



**A CONTINUED MEETING OF
THE CITY COUNCIL
MARCH 7, 2013, 5:00 P.M.
LIBRARY COMMUNITY ROOM**

AGENDA

A. CALL TO ORDER

B.

1. **RESOLUTION NO. 13-015** – Approval of Amendment #2 to the funding agreement with Lake City Development Corporation
2. **RESOLUTION NO. 13-014** Award of Bid for the 2013 McEuen Park Project

C. ADJOURNMENT – Recess to a to March 14th at 6:00 p.m. for a Joint Meeting with the North Idaho College Board of Trustees at the Library Community Room

NOTE: The City will make reasonable accommodations for anyone attending this meeting who require special assistance for hearing, physical or other impairments. Please contact the City Clerk at (208) 769-2231 at least 24 hours in advance of the meeting date and time.

CITY COUNCIL STAFF REPORT

DATE: March 5th, 2013
FROM: Gordon Dobler, Engineering Services Director
SUBJECT: Amendment #2 to the Agreement for Funding of Improvements for McEuen Field

DECISION POINT

Staff is requesting Council approval of the second amendment to the Agreement with LCDC, which provides for an additional \$4,124,800 in funds from LCDC for the improvements in the project.

HISTORY

In the past several months the scope of the project has increased to include many elements not in the original project scope. Staff has successfully negotiated a cost sharing formula with LCDC. The specifics were presented to the Council at the meeting of January 2nd. The LCDC board has approved the proposed amendment to the existing funding agreement.

FINANCIAL ANALYSIS

Funding for the project comes from a variety of sources including, the City, LCDC, LID, and various donations. This amendment increases the funding from LCDC by \$4,124,800.

PERFORMANCE ANALYSIS

The additional funding from LCDC, along with additional commitments from the City, provide the necessary funding for the estimated project costs.

RECOMMENDATION

Staff recommends that Council approve the Amendment #2 to the Agreement for Funding Improvements for McEuen Field.

RESOLUTION NO. 13-015

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO AUTHORIZING AN AMENDMENT NO. 2 TO THE AGREEMENT FOR FINANCING OF IMPROVEMENTS OF MCEUEN PARK WITH THE LAKE CITY DEVELOPMENT CORPORATON (LCDC).

WHEREAS, the City Administrator of the City of Coeur d'Alene has recommended that the City of Coeur d'Alene enter into Amendment No. 2 to the Agreement for Financing of Improvements for McEuen Park with the Lake City Developm ent Corporation (LCDC), pursuant to term s and conditions set forth in an agreem ent, a copy of which is attached hereto as Exhibit "1" and by reference made a part hereof; and

WHEREAS, it is deemed to be in the best interests of the City of Coeur d'Alene and the citizens thereof to enter into such agreement; NOW, THEREFORE,

BE IT RESOLVED, by the Mayor and City Council of the City of Coeur d'Alene that the City enter into Amendment No. 2 to the Agreement for Financing of Improvements for McEuen Park, in substantially the form attached hereto as Exhibit "1" and incorporated herein by reference with the provision that the Mayor, City Administrator, and City Attorney are hereby authorized to modify said agreement to the extent the substantive provisions of the agreement remain intact.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk be and they are hereby authorized to execute such agreement on behalf of the City.

DATED this 5th day of March, 2013.

Sandi Bloem, Mayor

ATTEST:

Renata McLeod, City Clerk

Motion by _____, Seconded by _____, to adopt the foregoing resolution.

ROLL CALL:

COUNCIL MEMBER GOOKIN Voted _____

COUNCIL MEMBER MCEVERS Voted _____

COUNCIL MEMBER GOODLANDER Voted _____

COUNCIL MEMBER KENNEDY Voted _____

COUNCIL MEMBER ADAMS Voted _____

COUNCIL MEMBER EDINGER Voted _____

_____ was absent. Motion _____.

**AMENDMENT NO. 2
TO
AGREEMENT FOR FINANCING OF IMPROVEMENTS**

McEuen Park, Coeur D'Alene, Idaho

THIS AMENDMENT No. 2 TO AGREEMENT FOR FINANCING OF IMPROVEMENTS (the "Second Amendment") is made and entered into between the Coeur d'Alene Urban Renewal Agency d/b/a Lake City Development Corporation (the "Agency") and the City of Coeur d'Alene, Idaho (the "City") as of the 5th day of March, 2013. The City and Agency are collectively referred to as the "Parties." All other terms are defined in the Agreement for Financing of Improvements, effective as of the 18th day of July 2012, as previously amended by the Amendment to Agreement for Financing of Improvements dated November 21, 2012 (collectively, the "Agreement").

