

CCO Form BR11  
Approved: 02/99 (DPP)  
Revised: 12/05 (BDG)  
Modified:

## Appendix 4

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
BRIDGE ENGINEERING ASSISTANCE PROGRAM (BEAP)  
CONSULTANT SERVICES AGREEMENT  
(HOURLY RATE FEE ARRANGEMENT)**

THIS AGREEMENT is entered into by \_\_\_\_\_  
(hereinafter, "Consultant"), and the Missouri Highways and Transportation  
Commission (hereinafter, "Commission").

WITNESSETH:

WHEREAS, the Commission has need at various times over the next three (3)  
years of a consultant to perform professional services in connection with the  
administration of the Bridge Engineering Assistance Program (BEAP); and

WHEREAS, the Commission has selected the Consultant to provide those  
services for local public bridge owners in Missouri on an as-needed basis.

NOW, THEREFORE, in consideration of the payments to be made and the  
covenants set forth in this Agreement to be performed by the Commission, the  
Consultant hereby agrees that it shall faithfully perform the professional services  
called for by this Agreement in the manner and under the conditions described in  
this Agreement.

(1) DEFINITIONS: The following definitions apply to these terms, as used in this  
Agreement:

(A) "AASHTO" means the American Association of State Highway and  
Transportation Officials.

(B) "COMMISSION" means the Missouri Highway and Transportation  
Commission, an executive branch agency of state government, which acts by  
and through its Director, Chief Engineer and others in the Missouri Department of  
Transportation.

(C) "CONSULTANT" means the firm providing professional services to the  
Commission as a party to this Agreement.

(D) "CONSULTANT'S REPRESENTATIVE" means the person or persons  
designated in writing by the Consultant to represent that firm in negotiations,  
communications, and various other contract administration dealings with the  
Commission's Engineers.

(E) "DELIVERABLES" means all data, studies, documents, designs,  
drawings, plans, specifications, or any other products prepared in performance of  
this Agreement, to be delivered to and become the property of the Commission  
pursuant to the terms and conditions set out in paragraph (10) of this Agreement.

(F) "DISADVANTAGED BUSINESS ENTERPRISE (DBE)" means an entity owned and controlled by a socially and economically disadvantaged individual as defined in 49 C.F.R. Part 26, which is certified as a DBE firm in Missouri by the Commission. Appropriate businesses owned and controlled by women are included in this definition.

(G) "ENGINEER" means the Chief Engineer or any other authorized representative of the Commission. Where the specific term "Chief Engineer" is used, it shall mean the Chief Engineer exclusively.

(H) "FHWA" or "FHA" means the Federal Highway Administration within the USDOT, headquartered at Washington, D.C., which acts through its authorized representatives.

(I) "INTELLECTUAL PROPERTY" consists of copyrights, patents, and any other form of intellectual property rights covering any data bases, software, inventions, training manuals, systems design or other proprietary information in any form or medium.

(J) "SUBCONSULTANT" means any individual, partnership, corporation, or joint venture to which the Consultant, with the written consent of the Engineer, subcontracts any part of the professional services under this Agreement but shall not include those entities which supply only materials or supplies to the Consultant.

(K) "SUSPEND" the services means that the services as contemplated herein shall be stopped on a temporary basis. This stoppage will continue until the Commission either decides to terminate the project or reactivate the services under the conditions then existing.

(L) "TERMINATE", in the context of this Agreement, means the cessation or quitting of this Agreement based upon the action or inaction of the Consultant, or the unilateral cancellation of this Agreement by the Commission.

(M) "USDOT" means the United States Department of Transportation, headquartered at Washington, D.C., which acts through its authorized representatives.

(N) "SERVICES" includes all professional engineering and related services and the furnishing of all equipment, supplies, and materials in conjunction with such services as are required to achieve the broad purposes and general objectives of this Agreement.

