

MICHIGAN DEPARTMENT OF TRANSPORTATION

«UNIV»

CONTRACT

THIS CONTRACT is made and entered into this date of _____ by and between the Michigan Department of Transportation, hereinafter referred to as the “DEPARTMENT,” and «Univ», hereinafter referred to as the “UNIVERSITY.”

WITNESSETH:

WHEREAS, the DEPARTMENT desires to engage the UNIVERSITY to provide professional services for «ProjDesc» on an as needed/when needed basis, such work collectively referred to hereinafter as the “SERVICES”; and

WHEREAS, the DEPARTMENT may issue work to the UNIVERSITY by way of a written document defining such work and detailing the reimbursement conditions, such document to be called an “AUTHORIZATION”; and

WHEREAS, each AUTHORIZATION will identify a funded research and/or development activity, hereinafter referred to as a “PROJECT,” and/or the ongoing activity of providing technical information to transportation agencies in Michigan, hereinafter referred to as the “PROGRAM”; each AUTHORIZATION will include a written document listing activities (Scope of Services) for PROJECT(S) and/or PROGRAM(S) and the associated costs, such document hereinafter referred to as a “WORK PLAN”; and

WHEREAS, each AUTHORIZATION will define the terms of reimbursement as actual cost basis, hereinafter referred to as “ACTUAL COST”; or as lump sum basis, hereinafter referred to as “LUMP SUM”; or as milestone basis, with lump sum payments to be made upon the accomplishment of defined milestones, hereinafter referred to as “MILESTONE”; or as unit price per unit of work basis, hereinafter referred to as “UNIT PRICE”; UNIT PRICES may be bid or agreed upon. Each AUTHORIZATION will also set forth the match requirements, as applicable; and

WHEREAS, the SERVICES will be performed in accordance with the DEPARTMENT’s Research and Implementation Manual, dated September 2008, as revised, attached hereto and made a part hereof by reference as if the same were repeated in full herein, said manual hereinafter referred to as the “MANUAL.” In the event of any discrepancies between the body of this Contract and the MANUAL, the body of the Contract will govern;

NOW, THEREFORE, the parties agree that:

THE UNIVERSITY WILL:

1. The UNIVERSITY specifically agrees that it will not perform the SERVICES without a prior written AUTHORIZATION for such SERVICES. By its signature on this Contract, the UNIVERSITY denotes its understanding that DEPARTMENT employees do not have the authority to verbally assign work to the UNIVERSITY. In the event that any DEPARTMENT employee attempts to assign SERVICES under this Contract without a written AUTHORIZATION specifically providing for such SERVICES, the UNIVERSITY will refuse to do any such work and will immediately contact the DEPARTMENT's Contract Administrator and/or the DEPARTMENT's Office of Research and Best Practices Administrator. A sample AUTHORIZATION form is attached as Exhibit A.
2. Perform all SERVICES in conformity with the DEPARTMENT's applicable standards, as provided by the DEPARTMENT with each AUTHORIZATION.
3. During the performance of the SERVICES, be responsible for any loss of or damage to original documents belonging to the DEPARTMENT while they are in the UNIVERSITY's possession. Restoration of lost or damaged original documents will be at the UNIVERSITY's expense.
4. Make such trips to confer with representatives of the DEPARTMENT and the United States Department of Transportation, Federal Highway Administration (FHWA), as may be necessary in carrying out the SERVICES set forth and budgeted in the AUTHORIZATION(S).
5. During the performance of the SERVICES, submit written quarterly reports to the DEPARTMENT. The quantity, timing, period covered, recipients, content, and format of such written quarterly reports will be as set forth in the MANUAL.
6. During the performance of the SERVICES, the UNIVERSITY will maintain a quality assurance program as it relates to the work at hand. Documentation of the quality assurance program will be available to the DEPARTMENT when requested. A quality assurance program will include, but not be limited to, calibration of equipment and assurance that testing procedures are in accordance with appropriate American Society for Testing and Materials (ASTM) and/or American Association of State Highway and Transportation Officials (AASHTO) guidelines. Also, equipment operators must be properly trained and/or certified for the testing method used in the research.
7. Prepare the graphics and text for the reports for the SERVICES in a form suitable and acceptable to the DEPARTMENT, such suitability and acceptability to be determined by the DEPARTMENT. This provision is limited to the format of the graphics and text. Nothing herein is to be construed as allowing the DEPARTMENT to declare as

unsuitable or unacceptable any of the graphics or text because of the conclusions arrived at by the UNIVERSITY through analysis of data collected for the SERVICES.

As used throughout this Contract, the words “satisfactory” and “acceptance” are defined to mean that the product is in the format required and is complete in accordance with the contract requirements; however, it does not mean that the conclusions arrived at for a PROJECT must be approved or agreed to by the DEPARTMENT or the FHWA.

8. Prepare and submit to the DEPARTMENT a written preliminary copy of the Final PROJECT Report in accordance with the WORK PLAN set forth in the AUTHORIZATION for its review and acceptance prior to submission of the Final PROJECT Report. The DEPARTMENT will notify the UNIVERSITY of its acceptance or rejection of the Final PROJECT Report within forty-five (45) days of receipt of same from the UNIVERSITY. The Final PROJECT Report will be submitted to the DEPARTMENT no later than ninety (90) days before the expiration date of the AUTHORIZATION.
9. Submit any proposed publication or notes for any proposed oral presentation by the UNIVERSITY or its subcontractors of the results of the SERVICES for prior review and acceptance by the DEPARTMENT. Prior to publication or presentation, the UNIVERSITY will give the DEPARTMENT an opportunity to review the manuscript or notes and will consider any suggested modifications. The DEPARTMENT will review the proposed publication or presentation notes and may suggest modifications. Such review and acceptance is for the DEPARTMENT’s own purposes and does not relieve the UNIVERSITY of any of its obligations and responsibilities for any claims arising out of such publication or presentation. Any such publication or presentation will include proper credit for all parties to this Contract. The UNIVERSITY will not publish or present the results of the SERVICES until after the DEPARTMENT has accepted the Final PROJECT Report and reviewed and accepted such proposed publication or presentation. The UNIVERSITY will not publish or present the DEPARTMENT’s confidential information, in accordance with the provisions of Section 12.
10. Permit representatives of the DEPARTMENT, the FHWA, and other authorized public agencies interested in the SERVICES and authorized in writing by the DEPARTMENT to have full access to the SERVICES during the UNIVERSITY’s performance.
11. With regard to audits and record-keeping,
 - a. The UNIVERSITY will establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this Contract or any AUTHORIZATION, said records to be hereinafter referred to as the “RECORDS.” Separate accounts will be established and maintained for all costs incurred under this Contract and all AUTHORIZATIONS.

- b. The UNIVERSITY will maintain the RECORDS for at least three (3) years from the date of final payment made by the DEPARTMENT under this Contract and any AUTHORIZATION. In the event of a dispute with regard to the allowable expenses or any other issue under this Contract or any AUTHORIZATION, the UNIVERSITY will thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of the decision has expired.
- c. The DEPARTMENT or its representative may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.
- d. The UNIVERSITY will comply with the Single Audit Act of 1984, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 USC 7501-7507).
- e. The UNIVERSITY will comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.
 - i. Universities expending a total of Five Hundred Thousand Dollars (\$500,000.00) or more in federal funds from one or more funding sources in their fiscal year will submit two (2) copies to the address in part ii below:

- The Reporting Package
- The Data Collection Form
- The audit firm management letter to the agency, if issued.

The OMB Circular A-133 audit must be submitted to the address below in accordance with the time frame established in the circular, as revised or amended.

