

Contract No. \_\_\_\_\_

CONTRACT  
BETWEEN THE  
CITY OF MILWAUKEE  
AND  
COLLINS ENGINEERS, INC.  
FOR

Underwater Dive Inspection of City Bridges to enable the City of Milwaukee to monitor, evaluate, maintain and plan repair for its underwater bridge foundations and dolphins hereinafter referred to as the "PROJECT."

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2003, by and between the City of Milwaukee ("CITY") AND Collins Engineers, Inc. ("CONSULTANT"), provides for those services described in detail elsewhere in this document.

WITNESSETH THAT:

WHEREAS, it is a Federal Highway Administration (FHWA) requirement that all bridge foundations including those foundations underwater be inspected; and

WHEREAS, it is deemed desirable to engage the services of a consultant to assist the CITY by performing underwater dive inspections for certain City of Milwaukee bridges; and

WHEREAS, the CONSULTANT represents that the CONSULTANT is capable, experienced and qualified to undertake and perform those certain services, as hereinafter set forth, as are required in accomplishing fulfillment of the obligations under the terms and conditions of the CONTRACT as an independent contractor and not as an employee of the CITY, and agrees to furnish such services as hereinafter described.

NOW, THEREFORE, the CITY and CONSULTANT, in consideration of the premises and the mutual promises and understandings hereinafter contained, agree as follows:

SECTION I – RETENTION OF SERVICES

CITY hereby agrees to engage the CONSULTANT and the CONSULTANT hereby agrees to personally perform, as an independent contractor and not as an employee of the CITY, the services hereinafter set forth, all in accordance with the terms and conditions of this CONTRACT.

The City of Milwaukee Department of Public Works (“DPW”) shall administer this CONTRACT specifically as related to work performed by the CONSULTANT. The DPW shall be the agent for the CITY whom the CONSULTANT shall have contact with in providing the services as required in this CONTRACT. The CITY ENGINEER, as the designee of the Commissioner of Public Works, will transmit all instructions, comments, and approvals to the CONSULTANT, and be the recipient of all submittals by the CONSULTANT.

SECTION II – REQUIREMENTS

The CONSULTANT is required to:

- A. Perform, do and carry out in a satisfactory, timely, and professional manner, the services delineated in this CONTRACT.
- B. Comply with requirements listed with respect to reporting on progress of the services, additional approvals required, and other matters relating to the performance of the services.
- C. Comply with time schedules in Section VII.

### SECTION III – SCOPE OF SERVICES

#### A. GENERAL

- (1) The work under this CONTRACT shall consist of performing those services for the PROJECT necessary or incidental to accomplish the PROJECT operations which are hereinafter specified.

The services included cover two distinct types of operations:

- a. Underwater Bridge Inspections (including Upstream/Downstream Soundings).
  - b. Design of Detailed Repair Schemes and Construction Inspection.
- (2) The CONSULTANT shall furnish all services and labor necessary to conduct and complete the WORK, AND SHALL FURNISH ALL EQUIPMENT, SUPPLIES, AND INCIDENTALS.
  - (3) The work under this CONTRACT shall at all times be subject to the approval of and shall be under the direction of the CITY ENGINEER.
  - (4) Future rehabilitation recommended as a result of the PROJECT may be financed in part by Federal and/or State funds. The work under this CONTRACT shall therefore comply with all applicable State and Federal laws and regulations.
  - (5) The CONSULTANT shall from time to time during the progress of the work confer with the CITY ENGINEER, and shall prepare and present such information and studies as may be pertinent and necessary or as may be requested by the CITY ENGINEER to enable the CITY ENGINEER to pass judgment on the features of the work. The CONSULTANT shall make such changes, amendments, or revisions in the detail of the work as may be required by the CITY ENGINEER. The CITY ENGINEER reserves the right to select the alternative(s) to be pursued and may

request additional alternatives be studied, subject to Section XV – Changes, if applicable.

- (6) At the request of the CITY ENGINEER and during the progress of the work, the CONSULTANT shall furnish such plans, schematics, or other information or data relating to the CONSULTANT'S work under this CONTRACT as may be required to enable the CITY ENGINEER to carry out or to proceed with rehabilitation recommended as a result of the PROJECT not covered by this CONTRACT, or as may be necessary to enable the CITY ENGINEER to furnish information to the CONSULTANT upon which to proceed further with the work.

**B. DETAILED DESCRIPTION OF SERVICES (UNDERWATER BRIDGE INSPECTION)**

**(1). GENERAL**

The City of Milwaukee will provide previous underwater inspection reports where available, as well as a general plan sheet and details of underwater elements to the Consultant. The Consultant shall review these documents prior to the dive. Where plans are not available, the Consultant shall provide sketches of underwater elements as part of the report.

Complete underwater substructure inspection services shall be provided including the use of experienced diving teams and equipment necessary to inspect the underwater structural elements of the bridges per the list in the BRIDGE SCHEDULE in Part B.9 of Section III.

The City of Milwaukee shall be provided with a comprehensive report that details the general condition of the substructure and channel, the relative elevation of the streambed in relation to the bottom of the substructure foundation, identifies areas of

damage and deterioration, and outlines the required corrective action. The report shall be signed and stamped by a Wisconsin registered professional engineer.