## (2) SCOPE OF SERVICES:

(A) The services covered by this Agreement shall include furnishing the professional, technical, and other personnel and the equipment, material and all other things necessary to provide structural and hydraulic recommendations to local agencies in accordance with the policies and procedures of the Bridge Engineering Assistance Program (BEAP) from time to time as needed and requested by the Commission. The services generally to be provided by the consultant are set forth in Exhibit II to this Agreement, titled "General Scope of Services," which is attached hereto and made a part of this Agreement.

(B) Scope and Cost of Requested Services: Each individual request for services shall be covered by a Memorandum of Understanding submitted by the

Consultant and approved by the Engineer. The memorandum will define the specific scope of work to be performed by the Consultant, the time limitations within which the work is to be performed, the specific deliverables required, and state the maximum price for those services. This ceiling shall not be exceeded prior to the approval of a supplemental Memorandum of Understanding. The Memorandum of Understanding will also indicate where the Consultant is to forward all deliverables. The standard BEAP Project Tracking Form, along with additional correspondence as needed to clarify the scope of work for an individual request will serve as the Memorandum of Understanding.

(3) TERM OF AGREEMENT: The Consultant's services are to commence upon execution of this Agreement and terminate three (3) years from the date of execution unless otherwise terminated prior to the date pursuant to the provisions of paragraph (10) of this Agreement. Upon agreement of all parties, this Agreement shall be renewed for an additional one (1) year term said term to begin on the day of termination of this Agreement.

(4) INFORMATION AND SERVICES PROVIDED BY THE COMMISSION:

(A) At no cost to the Consultant and in a timely manner, the Commission will provide available information of record which is pertinent to the requested services project to the Consultant upon request. In general, the Commission will provide the Consultant with the specific items or services set forth in Exhibit II or in the Memorandum of Understanding for the particular services requested by the Commission. The information provided by the Commission will generally be limited to information residing in the Commission's files pertaining to its administration of the National Bridge Inventory for Missouri and its accuracy cannot be guaranteed. If a project request is approved, the Consultant is expected to verify all information by visiting the site, and obtain additional information that may be available from the local bridge owner.

(B) The Consultant shall thoroughly review information obtained at the bridge site along with the information provided by the Commission and local agency concerning the requested services and will as expeditiously as possible advise the Engineer of any of that information which the Consultant believes is inaccurate or inadequate or would otherwise have an effect on any of its activities under this Agreement. In such case, the Commission shall provide the Consultant with a revised Memorandum of Understanding upon which the Consultant is entitled to rely. The Consultant shall not be liable for any errors, omissions, or deficiencies in the Consultant's services resulting from inaccurate or inadequate information furnished by the Commission which inaccuracies or inadequacies are not detected by the Consultant.

(5) RESPONSIBILITY OF THE CONSULTANT:

(A) The Consultant shall comply with applicable state and federal laws and regulations governing these services, as published and in effect on the date of this Agreement or any subsequent Memorandums of Understanding. The Consultant shall provide the services in accordance with the criteria and

requirements established and adopted by the Commission; and if none are expressly established in this Agreement, published manuals and policies of the Commission which shall be furnished by the Commission upon request; and, absent the foregoing, manuals and policies of AASHTO, as published and in effect on the date of this Agreement or any subsequent Memorandums of Understanding.

(B) Without limiting the foregoing, the performance of these services will be in accordance with the specific criteria and project procedures as indicated by the information set out in Exhibit II and the appropriate Memorandum of Understanding.

(C) The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all deliverables or any other services furnished under this Agreement. At any time during any subsequent stage of project development or phase of work performed by others based upon any deliverables or other services provided by the Consultant, the Consultant shall prepare any additional deliverables or other services needed to correct any negligent acts, errors, or omissions of the Consultant or anyone for whom it is legally responsible in failing to comply with the foregoing standard. The services necessary to correct such negligent acts, errors, or omissions shall be performed without additional compensation, even though final payment may have been received by the Consultant. The Consultant shall provide such services as expeditiously as is consistent with professional performance. Acceptance of the services will not relieve the Consultant of the responsibility to correct such negligent acts, errors, or omissions.

