

**MASTER CONTRACT**  
BETWEEN THE WISCONSIN DEPARTMENT OF TRANSPORTATION AND  
City of Milwaukee, Department of Public Works (MUNICIPALITY)  
FOR LOCAL CONSTRUCTION ENGINEERING SERVICES

I.D. 0690-62-96  
FOS OBJECT CODE: 5525

This is a MASTER CONTRACT for Construction Engineering Services between the Wisconsin Department of Transportation (DEPARTMENT) and City of Milwaukee, Department of Public Works (MUNICIPALITY) for Services as authorized by approved WORK ORDERS for an amount not to exceed \$2,000,000.00. No WORK ORDERS will be issued under this MASTER CONTRACT after December 31, 2006. The MASTER CONTRACT may be renewed to cover subsequent periods at agreed upon amounts through a contract amendment.

The DEPARTMENT deems it advisable to engage the MUNICIPALITY to provide certain SERVICES and has authority to contract for these SERVICES under Sec. 84.06 (3) Wis. Stats. The MUNICIPALITY represents it is in compliance with the laws and regulations relating to the SERVICES and signifies its willingness to provide the SERVICES.

The MUNICIPALITY Representative is Jeffrey S. Polenske, P.E., whose work address/email address/telephone number is: 741 North Broadway, Room 701, Milwaukee, WI 53202, (414)286-2400, Jpolen@mpw.net.

The DEPARTMENT Representative is Kathy Labisch, whose work address/email address/telephone number is 141 North West Barstow Street, Waukesha, WI 53187, (262) 548-8772, kathylabisch@dot.state.wi.us.

The parties agree to all of the provisions that are annexed and made a part of this MASTER CONTRACT consisting of eighteen (18) pages. This MASTER CONTRACT shall be effective when signed by both parties. All previous agreements or understandings between the parties regarding this master agreement are superseded. All previous and future project agreements between the parties are independent of this MASTER CONTRACT and subject to the provisions of those individual agreements.

This MASTER CONTRACT also incorporates the State of Wisconsin Department of Transportation Facilities Development MANUAL and all other MANUALS referenced therein, unless this MASTER CONTRACT expressly excludes a provision thereof or the MASTER CONTRACT clearly indicates different understanding of the parties.

Nothing in this MASTER CONTRACT accords any third party beneficiary rights whatsoever to any non-party that may be enforced by any non-party.

The following individuals, by their signatures hereto, acknowledge that they are authorized to enter into this MASTER CONTRACT on behalf of the department and the Municipality.

For the MUNICIPALITY	For the State of Wisconsin Department of Transportation
By: _____ Title: Commissioner of Public Works	By: _____ Contract Manager, Bureau of Financial Services
Date: _____	Date: _____
	Approved
By: _____ Title: Comptroller	_____ GOVERNOR, State of Wisconsin
Date _____	Date: _____

GENERAL PROVISIONS

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## GENERAL PROVISIONS

### I. **DEFINITIONS**

1. **MUNICIPALITY** means a city, village, town or county.
2. **MUNICIPALITY Representative** means the qualified employee or officer of the MUNICIPALITY who has the duties and responsibilities of the *Engineer* and *Project Engineer* as used in the *State of Wisconsin Department of Transportation Standard Specifications for Highway and Structure Construction and State of Wisconsin, Department of Transportation Construction and Materials MANUAL*.
3. **MASTER CONTRACT** means this Construction Engineering Services CONTRACT.
4. **WORK ORDERS** means the written document signed by the DEPARTMENT and the MUNICIPALITY that references this MASTER CONTRACT and identifies the services to be performed for a specific PROJECT under the terms of this MASTER CONTRACT. It includes the amount and method of compensation to be paid the MUNICIPALITY by the DEPARTMENT.
5. **DEPARTMENT** means the Wisconsin Department of Transportation.
6. **DEPARTMENT REPRESENTATIVE** means the qualified, full-time public employee of the DEPARTMENT in charge of this MASTER CONTRACT and its WORK ORDERS to monitor MUNICIPALITY compliance with its terms, conditions and specifications.
7. **FHWA** means the Federal Highway Administration
8. **MANUAL** or **MANUALS** means the DEPARTMENTS' Facilities Development MANUAL and other MANUALS referenced therein.
9. **PROJECT** means the specific section of a highway together with all appurtenances and construction to be performed.
10. **SERVICE** means the engineering services, labor, equipment and materials furnished by MUNICIPALITY in accordance with this MASTER CONTRACT and its WORK ORDERS.
11. **SPECIAL PROVISIONS** means the special directions or requirements peculiar to a PROJECT and not otherwise thoroughly or satisfactorily, detailed or presented in the SPECIFICATIONS and which are contained in the construction MASTER CONTRACT and its WORK ORDERS.
12. **SPECIFICATIONS** means the *Standard Specifications for Highway and Structure Construction of the Wisconsin Department of Transportation Edition* as incorporated in the construction MASTER CONTRACT and its WORK ORDERS.

