

STATE OF LOUISIANA  
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

RETAINER CONTRACT FOR RIGHT OF WAY SERVICES  
CONTRACT NO. 44\*\*\*\*\*  
STATEWIDE

**THIS RETAINER CONTRACT** (“Retainer Contract” or “Contract”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Louisiana Department of Transportation and Development, hereinafter referred to as the “DOTD”, and \*\*\*[Consultant], whose principal business address is \*\*\*[Principal Business Address], \*\*\* Louisiana \*\*\*\*\*[Zip], hereinafter referred to as “Consultant”.

Under authority granted by Title 48 of the Louisiana Revised Statutes, the DOTD has elected to engage the Consultant to perform, and the Consultant agrees to perform, the services described in the Scope of Contract Services under the terms and conditions, and for the compensation as stated in this Retainer Contract.

**ENTIRE AGREEMENT**

This Retainer Contract, together with the advertisement of [date], and Addendum No. \_\_\_\_\_ or (if plural) Addenda Nos. \_\_\_\_\_, the DOTD Standard Form 23-116 (SF 23-116) submitted by the Consultant in response to the advertisement, any attachments and exhibits hereto, and any Task Orders issued pursuant to this Retainer Contract, are specifically incorporated herein by reference and constitute the entire agreement between the parties with respect to the subject matter. However, in the event of a conflict between the terms of this Retainer Contract and the referenced documents, this Retainer Contract governs.

No amendment or variation of the terms of this Retainer Contract shall be valid unless made in writing and executed by the parties hereto.

**CONTRACT IDENTIFICATION**

Contract No. 44\*\*\*\*\* has been assigned to this Retainer Contract to identify costs. All invoices, progress reports, correspondence, etc. required in connection with this Retainer Contract shall be identified with the DOTD project title, Contract and Task Order number, and associated Purchase Order number.

**PROJECT DESCRIPTION**

The Consultant shall perform professional right of way services and right of way deliverables for proposed projects covered by this Retainer Contract under separate Task Orders (T.O.’s). The Consultant shall be required to execute a T.O. which shall specify the scope of right of way services and/or deliverables, performance time, and compensation therefor. Each executed T.O. shall become a part of the Retainer Contract.

## SCOPE OF CONTRACT SERVICES

The Consultant shall perform professional right of way services at proposed sites throughout the State of Louisiana, whether in combination or severally, contained in a T.O. issued for such services, said services being those detailed in Exhibit A (Scope of Right of Way Services), attached hereto and made a part hereof. A T.O. is the exclusive mechanism by and through which services will be performed under this Retainer Contract.

This Retainer Contract does not, in and of itself, provide for the performance of any particular professional right of way services or right of way deliverables, or for payment for such. Consultant acknowledges and agrees that this Retainer Contract does not guarantee that DOTD will enter into a T.O. with Consultant for any services during the term of this Retainer Contract.

## QUALITY CONTROL/QUALITY ASSURANCE

During the term of this Retainer Contract and any T.O.s issued in connection herewith, the Consultant must at all times and all phases ensure quality and adhere to established professional right of way service practices, policies, procedures, standards, and guidelines in the performance of right of way services and the preparation of right of way deliverables. To accomplish this, and in order to provide a mechanism by which all contracted professional right of way services and deliverables can be subjected to systematic and consistent review, the Consultant shall develop, implement, maintain, and operate under and within a Quality Control/Quality Assurance (“QC/QA”) program approved by DOTD. The DOTD shall provide limited input and technical assistance to the Consultant.

## ITEMS TO BE PROVIDED BY DOTD

DOTD shall provide copies of, or access to, appraisal reports, appraisal review sheets, right of way maps, construction plans, title research reports, electronic project tracking system(s), brochures, Office of Right of Way Operations Manual(s), and/or any other pertinent information, if available. It shall be the responsibility of the Consultant to review these documents and collect any required information at the applicable DOTD offices.