(D) All deliverables produced under this agreement shall be signed, sealed, and dated by the appropriate party responsible for performance of the services and who possesses appropriate registration in the state of Missouri to perform the type of services included in this Agreement or any subsequent Memorandum of Understanding. All requirements for professional registration and the signing and sealing of deliverables shall be in accordance with Missouri state law. All deliverables which are not the final version shall carry the words "Draft or Preliminary" or other similar language in an obvious location where it can readily be found, easily read, and is not obscured by other markings, as a disclosure to others that the deliverables are incomplete or preliminary. When the deliverables are presented in their final form, the word "Draft or Preliminary" or other similar language shall be removed and the deliverables thereupon signed, sealed, and dated as previously described in this paragraph.

(E) Where the scope of services requires the preparation of completed plans, plans submitted for review by permit authorities, and plans issued for construction, the plans shall be signed, sealed, and dated by a professional engineer registered in the State of Missouri. Incomplete or preliminary plan(s), when submitted for review by others, shall not be sealed, but the name of the responsible engineer, along with the engineer's Missouri registration number, shall be indicated on the plan(s) or included in the transmittal document. In addition, the phrase "Preliminary - Not for Construction," or similar language, shall be placed on the incomplete or preliminary plan(s) in an obvious location

where it can readily be found, easily read, and not obscured by other markings, as a disclosure to others that the plan(s) are incomplete or preliminary. When the plan(s) are completed, the phrase "Preliminary - Not for Construction" or similar language shall be removed and the plan(s) shall thereupon be sealed.

(F) The Consultant shall cooperate fully with the Commission and its Engineers, consultants, and contractors on adjacent projects, and with municipalities and local government officials, public utility companies and others as may be directed by the Engineer. This may include attendance at meetings, discussions, and hearings as requested by the Engineer.

(G) In the event any lawsuit or court proceeding of any kind is brought against the Commission, arising out of or relating to the Consultant's activities or services performed under this Agreement, including any Memorandum of Understanding, or any subsequent stage of project development or phase of work or any project of construction undertaken employing the deliverables provided by the Consultant in performing this Agreement, including any Memorandum of Understanding, the Consultant shall have the affirmative duty to assist the Commission in preparing the Commission's defense, including, but not limited to, production of documents, trials, depositions, or court testimony. Any assistance given to the Commission by the Consultant will be compensated at an amount or rate negotiated between the Commission and the Consultant as will be identified in a separate agreement between the Commission and the Consultant. To the extent the assistance given to the Commission by the Consultant was necessary for the Commission to defend claims and liability due to the Consultant's negligent acts, errors, or omissions, the compensation paid by the Commission to the Consultant will be reimbursed to the Commission.

(6) NO SOLICITATION WARRANTY: The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Commission will have the right to terminate this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee, plus costs of collection including reasonable attorney's fees.

(7) SUBCONSULTANTS:

(A) The Consultant agrees that except for those firms and for those services listed in the appropriate Memorandum of Understanding, there shall be no transfer of engineering services performed under this Agreement without the written consent of the Commission. Subletting, assignment, or transfer of the services or any part thereof to any other corporation, partnership, or individual is expressly prohibited. Any violation of this clause will be deemed cause for termination of this Agreement.

(B) The Consultant agrees, and shall require the selected Subconsultants, to maintain books, documents, papers, accounting records, and other evidence pertaining to direct costs and expenses incurred under the Agreement and to make such materials available at their offices at reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement, for inspection by the Commission or any of its authorized representative, and copies thereof shall be furnished.