WITNESSETH

WHEREAS, the Parties entered into the Agreement on 18th day of July, 2012, as amended; and

WHEREAS, certain improvements have been added to the scope of the Project; and

WHEREAS, the cost of the Project has been increased; and

WHEREAS, the Parties have determined the cost sharing for the increased costs and desire to amend the Agreement to reflect the same.

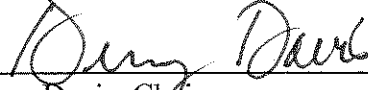
THEREFORE, the Parties amend the Agreement as follows:

1. **Amendment to Section III of the Agreement.** Section III. Financing of the Project Construction; Construction Draws; the first sentence is amended as follows:
The Agency has agreed to pay up to fifteen million, six hundred twenty four thousand, eight hundred dollars (\$15,624,800) less the portion of the Design Costs paid by the Agency (the "Agency Contribution") to the costs of construction of the Project (the "Construction Costs"), provided the City at all times complies with the terms of this Agreement.
2. **Ratification of the Agreement.** Except as set forth in this Second Amendment, the terms of the Agreement are hereby ratified and confirmed in all respects, and shall remain in full force and effect.
3. **Defined Terms.** Capitalized terms used herein and not defined shall have the meanings set forth in the Agreement.
4. **Execution in Counterparts.** This Second Amendment may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Agency and the City have caused this Second Amendment to be executed and delivered by a duly authorized officer of each of them, all this 5th day of March, 2013.

AGENCY:

COEUR D'ALENE URBAN RENEWAL
AGENCY d/b/a LAKE CITY DEVELOPMENT
CORPORATION

BY: 
Denny Davis, Chairman

Notice Address:
LCDC Executive Director
105 N. 1st Street, Suite 100
Coeur d'Alene, Idaho 83814

CITY:

CITY OF COEUR D'ALENE, IDAHO

BY: _____
Sandi Bloem, Mayor

Notice Address:
City Clerk
City of Coeur d'Alene
710 E. Mullan Avenue
Coeur d'Alene, Idaho 83814

CITY COUNCIL STAFF REPORT

DATE: March 7, 2013
FROM: Dennis J. Grant, Engineering Project Manager
SUBJECT: **Approval of Low Bidder for the 2013 McEuen Construction Project**

DECISION POINT

Staff is requesting the City Council to approve the 2013 McEuen Park Construction Project plans and approve Contractors Northwest, Inc. as the low bidder for the 2013 McEuen Construction Project.

HISTORY

The City of Coeur d'Alene received six responsive base bids:

Contractors Northwest, Inc.	\$ 14,621,000.00
Lydig Construction Inc.	\$ 14,997,000.00
Leone & Keeble, Inc.	\$ 15,929,000.00
Ralph L. Wadsworth Construction Co., LLC	\$ 16,100,000.00
Ginno Construction Co.	\$ 16,860,000.00
Apollo Inc.	\$ 17,775,000.00
Engineer's Estimate	\$ 15,063,000.00

FINANCIAL ANALYSIS

The 2013 McEuen Construction Project is a budgeted Project. The City of Coeur d'Alene's contribution will come from the Overlay Fund, Parks Capital Improvement Fund, Parking Fund and Fund Balance. There will also be contributions from Lake City Development Corporation, the Front Avenue Local Improvement District and Donations. The responsive low bidder is within the Project budget. Award of the contract as recommended would leave a contingency of approximately \$600,000.00.