- ii. Universities expending less than Five Hundred Thousand Dollars (\$500,000.00) in federal funds must submit a letter to the DEPARTMENT advising that an OMB Circular A-133 audit was not required. The letter will indicate the applicable fiscal year, the amount of federal funds spent, the name(s) of the DEPARTMENT federal programs, and the Catalog of Federal Domestic Assistance (CFDA) grant number(s). This information must also be submitted to the address below.

Address: Michigan Department of Transportation
Bureau of Finance and Administration
Contract Services Division
Service Prequalification Technician
P. O. Box 30050
Lansing, MI 48909

- iii. Universities must also comply with applicable state laws and regulations relative to audit requirements.
 - iv. Universities will not charge audit costs to the DEPARTMENT's federal programs that are not in accordance with the aforementioned OMB Circular A-133 requirements.
 - v. All universities are subject to the federally-required monitoring activities, which may include limited scope reviews and other on-site monitoring.
 - vi. Each AUTHORIZATION will include the following information related to the associated federal award: CFDA title, CFDA number, federal project name and number, award year, and federal agency.
- f. If any part of the work is subcontracted, the UNIVERSITY will assure compliance with subsections (a), (b), (c), (d), and (e) above for all subcontracted work.
12. If the DEPARTMENT discloses its confidential information to the UNIVERSITY, the UNIVERSITY will maintain such information as confidential. Information provided by the DEPARTMENT will be deemed confidential if it is marked confidential or stated in writing to be confidential. The above obligations of confidentiality will not apply to:
- a. Information for which the DEPARTMENT gives prior written permission for publication or use.
 - b. Information that is required to be disclosed based on law, legal process, or court order.

A violation of this provision will be considered a breach of this Contract, and the DEPARTMENT may terminate this Contract and/or the AUTHORIZATION(S) under the provisions of Section 29(b).

News releases pertaining to this Contract or the SERVICES to which it relates will not be made without prior written approval from the DEPARTMENT, and then only in accordance with explicit instructions from the DEPARTMENT. News releases made without the DEPARTMENT's approval will be considered a breach of the Contract, and the DEPARTMENT may terminate this Contract under the provisions of Section 29(b).

13. Carry and maintain for the life of the PROJECT and/or the PROGRAM, as a minimum, insurance or self-insurance. Insurance payment for loss or damage will be made to the DEPARTMENT. The UNIVERSITY will maintain self-insurance or provide liability, professional liability, public liability, and property damage insurance, insuring as they may appear the interests of all parties to this Contract against any and all claims that may arise out of the UNIVERSITY's operation hereunder. Universities receiving operating funds will provide Workers' Compensation Insurance as required by law. If the

UNIVERSITY is self-insured, the UNIVERSITY will provide the DEPARTMENT with documentation satisfactory to the DEPARTMENT of such self-insurance. If the UNIVERSITY provides liability, professional liability, public liability, and property damage insurance, the UNIVERSITY will provide the DEPARTMENT with a certificate of insurance. The UNIVERSITY will notify the DEPARTMENT in writing at least thirty (30) days in advance of any changes in insurance coverage.

14. Submit billings for SERVICES performed and written progress reports to the DEPARTMENT as follows:
 - a. The progress reports will outline the work accomplished during the reporting period; identify any problems, real or anticipated, associated with the conduct of the SERVICES; and identify any deviations from the WORK PLAN. The progress reports will be in accordance with the invoice submission requirements set forth in the MANUAL.
 - b. Billings for the SERVICES will be on an ACTUAL COST basis, a LUMP SUM basis, a MILESTONE basis, or a UNIT PRICE basis, as defined in the particular AUTHORIZATION. The billings for SERVICES on an ACTUAL COST basis will be in accordance with the provisions of Section 18. The billings for SERVICES on a LUMP SUM basis will be in accordance with the LUMP SUM schedule in the AUTHORIZATION. The billings for SERVICES on a MILESTONE basis will be in accordance with the MILESTONE schedule in the AUTHORIZATION. Each billing for MILESTONE payment will only occur upon acceptance of all work detailed in the MILESTONE schedule in the AUTHORIZATION for the specific MILESTONE. The billings for SERVICES on a UNIT PRICE basis will be in accordance with the UNIT PRICE(S) defined in the AUTHORIZATION. The billings for SERVICES on an ACTUAL COST basis or a UNIT PRICE basis will not be submitted more often than once per month.
 - c. The UNIVERSITY agrees that the costs reported to the DEPARTMENT for this Contract will represent only those items that are properly chargeable in accordance with this Contract. The UNIVERSITY also certifies that it has read the Contract terms and has made itself aware of the applicable laws, regulations, and terms of this Contract that apply to the reporting of costs incurred under the terms of this Contract.
 - d. The UNIVERSITY agrees to submit billings within thirty (30) days of completion of the billable activities. Any other schedule of payment must be requested in writing and approved by the DEPARTMENT. For SERVICES provided prior to September 30 of any year, estimated billing amounts for informational purposes or the actual billings must be received by the DEPARTMENT prior to October 10 of that year. The actual invoices must be received by November 15 of that year or payment will not be made. The actual invoiced amounts cannot exceed previously submitted estimates. In the event that the actual invoiced amounts

exceed the submitted estimated amount(s), the UNIVERSITY will be paid only up to the submitted estimated amount(s).

- e. The final billing for the SERVICES must be received within thirty (30) days of completion of the SERVICES. The DEPARTMENT may close the Contract and/or any AUTHORIZATION after the thirty (30) days have passed, and any costs due the UNIVERSITY may not be reimbursed until closure by the DEPARTMENT of the AUTHORIZATION.
- f. The UNIVERSITY will only bill the DEPARTMENT for up to eighty-five percent (85%) of the total amount of any AUTHORIZATION prior to submitting the Final PROJECT Report to the DEPARTMENT and receiving DEPARTMENT acceptance of such Final PROJECT Report.
- g. Any billings that do not contain the required information, as set forth in the MANUAL, will not be accepted or paid by the DEPARTMENT.

THE DEPARTMENT WILL:

- 15. Furnish for the use of the UNIVERSITY such DEPARTMENT standards and other information as may be needed in the AUTHORIZATION(S).
- 16. Upon receipt of the proposed estimate, the DEPARTMENT will conduct negotiations with the UNIVERSITY to determine the acceptable hours or percentage of effort and costs to be paid the UNIVERSITY for the work of completing the SERVICES. When mutual agreement is reached, the DEPARTMENT will issue a written AUTHORIZATION to the UNIVERSITY to proceed with the work. Each AUTHORIZATION will include the WORK PLAN, the effective date upon which the UNIVERSITY may begin work, the completion date, the agreed upon maximum compensation for the work, and the designated Key People, as defined in Section 28. Each AUTHORIZATION will define the basis of payment for the SERVICES as either ACTUAL COST, LUMP SUM, MILESTONE, or UNIT PRICE, in accordance with the provisions of Section 17.
- 17. Make payment to the UNIVERSITY after receipt of billings, subject to verification of progress, in accordance with the provisions enumerated below. Within thirty (30) days of the receipt of a billing from the UNIVERSITY, the DEPARTMENT will either approve the billing for payment or, in lieu of such approval, inform the UNIVERSITY that such approval has not been given. Additionally, the DEPARTMENT will inform the UNIVERSITY why the billing has not been approved and of the actions, if any, required of the UNIVERSITY to obtain such approval. Upon approval by the DEPARTMENT Project Manager, the billing will be submitted to the DEPARTMENT's Office of Research and Best Practices for final approval prior to payment. This subsequent payment process requires up to an additional thirty (30) days. The DEPARTMENT will make payment only for SERVICES actually performed and costs actually incurred.