(C) Unless waived or modified by the Commission, the Consultant agrees to require, and shall provide evidence to the Commission, that those Subconsultants shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance, for not less than the period of services under such subconsultant agreements, and in not less than the following amounts:

1. Commercial General Liability: \$400,000 per claim up to \$2,500,000 per occurrence;
2. Automobile Liability: \$400,000 per claim up to \$2,500,000 per occurrence;
3. Worker's Compensation in accordance with the statutory limits; and Employer's Liability: \$1,000,000; and

(D) The subletting of the services will in no way relieve the Consultant of its primary responsibility for the quality and performance of the services to be performed hereunder and the Consultant shall assume full liability for the services performed by its Subconsultants.

(E) The payment for the services of any Subconsultants will be reimbursed at cost by the Commission in accordance with the submitted invoices for such services, as set forth in paragraph (8), entitled "Compensation".

(F) The Consultant agrees to furnish a list of any Commission-approved DBE subconsultants under this Agreement upon the request of the Commission.

(G) The Consultant agrees that any agreement between the consultant and any subconsultant shall be an actual cost plus fixed fee agreement if the amount of the agreement between the consultant and subconsultant exceeds \$25,000.

(8) COMPENSATION: The Consultant shall be compensated based on hourly salary costs of employees, salary related expenses, general overhead and profit, and direct non-salary costs as allowed by 48 CFR Part 31, the Federal Acquisition Regulations (FAR), and 23 CFR 172, Administration of Engineering and Design Related Service Contracts. Payment under the provisions of this Agreement is limited to those costs incurred as restricted by Commission reimbursement policy and in accordance with generally accepted accounting principles to the extent that they are considered necessary for execution of the work. The following provisions apply with respect to the payment of fees to the Consultant:

(A) Labor Costs, Overhead and Profit: Payment shall be made based on the actual productive hours expended by personnel multiplied by the corresponding hourly rates indicated in the "Schedule of Hourly Labor Billing

Rates", attached as Exhibit I and incorporated herein. These rates include overhead and profit. Profit is established at a fixed 14% of allowable salary costs for Consultant's personnel. The schedule is effective for three (3) year(s) but may be revised no more than once each year to reflect changes in salary and overhead costs, if applicable, from the date of execution of this Agreement. All information requested in the attached Exhibit I shall be provided by the Consultant.

1. Overhead - Direct Labor: Direct labor overhead costs include additions to payroll cost for holidays, sick leave, vacation, group insurance, workers' compensation insurance, social security taxes (FICA), unemployment insurance, disability taxes, retirement benefits, and other related items. Direct labor overhead is shown on Exhibit I.

2. Overhead - General and Administrative: General and administrative overhead costs include administrative salaries (including non-productive salary of associates and employees), officer services, equipment rental and maintenance, office rent and utilities, office maintenance, office supplies, insurance, taxes, professional development expenses, legal and audit fees, professional dues and licenses, use of electronic computer for accounting, and other related items. The percentage of direct straight time payroll to be added to salary costs is shown on Exhibit I.

(B) Direct Non-Salary Costs: Payment shall be made based on the actual costs of Consultant's direct non-salary costs incurred in fulfilling the terms of this Agreement. Examples of direct non-salary costs include but are not limited to travel and subsistence, subcontract services, reproductions, computer charges, materials and supplies, and other related items necessary for completion of the services. Direct non-salary costs will be reimbursed at actual cost without any override or additives.

(C) Property and Equipment: The property and equipment used on this project such as automotive vehicles, access equipment, office equipment, etc., shall be owned, rented or leased by the Consultant, and charges will be made to the project for the use of such property at the rate established by company policies and practices. Approval by the Commission will be required prior to acquisition of reimbursable special equipment.

(D) Changes in Hourly Rates: The hourly rates indicated in Exhibit I may also be revised when, upon expiration of the existing Exhibit I, a new "Schedule of Hourly Labor Billing Rates" is submitted by the Consultant and approved by the Engineer. The Consultant shall submit all revisions to Exhibit I no later than thirty (30) days prior to the expiration date of the effective Exhibit I. If no revisions are submitted, the most recent billing rates established in Exhibit I will be extended for the following year.

