

OHIO DEPARTMENT OF TRANSPORTATION  
STANDARD RESEARCH AGREEMENT  
FOR

1. EDUCATIONAL ORGANIZATION WITH FEDERAL PARTICIPATION
2. EDUCATIONAL ORGANIZATION WITHOUT FEDERAL PARTICIPATION
3. EDUCATIONAL ORGANIZATION ON CALL
4. COMMERCIAL ORGANIZATION WITH FEDERAL PARTICIPATION
5. COMMERCIAL ORGANIZATION WITHOUT FEDERAL PARTICIPATION
6. COMMERCIAL ORGANIZATION ON CALL

Commented [ML1]: Choose the applicable Agreement type based on Prime Agency.

This Agreement is made by and between the State of Ohio Department of Transportation ("Department"), and <Research Agency Name> ("Contractor"). Department and Contractor may be periodically referred to throughout this Agreement singularly as a "Party" and collectively as the "Parties."

WHEREAS, the Department has indicated the need for a study entitled, <Project Title>, as described in the RFP/RFQ dated <Final RFP/RFQ Date> approved proposal dated <Approved Proposal Date> ("Study" or "Project"), which is incorporated by reference and made part of this cost-reimbursement Agreement; and

WHEREAS, it has been proposed that the conduct of this Project will require a total of XX months and contract funding in the amount of \$XXXXXXXXXX as described in the approved proposal dated <Approved Proposal Date> which includes a fixed fee of \$XXXX; and

WHEREAS, the Contractor has qualified personnel able to conduct the Study; and

WHEREAS, the Department desires the Contractor to conduct the Study;

NOW, THEREFORE, IT IS AGREED that the Contractor shall proceed with the Study in accordance with the following:

Commented [ML2]: Fixed Fees are for Commercial Organizations only. Not applicable for Educational Organizations.

SECTION I - PERIOD OF PERFORMANCE/AGREEMENT PRICE

(A) The Agreement duration and funding indicated above represent the total time and funding required to complete this project.

(B) This Agreement does not authorize any work to begin. |

1. The beginning date for the Study shall be communicated through receipt of a Project Initiation Letter.

1. All research tasks for this ROC Agreement, shall be communicated through the receipt of a Task Authorization Letter. Only the Research Section is authorized to send authorization communications.

Commented [ML3]: Section I (B) will only have one option remain dependent on the type of Agreement.

(C) This Agreement shall expire June 30, 202X. This Agreement may be renewed prior to the expiration date at the Department's discretion. The Department will notify the Contractor in writing of its intention to renew, and the Contractor will acknowledge and accept the notification in writing. All renewal periods executed by the Department will be to enable the Contractor to complete the work described in the approved proposal and shall expire on June 30<sup>th</sup> at the end of the subsequent biennium. The obligations of the Department for renewal are expressly conditioned upon the availability of lawful appropriations by the Ohio General Assembly and compliance with the statutory provisions under the Ohio Revised Code, including but not limited to, Section 126.07. Notwithstanding termination rights under any other provision of this Agreement, in the event the General Assembly fails to appropriate sufficient funds or funds are not made available under Ohio Revised Code Section 126.07, the Department's obligations are extinguished, and this Agreement shall be terminated without further obligation or liability to the Department, with written notice to the Contractor.

(D) This Agreement is funded utilizing |

1. 80% Federal Funds and 20% State Match Funds

2. 100% Federal Funds

3. 100% State Funds

Commented [ML4]: Funding as described in the RFP/RFQ will remain.

(E) Funds will be encumbered as indicated below, subject to their availability. This Agreement is void and

unenforceable if the funds are not available. Any unused balances from previous encumbrance periods remain in effect.