PERFORMANCE ANALYSIS

The City of Coeur d'Alene received six responsive bids for the 2013 McEuen Construction Project. The basis of the award shall be the sum of the base bid plus any combination or order of the Additive and Deductive Alternates selected by the Owner in its sole discretion. Here is the list of Additive and Deductive Alternates:

Add Alternate No. 1 – 3rd & Front Concrete Intersection

Add Alternate No. 2 – 5th & Front Concrete Intersection
Add Alternate No. 3 – 4th & Front Concrete Intersection
Add Alternate No. 4 – Main Pavilion East Wing
Add Alternate No. 5 – Main Pavilion West Wing
Add Alternate No. 6 – Main Pavilion Fire Place
Add Alternate No. 7 – Front Avenue Promenade, 5th to 6th
Deductive Alternate No. 1 – Sun-Dial Overlook
Deductive Alternate No. 2 – Individual Light Fixtures
(Per each S2 Fixture deleted up to a maximum of 15)

The Additive and Deductive Alternates selected by the City are as follows:
Deductive Alternate No. 2, Add Alternate No. 3, and Add Alternate No. 7. Therefore,
the total sum of the base bid plus the combination of the Additive and Deductive
Alternates selected is **\$ 14,809,800.00 for Contractors Northwest, Inc.**

RECOMMENDATION

Staff recommends a motion to approve the 2013 McEuen Construction Park Project plans, approve Contractors Northwest, Inc. as the low bidder, and authorize the mayor to execute the contract for the 2013 McEuen Construction Project.

CITY OF COEUR D'ALENE									
2013 MCEUEN CONSTRUCTION PROJECT									
BID TABULATION									
Bid Opening: MARCH 5, 2013 AT 2:00 PM									
				Apollo	Lydig	Leone	CNI	Ginno	Wadsworth
Pay Item	Description	Pay Unit	Est. Qty	Total Amount	Total Amount	Total Amount	Total Amount	Total Amount	Total Amount
	BASE BID – 2013 MCEUEN CONSTRUCTION PROJECT*	LS	1	\$ 17,775,000.00	\$ 14,997,000.00	\$ 15,929,000.00	\$ 14,621,000.00	\$ 16,860,000.00	\$ 16,100,000.00
	ADD ALTERNATE NO. 1 - 3RD & FRONT CONCRETE INTERSECTION	LS	1	\$ 27,900.00	\$ 31,700.00	\$ 44,000.00	\$ 32,150.00	\$ 34,000.00	\$ 34,800.00
	ADD ALTERNATE NO. 2 - 5TH & FRONT CONCRETE INTERSECTION	LS	1	\$ 21,000.00	\$ 23,400.00	\$ 27,600.00	\$ 23,800.00	\$ 23,000.00	\$ 26,300.00
	ADD ALTERNATE NO. 3 - 4TH & FRONT CONCRETE INTERSECTION	LS	1	\$ 17,500.00	\$ 19,000.00	\$ 22,900.00	\$ 19,400.00	\$ 19,000.00	\$ 27,200.00
	ADD ALTERNATE NO. 4 - MAIN PAVILION EAST WING	LS	1	\$ 120,000.00	\$ 116,900.00	\$ 112,900.00	\$ 116,000.00	\$ 125,000.00	\$ 112,700.00
	ADD ALTERNATE NO. 5 - MAIN PAVILION WEST WING	LS	1	\$ 120,000.00	\$ 116,900.00	\$ 112,900.00	\$ 116,000.00	\$ 125,000.00	\$ 112,300.00
	ADD ALTERNATE NO. 6 - MAIN PAVILION FIRE PLACE	LS	1	\$ 140,000.00	\$ 162,000.00	\$ 169,400.00	\$ 183,200.00	\$ 158,000.00	\$ 132,600.00
	ADD ALTERNATE NO. 7 - FRONT AVENUE PROMENADE, 5TH TO 6TH	LS	1	\$ 331,000.00	\$ 176,000.00	\$ 242,900.00	\$ 209,200.00	\$ 224,000.00	\$ 209,000.00
	DEDUCTIVE ALTERNATE NO. 1 – SUN-DIAL OVERLOOK	LS	1	\$ (106,600.00)	\$ (54,000.00)	\$ (76,700.00)	\$ (51,900.00)	\$ (90,000.00)	\$ (37,880.00)
	DEDUCTIVE ALTERNATE NO. 2 – INDIVIDUAL LIGHT FIXTURES	LS	1	\$ (3,660.00)	\$ (3,230.00)	\$ (3,300.00)	\$ (3,980.00)	\$ (3,400.00)	\$ (3,600.00)
	(Per each S2 Fixture Deleted up to a maximum of 15)								

RESOLUTION NO. 13-014

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO ACCEPTING THE BID OF CONTRACTOR NORTHWEST, INC. FOR THE 2013 MCEUEN CONSTRUCTION PROJECT.