(E) Individual Project Payment Ceiling: Total payment for an individual project carried out under this Agreement shall be limited to the "contract ceiling" stated in the Memorandum of Understanding covering that specific investigation. No work shall be done or costs incurred in excess of this ceiling until a supplemental Memorandum of Understanding is approved by the Engineer.

(F) Payments: The Consultant may submit an invoice for services rendered to the Commission after each project is complete. The invoice shall indicate the project is complete. Upon receipt of the invoice, the Commission will, as soon as practicable, pay the Consultant for the services rendered. No portion of the invoice will be retained. However, if an audit indicates an invoice(s) was incorrect, the Consultant will reimburse the Commission immediately upon notification.

(G) Funds from MoDOT's Highway Safety Division or MoDOT Technology Transfer Funds will be used to reimburse the Consultant during the period of the Agreement. The Consultant recognizes that funding for the services contemplated in the Agreement is dependent on congressional actions and overall program funding limits for the Bridge Engineering Assistance Program are not guaranteed.

(H) The Consultant recognizes that the Commission has identical agreements with other consultants to provide these same services to local agencies. The total amount the Consultant will receive under this Agreement is dependent upon the number and scope of approved projects for which Consultant is selected by counties, cities, and other political subdivisions.

(I) Audit: The Commission, if it so elects, will conduct a final cost audit of the Consultant's services performed under the terms of this Agreement. The Consultant will, during normal working hours, permit access to all records and books for the audit.

(9) PERIOD OF SERVICE:

(A) The services, and if more than one then each phase thereof, shall be completed in accordance with the schedule contained in the Memorandum of Understanding for each request for services. The Consultant and the Commission will be required to meet this schedule.

(B) The Commission will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of the Consultant. Requests for extensions of time shall be made in writing by the Consultant, before that phase of work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested. Such extension of time shall be the sole allowable compensation for all such delays.

(C) The Consultant and Commission agree that time is of the essence, and the Consultant and Commission will be required to meet the schedules in the appropriate Memorandum of Understanding. In the event of delays due to unforeseeable causes beyond the control of and without fault or negligence of the Consultant, no claim for damage shall be made by either party. An extension of time shall be the sole allowable compensation for any such delays.

(D) As used in this provision, the term "delays due to unforeseeable causes" includes the following:

1. War or acts of war, declared or undeclared;



2. Flooding, earthquake, or other major natural disaster preventing the Consultant from performing necessary services at the project site, or in the Consultant's offices, at the time such services must be performed;

3. The discovery on the project of differing site conditions, hazardous substances, or other conditions which, in the sole judgment of the Engineer, justifies a suspension of the services or necessitates modifications of the project design or plans by the Consultant;

4. Court proceedings;

5. Changes in services or extra services.

6. Delays caused by the local bridge owner, MoDOT district or Bridge Division.

(10) SUSPENSION OR TERMINATION OF AGREEMENT:

(A) The Commission may, without being in breach hereof, suspend or terminate the Consultant's services under this Agreement, or any services included in an active Memorandum of Understanding, for cause or for the convenience of the Commission, upon giving to the Consultant at least fifteen (15) days' prior written notice of the effective date thereof. The Consultant shall not accelerate performance of services during the fifteen (15) day period without the express written consent of the Commission.

(B) Should the Agreement be suspended or terminated for the convenience of the Commission, the Commission will pay to the Consultant its costs as set forth in paragraph (8)(A), for actual hours expended prior to such suspension or termination multiplied by the hourly rates included in the "Schedule of Hourly Billing Rates", plus reasonable hours incurred by the Consultant in suspending or terminating the services. The payment will make no other allowances for damages or anticipated fees or profits. In the event of a suspension of the services, the Consultant's compensation and schedule for performance of services hereunder shall be equitably adjusted upon resumption of performance of the services.