(2) DIVING INSPECTOR QUALIFICATION AND SAFETY STANDARDS

The inspections must be done under the direction of a registered professional engineer. Divers must be certified bridge inspectors or registered professional engineers who are certified divers. The responsible registered engineer must have five years experience in bridge inspection or equivalent underwater structure inspection experience.

All diving operations shall be performed in accordance with the applicable Occupational Safety and Health Administration (OSHA) standards and the WisDOT Dive Manual, as well as local safety standards.

(3) INSPECTION

Inspection shall be done in accordance with the National Bridge Inspection Standards (NBIS), the AASHTO Manual for the Condition Evaluation of Bridges, FHWA report FHWA-DP-80-1 "Underwater Inspection of Bridges", the WISDOT Structure Inspection Manual, the Wisconsin Bridge Inspection Manual, the Bridge Inspection Pocket Manual, the WisDOT Dive Manual, and Chapter 22 of the WisDOT Maintenance Manual.

All portions of all faces of all underwater structural elements including the portion of these elements subjected to periodic submersion shall be inspected at level 1.

Members that cannot be examined because of debris, vegetation, or other reasons should be cleaned and inspected at level 2 if it can be done with the use of hand tools.

Where zebra mussels are required to be removed, a 1-foot wide vertical strip will be cleaned every 10 feet around the perimeter of the substructure unit. If additional cleaning, or extraordinary removals are required, work will be completed under a

separate work order. Level 3 inspections shall be conducted where appropriate. Scuba or surface supplied diving equipment shall be used for the inspection of all underwater structural elements.

The inspection techniques used shall be sufficient to yield information necessary to make a general condition assessment of the underwater structural elements of each bridge listed. Any areas of mechanical damage or deterioration shall be identified and assessment made of the reasons for and extent of this damage or deterioration. In making the inspection, the diver shall have tools necessary for probing, measuring, and recording the conditions found.

Concrete members shall be struck with a hammer to gauge the soundness of the concrete and to detect any softness that might be present. Only non-destructive methods of inspection shall be employed.

Deficiencies shall be described in enough detail to allow rates of change to be monitored over consecutive inspections. This requires use of size and location, dimensions, sketches, photographs, or video. Deficiencies shall be compared to similar areas above water.

Spalled areas shall be measured on a square foot basis. Depth of spalled areas shall be measured in inches. Location of damage or deterioration shall be accurately recorded utilizing sketches, photographs, or video.

Areas of exposed reinforcing steel shall be documented and recorded as to location. Steel members will be inspected for corrosion, distortion and section loss. Marine growth shall be documented and inspected. Deficiencies shall be measured in inches and compared to similar areas above water.

Timber members shall be checked for damage, soundness, decay, and section loss.

The presence of fungi or marine growth shall be documented. Timber members shall be probed with an awl in splash zone areas to check for structural integrity.

Deficiencies will be measured in inches and compared to similar areas above water.

Stone facing blocks shall be inspected for damaged or displaced areas. Also, joints between stone facing blocks shall be probed with a pointed instrument to determine the condition of the joint material. The location of damage or deterioration shall be recorded utilizing sketches, photographs, or video.

Scoured areas at the base of support piers and abutments shall be measured in inches and feet as to depth, width, and penetration beneath the substructure. Sketches, photographs, or video shall be made of these areas. The area around the supports shall be inspected for mussels. The presence or absence shall be noted on the report.

(4) PHOTOGRAPHS/VIDEO

Underwater 35mm or video photographic equipment may be used to document areas of significant deterioration and distress when sketches are deemed to be inadequate. A clear water box shall be used in areas of low visibility water.

When required, photographs and/or video should be used to illustrate typical examples of severe and/or common type deficiencies. Also, for the most severe deficiencies, one photograph illustrating a typical example should include a scale, such as a ruler or common hand tool. The essential features of a deficiency shall be emphasized by making arrows, or dimensions directly on the photograph or video.

(5) UPSTREAM/DOWNSTREAM SOUNDINGS

In addition to the work described in the original REQUEST FOR PROPOSAL, THE City also requires that Upstream/Downstream soundings be taken for each bridge

listed in SECTION 9, BRIDGE SCHEDULE. The soundings shall be taken from a boat using a fathometer in accordance with the latest edition of FWWA-DP-80-1, "Underwater Inspection of Bridges. The Consultant shall present data in the form of the fathometer data readout with the bridge foundations drawn (added) to the fathometer data readout. The Consultant shall also add and label the streambed profile elevations at piers and abutments to the plan and profile sketches.

(6) REPORT

The findings of this investigation shall be assembled in report form, which shall be signed and stamped by a registered professional engineer. Four paper copies and one electronic copy of the report shall be submitted to the City of Milwaukee. One paper copy each shall be submitted to the Wisconsin Department of Transportation and to Milwaukee County by the City. The remaining two paper copies and one electronic copy will be retained by the City. Each report shall contain the bridge name, city identification number, state identification number, feature on, feature under, and date of inspection.