## **II. SCOPE OF SERVICES**

### **A. GENERAL**

1. The SERVICES under this MASTER CONTRACT shall consist of performing to the satisfaction of the DEPARTMENT all those construction engineering SERVICES necessary or incidental to accomplish the MASTER CONTRACT through its WORK ORDERS consistent with applicable professional standards.
2. The MUNICIPALITY shall furnish all materials, equipment, supplies and incidentals other than those designated in writing as to be furnished by the DEPARTMENT.
3. The MUNICIPALITY'S principal contact with the DEPARTMENT shall be through the DEPARTMENT'S Representative.
4. Since the SERVICES under this MASTER CONTRACT are to be financed in whole or in part with Federal or State funds, the SERVICES shall comply with all applicable Federal and State laws and REGULATIONS.
5. The FHWA may participate in all conferences and reviews.
6. At the request of the DEPARTMENT, the MUNICIPALITY during the progress of the SERVICES, shall furnish information or data relating to the SERVICES under this MASTER CONTRACT as may be required by the DEPARTMENT to enable it to carry out or to proceed with related phases of the PROJECT not covered by a WORK ORDER under this MASTER CONTRACT, or which may be necessary to enable the DEPARTMENT to furnish information to the MUNICIPALITY, upon which to proceed with further SERVICES.
7. Compliance with all of the foregoing shall be within the purview of this MASTER CONTRACT and its WORK ORDERS and shall not constitute a basis for additional or extra compensation.

### **B. SERVICES TO BE PERFORMED BY THE MUNICIPALITY**

The MUNICIPALITY agrees to:

1. Attend conferences required to carry out the MASTER CONTRACT and its WORK ORDERS.
2. Designate a PROJECT Engineer and Assistant PROJECT Engineer as necessary.
3. Become familiar with the standard construction practices of the DEPARTMENT, the construction plans of the WORK ORDERS for the PROJECT and the DEPARTMENT'S proposed schedule of operations prior to beginning field SERVICES under this MASTER CONTRACT through its WORK ORDERS.
4. Assign a sufficient number of technically qualified and experienced personnel to perform the SERVICES required under this MASTER CONTRACT and its WORK ORDERS.
5. Notify the DEPARTMENT Representative immediately of any unanticipated PROJECT conditions.

6. Withdraw any personnel or halt any SERVICES no longer required, at the request of the DEPARTMENT, or within a reasonable time after the lack of need becomes apparent to the DEPARTMENT.
7. Perform MUNICIPALITY field operations in accordance with OSHA regulations and accepted safety practices.
8. Provide for MUNICIPALITY personnel, transportation, supplies, materials and incidentals as are needed to accomplish the SERVICES required under the MASTER CONTRACT and its WORK ORDERS.
9. Perform construction surveys and staking and provide measurements needed by the DEPARTMENT.
10. Act as Inspector as provided in the SPECIFICATIONS, SPECIAL PROVISIONS and *State of Wisconsin, Department of Transportation Construction and Materials MANUAL*.
11. Sample or test, or both, materials to be incorporated in the work and reject work and materials not meeting the SPECIFICATIONS, SPECIAL PROVISIONS or *State of Wisconsin, Department of Transportation Construction and Materials MANUAL*.
12. Make certain that test report records or certificates of compliance have been received prior to the incorporation of materials in the work for materials tested off the PROJECT site.
13. Keep daily diaries, logs and records consistent with MUNICIPALITY practices as needed for record of the consultant's progress.
14. Measure and compute quantities of all materials incorporated in the work and items of work completed and maintain an item record account.
15. Prepare and submit such periodic intermediate and final reports and records as may be required by the DEPARTMENT and as are applicable to the PROJECT.
16. Return upon completion or termination of the MASTER CONTRACT and its WORK ORDERS, all SPECIFICATIONS, MANUALS, guides, written instructions, construction plans, unused forms and record keeping books and other documents and materials furnished by the DEPARTMENT. The MUNICIPALITY may be responsible for replacing lost documents or materials at the price determined by the DEPARTMENT.
17. Prepare and submit a brief written critique for each individual PROJECT plan.
18. Prepare and deliver one copy of the *as-built* or *record* plan to the DEPARTMENT as defined in the *State of Wisconsin Department of Transportation Construction and Materials MANUAL*.
19. Prepare and submit a certificate of completion to the DEPARTMENT upon completion of the WORK ORDER SERVICES.