WHEREAS, the City heretofore duly advertised invitation for bids for the 2013 McEuen Construction Project in Coeur d' Alene, Idaho, and said bids were opened as provided in said advertisement in the office of the City Clerk at 2:00 p.m., on Tuesday the 5th day of March, 2013, and the lowest responsible bid received was that of Contractors Northwest, Inc., in the amount of Fourteen Million, Eight Hundred and Nine Thousand, Eight Hundred Dollars and No/100's (\$14,809,800.00), and it is in the best interests of the City of Coeur d'Alene and the citizens thereof that said bid be accepted; NOW, THEREFORE,

BE IT RESOLVED, by the Mayor and City Council of the City of Coeur d'Alene that the bid of Contractors Northwest, Inc., in the amount of \$14,809,800.00 for the 2013 McEuen Construction Project is hereby accepted.

BE IT FURTHER RESOLVED, that the City enter into a contract with contractors Northwest, Inc. in substantially the form attached hereto as Exhibit "A" and incorporated herein by reference with the provision that the Mayor, City Administrator, and City Attorney are hereby authorized to modify said contract provided that the substantive provisions of the contract remain intact.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk be and they are hereby authorized to execute such contract on behalf of the City.

DATED this 7th day of March, 2013.

Sandi Bloem, Mayor

ATTEST:

Renata McLeod, City Clerk

Motion by _____, Seconded by _____, to adopt the foregoing resolution.

ROLL CALL:

COUNCIL MEMBER MCEVERS Voted _____

COUNCIL MEMBER ADAMS Voted _____

COUNCIL MEMBER KENNEDY Voted _____

COUNCIL MEMBER GOODLANDER Voted _____

COUNCIL MEMBER GOOKIN Voted _____

COUNCIL MEMBER EDINGER Voted _____

_____ was absent. Motion _____.

**CONTRACT
FOR
2013 McEUEEN CONSTRUCTION PROJECT**

THIS CONTRACT, made and entered into this 7th day of March, 2013, between the **CITY OF COEUR D'ALENE**, Kootenai County, Idaho, a municipal corporation duly organized and existing under and by virtue of the laws of the state of Idaho, hereinafter referred to as the "**CITY**", and **CONTRACTORS NORTHWEST, INC.**, a corporation duly organized and existing under and by virtue of the laws of the state of Idaho, with its principal place of business at 3731 N. Ramsey Road, Coeur d'Alene, Idaho, 83816 hereinafter referred to as "**CONTRACTOR**,"

WITNESSETH:

THAT, WHEREAS, the said **CONTRACTOR** has been awarded the contract for the **2013 McEuen Construction Project** (including Base Bid, a portion of Deductive Alternate No. 2 (total deduction of \$39,800), Add Alternate No. 3 and Add Alternate No. 7) according to Contract Documents, on file in the office of the City Clerk of said **CITY**, which Contract Documents, are incorporated herein by reference.

IT IS AGREED that for and in consideration of the covenants and agreements to be made and performed by the CITY OF COEUR D'ALENE, as hereinafter set forth, the **CONTRACTOR** shall complete improvements as set forth in the said Contract Documents, described above, in said **CITY**, furnishing all labor and materials therefor according to said Contract Documents and under the penalties expressed in the performance bond bearing even date herewith, and which bond with said Contract Documents are hereby declared and accepted as parts of this contract. All material shall be of the high standard required by the said Contract Documents and approved by the City Engineer, and all labor performed shall be of first-class workmanship.

The **CONTRACTOR** shall furnish and install barriers and warning lights to prevent accidents. The **CONTRACTOR** shall indemnify, defend and hold the **CITY** harmless from all claims arising from the **CONTRACTOR**'s actions or omissions in performance of this contract, and to that end shall maintain liability insurance naming the **CITY** as one of the insured's in the amount of One Million Dollars (\$1,000,000) for property damage or bodily or personal injury, death or loss as a result of any one occurrence or accident regardless of the number of persons injured or the number of claimants. A certificate of insurance providing at least thirty (30) days written notice to the **CITY** prior to cancellation of the policy shall be filed in the office of the City Clerk.