In addition, the consultant shall prepare a summary report. The cost of this report shall be incidental to the fee for the individual inspections and no additional compensation will be made. New terminology not commonly understood by non-inspection personnel should be minimized in the report, and values of rating shall be defined.

The underwater substructure inspection report shall provide a comprehensive description of all underwater substructure and channel deficiencies, shall indicate the cause of deficiencies, and shall specify required corrective action.

The report for each bridge shall contain the following standard sections arranged in the indicated sequence.



a. Plan and Profile Sheet or Sketch of structure with elements numbered

b. Field Bridge Inspection Report

Underwater Bridge Inspection Checklist/Dive Log

Pontis Underwater Bridge Inspection Report

The Field Bridge Inspection Report shall include the numerical condition of all elements of which any part is underwater along with an overall numerical NBI rating (sub or culvert) based on the underwater portion. The other three forms shall be filled out as required before, during, and after the dive.

c. Condensed Inspection Report (CIR)

The purpose of the condensed inspection report is to provide abbreviated documentation of individual substructure and channel elements and to minimize inspection and clerical effort while providing a complete assessment of the general condition of the underwater substructure and channel.

When deficiencies exist in an element that warrants a written description or sketch, it should be so noted and done in the Comprehensive Report of Deficiencies.

d. Comprehensive Report of Deficiencies

This section shall contain a comprehensive description of deficiencies that are significant. Descriptions shall provide details. The cause of deficiencies shall also be identified.

In addition, the report shall include comment and/or conclusions on the significance of the streambed profiles. It shall also include observations of any dikes, jetties, riprap, or other flood control devices or conditions affecting the flow of the river under the bridge.

e. Recommended Corrective Action

The identity of deficiencies requiring maintenance, repair or rehabilitation (corrective action) shall be contained in this section including the methods, quantities, and approximate costs of such action. Of all deficiencies identified, only those requiring corrective action shall be contained in this section. Structural deficiencies serious enough to cause a current or imminent traffic safety hazard must be flagged in the left margin with the word "CRITICAL" in capital letters adjacent to the element number. Also, the City should be immediately notified. Specific actions recommended by the Consultant shall be documented separately in a concise 2 or 3 page report. Recommendations are to be listed as individual, specific tasks. When applicable, an accompanying sketch portraying the precise details and limits of construction activities shall also be included. For budgeting purposes, an opinion of probable construction cost shall be included along with the recommended time schedule for completion of the recommended action. A meeting with the City shall be conducted prior to preparing the final report to review all recommended actions and any possible alternatives. As part of these discussions, the City may present its maintenance and capital improvements program as they relate to the inspection of bridges. Corrective actions for various bridges shall be listed in order of priority.

(7) CRITICAL CONDITIONS AND MEETINGS

The owning agency, City of Milwaukee, shall be contacted immediately when structural deficiencies serious enough to cause a current or imminent traffic safety hazard are detected.

The Engineering Consultant performing the underwater bridge inspection shall attend all meetings scheduled in connection with this inspection when required by the City.

Consultant shall inform the City as to dive schedule. City may provide a diver for observation and quality assurance.

(8) LOCATION OF BRIDGE

The location of the bridges are listed in the Bridge Schedule, Section 9.

(9) BRIDGE SCHEDULE

<u>State Structure</u> <u>I.D. Number</u>	<u>City</u> <u>I.D. No.</u>	<u>Bridge Location</u>	<u>Number</u> <u>of Spans</u> <u>Over River</u>	<u>River Location</u>
B-40-0513	305	400 North 27 <sup>th</sup> Street	2	Menomonee (Viaduct)
P-40-0847	306	400 North 35 <sup>th</sup> Street	2	Menomonee (Viaduct)
P-40-0654	318	100 North 25 <sup>th</sup> Street	2	Menomonee
P-40-0550	304	400 North 16 <sup>th</sup> Street	1	Menomonee (Bascule)
P-40-0539	300	100 West Plankinton Ave.	1	Menomonee (Bascule)
P-40-0794	202	300 West Becher Street	3	Kinnickinnic
P-40-0830	201	200 South First Street	2	KK (Bascule)
B-40-0952	100	100 North Broadway	3	Milwaukee (Bascule)
B-40-0548	101	400 North Water Street	1	Menomonee (Bascule)
P-40-0523	103	100 East St. Paul Avenue	5	Milwaukee (Vert. Lift)
P-40-0868	104	100 East Clybourn	3	Milwaukee (Vert. Lift)
P-40-0886	105	100 East Michigan Avenue	3	Milwaukee (Vert. Lift)
B-40-0488	106	100 East Wisconsin Avenue	3	Milwaukee (Vert. Lift)
B-40-0544	107	100 West Wells Street	3	Milwaukee (Vert. Lift)
P-40-0881	108	200 West Kilbourn Avenue	1	Milwaukee (Bascule)
B-40-0980	109	200 West State Street	3	Milwaukee (Bascule)
P-40-0880	110	200 West Juneau Avenue	1	Milwaukee (Bascule)
P-40-0864	111	100 West Cherry Street	3	Milwaukee (Bascule)
B-40-0406	112	300 East Pleasant	3	Milwaukee (Vert. Lift)
P-40-0875	113	1800 North Holton Street	3	Milwaukee (Viaduct)
P-40-0878	114	2000 North Humboldt Ave.	2	Milwaukee
P-40-0527	116	1400 East Locust Street	2	Milwaukee
B-40-0560	302	600 South 11 <sup>th</sup> Street	1	Burnham Canal
P-40-0610	303	100 North Emmer Lane	1	Menomonee (Bascule)
B-40-0947	200	2000 S. Kinnickinnic Ave.	1	KK (Bascule)
B-40-0414B	301BN	400 North 6 <sup>th</sup> Street	1	Menomonee (Bascule)
B-40-0413B	301BS	400 North 6 <sup>th</sup> Street	1	Burnham Canal (Bascule)

