

Contract Number _____

**State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
Madison, Wisconsin**

THIS AGREEMENT is made and entered into by and between the State of Wisconsin, hereinafter called the "State", by its Department of Natural Resources, hereinafter called the "Department", executing this Agreement, and ANCHOR QEA LLC, hereinafter called the "Consultant", for the work included in the Consultant's Proposal based on the Department's Scope of Work, both specified in Section 34 of the General Terms and Conditions below. Costs for the work shall be reimbursed in accordance with the attached proposal up to a maximum agreed amount NOT TO EXCEED \$489,976.00 (Four Hundred Eighty-Nine Thousand, Nine Hundred Seventy-Six Dollars).

For administrative purposes a contingency fund of \$48,998.00 (Forty-Eight Thousand, Nine Hundred Ninety-Eight Dollars) is approved for use on this project. The contingency fund may be used only with the prior approval of the Department and at the sole discretion of the Department. This contingency fund is not a part of the maximum NOT TO EXCEED amount agreed upon for the services in the proposal.

WITNESSETH

WHEREAS, the Department proposes development of a project, hereinafter named the "Project", which is described as follows: The project includes construction oversight during the sediment remediation for Segment2 and part of Segment 3 of the Portage Canal associated with BRR's case 02-11-577055.

WHEREAS, the Department deems it advisable to engage the services of a Consultant to furnish professional services in connection with the Project.

WHEREAS, the Department has authority as provided in Section 23.41 of the Wisconsin Statutes to engage such services.

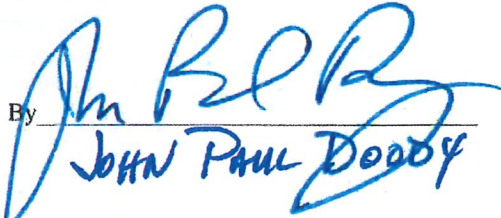
WHEREAS, the Consultant has signified its willingness to furnish services for the Department.

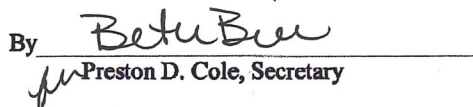
NOW THEREFORE, in consideration of these premises and their mutual and dependent agreements, the parties hereto agree as set forth in the following pages which are annexed hereto and made a part hereof. (Pages 1 to 7, inclusive.)

IN WITNESS WHEREOF, the Department and the Consultant have executed this AGREEMENT.

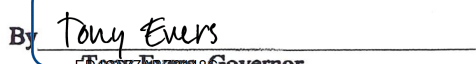
ANCHOR QEA LLC

**STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

By 
John Paul Dobby
Title MEMBER

By 
Preston D. Cole, Secretary
Date 3/16/20

Date MARCH 12, 2020

Approved:
DocuSigned by:
By 
Tony Evers, Governor

Date 4/5/2020 | 12:20 PM CDT

GENERAL SERVICES AGREEMENT
GENERAL TERMS AND CONDITIONS

- | | |
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| 1. Affirmative Action. | 23. Ownership of Documents. |
| 2. Antitrust Assignment. | 24. Ownership of Wastes. |
| 3. Applicable Law. | 25. Payments. |
| 4. Approvals or Inspections. | 26. Payment Terms and Invoicing. |
| 5. Assignment. | 27. Period of Agreement. |
| 6. Cancellation; Termination | 28. Project Management. |
| 7. Change Orders. | 29. Records, Access. |
| 8. Deduction for Uncorrected Work. | 30. Rejection of Defective Materials. |
| 9. Deliverables. | 31. Release of Information. |
| 10. Disclosure. | 32. Request for Payment; Progress Reports. |
| 11. Dispute Resolution. | 33. Safety. |
| 12. Entire Agreement; Amendments. | 34. Scope of Services to be Provided. |
| 13. Extra Work and Special Cases. | 35. Site Access |
| 14. Force Majeure. | 36. Data |
| 15. Guaranteed Delivery. | 37. Standard of Performance. |
| 16. Indemnification; Liability. | 38. Survival. |
| 17. Independent Contractor. | 39. Successors and Assigns. |
| 18. Insurance. | 40. Tax Delinquency. |
| 19. Inventions, Patents, Trademarks and Copyrights. | 41. Taxes. |
| 20. Late Penalties. | 42. Testimony. |
| 21. No Waiver of Conditions. | 43. Titles. |
| 22. Nondiscrimination. | 44. Warranty. |

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THE CONSULTANT shall provide professional services for the Project in accordance with the terms and conditions of this Agreement.