The **CONTRACTOR** agrees to maintain Workman's Compensation coverage on all employees, including employees of subcontractors, during the term of this contract as required by Idaho Code Sections 72-101 through 72-806. Should the **CONTRACTOR** fail to maintain such insurance during the entire term hereof, the **CONTRACTOR** shall indemnify the **CITY** against any loss resulting to the **CITY** from such failure, either by way of compensation or additional premium liability. The **CONTRACTOR** shall furnish to the **CITY**, prior to commencement of the work, such evidence as the **CITY** may require guaranteeing contributions which will come due under the Employment Security Law including, at the option of the **CITY**, a surety bond in an amount sufficient to make such payments.

The **CONTRACTOR** shall furnish the **CITY** certificates of the insurance coverage's required herein, which certificates must be approved by the City Attorney.

The **CONTRACTOR** agrees to receive and accept as full compensation for furnishing all materials, and doing all the work contemplated and embraced in the contract, an amount equal to the sum of the total for the work. The total amount of the contract shall not exceed **Fourteen Million, Eight Hundred and Nine Thousand, Eight Hundred Dollars and No/100's (\$14,809,800.00)**.

Requests for monthly progress payments must be submitted by the 10th of the month for work done in the previous calendar month. Partial payment shall be made within thirty (30) days after receipt of the duly certified estimate of the work completed in the previous calendar month less five percent (5%). Final payment shall be made thirty (30) days after completion of all work and acceptance by the City Council, provided that the **CONTRACTOR** has obtained from the Idaho State Tax Commission and submitted to the **CITY** a release of liability for taxes (Form 10-248-79). Payment shall be made by the City Finance Director or **LCDC**, under the

provisions of the Agreement for the Financing of Improvements between the **City** and **LCDC**, which agreement is incorporated herein.

The **CITY** will reimburse the **CONTRACTOR** for any use tax associated with the installation of any Owner Furnished Equipment (OFE) within forty-five (45) days of **CONTRACTOR'S** submittal to the **CITY** of proof of payment of the use tax for the OFE.

The number of calendar days allowed for completion of the Contract work shall be **Four Hundred Nine (409)** calendar days. The contract time shall commence no later than 10 days after the date of the Notice to Proceed issued by the **CITY**.

The **CITY** and the **CONTRACTOR** recognize that time is of the essence and failure of the **CONTRACTOR** to complete the work within the times allowed, including interim milestones as listed in Section 01 1000 Summary of Technical Specifications, shall result in damages being sustained by the **CITY**. Such damages are and will continue to be impractical and extremely difficult to determine. Therefore, in the event the **CONTRACTOR** shall fail to complete the work within the time limits in the table below, the **CONTRACTOR** shall pay to the **CITY** or have withheld from monies due, liquidated damages in the amounts shown in the following table, which sums shall not be construed as a penalty.

Interim Milestone*	Substantial Completion	Liquidated Damages
South Trail open for one day to vehicle traffic only, June 23, 2013 - Ironman Sunday	June 22, 2013	\$5,000
Front Avenue & Side Street Paving	November 1, 2013	\$50,000
Centennial Trail Asphalt Paving	November 1, 2013	\$1,000/Day
Remaining Front Avenue & Side Street Work (Not including the Front. Ave. Promenade), Side Street, Parking Facility and Lower Parking Lot	November 19, 2013	\$15,000 Lump Sum plus \$4000/Day
Pavilion and Harbor House Foundation and Walls	December 31, 2013	\$4,000/Day
All other work.	May 1, 2014	\$4,000/Day

*See Contract Documents for detailed interim milestone requirements.

IT IS AGREED that the **CONTRACTOR** must employ ninety five percent (95%) bona fide Idaho residents as employees on any job under this contract except where under this contract fifty (50) or less persons are employed by the **CONTRACTOR**, in which case the **CONTRACTOR** may employ ten percent (10%) nonresidents; provided, however, in all cases the **CONTRACTOR**, must give preference to the employment of bona fide residents in the performance of said work.