Progress meetings will be held to answer questions, provide information to both parties and discuss schedules. It is anticipated that one meeting will be required at the start of the contract work, and one meeting will be required after submission of the final contract documents. Other meetings will be scheduled as needed.

(10) DESIGN OF DETAILED REPAIR SCHEME AND CONSTRUCTION INSPECTION

The Consultant shall be prepared to produce detailed repair plans for fixing any deficiencies as recommended above and shall provide diving services for construction inspection of the repairs. This shall be done by a separate work order from the inspections.

(11) OTHER REQUIREMENTS

(1) The CONSULTANT shall do, perform and carry out all of the tasks and obligations outlined in this CONTRACT Scope of Services in addition to the CITY'S Request for Proposal (Exhibit I) hereby referenced and incorporated into this CONTRACT. The CONSULTANT shall do, perform and carry out all of the tasks and obligations outlined in the CONSULTANT'S PROPOSAL DATED May 23, 2003 and subsequent modifications as herein referenced and incorporated into the CONTRACT and will hereinafter be referred to as the Proposal (Exhibit II). The CONSULTANT'S obligations shall include all the tasks and objectives specifically proposed under the Proposal's Scope of Services, without substantial change to the Inspection Procedures specified in the Proposal. In the event of a conflict between the provisions of this CONTRACT incorporating Exhibit I (Request for Proposal) and the CONSULTANT'S Proposal, the provisions of the CONTRACT shall govern.

(12) DELIVERABLES

- (1) Four (4) paper copies of the final reports shall be delivered to the City of Milwaukee, CITY ENGINEER along with one electronic copy of the reports compatible with Microsoft Word 97 and Adobe Reader, respectively.

SECTION IV – SPECIFIC CONDITIONS OF PAYMENT

- A. The CONSULTANT will be compensated by the CITY for services provided under this CONTRACT on the following basis for all necessary inspection, sounding data collection, estimates, reports and related services involving listed City of Milwaukee bridge foundations by Collins Engineers, Inc., a Lump Sum of \$49,161.00.
- B. The total cost of this CONTRACT on the above basis, shall not exceed \$49,161.00.
- C. Progress Payments. The CONSULTANT may submit invoices to the CITY, not more often than once per month during the progress of the work, for partial payment on account, for the authorized work completed to date. Such invoices shall represent the value of the partially completed work and show the amount of CONTRACT work accomplished at the end of the billing period. For work based on the CONSULTANT'S specific hourly rate, a summary of hours and description of work shall accompany the request for payment. Partial payment of 70% for the work will be made upon completion of the field work with the remaining 30% payment made upon completion and acceptance of the report. Payments to the CONSULTANT will be limited to 95 percent of the total CONTRACT cost with the 5 percent retainer being withheld from the last billing(s). The 5 percent retainer will be paid upon notice from the CONSULTANT that the CONTRACT work is completed and final acceptance of the work by the CITY. Final payment of any balance due the CONSULTANT of the ultimate gross amount earned will be made promptly upon its ascertainment and verification by the CITY, after the completion of the work under this

CONTRACT and its acceptance by the CITY, and the receipt of the drawings, reports, and other related documents which are required to be furnished under this CONTRACT.

#### SECTION V – NOTICES

Any and all notices shall be in writing and deemed served upon by depositing same with the United States Postal Services as “Certified Mail, Return Receipt Requested” addressed to the CONSULTANT at:

Collins Engineers, Inc.  
6020 South Packard Avenue, 2<sup>nd</sup> Floor  
Cudahy, Wisconsin 53110  
Attention: Mr. Terrence Brown, P.E.

and to the CITY at:  
City of Milwaukee  
Department of Public Works  
Room 701, Zeidler Municipal Building  
841 North Broadway  
Milwaukee, Wisconsin 53202  
Attention: Mr. Jeffrey S. Polenske, P.E., City Engineer

All other correspondence shall be addressed as above, but may be sent “Regular Mail” and deemed delivered upon receipt by the addressee.