(C) The Consultant shall remain liable to the Commission for any claims or damages occasioned by any failure, default, error or omission in carrying out the provisions of this Agreement during its life, including those giving rise to a termination for non-performance or breach by Consultant. This liability shall survive and shall not be waived, or estopped by final payment under this Agreement.

(D) The Consultant shall not be liable for any errors or omissions contained in deliverables which are incomplete as a result of a suspension or termination where the Consultant is deprived of the opportunity to complete the Consultant's services.

(11) OWNERSHIP OF DRAWINGS AND DOCUMENTS:

(A) All deliverables, drawings and documents prepared in performance of this Agreement shall be delivered to and become the property of the Commission and the local agency upon suspension, abandonment, cancellation, termination, or completion of the Consultant's services hereunder. Basic survey notes, design

computations, and other data prepared under this Agreement shall be made available for use by the Commission or local agency without further compensation and without restriction or limitation on their use.

(B) The Commission may incorporate any portion of the deliverables into a project other than that for which they were performed, without further compensation to the Consultant; provided however, that (1) such deliverables shall thereupon be deemed to be the work product of the Commission and the Commission shall use same at its sole risk and expense; and (2) the Commission shall remove the Consultant's name, seal, endorsement, and all other indices of authorship from the deliverables.

(C) If the local agency incorporates any portion of the work into a project other than for which it was performed, it shall be deemed the work of the local agency. The Commission shall not be liable to further compensate the Consultant for such local agency use, or disclosure of information by a local agency concerning the deliverables to any party outside this Agreement

(12) DECISIONS UNDER THIS AGREEMENT AND DISPUTES:

(A) The Engineer will determine the acceptability of the drawings, specifications, and estimates and all other deliverables to be furnished, and will decide the questions that may arise relative to the proper performance of this Agreement. The determination of acceptable deliverables may occur following final payment, and as late as during the construction of the project which decisions shall be conclusive, binding and incontestable, if not arbitrary, capricious or the result of fraud.

(B) The Engineer will decide all questions which may arise as to the quality, quantity, and acceptability of services performed by Consultant and as to the rate of progress of the services; all questions which may arise as to the interpretation of the plans and specifications or other deliverables; all questions as to the acceptable fulfillment of the Agreement on the part of the Consultant; the proper compensation for performance or breach of the Agreement; and all claims of any character whatsoever in connection with or growing out of the services of the Consultant, whether claims under this Agreement or otherwise. The Engineer's decisions shall be conclusive, binding and incontestable if not arbitrary, capricious of the result of fraud.

(C) If the Consultant has a claim for payment against the Commission which in any way arises out of the provisions of this Agreement or the performance or non-performance hereunder, written notice of such claim must be made in triplicate within sixty (60) days of the Consultant's receipt of final payment for each individual project. Notwithstanding paragraph 20 of this Agreement, the notice of claim shall be personally delivered or sent by certified mail to the office of the Secretary to the Commission in Jefferson City, Missouri. The notice of claim shall contain an itemized statement showing completely and fully the items and amounts forming the basis of the claim and the factual and legal basis of the claim.

(D) Any claim for payment or an item of any such claim not included in the notice of claim and itemized statement, or any such claim not filed within the time

provided by this provision shall be forever waived, and shall neither constitute the basis of nor be included in any legal action, counterclaim, set-off, or arbitration against the Commission.

(E) The claims procedure in paragraphs 12 (C) and (D) do not apply to any claims of the Commission against the Consultant. Further, any claims of the Commission against the Consultant under this Agreement are not waived or estopped by the claims procedure in paragraphs 12 (C) and (D).

(13) SUCCESSORS AND ASSIGNS: The Commission and the Consultant agree that this Agreement and all agreements entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.

(14) INDEMNIFICATION RESPONSIBILITY:

(A) The Consultant agrees to save harmless the Commission, the FHWA, and local agency from all liability, losses, damages, and judgments for bodily injury, including death, and property damage to the extent due to the Consultant's negligent acts, errors, or omissions in the services performed or to be performed under this Agreement, including those negligent acts, errors, or omissions of the Consultant's employees, agents, and Subconsultants.