C. SERVICES TO BE PROVIDED BY THE DEPARTMENT

The DEPARTMENT agrees to:

1. Make available to the MUNICIPALITY copies of the construction MASTER CONTRACT and its WORK ORDERS and plans, shop drawings, plan revisions, SPECIFICATIONS, MANUALS, guides, written instructions and other information and data necessary to enable the MUNICIPALITY to perform the SERVICES under this MASTER CONTRACT and its WORK ORDERS to the same standards required of the DEPARTMENT'S personnel.
2. Provide for the use of the MUNICIPALITY, a supply of the blank diaries, logs, record keeping books and reporting forms necessary for the MUNICIPALITY to perform the SERVICES under this MASTER CONTRACT and its WORK ORDERS to the same standards required of the DEPARTMENT'S personnel.
3. Provide for laboratory testing of materials requiring off-site testing facilities and authorize DEPARTMENT to obtain test reports or certificates of compliance for such testing.
4. Perform soil borings and sub-surface explorations.

D. AGENCY COORDINATION, PUBLIC RELATIONS AND COOPERATION

1. Contact and coordination with all affected Local, State and Federal agencies, including the FHWA, the General Public, Utilities and Railroad Companies shall be the responsibility of the MUNICIPALITY, except as stated in the following paragraph:

*Efforts shall be made by the MUNICIPALITY to inform and advise abutting property owners affected by PROJECT activities and to advise local authorities: Police, Fire and Emergency Services, affected by PROJECT activities.*

2. The MUNICIPALITY shall cooperate fully with the DEPARTMENT and with Local, State and Federal agencies including the FHWA, the General Public, Utilities and Railroad Companies. Cooperation may include attendance at conferences.

E. MEETINGS AND CONFERENCES

1. Conferences, as may be necessary for the discussion and review of the SERVICES under this MASTER CONTRACT and its WORK ORDERS, shall be scheduled between the MUNICIPALITY and the DEPARTMENT. These conferences may include field review of the PROJECT.
2. Conferences are in addition to those meetings which are necessary for close coordination during day-to-day progress of the work.

### **III. PROSECUTION AND PROGRESS**

#### **A. GENERAL**

1. Written order to proceed with the SERVICES on any construction PROJECT under this MASTER CONTRACT and its WORK ORDERS will be given by the DEPARTMENT to the MUNICIPALITY. The DEPARTMENT will not be liable for payment of any SERVICES performed, or costs incurred, by the MUNICIPALITY prior to the written authorization.
2. SERVICES under this MASTER CONTRACT and its WORK ORDERS shall commence with attendance at an operation planning conference between the DEPARTMENT and the MUNICIPALITY. Attendees shall include the DEPARTMENT REPRESENTATIVE and the MUNICIPALITY Representative and such other persons as may be designated by each party to the MASTER CONTRACT and its WORK ORDERS. The DEPARTMENT will notify the MUNICIPALITY of the locations, date and time and will make necessary arrangements for the conference. Topics for discussion shall include: scope of the contractor's construction operations and anticipated schedule, required staffing by the MUNICIPALITY, lines of communication and authority, equipment needs, standard practices of the MUNICIPALITY and related subjects.
3. The MUNICIPALITY shall conduct the pre-construction conference for the involved utilities and agencies.
4. The MUNICIPALITY shall complete the SERVICES under this MASTER CONTRACT and its WORK ORDERS within the specified time for completion. Time shall not be extended because of any unwarranted or avoidable delay attributable to the MUNICIPALITY, but may be extended by the DEPARTMENT in the event of a delay attributable to the contractor, MUNICIPALITY or its authorized representative, or because of unavoidable delay caused by an *Act of God, Act of War, Act of Government* or other conditions beyond the control of the MUNICIPALITY, including *unavoidable delays* as defined in the SPECIFICATIONS. See also Section Number III, Item B, below:
5. The MUNICIPALITY shall notify the DEPARTMENT in writing when it has determined the SERVICES under this MASTER CONTRACT and its WORK ORDER are completed.
6. Unless the MASTER CONTRACT and its WORK ORDERS has been terminated prior to the completion of the SERVICES, the MASTER CONTRACT and its WORK ORDERS shall not be considered fulfilled upon completion and acceptance of the SERVICES, or upon final payment therefore, but shall be considered to be in full force and effect for the purposes of requiring the MUNICIPALITY to make revisions or corrections in the SERVICES as are necessary to correct errors in the SERVICES made by the MUNICIPALITY, or for the purposes of having the MUNICIPALITY make revisions in the SERVICES, as extra SERVICES, at the request of the DEPARTMENT.