- a. Compensation for SERVICES that will be reimbursed on an ACTUAL COST basis will be in accordance with the definition of such costs set forth in Section 18 and will not exceed the maximum amount set forth in each AUTHORIZATION.
- b. Compensation for SERVICES that will be reimbursed on a LUMP SUM basis will be in accordance with the LUMP SUM payment schedule detailed in each AUTHORIZATION and will not exceed the amount set forth in each AUTHORIZATION.
- c. Compensation for SERVICES that will be reimbursed on a MILESTONE basis will be in accordance with the MILESTONE payment schedule detailed in each AUTHORIZATION and will not exceed the amount set forth in each AUTHORIZATION.
- d. Compensation for SERVICES that will be reimbursed on a UNIT PRICE basis will be in accordance with the defined UNIT PRICE(S) detailed in each AUTHORIZATION and will not exceed the amount set forth in each AUTHORIZATION.
- e. The DEPARTMENT will only make payment to the UNIVERSITY for up to eighty-five percent (85%) of the amount of any AUTHORIZATION until it has received and accepted the Final PROJECT Report.
- f. Payment of the final fifteen percent (15%) of the compensation for the SERVICES performed under any AUTHORIZATION will be made upon acceptance of the Final PROJECT Report by the DEPARTMENT.
- g. Reimbursement for costs incurred is subject to the cost criteria set forth in 48 CFR Part 31 and 2 CFR Parts 215 and 220, incorporated herein by reference as if the same were repeated in full herein.

Reimbursement of ACTUAL COST pursuant to this section will not constitute a final determination by the DEPARTMENT of the allowability of such cost and will not constitute a waiver by the DEPARTMENT of any violation of the terms of this Contract committed by the UNIVERSITY.

18. Determine that payment for the costs of SERVICES required and performed that are to be reimbursed on an ACTUAL COST basis is in accordance with the following:
 - a. Direct Salary Costs: Actual labor costs of personnel performing the SERVICES. This cost will be based on the employees' actual hourly rates of pay and the actual hours of performance on the SERVICES, as supported by employee time and earning records, or on the employees' percentage of effort pay, in accordance with the UNIVERSITY's effort certification system.
 - b. Other Direct Costs: Actual costs of materials that may be required hereunder but

that are not normally provided as part of the overhead of the UNIVERSITY. All actual costs for which the UNIVERSITY seeks reimbursement will be itemized on its monthly accounting statement, a copy of which is to be provided for each month included on the billing. The UNIVERSITY will maintain the proper receipts and proof of payments as required under this Contract.

- c. Overhead and Indirect Costs: Overhead will be based on the rate set forth in the approved Colleges and Universities Rate Agreement between the UNIVERSITY and its cognizant agency; the rate will be applied to modified total direct costs, as defined in that agreement. Indirect costs will include those costs that, because of their incurrence for common or joint objectives, are not readily subject to treatment as direct costs.
 - d. Subconsultant Costs: Actual costs of subconsultants performing SERVICES under this Contract.
 - e. Travel and Subsistence: Actual costs in accordance with and not to exceed the amounts set forth in the current State of Michigan or federal Standardized Travel Regulations (41 CFR Chapter 301), whichever the UNIVERSITY accounting system will support, incorporated herein by reference as if the same were repeated in full herein.
 - f. Reimbursement for costs incurred is subject to the cost criteria set forth in 48 CFR Part 31 and 2 CFR Parts 215 and 220, incorporated herein by reference as if the same were repeated in full herein.
 - g. The UNIVERSITY will not be paid for costs attributable to the correction of errors and omissions by the UNIVERSITY.
19. Make payment to the UNIVERSITY in accordance with the following:
- a. For the costs of the SERVICES that will be reimbursed on an ACTUAL COST basis, progress payments may be made for reimbursement of amounts earned to date upon receipt of a billing and the written progress report, as set forth in the AUTHORIZATION. Progress payments will include direct salary costs, other direct costs, and calculated amounts for overhead using applied overhead rates, as herein set forth. Progress payments will not be made more than once a month.
 - b. In the event that the DEPARTMENT determines that the UNIVERSITY is not currently eligible to receive any or all of the funds requested, it will promptly notify the UNIVERSITY, stating the reasons for such determination.
 - c. Upon receipt by the DEPARTMENT of the required documents and any other accompanying information in a form satisfactory to the DEPARTMENT, the DEPARTMENT will process the payment request if the UNIVERSITY is complying with its obligations pursuant to the Contract and/or the

AUTHORIZATION(S). Reimbursement of any costs pursuant to this section will not constitute a final determination by the DEPARTMENT of the allowability of such costs and will not constitute a waiver by the DEPARTMENT of any violation of the terms of this Contract committed by the UNIVERSITY.

- d. The DEPARTMENT will make a final determination as to allowability of costs only after final audit of the SERVICES has been conducted. Regardless of its costs, the UNIVERSITY will not be entitled to compensation in excess of the maximum amount(s) set forth in Section 22 hereof.
20. When work occasioned at the DEPARTMENT's request is in addition to or other than work provided for by the express intent of this Contract, the DEPARTMENT will reimburse the UNIVERSITY for all such work on an ACTUAL COST basis, as defined in Section 18. The performance of and payment for such work will require the submission of a proposal to perform the work and the award of a written AUTHORIZATION revision prior to the UNIVERSITY beginning the work.

IT IS FURTHER AGREED THAT:

21. The parties will consider the SERVICES to be complete when accepted by the DEPARTMENT. Such acceptance by the DEPARTMENT is not intended to nor does it relieve the UNIVERSITY of any of its obligations and responsibilities herein.
22. The DEPARTMENT's maximum obligation for payment of funds for all AUTHORIZATIONS processed under this Contract is «Cnotexd». The maximum obligation for payment of funds for any individual AUTHORIZATION under this Contract is «Anotexd».

DEPARTMENT funds for each AUTHORIZATION are made available through legislative appropriations and are based on projected revenue estimates. The DEPARTMENT may reduce the amount(s) and corresponding scope(s) of work of the AUTHORIZATION(S) if the revenue actually received is insufficient to support the appropriation under which each AUTHORIZATION is issued upon ninety (90) days written notice to the UNIVERSITY. The UNIVERSITY will be responsible for all costs in excess of the funds shown in each AUTHORIZATION.

For all contracts and/or AUTHORIZATIONS with FHWA/State Planning and Research funds that span multiple DEPARTMENT fiscal years, the UNIVERSITY may not proceed to work at the beginning of any DEPARTMENT fiscal year (October 1 through September 30) beginning the October 1 following the effective date of the contract and/or AUTHORIZATION until after receiving written notification from the DEPARTMENT Project Manager that the UNIVERSITY may proceed to work. Any work performed and/or costs incurred by the UNIVERSITY prior to its receipt of such DEPARTMENT notification will not be eligible for reimbursement.

23. If the UNIVERSITY deems that extra compensation is due it for work not clearly covered in this Contract and/or any AUTHORIZATION hereunder, the UNIVERSITY will notify the DEPARTMENT in writing of its intention to make claim for such extra compensation before beginning such work. Failure on the part of the UNIVERSITY to give such notification will constitute a waiver of the claim for such extra compensation. The filing of such notice by the UNIVERSITY will not be construed to establish the validity of the claim.
24. Changes in the time period, the dollar amount, or the WORK PLAN as set forth in an AUTHORIZATION will not be permitted without a prior written revised AUTHORIZATION. The dollar amount of an AUTHORIZATION will not be changed without an accompanying and comparable change in the WORK PLAN in the AUTHORIZATION. The DEPARTMENT will neither pay nor be responsible for any cost incurred by the UNIVERSITY prior to the award or subsequent to the expiration or termination of any such AUTHORIZATION or this Contract.
25. Any change in the scope, character, or term of this Contract or in the maximum amount as shown in Section 22 of this Contract will only be by award of a prior written amendment to this Contract by the parties.
26. When unreasonable delays are caused by circumstances or conditions that are not the fault of and are beyond the control of the UNIVERSITY and are significant, as determined by the DEPARTMENT, the UNIVERSITY may:
 - a. Submit a written request for an extension of time to the DEPARTMENT Project Manager.
 - b. Submit a written request for an update to its labor and overhead rates to the DEPARTMENT's Bureau of Finance and Administration, Contract Services Division, Service Prequalification Technician (address set forth in Section 11) in order to reflect the rates currently in effect for the UNIVERSITY when such changes to those rates are material.