## CONTRACT TIME AND NOTICE TO PROCEED

This Retainer Contract shall be in effect for five (5) years. The contract time for each T.O. will be specified within the respective T.O.’s. Any T.O. in effect prior to the termination date of the Retainer Contract shall be completed.

The delivery schedule for all right of way services and/or deliverables shall be as established in the respective T.O.’s, or as otherwise established by DOTD.

The Consultant shall not proceed with the services required in any T.O. issued in connection with this Retainer Contract until issuance of a written Notice to Proceed from DOTD.

## GENERAL REQUIREMENTS

It is the intent of the parties to this Retainer Contract that, with the exception of those items specifically listed to be furnished by the DOTD, the Consultant shall, for the agreed compensation, obtain all data and furnish all services and materials required to fully develop and complete the required services of each T.O. All items required to accomplish these results, whether or not specifically mentioned in this Retainer Contract and/or T.O.s, are to be furnished at a cost not to exceed the maximum compensation amount established for each T.O. under this Retainer Contract.

For all projects having a project duration greater than one month, immediately upon receiving authorization to proceed with the items on a T.O., the Consultant shall prepare and submit to the Right of Way Administrator, or his designee, a proposed Progress Schedule. The Progress Schedule shall show, in particular, the appropriate items of work, times of beginning and completion by calendar periods, and other data pertinent to each schedule. In addition, this Progress Schedule shall be arranged such that the actual progress of each item in the T.O. can be shown as the items of work are accomplished. The Progress Schedule shall be revised monthly and submitted with other monthly data required. One (1) original and two (2) copies of this Progress Schedule shall be submitted.

## COMPENSATION

Compensation to the Consultant for services rendered in connection with each T.O. shall be in accordance with LSA-R.S. 48:294. Compensation shall be based on either: (1) the DOTD established rates for right of way services and deliverables in force and effect at the time the T.O. is executed and issued; or (2) the cost per unit of work for each item as proposed by the Consultant in its winning proposal, and/or as accepted and approved by DOTD. Compensation will be paid only for those services actually performed pursuant to the T.O. However, in rare and unusual circumstances, and then only at DOTD's sole discretion and election, provision may be made to include pre-determined labor rates for each item of services and/or deliverables, which may be paid for those items of work attempted by Consultant in good-faith, but not actually accomplished or delivered. Any such provisional labor rates shall only be in accordance with, and pursuant to, an approved and executed Provisional Labor Rate **Addendum**, which must be attached as an exhibit to this Retainer Contract and/or the T.O.s issued in connection with this Retainer Contract.

## PAYMENT

Payment will be made only upon approval of the services provided and completed packages submitted by Consultant, and all information being entered into DOTD's Appraisal, Acquisition and Relocation System (AARS). Payment will be made only on approval of the Right of Way Administrator, or his designee. If completion to the reasonable satisfaction of DOTD is obtained, payments are scheduled as follows:

- A. The Consultant shall provide a certified and itemized invoice to the Right of Way Administrator for approval.
- B. Full payments to the Consultant for services provided will be made monthly based on a certified and itemized invoice for the T.O. showing line item billable rates and unit prices and upon approval of the services provided and/or the deliverables delivered, and the completed file submitted and all information being entered into DOTD's AARS tracking system.
- C. Partial payments may be requested by the Consultant only in special circumstance for some items of work, in lieu of full payment after services and/or deliverables are complete. Partial payments may be issued for the following services and/or deliverables only when formally approved in writing by DOTD, using a case by case investigation:
  - a) A partial payment of forty (40%) percent of the total acquisition fee may be requested if:
    - i. All signatures have been secured on an Act of Sale or Servitude document and there are encumbrance problems which require an extended period of time for clearance; or
    - ii. If a succession is required and all potential owners or their agents have given written acceptance of DOTD's offer.
  - b) A partial payment of forty (40%) percent of the total relocation assistance fee may be requested if:
    - i. The relocation assistance offer is presented to a displaced family or individual; or
    - ii. The owner of the displaced personal property or business submits an approved inventory.