<u>Encumbrance Period</u>	<u>Encumbrance Amount</u>
Fiscal Year 202X	\$ XXXXX

SECTION II - LEGAL REFERENCE SECTION

This Agreement is governed by Ohio Revised Code Section 5501.03, the policies and procedures of the Department, the Department's Manual of Procedures for Research, Development & Technology Transfer ("Research Manual"), guidelines as determined by the Federal Highway Administration ("FHWA"), and applicable state and federal law.

SECTION III - SUBCONTRACTING

(A) The Contractor agrees to perform a minimum of 51 % of the research work associated with this Study. Specialized services and/or subcontracting items of work, if any, shall be as described in the approved proposal. The Contractor shall not enter into any additional subcontracting or additional specialized services without the written approval of the Department.

(B) The Contractor may subcontract without Department's approval for the purchase of articles, supplies, components, or special mechanical services, that do not involve the type of work or services described in the approved proposal, but which are required for its satisfactory completion. Such expenses shall be charged directly to the Contractor.

SECTION IV - RELATED AGREEMENTS OR CONTRACTS

The Contractor agrees that it has not entered into, nor shall enter into, other agreements or contracts, without written approval of the Department, to perform substantially identical work such that the work product contemplated under this Agreement duplicates the work done or to be done under other agreements or contracts.

SECTION V - COST PRINCIPLES

Reimbursable costs shall be defined in accordance with Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200). Cost accounting principles shall be used when determining eligible costs for a project.

SECTION VI - REIMBURSABLE EXPENSES

(A) Any reimbursable expense, as specifically outlined in the Work Plan referenced in the approved proposal for this Agreement, shall be paid in accordance with the requirements and rates as set forth in Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200) and Section 126.31 of the Ohio Revised Code.

(B) No out-of-state travel expenses will be honored without written approval by the Department.

(C) Travel expenses to meetings or conferences will only be allowed if the researcher is presenting a formal paper that is derived from this research Agreement and travel is approved prior to the event.

(D) 1. Funding for equipment, as shown in the proposal, may not be used for anything other than the purchase of equipment.  
2. Equipment is not permitted to be purchased on this ROC Agreement.

Commented [ML5]: Section VI (D) will only have one option remain dependent on the type of Agreement.

(E) Any software purchased or licensed for this Project may become the property of the Department upon completion of the Study, regardless of purchase price.

(F) Tuition and University Fees are not reimbursable expenses.

SECTION VII - LIMITATION OF INDIRECT COSTS

Regardless of other circumstances, the Department will only reimburse the Contractor up to XXXX percent (XX%) of direct labor for indirect costs. This rate will remain unchanged for the entire duration of the agreement.

SECTION VIII - PAYMENT

(A) Payments will be made to the Contractor, ~~for actual costs incurred,~~ upon receipt of an acceptable invoice. An acceptable invoice is defined as one where: (1) mathematical calculations are correct, and (2) backup documentation, as defined in the Research Manual, is attached to justify all charges made.

Commented [ML6]: Dorci - to review.

(B) In accordance with Section 126.30 of the Revised Code, and any applicable rules thereto, the Department shall make prompt payment for any services acquired from the Contractor. Upon receipt of an acceptable invoice and unless otherwise stated, payment shall be made within 30 calendar days. The adequacy and sufficiency of all invoices shall be determined solely by the Department. If the Department determines that an invoice is inadequate or insufficient, or determines that further documentation or clarification is required, the burden of providing the required information or documentation is on the Contractor. The Department shall notify the Contractor of the inadequacy or insufficiency and may provide any information necessary to correct the inadequacy or insufficiency. If such notification of inadequacy or insufficiency is provided, the required payment date shall be 30 days after receipt of the correct invoice.

(C) The Contractor shall bill the Department on a quarterly basis, minimally. Quarters end on the following dates: March 31, June 30, September 30, December 31. Acceptable invoices shall be sent to the Department within one month of the end of the quarter for expenses incurred during said quarter. Improper billing of invoices is subject to nonpayment ~~and irrevocable loss of federal authorization for the Agreement.~~

(D) Charges made prior to the start date, or after the completion date, will not be honored for payment.