The DEPARTMENT will provide written responses to such requests within thirty (30) days.

- c. In the event that the DEPARTMENT determines that an extension of time or an update in rates is warranted by the circumstances or conditions that are not the fault of and are beyond the control of the UNIVERSITY, the DEPARTMENT will respond by issuing an amendatory contract and/or an AUTHORIZATION revision. Such extension or granting of revised rates will not operate as a waiver by the DEPARTMENT of any of its rights herein set forth.
- d. In the event that the DEPARTMENT determines that an extension of time or an update in rates is not warranted by the circumstances or conditions, the DEPARTMENT will advise the UNIVERSITY in writing of its determination.

Such determination by the DEPARTMENT will be considered final and binding and not subject to further review or consideration.

Failure on the part of the UNIVERSITY to submit a written request for an extension of time or an update to its labor and overhead rates will constitute a waiver of the request for extra compensation for any such delay or rate change. The filing of such notice by the UNIVERSITY will not be construed to establish the validity of the request.

27. The UNIVERSITY specifically agrees that the DEPARTMENT retains the right to audit the RECORDS of the UNIVERSITY, regardless of the terms of reimbursement. Any adjustments that result from any such audits are specifically limited to those costs incurred that are reimbursed on an ACTUAL COST basis.

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

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

The DEPARTMENT will make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the UNIVERSITY, the UNIVERSITY will repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the UNIVERSITY fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the UNIVERSITY agrees that the DEPARTMENT will deduct all or a portion of the overpayment from any funds then or

thereafter payable by the DEPARTMENT to the UNIVERSITY under this Contract or any other agreement or payable to the UNIVERSITY under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The UNIVERSITY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT's decision only as to any item of expense the disallowance of which was disputed by the UNIVERSITY in a timely filed RESPONSE.

28. The DEPARTMENT and the UNIVERSITY will agree on the Key People to be assigned to the Project Team prior to any work being performed. The UNIVERSITY will not replace any Key People assigned to the Project Team without prior written approval from the DEPARTMENT. The DEPARTMENT has the right to disapprove such replacements, and the UNIVERSITY is required to find alternative replacements that are acceptable to the DEPARTMENT. The replacement of Key People from the Project Team without the DEPARTMENT's prior written approval will be considered a breach of this Contract and/or any AUTHORIZATION, and the DEPARTMENT may terminate this Contract and/or any AUTHORIZATION under the termination provisions of Section 29(b). If a member of the Project Team who is one of the Key People leaves the Project Team, the UNIVERSITY will replace that person with a person who is acceptable to the DEPARTMENT within thirty days, unless an extension of time is granted by the DEPARTMENT. Failure by the UNIVERSITY to find an acceptable replacement too the Project Team within thirty days or within the time extension granted by the DEPARTMENT, if any, will be considered a breach of the Contract, and the DEPARTMENT may terminate this Contract under the termination provisions of Section 29(b). "Key People" are defined as those people whose qualifications and experience are essential to providing quality SERVICES. "Project Team" means the personnel assigned by the UNIVERSITY and the subconsultant(s) who are responsible for the completion of the SERVICES.
29. The DEPARTMENT may terminate this Contract and/or any AUTHORIZATION(S) under this Contract for convenience or cause, as set forth below, before the SERVICES are completed upon forty-five (45) days written notice to the UNIVERSITY. The UNIVERSITY will be reimbursed in accordance with the following:

a. **Termination for Convenience:**

FOR COSTS TO BE REIMBURSED ON AN ACTUAL COST BASIS:

The UNIVERSITY will be reimbursed for all costs incurred up to the effective date set forth in the notice of termination. Such reimbursement will be as set forth

in Sections 17, 18, and 19. The DEPARTMENT will receive the work product produced by the UNIVERSITY under this Contract up to the time of termination, prior to the UNIVERSITY being reimbursed. In no case will the compensation paid to the UNIVERSITY for partial completion of the SERVICES exceed the amount the UNIVERSITY would have received had the SERVICES been completed.

FOR COSTS TO BE REIMBURSED ON A LUMP SUM BASIS:

The UNIVERSITY will be reimbursed for all costs incurred up to the effective date set forth in the notice of termination. The DEPARTMENT will pay a proportional share for the partially completed work product. The value of such partially completed work product will be determined by the DEPARTMENT based on actual costs incurred. Such reimbursement will be as set forth in Sections 17 and 19. The DEPARTMENT will receive the work product produced by the UNIVERSITY under this Contract up to the time of termination, prior to the UNIVERSITY being reimbursed. In no case will the compensation paid to the UNIVERSITY for partial completion of the SERVICES exceed the amount the UNIVERSITY would have received had the SERVICES been completed.

FOR COSTS TO BE REIMBURSED ON A MILESTONE BASIS:

The DEPARTMENT will pay the UNIVERSITY for all MILESTONES achieved for which the DEPARTMENT receives the completed work product. The DEPARTMENT will pay a proportional share for the partially completed work product of any partially completed MILESTONE. The value of such partially completed work product will be determined by the DEPARTMENT based on actual costs incurred. In no case will the compensation paid to the UNIVERSITY for partial completion of the SERVICES exceed the amount the UNIVERSITY would have received had the SERVICES been completed.

FOR COSTS TO BE REIMBURSED ON A UNIT PRICE BASIS:

The UNIVERSITY will be reimbursed for all units of work performed for which the DEPARTMENT receives the completed work product. The DEPARTMENT will pay a proportional share for the partially completed work product of any partially completed units of work. The value of such partially completed units of work will be determined by the DEPARTMENT based on actual costs incurred. In no case will the compensation paid to the UNIVERSITY for partial completion of the SERVICES exceed the amount the UNIVERSITY would have received had the SERVICES been completed.

b. Termination for Cause:

In the event that the UNIVERSITY fails to complete any of the SERVICES in a manner satisfactory to the DEPARTMENT, and/or discloses the

DEPARTMENT's confidential information, in violation of the provisions set forth in Section 12, and/or replaces any Key People without prior written approval from the DEPARTMENT, as set forth in Section 28, and/or fails to find an acceptable replacement to the Project Team within thirty days or within the extension of time granted by the DEPARTMENT, if any, as set forth in Section 28, the DEPARTMENT may terminate this Contract and/or any AUTHORIZATION(S) under this Contract for cause. Written notice of termination will be sent to the UNIVERSITY. The UNIVERSITY will be reimbursed as follows:

FOR COSTS TO BE REIMBURSED ON AN ACTUAL COST BASIS:

The UNIVERSITY will be reimbursed for the SERVICES completed up to receipt of the notice of termination. The DEPARTMENT may pay a proportional share for the work product. The value of such partially completed work product will be determined by the DEPARTMENT based on actual costs incurred up to the estimated value of the work product received by the DEPARTMENT, as determined by the DEPARTMENT. Such actual costs will be as set forth in Section 18. The DEPARTMENT will receive the work product produced by the UNIVERSITY under this Contract up to the time of termination, prior to the UNIVERSITY being reimbursed. In no case will the compensation paid to the UNIVERSITY for partial completion of the SERVICES exceed the amount the UNIVERSITY would have received had the SERVICES been completed.