The **CONTRACTOR** furthers agrees: In consideration of securing the business of construction the works to be constructed under this contract, recognizing the business in which he is engaged is of a transitory character and that in the pursuit thereof, his property used therein may be without the state of Idaho when taxes, excises or license fees to which he is liable become payable, agrees:

1. To pay promptly when due all taxes (other than on real property), excises and license fees due to the State of Idaho, its subdivisions, and municipal and quasi-municipal corporations therein, accrued or accruing during the term of this contract, whether or not the same shall be payable at the end of such term.
2. That if the said taxes, excises and license fees are not payable at the end of said term but liability for said payment thereof exists, even though the same constitutes liens upon his property, to secure the same to the satisfaction of the respective officers charged with the collection thereof.

3. That in the event of his default in the payment or securing of such taxes, excises and license fees, to consent that the department, officer, board or taxing unit entering into this contract may withhold from any payment due him hereunder the estimated amount of such accrued and accruing taxes, excises and license fees for the benefit of all taxing units to which said **CONTRACTOR** is liable.
4. The **CONTRACTOR** further agrees, in consideration of securing this contract, to comply will all the requirements of Attachment 1, which by this reference is incorporated herein.

For the faithful performance of this contract in accordance with the Contract Documents, and payment for all labor and materials, the **CONTRACTOR** shall execute good and sufficient performance bond and payment bond in a form acceptable to the City Attorney each in the amount of one hundred percent (100%) of the total amount of the bid as hereinbefore stated, said bonds to be executed by a surety company authorized to do business in the state of Idaho.

The term "CONTRACT DOCUMENTS" means and includes the following:

- A) Advertisement For Bids
- B) Information For Bidders
- C) Bid Proposal
- D) Bid Bond
- E) Bidding Forms as Required
- F) Contract
- G) Labor and Materials Payment Bond
- H) Performance Bond
- I) Notice of Award
- J) Notice to Proceed
- K) Change Order
- L) General Conditions
- M) Technical Specifications
- N) Special Provisions
- O) Drawings
- P) Addenda No. 1 through 7
- Q) Stormwater Pollution Prevention Plan (SWPPP)
- R) Permits
- S) Appendices

THIS CONTRACT, with all of its forms, specifications and stipulations, shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the Mayor and City Clerk of the CITY OF COEUR D'ALENE have executed this contract on behalf of said **CITY**, the City Clerk has affixed the seal of said City hereto, and the **CONTRACTOR** has caused the same to be signed by its President, and its seal to be affixed hereto, the day and year first above written.

CITY OF COEUR D'ALENE
KOOTENAI COUNTY, IDAHO

CONTRACTORS NORTHWEST, INC.
KOOTENAI COUNTY, IDAHO

Sandi Bloem, Mayor

By: _____
Its: _____

ATTEST:

ATTEST:

Renata McLeod, City Clerk

STATE OF IDAHO)
) ss.
County of Kootenai)

On this 7th day of March, 2013, before me, a Notary Public, personally appeared **Sandi Bloem** and **Susan K. Weathers**, known to me to be the Mayor and City Clerk, respectively, of the City of Coeur d'Alene that executed the foregoing instrument and acknowledged to me that said City of Coeur d' Alene executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____
My Commission expires: _____

STATE OF IDAHO)
) ss.
County of Kootenai)

On this _____ day of March, 2013, before me, a Notary Public, personally appeared _____, known to me to be the _____, of **Contractors Northwest, Inc.**, and the person who executed the foregoing instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____
My Commission Expires: _____

ATTACHMENT 1

This Attachment is to be inserted in every contract subject to Title VI of the Civil Rights Act of 1964 and associated Regulations.

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

1. Compliance with Regulations

The contractor shall comply with the Regulations relative to non-discrimination in federally assisted programs of United States Department of Transportation (USDOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Non-discrimination

The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-contractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Sub-contracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiations made by the contractor for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, sex, or national origin.

4. Information and Reports

The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the contracting agency or the appropriate federal agency to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to ITD or the USDOT as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Non-compliance

In the event of the contractor's non-compliance with the non-discrimination provisions of this contract, the contracting agency shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to:

- Withholding of payments to the contractor under the contract until the contractor complies, and/or;
- Cancellation, termination, or suspension of the contract, in whole or in part.

Incorporation of Provisions

The contractor shall include the provisions of paragraphs (1) through (5) in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any sub-contractor or procurement as the contracting agency or USDOT may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the contractor may request ITD enter into such litigation to protect the interests of the state and, in addition, the contractor may request the USDOT enter into such litigation to protect the interests of the United States.