The balance of payments to be paid when the services are completed and/or the deliverables are delivered and the file is submitted and approved by DOTD.

In those rare and unusual circumstances in which DOTD has elected to pay pre-determined labor rates for incomplete items of service and/or deliverables which were attempted by Consultant in good-faith, but which were not actually accomplished or delivered, in accordance with and pursuant to an approved and executed Provisional Labor Rate **Addendum**, invoices for payment of such incomplete items shall include: the names of the employees performing the activity and/or work; the employees' respective job classifications; a description of the activity and/or work for which the labor was expended; the time expended by each employee on the activity and/or work; and the employee's individual timesheets for the activity and/or work. Legible verified copies of the individual timesheets for the incomplete services and/or deliverables invoiced shall be attached to and/or be included in all invoices. All timesheets shall be signed by the Consultant (whether or not Consultant is the direct employer), any sub (if the sub is the direct employer of the employee for whose labor payment is sought), the supervisor of the employee, and the employee.

### CONTRACT CHANGES

Minor revisions in the described services and/or deliverables for each T.O. shall be made by the Consultant without additional compensation. Considerations for minor revisions have been

included in the compensation computations. **If the DOTD requires more substantial revisions or additional services and/or deliverables which the Consultant believes warrants additional compensation, the Consultant shall notify the DOTD in writing within thirty (30) days of being instructed to perform such services. The Consultant shall not commence any additional services and deliverables until written authority to proceed has been given by DOTD.** If DOTD agrees that the required services and/or deliverables are necessary and warrants additional compensation, a supplement to the T.O. may be issued.

If DOTD disagrees that additional compensation is due for the required work, it shall be the Consultant's responsibility to perform the services and to adhere to the procedures as set forth in the Claims and Disputes provisions of this Retainer Contract.

### OWNERSHIP OF DOCUMENTS

All data, information, and material in the knowledge, possession, or control of the Consultant, including, but not limited to, all physical data, electronic data, metadata, digital files, physical files, emails, physical written correspondence, communications, documents, notes, drawings, tracings, and/or any and all other items, whether corporeal or incorporeal, prepared, created, collected, or otherwise acquired in connection with this work, in whatsoever format or form such items are found or maintained, is, and shall forever remain and be, the sole and exclusive property of DOTD, excepting only the personnel and administrative files of Consultant. DOTD shall not be restricted in any way whatsoever in its use of such items, except as specifically provided for in Louisiana R.S. 38:2317.

No public news releases, internet postings, technical papers, or presentations concerning this Project may be made without the prior written consent and/or approval of DOTD.

### DELAYS AND EXTENSIONS

Upon written request to DOTD, the Consultant may be given an extension of time for delays occasioned by events or circumstances beyond the Consultant's control, delays caused by tardy approvals of work in progress by various official agencies involved in the project, or delays caused by any acts or omissions by the DOTD.

It may be cause for review of contract compensation if the accumulated approved extensions of contract time caused by tardy approvals of work in progress by various official agencies involved in each T.O., and/or caused by any acts or omissions by the DOTD or its agents, equals or exceeds twelve (12) months. If, in the opinion of the DOTD Chief Engineer, circumstances indicate a need for additional compensation, the compensation stipulated herein for work accomplished, for the delayed individual Stage/Part of the T.O., shall be addressed. **If the Consultant believes contract delays warrant an adjustment in contract compensation, then the Consultant shall notify the DOTD in writing of its request within thirty (30) days of being instructed to perform the work. No compensation adjustment shall be made for work performed prior to such written request.**

If, in the opinion of the DOTD Chief Engineer, circumstances do not indicate a need for additional compensation, it shall be the Consultant's responsibility to perform the work and adhere to the procedures as set forth in the Claims and Disputes provisions of this Contract.