7. Should the DEPARTMENT deem it necessary for the MUNICIPALITY to render additional SERVICES for review of MASTER CONTRACT and its WORK ORDER items, conditions, claims or litigation matters after completion of the MASTER CONTRACT and its WORK ORDERS, the MUNICIPALITY agrees to cooperate and render the requested SERVICES. These SERVICES shall be paid for as extra SERVICES in the amount and manner mutually agreed upon by the MUNICIPALITY and the DEPARTMENT.
8. A *close out* conference shall be at the discretion of the DEPARTMENT held upon completion of this MASTER CONTRACT and its WORK ORDERS to evaluate the performance of the MUNICIPALITY. Attendees shall include the DEPARTMENT REPRESENTATIVE and MUNICIPALITY REPRESENTATIVE and such other persons as may be designated by each party to the MASTER CONTRACT. The DEPARTMENT will notify the MUNICIPALITY of the location, date and time, and will make necessary arrangements for the conference. The evaluation shall consider the quality and adequacy of the MUNICIPALITYS' SERVICES, extent of corrections, ability to meet schedules, cooperation, substantiation of costs, documentation of claims and related subjects.
9. The MASTER CONTRACT and its WORK ORDERS will be considered completed when the MUNICIPALITY is released by written notice from the DEPARTMENT.

B. DELAYS AND EXTENSIONS

1. Delays caused through no fault of the MUNICIPALITY may be cause for extension of time for completion of the SERVICES. Time extensions may be granted upon proper claim and justification by the MUNICIPALITY. Approved time extensions may be cause for consideration of adjustments in payment. Failure of the MUNICIPALITY to submit a formal written request for an extension of time prior to the expiration of MASTER CONTRACT and its WORK ORDERS shall constitute a basis for denying any cost adjustments for reason of delay.

C. TERMINATION OF MASTER CONTRACT AND ITS WORK ORDERS

1. The right is reserved by the DEPARTMENT to terminate all or part of this MASTER CONTRACT and its WORK ORDERS at any time upon written notice to the MUNICIPALITY. Notice of termination shall be sent not less than ten (10) days in advance of the termination date started in the notice.
2. In the event the MASTER CONTRACT and its WORK ORDERS are terminated by the DEPARTMENT without fault on the part of the MUNICIPALITY, the MUNICIPALITY shall be paid for the SERVICES rendered and delivered to the DEPARTMENT up to the time of termination as determined by mutual agreement between the MUNICIPALITY and the DEPARTMENT. This agreement shall be executed as an amendment to the MASTER CONTRACT.
3. In the event the SERVICES of the MUNICIPALITY are terminated by the DEPARTMENT for fault on the part of the MUNICIPALITY, the MUNICIPALITY shall be paid the reasonable value of the SERVICES rendered and delivered to the DEPARTMENT up to the time of termination. The value of the work performed and SERVICES rendered and delivered will be determined by the DEPARTMENT.



D. SUBLETTING OR ASSIGNMENT OF MASTER CONTRACT AND ITS WORK ORDERS

1. The MUNICIPALITY shall not sublet or assign all or any part of the SERVICES under the WORK ORDERS without the prior written approval of the DEPARTMENT. Consent to assign, sublet or otherwise dispose of any portion of the WORK ORDERS shall not be constructed to relieve the MUNICIPALITY of any responsibility for the fulfillment of the WORK ORDERS.
2. All the applicable terms of this MASTER CONTRACT and its WORK ORDERS remain in force and are a condition to any SERVICES approved to be sublet or assigned.