#### SECTION VI – CONTRACT DOCUMENTS

- A. The CONSULTANT agrees to submit contract documents as described in the Section III.B.12 (Scope of Services/Deliverables), Section IV.C. (Specific Conditions of Payment/Progress Payments) and interim reports as may be required by the CITY ENGINEER at such time as may be scheduled for submittal, unless otherwise agreed to in writing.
- B. All contract documents, studies, analysis, memoranda and related data and material as may be developed during the performance of this CONTRACT shall be submitted to the CITY ENGINEER, and be the exclusive property of the CITY, which shall have the right to use

same for any purpose without any further compensation to the CONSULTANT other than hereinafter provided. It is understood that should the CITY or others reuse for any other purpose or make design modifications that alter the specific purpose of said documents, it does so at their sole risk and without liability or legal exposure to the CONSULTANT. The CITY further agrees to indemnify the CONSULTANT for all loss, damage, costs or expense, including attorney fees, relating to any claim asserted for any other use other than use for this CONTRACT. All of the aforesaid documents and materials prepared or assembled by the CONSULTANT under this CONTRACT are confidential and the CONSULTANT agrees not to submit or make same available to any individual, agency, public body or organization other than the DPW, except as may be otherwise herein provided without prior written approval by CITY.

- C. The aforesaid documents and material prepared in whole or in part under this CONTRACT shall not be made the subject of any report, book, written or oral dissertation by the CONSULTANT other than as herein specifically provided. If this CONTRACT is terminated for cause or for any other reason, all finished or unfinished documents or materials prepared under this CONTRACT shall be immediately transmitted to the DPW at the effective date of such termination.

#### SECTION VII – TIME OF PERFORMANCE

The services to be performed under the terms and conditions of this CONTRACT shall be in force and shall commence upon execution of this CONTRACT by the CONSULTANT and upon written notice from the DPW to proceed, or when CONSULTANT has received an original of the CONTRACT which is complete and fully executed, and shall be undertaken and completed in such sequence as to ensure its expeditious completion in the light of the purposes of this CONTRACT. It is the intent of DPW and the CONSULTANT that all of the services

required to be performed hereunder by the CONSULTANT is scheduled to be finished by December 31, 2003. The following schedule shall be adhered to in order to meet said completion date:

- Dive inspection under this contract will be completed by October 31, 2003.
- Final reports shall be submitted by December 31, 2003.

In addition to all other remedies inuring to the CITY should the CONTRACT not be completed by the date specified in accordance with all of its terms, requirements and conditions therein set forth, the CONSULTANT shall continue to be obligated thereafter to fulfill CONSULTANT'S responsibility to complete the scope of services and to execute any necessary amendments to this CONTRACT. Delays in completing the work within the time provided for completion as specified elsewhere in this CONTRACT, for reasons not attributable to the CONSULTANT, may constitute justification for additional compensation to the extent of documentable increases in costs of labor. Failure of the CONSULTANT to submit a formal written request for an extension of time prior to the expiration of CONTRACT time as specified elsewhere in this CONTRACT shall constitute a basis for denying any cost adjustments for reasons of such delay.

#### SECTION VIII – CONDITIONS OF PERFORMANCE AND COMPENSATION

- A. Performance. The CONSULTANT agrees that the performance of CONSULTANT'S work, services and the results therefrom, pursuant to the terms, conditions and agreements of this CONTRACT, shall conform to such recognized high professional standards as are prevalent in this field of endeavor and like services.
- B. Place of Performance. The CONSULTANT shall conduct CONSULTANT'S services as required under the terms and conditions of this CONTRACT at such place or places as is



necessary, which will enable the CONSULTANT to fulfill CONSULTANT'S obligation under this CONTRACT.

- C. **Compensation.** CITY agrees to pay, subject to the contingencies herein, and the CONSULTANT agrees to accept for the satisfactory performance of the services under this CONTRACT the amount of total compensation specified in SECTION IV. All expenses for travel, meals and lodging are not eligible for compensation under any part of this CONTRACT. It is expressly understood and agreed that in no event will the total compensations to be paid hereunder exceed said amount for all of the services required except for as provided herein.
- D. **Additional Fringe or Employee Benefits.** The CONSULTANT shall not receive nor be eligible for any fringe benefits or any other benefits to which CITY salaried employees are entitled to or are receiving.
- E. **Taxes, Social Security, Insurance and Government Reporting.** Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the CONSULTANT receiving payment under this CONTRACT shall be the sole responsibility of the CONSULTANT. The CONSULTANT shall be solely responsible to meet CONSULTANT insurance needs as specified below or as may be additionally required by the DPW during the terms of this CONTRACT or any extension thereof.

**(1) Worker's Compensation and Employer's Liability**

Coverage Amounts

Worker's Compensation	Statutory
Employer's Liability	
Bodily Injury by Accident each accident	\$100,000
Bodily Injury by Disease each employee	\$100,000
Bodily Injury by Disease policy limit	\$500,000

**(2) Commercial General Liability**

Limits of Liability

**Bodily Injury Property Damage**

each occurrence	\$1,000,000
general aggregate	\$1,000,000
products/completed operations aggregate	\$1,000,000

**Personal Injury**

Aggregate	\$1,000,000
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To Include

Occurrence form

Premises/operations coverage

Products/completed operations coverage

(to extend for two (2) years after the  
acceptance of the work by the City of Milwaukee)

Contractual liability for risks assumed in this agreement

**(3) Automobile Liability**

Limits of Liability

Bodily Injury/Property Damage

Each accident \$1,000,000

To Include

Coverage on all owned, non-owned and hired vehicles

(4) Umbrella Liability

Limits of Liability

Personal Injury/Property Damage

each occurrence \$2,000,000

aggregate \$2,000,000

To Include

Occurrence form

First dollar defense coverage

Insuring agreement which will provide excess

protection to the primary coverages

(exclusive of professional liability)

(5) Professional Liability

Limits of Liability

Wrongful Act

per incident \$1,000,000

aggregate \$1,000,000

To Include

Insuring agreement to cover errors, and omissions

including loss, costs and expenses which result

from the operations of the service provider

If insuring agreement is claims made, the coverage must be continued for the duration of the contract or for a period of time after contract completion date as required by the City of Milwaukee.