FOR COSTS TO BE REIMBURSED ON A LUMP SUM BASIS:

The UNIVERSITY will be reimbursed for SERVICES completed up to receipt of the notice of termination. The DEPARTMENT may pay a proportional share for the work product. The value of such partially completed work product will be determined by the DEPARTMENT based on actual costs incurred up to the estimated value of the work product received by the DEPARTMENT. Such reimbursement will be as set forth in Sections 17 and 19. The DEPARTMENT will receive the work product produced by the UNIVERSITY under this Contract up to the time of termination, prior to the UNIVERSITY being reimbursed. In no case will the compensation paid to the UNIVERSITY for partial completion of the SERVICES exceed the amount the UNIVERSITY would have received had the SERVICES been completed.

FOR COSTS TO BE REIMBURSED ON A MILESTONE BASIS:

The UNIVERSITY will be reimbursed for all MILESTONES achieved for which the DEPARTMENT receives the completed work product. The DEPARTMENT will not reimburse the UNIVERSITY for any partially completed MILESTONE(S). In no case will the compensation paid to the UNIVERSITY for partial completion of the SERVICES exceed the amount the UNIVERSITY would have received had the SERVICES been completed.

FOR COSTS TO BE REIMBURSED ON A UNIT PRICE BASIS:

The UNIVERSITY will be reimbursed for all units of work performed for which the DEPARTMENT receives the completed work product. The DEPARTMENT may pay a proportional share for the work product of any partially completed unit of work. The value of such partially completed work product will be determined by the DEPARTMENT based on actual costs incurred up to the estimated value of the work product received by the DEPARTMENT, as determined by the DEPARTMENT. In no case will the compensation paid to the UNIVERSITY for partial completion of the SERVICES exceed the amount the UNIVERSITY would have received had the SERVICES been completed.

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

30. All documents prepared by the UNIVERSITY are the property of the DEPARTMENT and cannot be furnished to any party without permission of the DEPARTMENT, except to the involved governmental agencies and commissions as part of the progress reporting process and except as provided in and limited in Section 31 herein. It is understood that the documents intended to become the property of the DEPARTMENT are those that are to be submitted by the UNIVERSITY to the DEPARTMENT under this Contract and/or any AUTHORIZATION hereunder. The UNIVERSITY may publish the results of its research in scholarly literature after acceptance of the Final PROJECT Report and review of the proposed publication by the DEPARTMENT and in accordance with the provisions of this Contract, including Section 9, and/or the AUTHORIZATION(S).
31. If patentable or copyrightable discoveries or inventions, as determined by United States patent or copyright law, should result from work performed under this Contract and/or any AUTHORIZATION, the UNIVERSITY may file a patent and/or copyright. The UNIVERSITY shall notify the DEPARTMENT of any patent and copyright applications resulting from work performed under this Contract and/or any AUTHORIZATION. If a patent or a copyright is obtained, the UNIVERSITY shall grant to all state and local governmental agencies and the United States government an irrevocable, nonexclusive, and royalty-free license to reproduce, publish, or otherwise use and to authorize others to use the work for governmental purposes. The UNIVERSITY shall provide the

DEPARTMENT with notice of any patentable or copyrightable results generated during and under this Contract and/or any AUTHORIZATION in coordination with the Final Report or otherwise as part of the close-out process of the project. Any patentable or copyrightable discoveries or inventions resulting from work performed under this Contract and/or any AUTHORIZATION will be subject to the applicable federal regulations, including, but not limited to, 37 CFR Section 401 and 35 USC Sections 202, 203, and 204, the provisions of which are attached hereto and made a part hereof by reference as if the same were repeated in full herein.

32. Services that fall under Executive Order 2001-3, Creation of the Department of Information Technology, attached hereto and made a part hereof as Attachment C, will not be authorized under this Contract.
33. This Contract and any AUTHORIZATION(S) hereunder are personal to the parties and cannot be assigned. The UNIVERSITY will not subcontract any portion of the Contract or the SERVICES, as herein defined, without the prior written approval of the DEPARTMENT, and any such subcontracts will include all applicable provisions of this Contract.

After obtaining prior written approval from the DEPARTMENT to subcontract a portion of the Contract or the SERVICES under an AUTHORIZATION, the UNIVERSITY will submit to the DEPARTMENT any and all subcontracts, including amendments, that are individually or in combination in excess of Twenty-Five Thousand Dollars (\$25,000.00) prior to the UNIVERSITY signing said subcontracts. The UNIVERSITY will not enter into multiple subcontracts of lesser amounts for the purpose of avoiding such approval process. All subcontracts will be signed by the UNIVERSITY and the subcontractor before being submitted to the DEPARTMENT and before work commences.

Such approval of any subcontract is given solely for the purposes of the DEPARTMENT. Approval does not constitute an assumption of liability, a waiver, or an estoppel to enforce any of the requirements of this Contract, nor will any such approvals by the DEPARTMENT be construed as a warranty of the third party's qualification, professional standing, ability to perform the work being subcontracted, or financial integrity.

34. The UNIVERSITY agrees to pay each subcontractor for the satisfactory completion of work associated with the subcontract no later than thirty (30) calendar days from the receipt of each payment the UNIVERSITY receives from the DEPARTMENT. The UNIVERSITY agrees further to return retainage payments to each subcontractor within thirty (30) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement from these time frames may occur only upon receipt of written approval from the DEPARTMENT. These requirements are also applicable to all sub-tier subcontractors and will be made a part of all subcontract agreements.

This prompt payment provision is a requirement of 49 CFR Part 26, as amended, and does not confer third-party beneficiary right or other direct right to a subcontractor

against the DEPARTMENT. This provision applies to both Disadvantaged Business Enterprise (DBE) and non-DBE subcontractors.

The UNIVERSITY further agrees that it will comply with 49 CFR Part 26, as amended, and will report any and all DBE subcontractor payments to the DEPARTMENT semi-annually in the format set forth in Appendix G, dated June 1, 2001, attached hereto and made a part hereof, or any other format acceptable to the DEPARTMENT.

35. All questions that may arise as to the quality and acceptability of work, the manner of performance and rate of progress of the work, the interpretation of designs and specifications, and the satisfactory and acceptable fulfillment of the terms of this Contract and/or any AUTHORIZATION hereunder will be decided by the DEPARTMENT.
36. With regard to non-discrimination and DBE requirements:
 - a. In connection with the performance of the SERVICES under this Contract, the UNIVERSITY (hereinafter in Appendix A referred to as the “contractor”) agrees to comply with the State of Michigan provisions for “Prohibition of Discrimination in State Contracts,” as set forth in Appendix A, dated March 1998, attached hereto and made a part hereof. That provision will be included in all subcontracts relating to this Contract.
 - b. During the performance of this Contract, the UNIVERSITY, for itself, its assignees, and its successors in interest (hereinafter in Appendix B referred to as the “contractor”), agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 USC Sections 1971, 1975a-1975d, and 2000a-2000h-6, and the regulations of the Department of Transportation (49 CFR Part 21) issued pursuant to said Act, including Appendix B, dated June 2003, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to this Contract.
 - c. The UNIVERSITY will carry out the applicable requirements of the DEPARTMENT’s DBE program and 49 CFR Part 26, including, but not limited to, those requirements set forth in Appendix C, dated October 1, 2005, attached hereto and made a part hereof.
37. Public Act 533 of 2004 requires that payments under this Contract and all AUTHORIZATIONS hereunder be processed by electronic funds transfer (EFT). The UNIVERSITY is required to register to receive payments by EFT at the Contract & Payment Express website (www.cpexpress.state.mi.us).
38. The UNIVERSITY warrants that it has not employed or retained any company or person other than bona fide employees working solely for the UNIVERSITY to solicit or secure this Contract and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for the UNIVERSITY, 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 DEPARTMENT will 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.