#### **IV. BASIS OF PAYMENT**

##### **A. GENERAL**

1. Reimbursement for costs will be limited to those which are allowable under applicable Federal acquisition REGULATIONS and the DEPARTMENTS' Facilities Development MANUAL.
2. Payment by the DEPARTMENT for the completed and approved SERVICES rendered under this MASTER CONTRACT and its WORK ORDERS is intended as full compensation for work performed or SERVICES rendered and for all labor, material, supplies, equipment and incidentals necessary to complete the work.
3. The MUNICIPALITY shall submit invoices on the form or format similar to that specified in the DEPARTMENT Facilities Development MANUAL, not more often than once per month during the progress of the SERVICES for partial payment on account for the authorized SERVICES completed to date. The final invoice shall be submitted to the DEPARTMENT within three (3) months of completion of SERVICES under the WORK ORDERS.
4. Invoices shall separately identify costs for each individual WORK ORDER and if a WORK ORDER includes more than one (1) PROJECT for each individual PROJECT.
5. No payment shall be construed as DEPARTMENT acceptance of unsatisfactory or defective SERVICES or improper materials. Final payment of any balance due the MUNICIPALITY will be made within thirty (30) days after its verification by the DEPARTMENT, upon completion of the SERVICES under the respective WORK ORDER acceptance by the DEPARTMENT, and upon receipt of the survey notes, records, reports, final estimates, *as built* plans, SPECIFICATIONS, MANUALS, guides, construction contracts and plans and other documents required to be returned or to be furnished under this MASTER CONTRACT.
6. The DEPARTMENT has the equitable right to set off against any sum due and payable to the MUNICIPALITY under this MASTER CONTRACT any amount the DEPARTMENT determines the MUNICIPALITY owes the DEPARTMENT, whether arising under this MASTER CONTRACT and its WORK ORDERS or under any other MASTER CONTRACT or otherwise.
7. All documents and evidence pertaining to costs incurred under this MASTER CONTRACT and its WORK ORDERS will be available for inspection during normal business hours in the MUNICIPALITY'S office for a period of three (3) years following final WORK ORDER payments.
8. The MUNICIPALITY may be subject to the single audit standards as described in the *OMB Circular A133*.

B. SERVICE ORDERS, EXTRA SERVICES OR DECREASED SERVICES

1. Written orders regarding the SERVICES may be give by the DEPARTMENT. Properly approved written orders that change the scope of SERVICVES in the WORK ORDERS, or increase or decrease the quantity of labor or materials, or the expense of the SERVICES, shall not annul or void this MASTER CONTRACT and its WORK ORDERS.
2. The MUNICIPALITY must proceed with the SERVICES, as directed, by furnishing the necessary labor, equipment, materials and professional SERVICES to complete the SERVICES within the time limits specified in the SERVICE order schedules, or as adjusted by written agreement of the parties.
3. If in the MUNICIPALITY'S opinion the orders involve SERVICES not included in the terms or scope of this MASTER CONTRACT and its WORK ORDERS, or would require the discarding or redoing of SERVICES which were based upon earlier direction or approval, the MUNICIPALITY must notify the DEPARTMENT in writing of its opinion if it desires extra compensation.
4. Such notification shall include the justification for the claim for extra compensation requested.
5. The DEPARTMENT will review the MUNICIPALITY'S submittal and, if acceptable, approve a change order as an amendment to the WORK ORDERS. SERVICES under a change order shall not proceed until so authorized by the DEPARTMENT by a written WORK ORDER amendment.
6. If the DEPARTMENT orders a decrease in MUNICIPALITY SERVICES, as provided in Section II, Item two (2) of the MASTER CONTRACT, the cost of the DEPARTMENT personnel and SERVICES will be shown in the order and the order will also direct an appropriate prorata reduction in the *fixed fee* and other WORK ORDER amounts.

## V. MISCELLANEOUS PROVISIONS

### A. CONSTRUCTION ENGINEERING STANDARDS

1. All SERVICES under the MASTER CONTRACT and its WORK ORDERS shall be performed in accordance with the current standard practices of the DEPARTMENT as contained in the SPECIFICATIONS, SPECIAL PROVISIONS, MANUALS, guides and written instructions and shall be consistent with generally accepted professional practice.
2. No variation will be permitted except by written order of the DEPARTMENT.