With regard to Sections (2)(3) and (4) a Certificate of Insurance shall be provided to the DPW as evidence thereof naming the CITY as an additional insured for public liability and property damage, and providing for a thirty (30) day notice to the DPW prior to change, termination or cancellation.

#### SECTION IX – METHOD OF PAYMENT

DPW agrees that subsequent to the full and complete performance of this CONTRACT, and satisfactory performance of the services as specified in Section II and Section III, to pay the amount or amounts as herein set forth. In the event of a dispute as to the services performed, the compensation to be paid, or the interpretation or application of any provision of this CONTRACT, the decision of DPW or its designee of the CITY shall prevail. The conditions of payment are as follows: Compensation for services required under this CONTRACT shall be contingent upon each activity being reviewed for approval, and being approved for payment by the DPW, as stipulated in Section IV.

#### SECTION X – PROMPT PAYMENT PROVISION

The City of Milwaukee as a matter of policy shall strive to pay all invoices within thirty (30) days. Payment to the CONSULTANT will be deemed timely if the payment is mailed, delivered, or transferred within 60 calendar days after receipt of a properly completed invoice or receipt and acceptance of the property or service, or the date of final completion as determined by the CITY when all corrective measures are complete on punch list items under the order or

CONTRACT, whichever is later. If the CITY does not make payment by the 60<sup>th</sup> calendar day, the CITY shall pay simple interest beginning with the 31<sup>st</sup> calendar day at the rate of one percent per month. No interest will be paid on final payments of 5% of the contract, or \$1,000, whichever is greater.

#### SECTION XI – DEFENSE OF SUITS

In case any action in court or proceeding before an administrative agency is brought against the CITY, or any of their officers, agents, or employees for the error, omission or neglect of the CONSULTANT to perform any of the covenants, acts, matters or things by this CONTRACT undertaken, or for injury or damage caused in whole or in part by the alleged negligence of the CONSULTANT, its officers, agents or employees, the CONSULTANT shall indemnify and save harmless the CITY and their officers, agents and employees from all losses, damages, costs, expenses, judgments or decrees arising out of such action. The CITY will tender the defense of any claim or action at law or in equity to the CONSULTANT or CONSULTANT'S insurer, upon such tender it shall be the duty of the CONSULTANT and CONSULTANT'S insurer to defend such claim or action without cost or expense to the CITY or their officers, agents or employees. The CONSULTANT shall be solely responsible for the conduct and performance of the services required under the terms and conditions of this CONTRACT and for the results therefrom. The CONSULTANT shall meet insurance needs as stipulated in Section VIII.E.

#### SECTION XII - REGULATIONS

The CONSULTANT agrees to comply with all of the requirements of all federal, state and local laws as well as codes, specifications and requirements related to the performance of the work under this CONTRACT.

### SECTION XIII – TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, the CONSULTANT shall fail to fulfill in timely and proper manner the CONSULTANT'S obligations under this CONTRACT, or if the CONSULTANT shall violate any of the covenants, agreements or stipulations of this CONTRACT, the DPW shall thereupon have the right to terminate this CONTRACT by giving written notice to the CONSULTANT of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other materials related to the services prepared by the CONSULTANT under this CONTRACT shall, at the option of DPW, become the property of the CITY. Notwithstanding the above, the CONSULTANT shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the CONTRACT by the CONSULTANT, and DPW may withhold any payments to the CONSULTANT for the purpose of setoff until such time as the exact amount of damages due to the CITY from the CONSULTANT is determined.

### SECTION XIV – TERMINATION FOR CONVENIENCE OF THE CITY

The CITY may terminate this CONTRACT at any time for any reason by giving at least ten (10) days notice in writing from the CITY to the CONSULTANT. If the CONTRACT is terminated by the CITY as provided herein, the CONSULTANT will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the CONSULTANT covered by this CONTRACT, less payments for such services as were previously made. Provided, however, that if less than sixty percent (60%) of the services covered by this CONTRACT have been performed upon the effective date of such termination, the CONSULTANT shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed

under the CONTRACT) incurred by the CONSULTANT during the CONTRACT period which are directly attributable to the uncompleted portion of the services covered by this CONTRACT. If this CONTRACT is terminated due to the fault of the CONSULTANT, Section XIII hereof, relative to termination, shall apply.