(E) The Department shall withhold 20%, totaling \$XXXXX, of the initial Agreement amount until receipt of all final deliverables. Final deliverables are specified in the previously referenced approved proposal.

Commented [ML7]: This will be deleted for ROC Agreements.

SECTION IX - REPORTS

(A) The Contractor shall participate in status updates at a frequency determined during the project ~~and or task~~ start up meeting.

(B) ~~1. No later than 120 days prior to the Agreement completion date, electronic Word files of the draft Final Report and draft Fact Sheet must be received by the Department's Research Section for review, unless otherwise noted.~~

~~2. No Later than 30 days prior to the final task completion date, electronic Word files of the draft deliverables must be received by the Department's Research Section for review, unless otherwise noted. Deliverables and due dates for each task will be established in the Task Authorization Letter and must be received by the Department's Research Section for review, unless otherwise noted.~~

Commented [ML8]: Section IX (B) will only have one option remain dependent on the type of Agreement.

(C) All reports shall be written using US customary units.

~~(D) An electronic version of the Fact Sheet and Final Report in a format defined in the proposal must be received by the Department's Research Section in order to fulfill the conditions of this Agreement, unless otherwise noted.~~

~~(DE)~~ The Contractor shall deliver an electronic version of the approved Final Report and Fact Sheet to the Department's Research Section NO LATER THAN THE AGREEMENT/TASK COMPLETION DATE in order to fulfill the conditions of this Agreement, unless otherwise noted.

~~(EF)~~ All Interim and Final Reports shall contain a Technical Report Documentation Page (1700 Page), Disclaimer Statement on the credit sheet and a Credit Reference on the report cover and/or title page as referenced in the Research Manual.

~~(EG)~~ Prior to acceptance of the Interim Report, Fact Sheet or Final Report, either party to the Agreement may initiate a request for publication of the reports, or any portions thereof.

~~(GH)~~ Neither party shall publish nor otherwise disclose, nor permit to be disclosed or published, the results of the Study-, or any particulars or details about the research, during the period of the Agreement without notifying the other party and securing their consent in writing prior to such disclosure or publication, except as provided in Section XI, Paragraph (E).

~~(HI)~~ The parties to this Agreement shall have equal responsibility to review and approve material for publication, except that the Department reserves the right to initially publish the reports, except that the researcher may, without

condition, publish any non-proprietary portion of the materials generated under this Project upon completion.

(J) Publication by either party shall give credit to the other party and to the FHWA (for federally funded Agreements), unless upon failure of agreement on any report, any of the parties request its credit acknowledgment be omitted.

(K) In the event of failure of agreement between the Department and the Contractor relative to the publication of any reports during the period of the Agreement, the Department reserves the right to publish independently, in which event the nonconcurrence of the Contractor shall be set forth, if so requested by the Contractor.

(L) If the Department does not elect to publish any reports, publication by the Contractor shall then be a matter within the province of the Contractor's policy; but, if the Contractor then elects to publish independently, the nonconcurrence of the Department and FHWA shall be set forth, if so requested by the Department or FHWA (for federally funded Agreements).

(M) Both written and oral releases are considered to be within the context of publication, however, there is no intention to limit discussion of the Study with small technical groups or lectures to employees or students. Lectures to other groups which describe the proposal, but disclose neither data nor results, are permissible.

(N) After acceptance of the Fact Sheet and Final Report, the Contractor, Department and FHWA (for federally funded Agreements) are free to use the data and results without restriction. If patentable items are involved, this paragraph is subject to the provisions of Sections XI, XII, and XIII.