39. The UNIVERSITY specifically agrees that in the performance of the SERVICES herein enumerated, by itself, by an approved subcontractor, or by anyone acting on its behalf, it will comply with any and all state, federal, and local statutes, ordinances, and regulations and will obtain all permits that are applicable to the entry into the performance of this Contract and/or any AUTHORIZATION hereunder.
40. If the DEPARTMENT does not wish to subscribe to the findings or conclusions of the SERVICES, the following statement will be added to the credit line of all reports published by the UNIVERSITY or by the DEPARTMENT:

“The opinions, findings, and conclusions expressed in this publication are those of the authors and not necessarily those of the Michigan State Transportation Commission, the Michigan Department of Transportation, or the Federal Highway Administration.”

41. Each party to this Contract will remain responsible for any claims arising out of its own acts and/or omissions during the performance of this Contract, as provided by this Contract or by law.

This Contract is not intended to increase or decrease either party's liability for or immunity from tort claims.

This Contract is not intended to nor will it be interpreted as giving either party a right of indemnification, either by contract or by law, for claims arising out of the performance of this Contract.

42. The UNIVERSITY is an independent contractor while performing the SERVICES provided for in this Contract and is not an employee of the DEPARTMENT.
43. In accordance with 1980 PA 278, MCL 423.321 *et seq.*; MSA 17.458(22) *et seq.*, the UNIVERSITY, in the performance of this Contract, will not enter into a contract with a subcontractor, manufacturer, or supplier listed in the register maintained by the United States Department of Labor of employers who have been found in contempt of court by a federal court of appeals on not less than three (3) separate occasions involving different violations during the preceding seven (7) years for failure to correct an unfair labor practice, as prohibited by Section 8 of Chapter 372 of the national Labor Relations Act, 29 USC 158. The DEPARTMENT may void this Contract if the name of the UNIVERSITY or the name of a subcontractor, manufacturer, or supplier utilized by the UNIVERSITY in the performance of this Contract subsequently appears in the register during the performance of this Contract.

44. The UNIVERSITY's signature on this Contract constitutes the UNIVERSITY's certification of "status" under penalty of perjury under the laws of the United States in respect to 49 CFR Part 29 pursuant to Executive Order 12549.

The certification included as a part of this Contract as Attachment A is Appendix A of 49 CFR Part 29 and applies to the UNIVERSITY (referred to in Appendix A as "the prospective primary participant").

The UNIVERSITY is responsible for obtaining the same certification from all subcontractors under this Contract by inserting the following paragraph in all subcontracts:

"The subcontractor's signature on this contract constitutes the subcontractor's certification of 'status' under penalty of perjury under the laws of the United States with respect to 49 CFR Part 29 pursuant to Executive Order 12549. The certification included as a part of this contract as Attachment B is Appendix B of 49 CFR Part 29."

This certification is required of all subcontractors, testing laboratories, and other lower tier participants with which the UNIVERSITY enters into a written arrangement for the procurement of goods and SERVICES provided for in this Contract.

45. For contracts in excess of One Hundred Thousand Dollars (\$100,000.00):
- a. The UNIVERSITY stipulates that any facility to be utilized in the performance of this Contract, unless such contract is exempt under the Clean Air Act, as amended (42 USC 7401 *et seq.*, as amended, including Pub. L. 101-549), and under the Clean Water Act, as amended (33 USC 1251 *et seq.*, as amended, including Pub. L. 100-4), Executive Order 11738, and regulations in implementation thereof (40 CFR Part 15), is not listed on the date of contract award on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities Pursuant to 40 CFR Part 15.20.
 - b. The UNIVERSITY agrees to comply with all the requirements of the Clean Air Act and the Clean Water Act and all regulations and guidelines listed thereunder related to the UNIVERSITY and the SERVICES under this Contract.
 - c. The UNIVERSITY will promptly notify the DEPARTMENT and the U.S. EPA, Assistant Administrator for Enforcement, of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for this Contract is under consideration to be listed on the EPA List of Violating Facilities.
 - d. The UNIVERSITY agrees to include or cause to be included the requirements of the preceding three paragraphs (a), (b), and (c), in every nonexempt subcontract.

46. The UNIVERSITY agrees that no otherwise qualified individuals with disabilities in the United States, as defined in Section 1630.2 of the Americans with Disabilities Act, Title 42 USC 12101, will, solely by reason of their disabilities, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any PROGRAM or activity receiving benefits under this Contract.
47. The UNIVERSITY certifies to the best of its knowledge and belief that no federal appropriated funds have been paid or will be paid by or on behalf of the UNIVERSITY to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of any agency, or an employee of a member of Congress in connection with the awarding 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.

The UNIVERSITY will require that the language of this certification be included in the award documents for all third-party agreements (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreement(s)) and that all subrecipients will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00) for each such failure.

48. The UNIVERSITY warrants that it will have its PROJECT staff and its PROGRAM staff, as applicable, sign Exhibit B, attached hereto and made a part hereof, wherein each staff member agrees to not volunteer or offer his/her services to any litigant against the DEPARTMENT with respect to any SERVICES it has agreed to perform for the DEPARTMENT under this Contract, provided that this provision will not apply nor be enforced if the UNIVERSITY or any of the PROJECT staff or any of the PROGRAM staff are issued a valid subpoena to testify in a judicial or administrative proceeding or would cause the UNIVERSITY or any of the PROJECT staff or any of the PROGRAM staff to be in violation of any Michigan or federal law.
49. With regard to claims based on goods or services that were used to meet the UNIVERSITY's obligation to the DEPARTMENT under this Contract, the UNIVERSITY hereby irrevocably assigns its right to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or the DEPARTMENT due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - .788, excluding Section 4a, to the State of Michigan or the DEPARTMENT.

The UNIVERSITY shall require any subcontractors to irrevocably assign their rights to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or the DEPARTMENT with regard to claims based on goods or services that

were used to meet the UNIVERSITY's obligation to the DEPARTMENT under this Contract due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - .788, excluding Section 4a, to the State of Michigan or the DEPARTMENT as a third-party beneficiary.

The UNIVERSITY shall notify the DEPARTMENT if it becomes aware that an antitrust violation with regard to claims based on goods or services that were used to meet the UNIVERSITY's obligation to the DEPARTMENT under this Contract may have occurred or is threatened to occur. The UNIVERSITY shall also notify the DEPARTMENT if it becomes aware of any person's intent to commence, or of commencement of, an antitrust action with regard to claims based on goods or services that were used to meet the UNIVERSITY's obligation to the DEPARTMENT under this Contract.

50. Any approvals, acceptances, reviews, and inspections of any nature by the DEPARTMENT will not be construed as a warranty or assumption of liability on the part of the DEPARTMENT. It is expressly understood and agreed that any such approvals, acceptances, reviews, and inspections are for the sole and exclusive purposes of the DEPARTMENT, which is acting in a governmental capacity under this Contract, and that such approvals, acceptances, reviews, and inspections are a governmental function incidental to the SERVICES under this Contract.

Any such approvals, acceptances, reviews, and inspections by the DEPARTMENT will not relieve the UNIVERSITY of its obligations hereunder, nor are such approvals, acceptances, reviews, and inspections by the DEPARTMENT to be construed as a warranty as to the propriety of the UNIVERSITY's performance but are undertaken for the sole use and information of the DEPARTMENT.

51. In case of any discrepancy between the body of this Contract and any AUTHORIZATION(S) hereto, the body of the Contract will govern.
52. This Contract will be in effect from the date of award through four (4) years. Costs incurred outside the terms of this Contract and any AUTHORIZATION(S) will not be eligible for reimbursement.

53. This Contract will become binding on the parties and of full force and effect upon signing by the authorized representatives of the UNIVERSITY and the DEPARTMENT and upon adoption of a resolution approving said Contract and authorizing the signature(s) thereto of the respective official(s) of the UNIVERSITY, a certified copy of which resolution will be sent to the DEPARTMENT with this Contract, as applicable.

IN WITNESS WHEREOF, the parties have caused this Contract to be awarded.