### PROSECUTION OF WORK

**GENERAL** - The Consultant shall provide sufficient resources to insure completion of each T.O. in accordance with the T.O. scope of services and within the T.O. time limit. If the completed work is behind the approved T.O. schedule (if applicable), the Consultant shall take immediate steps to restore satisfactory progress. The Consultant shall report its progress on each T.O. according to the reporting schedule created by DOTD and/or immediately upon request.

The progress of each T.O. shall be determined monthly with the submission of an invoice and T.O. Progress Schedule (for those T.O.'s with a duration greater than one month) to the DOTD. For any work, the T.O. shall be considered to be **on schedule if the percentage of the total work completed is equal to or greater than the percentage of T.O. contract time elapsed.**

The T.O. schedule (if applicable) includes the combined time allotted for all services of each T.O., subject to any overlaps of concurrent activities. For the purpose of evaluating work progress, the elapsed time for any T.O. begins on the Notice to Proceed date for each T.O., even though contracted services may not commence on the official Notice to Proceed date for each T.O. Should any T.O. fail to commence in accordance with the original T.O. because of delinquencies in a previous T.O., the elapsed time in the above ratio shall be measured from the time the T.O. would have begun had the previous T.O. been completed on schedule. Should any delays in progress be necessitated by circumstances outside of the Consultant's control, it shall be the responsibility of the Consultant to request an appropriate adjustment in contract time.

**DISQUALIFICATION** - If the ratio of percentage of work completed to percentage of time elapsed falls below 0.75 for each T.O., the Consultant shall be notified in writing that he is in a state of Disqualification. During the period of disqualification, the Consultant shall not be considered for Contracts of the DOTD, nor shall he be considered or approved as a sub-consultant on Contracts of the DOTD. The Consultant shall be allowed to proceed with any work under any preexisting contract or written sub-consultant agreement. The period of disqualification shall continue until the completed work on the Contract is not delinquent by more than the foregoing ratio or until all work on the T.O. has been satisfactorily completed. **Should the Contract be terminated as a consequence of the failure of the Consultant to comply with the terms, progress or quality of work in a satisfactory manner, the Consultant shall be disqualified for a period of one year therefrom, unless debarment procedures are instituted.**

**APPEAL OF DISQUALIFICATION** – The disqualified Consultant may submit a written appeal to the DOTD Chief Engineer for review by the Disqualification Review Board (DRB). The DRB will be composed of the DOTD Chief Engineer or his designee, Consultant Contract Services Administrator and the Project Development Director. The written appeal shall be submitted within seven (7) days, excluding weekends and holidays, after issuance of written notice of disqualification and may either request a meeting with the DRB or that the DRB consider a

written appeal only. A meeting of the DRB will be scheduled within ten (10) days, excluding weekends and holidays, after receipt of the appeal. After all the information has been considered, the Chief Engineer will notify the Consultant of the decision of the DRB in writing within ten (10) days, excluding weekends and holidays. The decision of the DRB will not operate as a waiver by the DOTD of any rights under this Contract or for any damages, including, but not limited to, untimely completion.

### PROGRESS INSPECTIONS

During the progress of the work, representatives of the DOTD and other interested parties when so named herein or in any T.O. shall have the right to examine the work and may confer with the Consultant thereon. In addition, the Consultant shall furnish, upon request, copies of any specific item of his work for the DOTD inspection.

### TERMINATION OR SUSPENSION

The Consultant shall not have the authority to unilaterally terminate or suspend this Retainer Contract and its concomitant T.O.s. However, this Retainer Contract and/or its T.O.s may be terminated prior to expiration of the term under any or all of the following conditions:

1. By mutual written agreement and consent of the parties;
2. By DOTD as a consequence of the Consultant's failure to comply with the terms of the Retainer Contract or its T.O.s; to meet all progress requirements; or to perform the professional right of way services and deliverables in a manner, and to the standards of quality, required by DOTD for such services and deliverables;
3. By either party upon failure of the other party to fulfill its obligations as set forth in this Retainer Contract and its T.O.s;
4. By the DOTD due to the departure or incapacity to continue for whatsoever reason of any principal member or members or Key Personnel of the Consultant's firm;
5. By satisfactory completion of all services and obligations described herein;
6. By DOTD for failure of funding for the underlying project;
7. By DOTD unilaterally for cause; or
8. By DOTD without cause, upon giving thirty (30) calendar days written notice to the Consultant and paying compensation due for work completed satisfactorily.