#### SECTION X - EQUIPMENT AND INSTRUMENTATION

(A) Equipment and instrumentation are defined as an article of nonexpendable, tangible personal property having a useful life of at least two (2) years and an acquisition cost of \$1,000 or more per unit or a combined value of \$1,000 for components which are assembled into a larger unit. An item that meets these criteria, but is permanently embedded or attached to pavement, structure or other infrastructure in such a way as to result in irreparable damage to the item itself or the article to which it is attached shall not be classified as equipment.

(B) If equipment and instrumentation items exceeding \$1,000 in accumulated cost have not been identified specifically in the proposal budget, written approval must be obtained from the Department prior to purchase of the item(s).

(C) Title to all equipment and instrumentation items shall rest with the Department. Upon completion of this Study, the Department will determine a final salvage value and disposition, subject to approval by FHWA (for federally funded Agreements). Equipment and instrumentation items may also be reclaimed by the Contractor from the Project before the project completion date if it is determined by both parties that said item(s) is/are no longer necessary to complete the Project's work.

(D) The Contractor and Department will maintain a complete inventory listing of all equipment and instrumentation purchased or built for this Project and shall abide by the inventory process defined in the Research Manual.

(E) The Department and FHWA (for federally funded Agreements) shall have access to this equipment, instrumentation items, and records as may be required for the purpose of verification or disposition.

#### SECTION XI - RIGHTS IN DATA, PATENTS AND COPYRIGHTS: PUBLIC USE

(A) The Contractor shall not knowingly include in any deliverables any copyrighted material, unless the copyright owner and any person, agency, or instrumentality providing financial assistance to the copywritten work gives prior written approval to use such copyrighted matter in the manner provided herein.

(B) The parties to this Agreement agree that all rights to and interest in either discoveries or inventions, including but not limited to data, reports, manuscripts, books, literary works, copyrights and patentable discoveries or inventions resulting from this agreement shall be owned by the Contractor subject to the provisions of Ohio Revised Code Section 3345.14 and 37 CFR Part 401, 23 CFR 420.121(i), 23 CFR 420.121(b) and all other applicable provisions of the Bayh-Dole Act (for federally funded Agreements).

(C) With respect to each invention to which the Contractor retains title, the Contractor agrees to grant the Department and FHWA (for federally funded Agreements) a nonexclusive, nontransferable, irrevocable, paid-up license to make, use and sell the patented invention.

(D) Contractor agrees that if they ever sell, give, license, assign or otherwise transfer their patent rights that the Contractor will include a provision that the buyer, assignee, licensee will grant the Department and FHWA (for federally funded Agreements) a nonexclusive, nontransferable, irrevocable, paid-up license to use the product.

(E) The parties understand that the requirements found in Ohio Revised Code Section 149.43 apply.

(F) The Contractor shall also deliver, transfer, and convey to the Department all documents, data, materials, information, processes, studies, reports, surveys, proposals, plans, codes, scientific information, technological information, regulations, maps, equipment, charts, schedules, photographs, exhibits, software, software source code, documentation, and other materials and property, that are prepared, developed or created under or in connection with this Agreement at the Department's request based on joint ownership as stated above.

#### SECTION XII – PATENT AND COPYRIGHT INDEMNITY

##### (A) Ohio Public Institution Requirements

(1) Except as may be prohibited by law, the Contractor shall be responsible for any and all claims, actions, damages, expenses awarded by a court of competent jurisdiction, resulting from the negligent acts and omissions of its officers, employees, or agents engaged in the scope of their employment and arising under this Agreement, including but not limited to acts of infringement of any U.S. or foreign patent or copyright arising out of the Contractor's performance under this Agreement.

(2) The Contractor shall not knowingly include in any work or deliverable any legally protected intellectual property of another, including any copyrighted matter, unless the intellectual property owner gives prior written approval to use such intellectual property.