(B) The Consultant shall be responsible for the direct damages incurred by the Commission or local agency as result of the negligent acts, errors, or omissions of the Consultant or anyone for whom the Consultant is legally responsible, and for any losses or costs to repair or remedy any subsequent stage of project development, phase of work, or project construction as a result of such negligent acts, errors or omissions; provided, however, the Consultant shall not be liable to the Commission or local agency for such losses, costs, repairs and/or remedies which constitute betterment of or an addition of value to the subsequent stages of project development or the construction of the project.

(C) Neither the Commission's review, approval or acceptance of, or payment for, any services required under this Agreement, nor the termination of this Agreement prior to its completion, will be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement. This indemnification responsibility survives the completion of this Agreement, as well as the completion of subsequent stages of project development or the construction of the project at some later date, and remains as long as a construction contractor may file or has pending a claim or lawsuit against the Commission or local agency on this project arising out of the Consultant's services hereunder.

(15) INSURANCE:

(A) The Consultant shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in full force and effect to protect the Consultant from claims under Worker's Compensation Acts, claims for damages for personal injury or death, and for damages to property arising from the negligent acts, errors, or omissions of the Consultant

and its employees, agents, and Subconsultants in the performance of the services covered by this Agreement, including, without limitation, risks insured against in commercial general liability policies.

(B) The Consultant shall also maintain professional liability insurance to protect the Consultant against the negligent acts, errors, or omissions of the Consultant and those for whom it is legally responsible, arising out of the performance of professional services under this Agreement.

(C) The Consultant's insurance coverages shall be for not less than the following limits of liability:

1. Commercial General Liability: \$400,000 per claim up to \$2,500,000 per occurrence;
2. Automobile Liability: \$400,000 per claim up to \$2,500,000 per occurrence;
3. Worker's Compensation in accordance with the statutory limits; and Employer's Liability: \$1,000,000; and
4. Professional ("Errors and Omissions") Liability: \$1,000,000.00, each claim and in the annual aggregate.

(D) The Consultant shall, upon request at any time, provide the Commission with certificates of insurance evidencing the Consultant's commercial general or professional liability ("Errors and Omissions") policies and evidencing that they and all other required insurance is in effect, as to the services under this Agreement.

(E) Any insurance policy required as specified in paragraph No. (15) shall be written by a company which is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State of Missouri.

(16) NONDISCRIMINATION CLAUSE: The Consultant shall comply with all state and federal statutes applicable to the Consultant relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).

(17) ACTIONS: No action may be brought by either party hereto concerning any matter, thing, or dispute arising out of or relating to the terms, performance, non-performance, or otherwise of this Agreement except in the Circuit Court of Cole County, Missouri. The parties agree that this Agreement is entered into at Jefferson City, Missouri, and substantial elements of its performance will take place or be delivered at Jefferson City, Missouri, by reason of which the Consultant consents to venue of any action against it in Cole County, Missouri. The Consultant shall cause this provision to be incorporated into all of its agreements with, and to be binding upon, all subconsultants of the Consultant in the performance of this Agreement.

(18) AUDIT OF RECORDS: For purpose of an audit, the Consultant shall maintain all those records relating to direct costs and expenses incurred under this Agreement, including but not limited to invoices, payrolls, bills, receipts, etc. These records must be available at all reasonable times to the Commission or its designees and representatives, at the Consultant's offices, at no charge, during the Agreement period and any extension thereof, and for the three (3) year period following the date of final payment made under this Agreement. If the Commission has notice of a potential claim against the Consultant and/or the Commission based on the Consultant's services under this Agreement, the Consultant, upon written request of the Commission, shall retain and preserve its records until the Commission has advised the Consultant in writing that the disputed claim is resolved.