Upon termination of this Retainer Contract or any T.O., the Consultant shall not begin work on any item of services or deliverables assigned under any T.O., but may, at DOTD's option and written direction, complete any items still in progress on the date of termination. The Consultant shall immediately deliver to DOTD all records and work produced or compiled since the date of execution of the T.O. through the date of termination, and thereafter, only as is applicable. DOTD shall pay in full for all work accomplished up to the date of termination, and shall pay upon receipt for all work commenced prior to termination, but completed after termination, if applicable. Any work newly initiated by Consultant after termination, without prior written consent and approval by DOTD, shall not be compensable or due and owing, and is undertaken at Consultant's sole risk and peril.

If for any reason DOTD wishes to suspend an open T.O., it may do so by giving the Consultant written notice of intent to suspend. The Consultant shall, immediately upon receipt of the notice of intent to suspend, stop all work on the T.O. Work shall resume no later than forty-eight (48) hours after DOTD provides the Consultant with a written notice to resume work.

As provided for in condition number three above, Consultant may terminate for cause upon the failure of DOTD to comply with the terms and conditions of the Retainer Contract and/or its attendant T.O.s. However, Consultant shall give DOTD written notice specifying DOTD's failure, and a reasonable opportunity, and in any event not less than thirty (30) calendar days from DOTD's receipt of the written notice, for DOTD to cure the failure.

The continuation of this Retainer Contract and/or its attendant T.O.s is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the Retainer Contract and/or its T.O.s. As provided for in condition number six above, DOTD may terminate the Retainer Contract and/or its attendant T.O.s if the legislature fails to appropriate sufficient monies to provide for the continuation of the Retainer Contract and/or its T.O.s, or if such appropriation is reduced by the veto of the Governor, or by any means provided in the appropriations act of Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the Retainer Contract and/or its attendant T.O.s, the Retainer Contract and/or its T.O.s shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated.

### CLAIMS AND DISPUTES

Consultant's failure to provide the required written notification pursuant to the provisions of the Contract Changes and the Delays and Extensions sections of this Contract shall be deemed a waiver of any and all claims for additional compensation.

When the Consultant has timely filed notice pursuant to the provisions of the Contract Changes and/or the Delays and Extensions sections of this Retainer Contract, the Consultant shall submit the entire claim and supporting documentation to the DOTD Consultant Contract Services Administrator within thirty (30) days of the notice. The Consultant Contract Services Administrator shall submit the claim to the DOTD Consultant Contracts Claims Committee (hereinafter, "the Committee") for review.

The Consultant shall be notified in writing of the Committee's recommendation, and, if accepted by the Consultant and approved by the Chief Engineer and FHWA, if applicable, the parties hereto shall execute a Task Order based upon said recommendation. If the Committee's recommendation is not accepted by the Consultant, the Consultant may file a written appeal to the Chief Engineer. The decision of the Chief Engineer shall be final, and the Consultant shall be notified in writing of the Chief Engineer's decision, which is final and unappealable.



## INSURANCE REQUIREMENTS

During the term of this Retainer Contract and all T.O.s issued pursuant to this Retainer Contract, the Consultant shall carry and have in place a policy of professional liability (PLI) insurance in an amount of not less than \$1,000,000. This insurance shall be written on a “claims-made” basis. The Consultant shall provide, or cause to be provided, to DOTD a Certificate of Insurance evincing such PLI insurance.