### B. REVISION OF SPECIFICATIONS AND PLANS

1. The DEPARTMENT may, by written notice and without invalidating this MASTER CONTRACT and its WORK ORDERS, require changes in the SPECIFICATIONS, construction contract plans or SPECIAL PROVISIONS resulting in the revision or abandonment of SERVICES already performed by the MUNICIPALITY or resulting in SERVICES by the MUNICIPALITY not contemplated in the MASTER CONTRACT and its WORK ORDERS.
2. Claims by the MUNICIPALITY for compensation for SERVICES resulting from these revisions shall be submitted and processed in accordance with Section IV, Item B, above.

### C. OWNERSHIP OF DOCUMENTS

1. Upon completion or termination of the MASTER CONTRACT and its WORK ORDERS, the originals of all plans, SPECIFICATIONS, MANUALS, guides, written instructions, copies of the construction contract, unused forms and record keeping books, and other written data and information furnished to the MUNICIPALITY by the DEPARTMENT for the performance of the MASTER CONTRACT and its WORK ORDERS, all survey notes, diaries, reports, records, estimates, *as built* or record plans, and other information and data collected or prepared by the MUNICIPALITY in the performance of this MASTER CONTRACT and its WORK ORDERS, shall be properly arranged and delivered to the DEPARTMENT and shall become the property of the DEPARTMENT.
2. Documents collected or prepared by the MUNICIPALITY in the performance of the MASTER CONTRACT and its WORK ORDERS may be used without restriction by the DEPARTMENT for any public purpose. Any such use shall be without compensation or liability to the MUNICIPALITY.

### D. CONTINGENT FEES

1. The MUNICIPALITY warrants that it has not employed or retained any company or person other than a bonafide employee working solely for the MUNICIPALITY, to secure this MASTER CONTRACT and its WORK ORDERS, and that it has not paid or agreed to pay, any company or person other than a bonafide employee working solely for the MUNICIPALITY, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this MASTER CONTRACT and its WORK ORDERS. For breach or violation of this warranty, the DEPARTMENT shall have the right to terminate this MASTER CONTRACT and its WORK ORDERS without liability.

E. ACCESS TO RECORDS

1. The MUNICIPALITY and subcontractors to the MUNICIPALITY, if any, agree to maintain for inspection by the DEPARTMENT, FHWA and other, all books, documents, papers, accounting records and other evidence pertaining to all costs incurred under this MASTER CONTRACT and its WORK ORDERS and to make such materials available at their respective offices at all reasonable times during the life of the MASTER CONTRACT and its WORK ORDERS for three (3) years from the date of final payment under the MASTER CONTRACT and its WORK ORDERS, and to furnish copies thereof, if requested.
2. If more than a nominal number of copies are requested, the additional copies shall be furnished at the expense of the requesting agency or person.

F. LEGAL RELATIONS

1. The MUNICIPALITY shall become familiar with, and shall at all times observe and comply, with all applicable Federal, State and Local laws, ordinances and REGULATIONS.
2. In carrying out the provisions of this MASTER CONTRACT and its WORK ORDERS, or in exercising any power or authority granted to the MUNICIPALITY, DEPARTMENT or FHWA, there shall be no personal liability upon the authorized representatives of the MUNICIPALITY, DEPARTMENT and the FHWA, it being understood that in such matters they act as agents and representatives of those agencies.
3. The MUNICIPALITY shall be responsible for any and all damages to property or persons arising out of a negligent act, error and/or omission in the MUNICIPALITY'S performance of the SERVICES covered by the MASTER CONTRACT and its WORK ORDERS.
4. The MUNICIPALITY shall indemnify and save harmless, the DEPARTMENT and the FHWA and all of their officers, agents and employees on account of any damages to persons or property resulting from negligence of the MUNICIPALITY in connection with performance and completion of the SERVICES covered by the MASTER CONTRACT and its WORK ORDERS.