(19) NOTICE TO THE PARTIES: All notices or communications required by this Agreement shall be made in writing, and shall be effective upon receipt by the Commission or the Consultant at their respective addresses of record. Letters or other documents which are prepared in 8.5 x 11 inch format may be delivered by telefax, provided that an original is received at the same address as that to which that telefax message was sent, within three (3) business days of the telefax transmission. Either party may change its address of record by written notice to the other party.

(A) Notice to the Commission: Notices to the Commission shall be addressed and delivered to the following Engineer, who is hereby designated by the Commission as its primary authorized Engineer for administration, interpretation, review, and enforcement of this Agreement and the services of the Consultant hereunder:

Mr. Dennis Heckman, P.E.  
State Bridge Engineer  
Missouri Department of Transportation  
P.O. Box 270  
Jefferson City, Missouri 65102  
Telefax No.: (573) 526-5488  
Telephone No.: (573) 751-0265

The Commission reserves the right to substitute another person for the individual named at any time, and to designate one or more other Engineers to have authority to act upon its behalf generally or in limited capacities, as the Commission may now or hereafter deem appropriate. Such substitution or designations shall be made by the Chief Engineer in a written notice to the Consultant.

(B) Notice to the Consultant: Notices to Consultant shall be addressed and delivered to Consultant's representative, as follows:

[Addressee Name]  
[Addressee Title]

[Consultant Firm Name]  
[Street Address and P.O. Box, if any]  
[City], [State] [Zip Code]  
Telefax No.: [Give Number]  
Telephone No.: [Give Number]

The Consultant reserves the right to substitute another person for the individual named at any time, and to designate one or more Consultant's Representatives to have authority to act upon its behalf generally or in limited capacities, as the Consultant may now or hereafter deem appropriate. Such substitutions or designations shall be made by the Consultant's president or chief executive officer in a written notice to the Commission.

(20) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Consultant shall comply with all local, state, and federal laws and regulations which govern the performance of this Agreement.

(21) CONFIDENTIALITY: The Consultant agrees that the Consultant's services under this Agreement is a confidential matter between the Consultant, the local agency, and the Commission. The Consultant shall not disclose any aspect of the Consultant's services under this Agreement to any other person, corporation, governmental entity, or news media, excepting only to such employees, subconsultants, and agents as may be necessary to allow them to perform services for the Consultant in the furtherance of this Agreement, without the prior approval of the Commission's Engineer; provided, however, that any confidentiality and non-disclosure requirements set out herein shall not apply to any of the Consultant's services or to any information which (1) is already in the public domain or is already in the Consultant's possession at the time the Consultant performs the services or comes into possession of the information, (2) is received from a third party without any confidentiality obligations, or (3) is required to be disclosed by governmental or judicial order. Any disclosure pursuant to a request to the Commission under Chapter 610, RSMo, shall not constitute a breach of this Agreement. The content and extent of any authorized disclosure shall be coordinated fully with and under the direction of the Commission's Engineer, in advance.

(22) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the Consultant.

(23) SEVERABILITY AND SURVIVAL:

(A) Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Commission and the Consultant.

(B) All express representations, indemnifications, or limitations of liability made or given in this Agreement will survive the completion of all services by the Consultant under this Agreement or the termination of this Agreement for any reason.

(24) PAYMENT BOND: In the event a subconsultant is used for any services under this Agreement, Consultant shall provide a payment bond under Section 107.170 RSMo. (2000), as amended, for any services which are printing, aircraft, archaeology, surveying, hazardous waste or geotechnical including but not limited to the collection of soil samples. Any payment bond must be acceptable to the Commission and must be provided prior to the performance of service. The cost for the payment bond must have been included in the fee of the Consultant under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective proper officials.

Executed by the Consultant the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Executed by the Commission the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

[CONSULTANT'S FIRM NAME]

By \_\_\_\_\_

By \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

Secretary to the Commission

Title: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_

\_\_\_\_\_

Commission Counsel

Title: \_\_\_\_\_