##### (B) Ohio Private Institutions and Public and Private Institutions Residing Outside Ohio Requirements

(1) Except as may be prohibited by law, the Contractor shall indemnify the Department and its officers, agents, and assigns against liability, including costs and expenses, for infringement of any U.S. or foreign patent or copyright arising out of the Contractor's performance under this Agreement. The Contractor shall further hold the Department harmless from any and all claims against Contractor or agents of the Contractor by reason of any patent or copyright infringement action. The Contractor shall, upon the Departments' request and at the Contractor's expense, defend patent or copyright infringement actions predicated upon the work performed under this Agreement.

(2) The Contractor shall not knowingly include in any work or deliverable any legally protected intellectual property of another, including any copyrighted matter, unless the intellectual property owner gives prior written approval to use such intellectual property.

#### SECTION XIII - NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

In the event of any claim or suit against the Department arising from any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this Agreement, the Contractor shall furnish to the Department upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services).

#### SECTION XIV - INSPECTION OF WORK

The Department and FHWA (for federally funded Agreements) shall be accorded proper facilities for review and inspection of the work hereunder and shall at all reasonable times have access to the premises, to all books, records, correspondence, instructions, receipts, vouchers and memoranda of every description pertaining to the work hereunder. Arrangements for all reviews and inspections by FHWA will be made by the Department.

#### SECTION XV - RECORDS

The Contractor shall maintain accounting records in a manner consistent with generally accepted accounting procedures, and other evidence pertaining to the costs incurred on this Project. This data will be made available for inspection by the Department, FHWA (for federally funded Agreements) or any authorized representative of the State and

Federal Government at all reasonable times at the office of the Contractor during the Agreement period and for three (3) years after the date of final payment to the Contractor. Copies of such records shall be furnished if requested.

#### SECTION XVI - CHANGES OR MODIFICATIONS

This Agreement constitutes the entire agreement between the parties. Any alteration, amendment, extension, supplement or modification of the scope of work and method of study, as detailed in the proposal, shall be agreed to in writing by the parties.

#### SECTION XVII – SUSPENSION/TERMINATION OF AGREEMENT

(A) Either party may terminate this Agreement by giving the other party 30 days written notice of its election to do so. If the Agreement is cancelled under this provision, the Department shall reimburse the Contractor for all work completed to that date. Upon termination, all equipment and instrumentation items purchased or built for this Project and all data, results, reports, and other materials developed by the Contractor will be turned over to the Manager of the Department's Research Section or a designated representative.

(B) The Department may, at any time prior to the completion of the Project, suspend this Agreement with or without cause by giving written notice to the Contractor.

(C) The Contractor, upon receipt of notice of suspension or termination, shall cease work on all activities under this Agreement, suspend or terminate all subcontracts relating to such activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report, as of the date of receipt of notice of suspension or termination, describing the status of all work under that Agreement, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as the Department may require.

(D) In the event of suspension or termination under this Section, Contractor shall be entitled to compensation, upon submission of an acceptable invoice, for the work performed prior to the receipt of notice of termination or suspension, which shall be calculated by (1) the level of effort at the agreed upon percentage as set forth in the proposal; or (2) the hourly rate set forth in the proposal multiplied by the number of hours worked, prior to receipt of notice of termination or suspension, as determined by the Department, or in the case of services for which the Contractor charges a flat rate, based on a reasonable percentage of the total services performed, as determined by the Department.

(E) The Department shall not be liable for any further claim, and the claims submitted by the Contractor shall not exceed the total amount of consideration stated in this Agreement.

#### SECTION XVIII - DEFAULT

The Department reserves the right to recover all labor charges and fringe benefits relative to this Study should the Contractor fail to comply with Section IX Paragraphs (A), (B), ~~and (D)~~ and (G); Section X (C); Section XI; and Section XXIII of this Agreement or fails to provide items noted as project deliverables in the approved proposal and/or subsequent addenda.

#### SECTION XIX - EQUAL EMPLOYMENT OPPORTUNITY

(A) In carrying out this Agreement, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, or age. The Contractor will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, disability, or age. Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.