«UNIV»

By: _____
Title:

MICHIGAN DEPARTMENT OF TRANSPORTATION

By: _____
Title:



Exhibit A Contract Services Division

ACCEPTANCE OF PRICED PROPOSAL & AUTHORIZATION FOR UNIVERSITY TO PROCEED

*Copy this sheet only: Office of Commission Audits, Engineer of Research & Best Practices
Full copy: MDOT Project Manager, University, Research Analyst (if applicable)*

CONTRACT NO.		AUTHORIZATION & REVISION NO.					
IDS CONTRACT EFFECTIVE DATE		IDS CONTRACT EXPIRATION DATE					
AUTHORIZED UNIVERSITY AND ADDRESS							
UNIVERSITY ADMINISTRATOR		ADDRESS MAIL TO THIS PERSON		PHONE NO.		FAX NO.	
MDOT PROJECT MANAGER		MAIL CODE		PHONE NO.		FAX NO.	
PRINCIPAL INVESTIGATOR			ASSOCIATE RESEARCHERS				
PROJECT NAME							
SERVICE DESCRIPTION & LOCATION / Page(s) (1 to)							
RESEARCH NO.	CS NO.	JOB NO.	% FEDERAL	PCA CODE	INDEX CODE	REPORTING	
INVOICING LIMITATION The University may only invoice up to 85% of the total authorization amount prior to the submission and subsequent approval of the final deliverables.				MDOT PAYMENTS AREA TO SEND UNIVERSITY INVOICES <input type="checkbox"/> Office of Research & Best Practices (Research Admin. Assistant) <input type="checkbox"/> Contract Services Division - Contract Support Unit			
MDOT CONTRACT ADMINISTRATOR COMMENTS			SERVICE COMPLETION AND AUTHORIZATION EXPIRATION DATE On December 1 each year, all prior fiscal year funds will be released from existing obligation. Invoices submitted on or after December 1 for prior fiscal year work will not be paid.				
SUMMARY OF COST							
FUNDING	to		to		to		AMOUNT
	FY	JN	FY	JN	FY	JN	
University Share							\$ 0.00
MDOT Funding							\$ 0.00
Totals		\$ 0.00		\$ 0.00		\$ 0.00	
AUTHORIZATION AMOUNT							\$ 0.00
TOTAL AUTHORIZED TO DATE (Maximum)							
Basis of Payment is							
UNIVERSITY ADMINISTRATOR:				DATE SIGNED:			
MDOT CONTRACT ADMINISTRATOR:				DATE REVIEWED:			
MDOT AUTHORIZATION BY:				DATE EXECUTED (Authorization Effective Date):			

EXHIBIT B

The undersigned individual declares that he/she has read and understands the terms of the contract between «Univ» and the Michigan Department of Transportation concerning research for the project titled “«ProjName».” Specifically, the undersigned agrees that he/she will not volunteer or offer his/her services to any litigant against the Michigan Department of Transportation with respect to any of the services he/she has agreed to perform or has performed under this Contract. However, this provision will not apply nor be enforced if the undersigned is issued a valid subpoena to testify in a judicial or administrative proceeding or would cause the undersigned to be in violation of any Michigan or federal law.

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

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

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.
6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.

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

March 1998

APPENDIX B
TITLE VI ASSURANCE

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

1. **Compliance with Regulations:** The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the contractor 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 contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor’s obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State Highway department of the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway 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 contractor’s noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- a. withholding of payments to the contractor under the contract until the contractor complies, and/or
 - b. cancellation, termination or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions**: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(Revised October 1, 2005)

APPENDIX C

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

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

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

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

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

INSTRUCTIONS

This statement reports the actual dollar amounts of the project cost earned by and paid to DBE subconsultants. Complete and submit to the Contract Administrator semi-annually. Some forms may be blank if no payment was made since the previous billing.

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

For “Billing Period,” report the calendar days covered by the billing.

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

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

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

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

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

For “Actual Amount Paid During this Billing Period” report actual payments made to the subcontractor for services during this billing period.

Provide “DBE Authorized Signature” for final payment only.

Be sure to sign, title and date this statement.

MDOT CONTRACT ADMINISTRATOR:

Complete “Comments” if necessary, sign, date and forward to the Office of Equal Opportunity within seven (7) days of receipt.

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

Instructions for Certification

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

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

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

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

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

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

ATTACHMENT B

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

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction”, “debarred”, “suspended”, “ineligible”, “lower tier covered transaction”, “participant”, “person”, “primary covered transaction”, “principal”, “proposal”, and “voluntarily excluded”, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Telephone No. (517) 335-2513 or (517) 335-2514).

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

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

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

[Federal Register Doc. 88-11561 Filed 5-25-88; 8:45 a.m.]

March 9, 1989

Creation of the Department of Information Technology EXECUTIVE ORDER NO. 2001 - 3

**EXECUTIVE ORDER
No. 2001 - 3
DEPARTMENT OF INFORMATION TECHNOLOGY
DEPARTMENT OF MANAGEMENT AND BUDGET
Executive Reorganization**

WHEREAS, Article V, Section 1, of the Constitution of the state of Michigan of 1963 vests the executive power in the Governor; and

WHEREAS, Article V, Section 2, of the Constitution of the state of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, certain functions, duties and responsibilities currently assigned to other state departments can be more effectively carried out by a new principal Department of Information Technology; and

WHEREAS, reorganizing information technology management functions into a new principal department with a cabinet-level Chief Information Officer will promote a unified approach to information technology management for executive branch agencies; and

WHEREAS, the creation of a new Department of Information Technology will improve the management of information technology investments and allow the state to establish stronger strategic relationships with business partners; and

WHEREAS, the creation of a new Department of Information Technology will strengthen central policymaking and direction-setting in all areas of information technology, bring about improved information management and data standardization, and catalyze the use of improved project management practices and strategic technology infrastructure planning; and

WHEREAS, improvements are necessary to provide the customers of the state of Michigan - be they citizens, businesses or employees - with an improved delivery of state services; and

WHEREAS, it is necessary in the interests of efficient administration and good government to effect these changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the state of Michigan, pursuant to the powers vested in me by the Constitution of the state of Michigan of 1963 and the laws of the state of Michigan, do hereby order the following:

I. DEFINITIONS

As used herein:

A. The "Department of Management and Budget" means the principal department created by Section 121 of Act No. 431 of the Public Acts of 1984, being Section 18.1121 of the Michigan Compiled Laws.

B. The "Michigan Information Network Office" means the entity created by Executive Order 1995-14, being Section 18.1695 of the Michigan Compiled Laws.

C. The "Michigan Information Network Advisory Board" means the entity created by Executive Order 1995-14, being Section 18.1695 of the Michigan Compiled Laws.

D. "Information Technology Services" means services involving all aspects of managing and processing information including, but not limited to:

- application development and maintenance;
- desktop computer support and management;
- mainframe computer support and management;
- server support and management;
- local area network support and management;
- information technology contract, project and procurement management;
- information technology planning and budget management, and;
- telecommunication services, security, infrastructure and support.

II. CREATION OF THE DEPARTMENT OF INFORMATION TECHNOLOGY

A. The Department of Information Technology (hereafter "Department") is hereby created. This Department shall be headed by a Director who shall be appointed by and serve at the pleasure of the Governor. The Director shall also serve as the state's Chief Information Officer.

B. The Department shall lead state efforts to re-engineer the state's information technology infrastructure with the goal of achieving the use of common technology across the executive branch.

C. The Department shall coordinate a unified executive branch strategic information technology plan, identify best practices from executive branch agencies and other public and private sector entities, and develop and implement processes to replicate information technology best practices and standards throughout the executive branch.

D. The Department shall oversee the expanded use and implementation of project and contract management principles as they relate to information technology projects within the executive branch. Funded projects within executive branch agencies shall use the project and contract management methodologies specified by the Department.