#### SECTION XV – CHANGES

The CITY may, from time to time, request changes in the scope of services of the CONSULTANT to be performed hereunder. Such changes, including any increase or decrease in the amount of CONSULTANT'S compensation which are mutually agreed upon by and between the CITY and the CONSULTANT, shall be incorporated in written amendments to the CONTRACT. Further, if in the CONSULTANT'S opinion, said changes involve work not included in the terms or scope of services of this CONTRACT, the CONSULTANT must notify the CITY in writing if it is believed that extra compensation or additional time allowance is warranted. Such notification shall include the justification for extra compensation and the estimated amount of additional fee requested. The CITY shall review the CONSULTANT'S submittal and, if acceptable, will approve a change order as an amendment to this CONTRACT. Work under a change order shall not proceed until so authorized by the CITY. Such change orders shall include appropriate time extensions when warranted.

#### SECTION XVI – PERSONNEL

A. The CONSULTANT represents that the CONSULTANT has or will secure at the CONSULTANT'S own expense all personnel required in performing the services under this CONTRACT. Such personnel shall not be employees of or have any contractual relationship with the CITY.

- B. All of the services required hereunder will be performed by the CONSULTANT or under the CONSULTANT'S supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.
- C. None of the work or services covered by this CONTRACT shall be subcontracted without the prior written approval of DPW. All additional work or services that is subcontracted shall be specified by written contract or agreement and shall be subject to each provision of this CONTRACT. The CONSULTANT shall be as fully responsible to the CITY for the acts and omissions of CONSULTANT'S subcontractors and of persons either directly or indirectly employed by the CONSULTANT'S subcontractors as the CONSULTANT is for the acts and omissions of persons directly employed by the CONSULTANT.

#### SECTION XVII – ASSIGNABILITY

The CONSULTANT shall not assign any interest in this CONTRACT and shall not transfer any interest in same (whether by assignment, notation or any other manner), without the prior written consent of the DPW. Provided, however, that claims for money due or to become due the CONSULTANT from the CITY under the CONTRACT may be assigned to a bank, trust company or other financial institution without such approval. Notices of any such assignment or transfer shall be furnished promptly to the DPW.

#### SECTION XVIII – RECORDS

- A. Establishment and Maintenance of Records. Records shall be maintained in accordance with requirements prescribed by DPW with respect to all matters covered by this CONTRACT. Except as otherwise authorized, such records shall be maintained for a period of three (3) years after receipt of the final payment under this CONTRACT.
- B. Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper



detail the nature and propriety of other accounting documents pertaining in whole or in part to this CONTRACT and shall be clearly identified and readily accessible.

#### SECTION XIX – REPORT AND INFORMATION

At such times and in such forms as the CITY may require, there shall be furnished to DPW such statements, records, reports, data and information as DPW may request pertaining to matters covered by this CONTRACT.

#### SECTION XX – AUDITS AND INSPECTIONS

At any time during normal business hours and as often as DPW, or if federal or state grants or aids are involved, as the appropriate federal or state agency, may deem necessary, there shall be made available to DPW or such agency for examination, all of the CONSULTANT'S records with respect to all matters covered by this CONTRACT and shall permit DPW or such agency and/or representatives of the Comptroller General of the United States to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, condition of employment and other data relating to all matters covered by this CONTRACT. The CONSULTANT shall assist the CITY in complying with any public record requests.

#### SECTION XXI – CONFIDENTIALITY OF INFORMATION

A. In order for the CONSULTANT to perform certain tasks required by this contract, it is necessary that the CITY discloses to the CONSULTANT certain confidential copyrightable information concerning, among other things, computer programming and software. The CONSULTANT (including all its employees, directors, and other persons involved in its business) shall hold in confidence and refrain from disclosing to any third party any of the CITY'S information and shall use its best efforts to prevent inadvertent disclosure of any of the CITY'S information.

- B. The CONSULTANT (including all its employees, directors, and other persons involved in its business) shall not use the CITY'S information or circulate it within its own organization except to the extent necessary for the Scope of Services described in Section III of this CONTRACT.
- C. All of the reports, information, data, etc., prepared or assembled by the CONSULTANT under this CONTRACT are confidential and the CONSULTANT agrees that they shall not be made available to any individual or organization, other than an appropriate agency of the United States government without the prior written approval of DPW.

#### SECTION XXII – CONFLICT OF INTEREST

- A. Interest in CONTRACT. No officer, employe or agent of the CITY who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this CONTRACT pertains, will have any personal interest, direct or indirect in this CONTRACT.
- B. Interest of Other Local Public Officials. No member of the governing body of the locality and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of this CONTRACT, shall have any personal interest, direct or indirect, in this CONTRACT.
- B. Interest of CONSULTANT and Employees. The CONSULTANT covenants that no person described in Sections XXII.A. and B. above who presently exercises any functions or responsibilities in connection with the CONTRACT has any personal financial interest, direct or indirect, in this CONTRACT. The CONSULTANT further covenants that the CONSULTANT presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services hereunder. The CONSULTANT further covenants that in the performance of this

CONTRACT no person having any conflicting interest shall be employed. An interest on the part of the CONSULTANT or his employees must be disclosed to the DPW. Provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of and participation by residents of the area. The CONSULTANT further covenants that no open contracts or retainers are in effect between the CONSULTANT and any entity affected by the outcome of the CONSULTANT'S work and that no such contract will be entered into during the course of the CONSULTANT'S work on the PROJECT unless expressly authorized by the DPW.