(B) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. 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, religion, color, sex, national origin, disability, or age. The Contractor shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

(C) The Contractor will also comply with the federal regulations of the U.S. Department of Transportation ("USDOT")

relative to nondiscrimination in federally-assisted programs (49 CFR Part 21), which are herein incorporated by reference and made a part of this Agreement.

#### SECTION XX - TITLE VI/NONDISCRIMINATION ASSURANCES

(A) During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest and consultants (collectively "Contractor") agrees as follows:

(1) Compliance with Regulations: The Contractor will comply with the Acts and Regulations relative to Non-discrimination in federally-assisted programs of USDOT, FHWA, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

(2) Non-discrimination: The Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin, sex, age, disability or, low-income status, ~~or limited English proficiency~~ in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Subsection B, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

(3) Solicitations for Subcontractors, 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 will be notified by the contractor of the Contractor's obligations under this Agreement and the Acts and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability or, low-income status, ~~or limited English proficiency~~.

(4) Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor will so certify to the Department or FHWA, as appropriate, and will 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 Agreement, the Department will impose such sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

- a. withholding payments to the Contractor under the Agreement until the Contractor complies; and/or
- b. cancelling, terminating, or suspending the Agreement, in whole or in part.

(6) Incorporation of Provisions: The Contractor will include the provisions of paragraphs one (1) through six (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Department or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Department to enter into any litigation to protect the interests of the Department. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(B) During the performance of this contract, the Contractor agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

#### Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects)
- Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.) (prohibits discrimination on the basis of sex)
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination



on the basis of disability) and 49 CFR Part 27

- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age)
- Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex)
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are federally funded or not)
- Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12189), as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38 (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities)
- The Federal Aviation Administration's Non-Discrimination Statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex)
- ~~Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations)~~
- ~~Executive Order 13166, Improving Access to Services for People with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP).~~ To ensure compliance with Title VI, you must take reasonable steps to ensure that limited English proficiency LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100)
- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended (prohibits discrimination in the sale, rental, and financing of dwellings on the basis of race, color, religion, sex, national origin, disability, or familial status (presence of child under the age of 18 and pregnant women)
- Title IX of the Education Amendments Act of 1972, as amended (20 U.S.C. 1681 et seq.) (prohibits discrimination on the basis of sex in education programs or activities)
- Uniformed Services Employment and Reemployment Rights Act (USERRA) (38 U.S.C. 4301-4333) (prohibits discrimination on the basis of present, past or future military service)
- Genetic Information Nondiscrimination Act (GINA) (29 CFR Part 1635, 42 U.S.C. 2000ff)

#### SECTION XXI – DISADVANTAGED BUSINESS ENTERPRISE POLICY AND OBLIGATION

Contractor agrees not to discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Contractor agrees to carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Contractor understands that failure to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Department deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or, (4) Disqualifying the contractor from future bidding as non-responsible.

#### SECTION XXII - PROTECTION FOR CONTRACTING AUTHORITY

Any and all of the employees of the Contractor while engaged in the performance of any work or services required by the Department under this Agreement shall be considered employees of the Contractor only and not the Department, and any and all claims that may or might arise under the Worker's Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Contractor. Contractor understands that during the course of this work, its employees may be provided access to situations including, but not limited to active construction projects, work zones and heavy equipment.

#### SECTION XXIII - CONFLICTS OF INTEREST

(A) No personnel of Contractor or member of the governing body of any locality or other public official or employee of any such governing body in which, or relating to which, the work under this Agreement is being carried out, and who exercises any functions or responsibilities in connection with the review or approval of the understanding or carrying out of such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.

(B) Any such person who acquired an incompatible or conflicting personal interest on or after the effective date of



this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the Contractor. Contractor shall immediately notify the Department in writing of the incompatible or conflicting personal interest of the affected person. Thereafter, he or she shall not participate in any action affecting the work under this Agreement, unless the Department shall determine that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

#### SECTION XXIV – RESPONSIBILITY FOR CLAIMS

##### (A) Ohio Public Institution Requirements

Contractor shall be responsible for the liability associated with the errors, actions, or failures to act of its employees, agents, representatives or third parties.