G. NON-DISCRIMINATION IN EMPLOYMENT

1. During the performance of this MASTER CONTRACT and its WORK ORDERS, the MUNICIPALITY, for itself, its assignees and successors in interest agree as follows: In connection with the performance of SERVICES under this MASTER CONTRACT and its WORK ORDERS, the MUNICIPALITY agrees not to discriminate against any employee or applicant because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in *Wisconsin Statute Number 51.0(5)*, sexual orientation as defined in *Wisconsin State Statute 111.32(13m)* or national origin. This provision 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. Except with respect to sexual orientation, the MUNICIPALITY further agrees to take affirmative action to ensure equal employment opportunities. The MUNICIPALITY agrees to post in conspicuous

places, available for employees and applicants for employment, notices to be provided by the DEPARTMENT, setting forth the provisions of the non-discrimination clause.

2. The following statutory definition shall be used for the purpose of interpreting and administering this MASTER CONTRACT and its WORK ORDERS. *Developmental Disability* means a disability attributable to mental retardation, cerebral palsy, epilepsy or another neurological condition closely related to mental retardation or requiring treatment similar to that required for the mentally retarded, which disability has originated before the individual has attained eighteen (18) years of age, has continued or can be expected to continue indefinitely and constitutes a substantial handicap to the afflicted individual.
3. The MUNICIPALITY will comply with the REGULATIONS of the State of Wisconsin and the DEPARTMENT relative to non-discrimination in Federally-assisted programs of the Department of Transportation, *Title 49, Code of Federal REGULATIONS, Part 21*, hereinafter referred to as the **REGULATIONS**, which are herein incorporated by reference and made a part of this MASTER CONTRACT and its WORK ORDERS.
4. The MUNICIPALITY with regard to the SERVICES performed by it after award and prior to completion of this MASTER CONTRACT and its WORK ORDERS will not discriminate on the grounds of sex, race, color or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The MUNICIPALITY will not participate either directly or indirectly in the discrimination prohibited by *Section 21.5* of the REGULATIONS, including employment practices when the MASTER CONTRACT and its WORK ORDERS covers a program set forth in Appendix B of the REGULATIONS.
5. In all solicitations, either by competitive bidding or negotiation made by the MUNICIPALITY for activities to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the MUNICIPALITY of the obligations under this MASTER CONTRACT and its WORK ORDERS and the REGULATIONS relative to non-discrimination on grounds of sex, race, color or national origin.
6. The MUNICIPALITY will provide all information and reports required by the REGULATIONS, or orders and instructions 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 to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a MUNICIPALITY is not available, the MUNICIPALITY shall so certify to the DEPARTMENT and shall set forth what efforts it has made to obtain the information.
7. In the event of the MUNICIPALITY'S non-compliance with the non-discrimination provisions of this MASTER CONTRACT and its WORK ORDERS, the DEPARTMENT shall impose such MASTER CONTRACT and its WORK ORDERS sanctions as it may determine to be appropriate including, but not limited to:
  - a. Withholding of payments to the MUNICIPALITY under the MASTER CONTRACT and its WORK ORDERS until the MUNICIPALITY

complies and/or cancellation, termination or suspension of the MASTER CONTRACT and its WORK ORDERS, in whole or in part, or both.

8. The MUNICIPALITY will include the provisions for non-discrimination in every subcontract, including procurements of materials and leases of equipment unless exempt by the REGULATION, order, or instructions issued pursuant thereto. The MUNICIPALITY will take action with respect to any subcontract or procurement as the DEPARTMENT may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that in the event a MUNICIPALITY becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the MUNICIPALITY may request the FHWA to enter into such litigation to protect the interests of the United States.

#### H. FEDERAL REQUIREMENTS FOR DISADVANTAGES BUSINESS PROGRAM

1. Disadvantaged Businesses (DB) as defined in *49CFR, Part 23*, shall have the maximum opportunity to participate in the performance of WORK ORDERS financed in whole or in part with Federal funds. Consequently, the DB requirements of *49 CFR, Part 23* apply to this MASTER CONTRACT.
2. The consultant agrees to ensure that Disadvantaged Businesses as defined in *49 CFR, Part 23*, have the maximum opportunity to participate in the performance of any subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, the MUNICIPALITY shall take all necessary and reasonable steps in accordance with *49 CFR, Part 23*, to ensure that Disadvantaged Businesses have the maximum opportunity to compete for and perform subcontracts. The MUNICIPALITY shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts. Failure to carry out the requirements of this provision shall constitute a breach of contract and may result in termination of this MASTER CONTRACT and its WORK ORDERS by the MUNICIPALITY, DEPARTMENT, or both or other such remedy as the DEPARTMENT deems appropriate.