## RESPONSIBILITY FOR THE PROJECT

As is appropriate for the type of Contract entered into, the type of Consultant needed for the contracted professional right of way services and deliverables, and the structure of the Consultant’s business entity, and pursuant to LSA-R.S. 48:290 (A-D), as applicable, the Consultant’s Professionally Competent Principal or Responsible Member shall be in responsible charge of the project. Such Professionally Competent Principal or Responsible Member shall sign (using their office title with the firm) and date all project documentation. These nominate persons, along with other innominate persons considered to be “Key Personnel” in Consultant’s firm and/or operations, may not be removed, replaced, or substituted without the prior written consent of DOTD, which consent will not be unreasonably withheld. In the event that such designated persons and/or Key Personnel become unable or unavailable to continue functioning in this capacity, Consultant shall immediately notify DOTD in writing of this occurrence. Consultant may provide DOTD with a suggested replacement or course of action, but DOTD is not obligated to accept this suggestion. Failure to have such a person continually in place constitutes a material breach of contract. Election by DOTD to take or not to take action in event of such breaches does not constitute a waiver by DOTD of any rights accruing to DOTD under this Retainer Contract or its T.O.s, or of any other available rights, relief, remedies, or causes of action.

## INDEMNITY

The Consultant agrees to indemnify and save harmless the DOTD against any and all claims, demands, suits, and judgments of sums of money (including attorney’s compensation and cost for defense) to any party for loss of life or injury or damage to persons or properties arising out of, resulting from, or by reason of, any negligent act or omission by the Consultant, its agents, servants, or employees while engaged upon or in connection with the services required or performed by the Consultant hereunder.

## ERRORS, OMISSIONS, AND BEST PRACTICES

It is understood that all services required of the Consultant pursuant to this Retainer Contract shall be done in conformity with professional right of way services best practices, and shall meet or exceed all industry standards and all DOTD standards, and shall be performed to the satisfaction and approval of DOTD. DOTD’s review, approval, acceptance of, or payment for any services required under this Contract shall not be construed to operate as a waiver of any of

the rights accruing to DOTD under this Contract, or of any other available rights, relief, remedies, or causes of action.

The Consultant shall be responsible for the professional quality and technical accuracy of all professional right of way services and/or deliverables furnished by the Consultant. Should errors or substandard work be revealed during normal performance or progress reviews, DOTD may return the deliverables for correction and require unsatisfactory services already performed to be corrected to DOTD's satisfaction, and DOTD may withhold payments until the Consultant provides an acceptable product. The Consultant shall, without additional compensation and at its sole cost and expense, correct or revise any deficiencies in its professional right of way services and/or deliverables discovered subsequent to final acceptance by DOTD. If the project schedule requires that DOTD staff make corrections or take corrective action due to oversight, errors, or omissions by the Consultant, the Consultant shall be responsible for the cost and expenses incurred by DOTD to address the situation and make the corrections. The costs to be recovered shall include, but are not limited to, the costs associated with moving the letting date, issuing addenda to the plans/proposal, and payroll costs for making corrections plus applicable overhead cost not to exceed the allowable overhead for the Consultant's firm.

#### CLAIM FOR LIENS

The Consultant shall hold DOTD harmless from any and all claims for liens or third-party claims in connection with the performance of its obligations under this Retainer Contract.

#### COMPLIANCE WITH LAWS

The Consultant shall comply with all applicable Federal, State, and Local laws and ordinances, as shall all others employed by it in carrying out the provisions of this Retainer Contract.

#### COMPLIANCE WITH CIVIL RIGHTS ACT

The Consultant agrees to abide by the requirements of the following, as applicable: Titles VI and VII of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972, as amended; Federal Executive Order 11246, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veteran's Readjustment Assistance Act of 1974; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Americans with Disabilities Act of 1990, as amended.