SECTION XXIII – DISCRIMINATION PROHIBITED

A. In all hiring or employment made possible by or resulting from this CONTRACT there shall not be any discrimination against any employee or applicant for employment because of race, color, sex orientation, religion, sex or national origin, and affirmative action will be taken to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex orientation, sex or national origin. This requirement shall apply to but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. There shall be posted in conspicuous places available to employees and applicants for employment, notices required or to be provided by Federal or state agencies involved, setting forth the provisions of the clause. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex orientation, sex or national origin.

- B. No person in the United States shall, on the ground of race, color, religion, sex orientation, sex or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this CONTRACT. The CITY and each employer will comply with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964.
- C. The CONSULTANT will cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this CONTRACT so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

#### SECTION XXIV – WORKER’S COMPENSATION INSURANCE

The CONSULTANT, and all subcontractors, if any, shall provide to the DPW an affidavit or other satisfactory proof which DPW may require evidencing that the CONSULTANT and all subcontractors have obtained Worker’s Compensation Insurance for all persons performing any work or services under the CONTRACT or subcontract as is required by the Worker’s Compensation Act of the State of Wisconsin. No payments or disbursements under the CONTRACT shall be made if such proof has not been furnished.

#### SECTION XXV – WITHHOLDING OF SALARIES

If in the performance of this CONTRACT there is any underpayment of salaries by the CONSULTANT or by any subcontractor thereunder, DPW shall withhold from the CONSULTANT out of payments due to the CONSULTANT an amount sufficient to pay to employees underpaid the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts

withheld will be disbursed by DPW for and on account of the CONSULTANT or subcontractor, if any, to the respective employees to whom they are due.

#### SECTION XXVI – OTHER PROVISIONS

- A. Any and all information, plans, reports and conclusions derived or developed as a consequence or result of this CONTRACT may be utilized by DPW in such manner and purposes as DPW desires or determines without permission or approval of the CONSULTANT or compensation to the CONSULTANT other than herein provided.
- B. The word “CONSULTANT” means a person, or an entity, whether public or private, that enters into contact with CITY.

#### SECTION XXVII – FORCE MAJEURE

The CONSULTANT shall perform the Work unless performance is delayed by an event or occurrences that constitutes a “Force Majeure.” For purposes of this CONTRACT, a “Force Majeure” is an event or occurrence which delays or prevents performance of the Work that is beyond the control of the CONSULTANT. The CONSULTANT shall undertake all reasonable efforts to avoid or minimize such delays. Force Majeure events may include without limitation: acts of God, war, revolution, riots, strikes, fires, or floods. When circumstances arise which the CONSULTANT believes constitutes a Force Majeure event which will delay the completion of the Work, the CONSULTANT shall promptly notify the DPW orally within seven-two (72) hours after the CONSULTANT discovers that a Force Majeure event has occurred (Facsimile transmission will be considered “notice” for the purpose of this Section).

Thereafter, the CONSULTANT shall, within seven (7) calendar days of oral notification to the DPW, notify the DPW in writing of the Force Majeure event. The schedule shall be adjusted by the length of the delay caused by the Force Majeure event. Any adjustment shall be made following the provision on Changes, Section XV. Any Project Schedule modification due

hours after the CONSULTANT discovers that a Force Majeure event has occurred (Facsimile transmission will be considered "notice" for the purpose of this Section).

Thereafter, the CONSULTANT shall, within seven (7) calendar days of oral notification to the DPW, notify the DPW in writing of the Force Majeure event. The schedule shall be adjusted by the length of the delay caused by the Force Majeure event. Any adjustment shall be made following the provision on Changes, Section XV. Any Project Schedule modification due to a Force Majeure shall be written and shall be incorporated into the Time of Performance schedule governing this CONTRACT. Any such extension does not alter the schedule for performance or completion of other tasks required by this Agreement which are not affected by the Force Majeure. Any delays which are not caused by unreasonable actions of the City are not compensable by an adjustment to the cost specified in Section IV.B.

IN WITNESS WHEREOF, the parties hereto have had these presents duly  
executed in their respective names by their respective officers as of the date and year first above  
written.

In The Presence of

\_\_\_\_\_

\_\_\_\_\_  
Title \_\_\_\_\_ Date \_\_\_\_\_

In the Presence of

CITY OF MILWAUKEE

\_\_\_\_\_

\_\_\_\_\_  
Commissioner of Public Works Date \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Comptroller \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
City Engineer \_\_\_\_\_ Date \_\_\_\_\_

Approved as to content this \_\_\_\_\_ day of  
\_\_\_\_\_, 2003

\_\_\_\_\_  
City Attorney

Approved as to form and execution this \_\_\_\_\_  
Day of \_\_\_\_\_, 2003

AGRMT COLLINS ENGINEERS INC  
June 20, 2003  
JS:cjt

**SCHEDULE OF EXHIBITS**

**Exhibit I: Request for Proposal**  
**Exhibit II: Proposal**