#### I. EQUAL EMPLOYMENT OPPORTUNITY (All Contracts Exceeding \$10,000.00)

During the performance of the MASTER CONTRACT, the MUNICIPALITY agrees as follows:

1. The MUNICIPALITY will, in all solicitations or advertisements for employees placed by or on behalf of the MUNICIPALITY; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
2. The MUNICIPALITY will comply with all provisions of Executive Order 11246 entitled, *Equal Employment Opportunity* as amended by Executive Order 11375, and as supplemented in Department of Labor REGULATIONS *41 CFR Part 60*.
3. The MUNICIPALITY will furnish all information and reports required by Executive Order 11246 and by rules, REGULATIONS and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the DEPARTMENT, FHWA and the United States Secretary of Labor for purposes of investigation to ascertain compliance with such rules, REGULATIONS and orders.

4. The MUNICIPALITY will include the provisions of this section entitled, *Employment Opportunity* in every subcontract in excess of \$10,000.00.

J. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (All Contracts Exceeding \$100,000.00)

1. The MUNICIPALITY stipulates that any facility to be utilized in the performance of this MASTER CONTRACT, unless such MASTER CONTRACT is exempt under the Clean Air Act, as amended *42 U.S.C. 1857 et. seq.*, as amended by *Pub. L. 91-604*, and under the Federal Water Pollution Control Act, as amended *33 U.S.C. 1251 et. seq.*, as amended by *Pub. L. 92-500* Executive Order 11738, and REGULATIONS in implementation thereof *40 CFR Part 15*, is not listed on the date of MASTER CONTRACT award on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to *40 CFR 15.20*.
2. The MUNICIPALITY agrees to comply with all the REQUIREMENTS of *Section 114* of the Clean Air Act and *Section 308* of the Federal Water Pollution Control Act and all REGULATIONS and guidelines listed there under.
3. The MUNICIPALITY shall 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 MASTER CONTRACT is under consideration to be listed on the EPA LIST of Violating Facilities.
4. The MUNICIPALITY agrees to include, or cause to be included, the REQUIREMENTS of the preceding three (3) paragraphs, numbers one (1), two (2) and three (3), in every non-exempt subcontract.

K. ERRORS AND OMISSIONS

1. The MUNICIPALITY shall be responsible for the accuracy of the SERVICES performed by the MUNICIPALITY under the MASTER CONTRACT and shall promptly make necessary revisions or corrections to its SERVICES resulting from its negligent acts, its errors or omissions without additional compensation. The MUNICIPALITY shall give immediate attention to these revisions or corrections to prevent or minimize delay to the PROJECT.
2. The MUNICIPALITY shall be responsible to the DEPARTMENT for any losses to, or costs to, repair or remedy construction as a result of MUNICIPALITYS' negligent acts, errors or omissions.



L. CONFLICT OF INTEREST

1. The MUNICIPALITY warrants it has no public or private interest and shall not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the SERVICES under this MASTER CONTRACT.
2. The MUNICIPALITY shall not employ any person currently employed by the DEPARTMENT for any SERVICES included under the provisions of the MASTER CONTRACT.

M. CERTIFICATION REGARDING LOBBYING

MUNICIPALITY certifies that:

1. No Federal appropriated funds have been paid or will be paid by, or on behalf of, the MUNICIPALITY to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds, other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with this Federal contract, grant, loan or cooperative agreement, the consultant shall complete and submit standard Form-LOLL, *Disclosure Form to Report Lobbying* in accordance with its instructions.

N. PROCEDURES FOR HANDLING ERRORS AS DESCRIBED IN SECTION V.K.

1. The DEPARTMENT may recover those additional costs incurred by the DEPARTMENT and FHWA as the result of errors determined to be the responsibility of MUNICIPALITY as described in Section V.K.
2. When the DEPARTMENT pursues reimbursement, the MUNICIPALITY will be notified of the decision and options for repayment. The DEPARTMENTS' options listed in priority order are:
  - a. Repayment in full.
  - b. Deductions from other payments due and payable to the CONSULTANT by equitable right of set-off.
  - c. Legal action by the MUNICIPALITY, DEPARTMENT or both to collect the costs.
  - d. Any combination of the above.

O. EQUIPMENT ACQUISITION

1. Equipment charged as a direct cost to this MASTER CONTRACT will be subject to rules for equipment purchased under grants to local sub-recipients as outlined at *49 CFR 18.32*.