The Consultant agrees not to discriminate in its employment practices, and shall render services under this Contract without regard to race, color, age, religion, sex, national origin, veteran status, political affiliation, or disabilities.

Any act of discrimination committed by the Consultant, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this Contract.

### COVENANT AGAINST CONTINGENT FEES

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Retainer Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Retainer Contract. For breach or violation of this warranty, the DOTD shall have the right to annul this Retainer Contract and any T.O.'s issued pursuant to this Retainer Contract without liability, or in DOTD's discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

No legislator or person who has been certified by the Secretary of the State as elected to the legislature, no member of any board or commission, or members of their families or legal entities in which the legislator, person, or board or commission member has an interest, may derive any benefit from this Retainer Contract, or share in any part of this Retainer Contract in violation of the Louisiana Code of Governmental Ethics (LSA-R.S. 42:1101, et seq.).

### CODE OF GOVERNMENTAL ETHICS

The Consultant acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics, as amended) applies to the Consultant in the performance of services called for in this Retainer Contract. The Consultant agrees to immediately notify the State if potential violations of the Code of Governmental Ethics arise at any time during the term of this Retainer Contract and/or its T.O.s.

### SUBLETTING, ASSIGNMENT, OR TRANSFER

Neither this Retainer Contract, nor any portions thereof, shall be transferred, assigned, or sublet without the prior written consent of DOTD.

### COST RECORDS

The Consultant and its subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred relative to this project. Costs shall be in accordance with 48 CFR 31 of the Federal Acquisition Regulations System (FARS), as amended, as modified by DOTD's audit guidelines, and which are incorporated herein by reference as if copied *in extenso*. The FARS is available for inspection through [www.transportation.org](http://www.transportation.org). Records shall be retained until such time as an audit is made by DOTD, or the Consultant is released in writing by the DOTD Audit Director, at which time the Consultant may dispose of such records. The Consultant shall, however, retain such records for a minimum of five (5) years from the date of last payment for the services or deliverables rendered under this Retainer Contract, and shall make all such records readily available for inspection by DOTD and/or the

Louisiana Legislative Auditor, the Federal Highway Authority (FHWA), and/or the General Accounting Office (GAO) upon request.

### **SUCCESSORS AND ASSIGNS**

This Retainer Contract and its attendant T.O.s shall be binding upon the successors and assigns of the respective parties hereto.

### **TAX RESPONSIBILITY**

The Consultant hereby agrees that the responsibility for payment of taxes on the payments received under this Retainer Contract shall be Consultant's obligation.

### **JOINT EFFORT**

This Retainer Contract shall be deemed for all purposes prepared by the joint efforts of the parties hereto and shall not be construed against one party or the other as a result of the preparation, drafting, submittal, or other event of negotiation, drafting, or execution of this Retainer Contract.

### **SEVERABILITY**

If any term, covenant, condition, or provision of this Retainer Contract or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Retainer Contract or the application of such term, covenant, condition, or provision to persons or circumstances other than those as to which is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Retainer Contract shall be valid and enforced to the fullest extent permitted by law.

SAMPLE FOR INFORMATIONAL PURPOSES ONLY

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

WITNESSES:

\*\*\*Consulting Firm, Inc.

\_\_\_\_\_  
Witness for First Party

BY:

\_\_\_\_\_  
Witness for First Party

\_\_\_\_\_  
Typed or Printed Name

TITLE: \*\*\*  
\_\_\_\_\_

\_\_\_\_\_  
\*\*\*  
Federal Identification Number

STATE OF LOUISIANA  
DEPARTMENT OF TRANSPORTATION  
AND DEVELOPMENT

\_\_\_\_\_  
Witness for Second Party

BY: \_\_\_\_\_  
Secretary

\_\_\_\_\_  
Witness for First Party

RECOMMENDED FOR APPROVAL BY:

\_\_\_\_\_  
Division Head

FHWA Authorization Date: **enter date and underline**

FHWA Approval Date: **enter date and underline**