E. The Department shall serve as a general contractor between the state's information technology users and private-sector providers of information technology products and services. The Department shall work toward building stronger partnering relationships with providers.

F. The Department shall develop service-level agreements with executive branch departments and agencies to ensure quality products are delivered on schedule and within budget.

G. The Department shall develop standards for application development including, but not limited to, a standard methodology and cost-benefit analysis that all executive branch departments and agencies shall utilize for application development activities.

H. The Department shall have the full cooperation of executive branch departments and agencies in developing and implementing the sharing of data and information throughout the executive branch. The Department shall determine and implement statewide efforts to standardize data elements and shall determine data ownership assignments among executive branch departments and agencies.

I. The Department shall develop systems and methodologies to review, evaluate and prioritize existing information technology projects within the executive branch and shall report to the Governor the status of information technology projects on a semi-annual basis.

J. The Department will assist the State Budget Office with the development of information technology budgets for the executive branch. All information technology budget requests from the executive branch will be submitted to the State Budget Office and the Department. The State Budget Office and the Department will jointly review and recommend for funding consideration only those proposals that fit into the overall strategic information technology management plan of the state and that provide a reasonable return on investment.

III. INFORMATION TECHNOLOGY FUNCTIONS AND PERSONNEL

A. Except as otherwise provided in part IV of this order, all the authority, powers, duties, functions, responsibilities, personnel, equipment and budgetary resources

involved in or related to the provision of information technology services currently located within any executive branch department or agency are hereby transferred to the Department of Information Technology by a Type II transfer, as defined in Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

B. As necessary to accomplish the missions and goals of executive branch departments and agencies, the Director of the Department of Information Technology, or the individual designated by the Governor as the Information Technology Transition Director, may immediately detail personnel transferred from executive branch departments and agencies under the provisions of this part back to their respective department or agency of origin.

IV. DEPARTMENT OF MANAGEMENT AND BUDGET

A. All the authority, powers, duties, functions and responsibilities of the following units, teams, divisions, and offices within the Department of Management and Budget:

- the Michigan Administrative Information Network;
- the Computing Services Unit;
- the Information Technology Services Division;
- the Office of Project Management;
- the Information Technology Budget and Finance Division;
- the Office of Information Technology Solutions;
- the Telecommunications Services Unit, and;
- the Michigan Information Network Office;

including, but not limited to, the statutory authority, powers, duties, functions and responsibilities set forth in:

1. Section 203 of Act No. 431 of the Public Acts of 1984, as amended, being Section 18.1203 of the Michigan Compiled Laws (automated information processing installations);
2. Section 269(1)(b) and 269(1)(d) of Act No. 431 of the Public Acts of 1984, as amended, being Section 18.1269(1)(b) and 18.1269(1)(d) of the Michigan Compiled Laws (provision of centralized services to state agencies, specifically telecommunications and optical disc services);
3. Executive Order 1994-13, as amended, being Section 18.32 of the Michigan Compiled Laws (transfer of certain computer program analysis and programming responsibilities to the Michigan Administrative Information Network);
4. Executive Order 1994-15, as amended, being Section 18.33 of the Michigan Compiled Laws (telecommunications systems and related services);

5. Executive Order 1995-10, as amended, being Section 18.1691 of the Michigan Compiled Laws (consolidation of information processing systems for executive branch agencies);

6. Executive Order 1995-14, as amended, being Section 18.1695 of the Michigan Compiled Laws (Michigan Information Network Office); and,

7. Section 1291 of Act No. 335 of the Public Acts of 1993, as amended, being Section 380.1291[1] of the Michigan Compiled Laws (world-class statewide interactive video and data access and exchange system);

are hereby transferred from the Department of Management and Budget to the Department of Information Technology by a Type II transfer, as defined in Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

B. All the authority, powers, duties, functions and responsibilities of the Michigan Information Center, which is currently located in the Executive Office of the Governor pursuant to the terms of a Memorandum of Understanding and a Memorandum of Agreement executed between the Executive Office of the Governor and the Department of Management and Budget in March of 2001, upon its return from the Executive Office of the Governor to the Department of Management and Budget, is hereby transferred from the Department of Management and Budget to the Department of Information Technology by a Type II transfer, as defined in Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws

V. MICHIGAN INFORMATION NETWORK ADVISORY BOARD

All the authority, powers, duties, functions and responsibilities of the Michigan Information Network Advisory Board are hereby transferred from the Department of Management and Budget to the Department of Information Technology by a Type III transfer, as defined in Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws. The Michigan Information Network Advisory Board is hereby abolished.

VI. MISCELLANEOUS

A. The individual designated by the Governor as the Information Technology Transition Director shall provide executive direction and supervision for the implementation of all transfers of authority to the Department of Information Technology made under this Order.

B. The Information Technology Transition Director, and the Directors of all executive branch departments and agencies shall jointly identify the program positions and administrative function positions that will be transferred to the

Department of Information Technology according to the terms of this Order. The Information Technology Transition Director and the Directors of all executive branch departments and agencies shall make every effort to develop agreements specifying these positions by the effective date of this order. In the event of a failure to reach agreement on the positions to be transferred under this order, the Information Technology Transition Director shall develop a written recommendation specifying the positions to be transferred to the Department of Information Technology under the terms of this order. The Information Technology Transition Director shall submit the recommendation to the Governor no later than January 1, 2002, for his consideration and approval.

C. The Information Technology Transition Director shall immediately initiate coordination with the directors of all state departments affected by this Order to facilitate the transfers and develop memoranda of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved related to the authority to be transferred.

D. All records, personnel, property, equipment, grants and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to any entity for the activities, powers, duties, functions and responsibilities transferred to the Department of Information Technology by this Order are hereby transferred to the Department of Information Technology.

E. The Director of the Department of Information Technology shall administer the assigned functions transferred by this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

F. The Director of the Department of Information Technology, or other individual designated by the Governor, may establish an administrative unit, including budget, personnel, information systems, internal audit, procurement, legislative and other related administrative functions. The Director of the Department of Information Technology, or other individual designated by the Governor, may also request the assistance of any state department or agency with respect to personnel, budgeting, procurement, information systems and other management-related functions and the state department or agency shall provide such assistance.

G. The Director of the Department of Information Technology, or other individual designated by the Governor, may hire or retain such contractors, sub-contractors, advisors, consultants and agents as the director may deem advisable and necessary, in accordance with the relevant procedures, statutes, rules and regulations of the Civil Service Commission and the Department of Management and Budget, and may make and enter into contracts necessary or

incidental to the exercise of the powers and performance of the duties of the department and the director. Under this provision, the Director of the Department of Information Technology, or other individual designated by the Governor, may specifically hire or retain such contractors, sub-contractors, advisors, consultants and agents as the director may deem advisable and necessary to provide legal advice or legal services, to provide for research and development activity, and/or to provide strategic planning services.

H. The Director of the Department of Information Technology, or other individual designated by the Governor, may by written instrument delegate a duty or power conferred by law or this Order, and the department, agency or person to whom such duty or power is delegated may perform the duty or exercise the power at the time and to the extent that the duty or power is delegated by the Director of the Department of Information Technology, or other individual designated by the Governor.

I. After consultation with the Director of the Department of Information Technology, or other individual designated by the Governor, the State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of the fiscal year.

J. All rules, orders, contracts, grants and agreements relating to the functions transferred to the Department of Information Technology by this Order lawfully adopted prior to the effective date of this Order by the responsible state agency shall continue to be effective until revised, amended or rescinded.

K. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order.

L. The invalidity of any portion of this Order shall not affect the validity of the remainder thereof.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the state of Michigan of 1963, the provisions of this Executive Order shall become effective October 14, 2001.

Given under my hand and the Great Seal of the State of Michigan this 9th day of August, in the Year of our Lord, Two Thousand One.

GOVERNOR

BY THE GOVERNOR:

SECRETARY OF STATE