ADDITIONAL INSURED provisions or 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	CONTACT NAME: Paula Martineau, AAI, ACSR
Cross Insurance-Portsmouth 75 Portsmouth Blvd. Suite 100 Portsmouth NH 03801	PHONE (A/C, No, Ext): (603) 812-2600 FAX (A/C, No): (603) 570-1073 E-MAIL ADDRESS: pmartineau@crossagency.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Phoenix Insurance Company	
INSURER B: Travelers Indemnity Co	25658
INSURER C: Travelers Property Casualty Company of America	25674
INSURER D: The Charter Oak Fire Ins Co	25615
INSURER E: Navigators Specialty Insurance Company	36056
INSURER F:	

INSURED
John Turner Consulting Inc.
44 Lafayette Road, Suite 6
PO Box 953
North Hampton NH 03862

COVERAGES — CERTIFICATE NUMBER: CL20103038220 — REVISION NUMBER:

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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [X] LOC [ ] OTHER:	Y	Y	P-630-9N221189	10/30/2020	10/30/2021	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 500,000
							MED EXP (Any one person)	$ 15,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
B	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [X] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY	Y	Y	810-9N222033	10/30/2020	10/30/2021	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
							Uninsured motorist	$ 1,000,000
C	[X] UMBRELLA LIAB [X] OCCUR [X] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $	Y	Y	CUP-9N222948	10/30/2020	10/30/2021	EACH OCCURRENCE	$ 10,000,000
							AGGREGATE	$ 10,000,000
								$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [Y] If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	Y	UB-9N223195	10/30/2020	10/30/2021	[X] PER STATUTE [ ] OTH-ER	
							E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
E	PROFESSIONAL LIABILITY Ded per claim $25K, Aggregate $75K			CE20MPL0BR3I7IC	10/30/2020	10/30/2021	AGGREGATE	$3,000,000
							EACH CLAIM	$3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

NH DOT & The State of NH are additionally insured on a primary & non-contributory basis under the General Liability, Auto Liability & Umbrella as required by contract. Waiver of subrogation applies under all policies noted above as required by contract & permitted by law. 3a States: MA, ME, NH, NY, VT. John Turner is excluded from the Workers Comp. Insurance afforded by the policies described herein is subject to all the terms, exclusions, warranties and conditions of such policies.

CERTIFICATE HOLDER

NH DOT
7 Hazen Dr
Concord NH 03302

CANCELLATION

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

Paula Martineau

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