##### (B) Ohio Private Institution and Public and Private Institutions Residing Outside Ohio Requirements

Except as may be prohibited by law, Contractor agrees to indemnify and hold the Department harmless for all liability and expense arising out of the performance of this Agreement, provided that such liability or expense is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor will not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of the Department, its employees, other contractors, or agents. Contractor agrees to indemnify and hold the Department harmless from claims for wages or overtime compensation due its employees in rendering services pursuant to this Agreement, including payment of all costs in defense of any claim made under the Fair Labor Standards Act or any other federal or state law.

#### SECTION XXV - COMPLIANCE WITH THE LAW

The Contractor agrees to comply with all applicable federal, state, and local laws in the conduct of the work hereunder. Contractor accepts full responsibility for payment of all taxes including without limitation, unemployment compensation insurance premiums, all income tax deductions, social security deduction required for all employees engaged by Contractor in the performance of the work authorized by this Agreement. The Department shall not be liable for any taxes under this Agreement.

#### SECTION XXVI – LIMITATION OF LIABILITY

Neither party will be liable for any indirect, incidental, or consequential loss or damage of any kind including but not limited to lost profits, even if the parties have been advised, knew, or should have known of the possibility of damages. Notwithstanding any other limitation provisions, the Contractor agrees that the Contractor shall be liable for all direct loss or damages due to the negligence or other tortious conduct of the Contractor under this Agreement.

#### SECTION XXVII - ASSIGNMENT

Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.

#### SECTION XXVIII - GOVERNING LAW

~~This Agreement is not binding upon the Department unless executed in full and is effective as of the date of signature of the Department.~~ The Agreement shall be construed and interpreted and the rights of the parties determined in accordance with the laws of the State of Ohio.

#### SECTION XXIX - DRUG-FREE WORKPLACE

Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace. Contractor shall make a good faith effort to ensure that all Contractor's employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

#### SECTION XXX - OHIO ELECTIONS LAW

Contractor affirms that, as applicable to it, no party listed in Division (I) or (J) of Section 3517.13 of the Ohio Revised Code has made, as an individual, within the two (2) previous calendar years, one (1) or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.

SECTION XXXI - OHIO ETHICS LAW REQUIREMENTS

Contractor agrees that it is currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.

SECTION XXXII – MISCELLANEOUS

This Agreement is not binding upon the Department unless executed in full and is effective as of the date of signature of the Department. Any person executing this Agreement in a representative capacity hereby represent that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument. Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile or electronic signature of any other party delivered in such a manner as if such signature were an original. The provisions of this Agreement are severable and independent. If any provision of this Agreement shall be determined to be unenforceable in whole or in part or held to be contrary to law by a court of competent jurisdiction, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

ADDITIONS TO THE AGREEMENT

- 1) No provisions of this Agreement shall be binding on the Contractor if it is contrary to the laws of the state of <enter State>.
- 2) Prior written approval from the Department's Research Section is required to access contingency funding. Requests must be made in accordance with the Research Manual and will be considered on a case-by-case basis. Contingency funds are not guaranteed.
- 3) At this time, only Phase 1 is authorized. Phase 2 cannot commence until written authorization is received from the Department's Research Section.

OR

None

The parties have executed this Agreement by their duly authorized officers on the day, month and year set out below.

CONTRACTOR	DEPARTMENT	OFFICE OF CHIEF LEGAL COUNSEL
		Reviewed as to Form
By: _____	By: _____	By: _____
Title: _____	<div>Pamela Boratyn, Director of The Ohio Department of Transportation, by David Slatzer</div> Title: _____	Title: _____
Date: _____	Date: _____	Date: _____