1. AFFIRMATIVE ACTION. If the amount of this Agreement is \$50,000 or more, the Consultant agrees to submit a written affirmative action plan to the Department within 15 business days after the Agreement commences if an acceptable plan is not already on file with the State of Wisconsin. (Consultants with an annual work force of fewer than 25 employees are exempted from this requirement.) Failure to comply with the conditions of this clause may result in the Consultant being declared an “ineligible” contractor, termination of the Agreement, or withholding of payment

2. ANTITRUST ASSIGNMENT. The Consultant and the Department recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Department. Therefore, the Consultant hereby assigns to the Department any and all claims for such overcharges as to goods, materials or services purchased in connection with this Agreement.

3. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of Wisconsin. The Consultant shall at all times comply with all federal,

state and local laws, ordinances and regulations in effect during the period of this Agreement.

4. APPROVALS OR INSPECTIONS. None of the approvals or inspections performed by the Department shall be construed or implied to relieve the Consultant from any duty or responsibility it has for its professional performance, unless the Department formally assumes such responsibility through a letter from the Department expressly stating that the responsibility has been assumed.

5. ASSIGNMENT. Neither this Agreement nor any right or duty in whole or in part by the Consultant under this Agreement may be assigned, delegated or subcontracted without the written consent of the Department.

6. CANCELLATION; TERMINATION. A. The Department reserves the right to cancel this Agreement in whole or in part, without penalty, due to non-appropriation of funds or for the failure of the Consultant to comply with terms, conditions, or specifications of this Agreement.

B. The Department may terminate this Agreement for any reason at any time upon not less than 10 days' written notice to the Consultant.

C. In the event of termination the Department shall pay the Consultant for that portion of the work satisfactorily performed prior to the date of termination.

D. If this Agreement is canceled or terminated by the Department for reasons other than the failure of the Consultant to comply with terms, conditions or specifications of this Agreement, the Consultant shall also be entitled to reasonable cancellation or termination costs relating to costs incurred by the Consultant for commitments which had become firm prior to the cancellation or termination.

E. Upon cancellation or termination under PARAGRAPH A. or B., above, the Consultant shall promptly discontinue all affected work (unless the notice of termination directs otherwise), and deliver or otherwise make available to the Department all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in progress.

7. CHANGE ORDERS. A. A change order is a written order to the Consultant signed by the Department, issued after the execution of this Agreement, authorizing a change in the work or an adjustment in the Contract Sum or the Contract Time. Change Orders may be initiated by either party at any time.

B. Changes in work shall be within the general scope of the Agreement, consisting of additions, deletions or other revisions; the Contract Sum and the Contract Time being adjusted accordingly. Complete documentation of additional work, cost changes, and contract time shall be provided to the Department by the Consultant.

C. No adjustments to the Contract Sum or the Contract Time may be made for any changes performed by the Consultant that have not been ordered by the Department.

8. DEDUCTION FOR UNCORRECTED WORK.

If the Department deems it expedient to accept defective work or work not performed in accordance with the Agreement, the difference in value, together with a fair allowance for the damages, may be deducted from the payments that are owed to the Consultant under this Agreement.

9. DELIVERABLES. Deliverables are defined as those items included in the Agreement's time schedule.

10. DISCLOSURE. If a state public official (as defined under Section 19.42, Wisconsin Statutes), a member of a state public official's immediate family, or any organization in which a state public official or a member of the official's immediate family owns or controls a 10% interest, is a party to this Agreement, and if this Agreement involves payment of more than \$3,000 within a 12 month period, this Agreement is voidable by the State unless appropriate disclosure is made according to Section 19.45(6), Wisconsin Statutes, before signing the Agreement. Disclosures shall be made to the State of Wisconsin Ethics Board, 44 E. Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608 266-8123).

11. DISPUTE RESOLUTION. In the event that a dispute arises between the Department's project manager and the Consultant's project manager, either party may request a conference between the Department's Director of the Bureau for Remediation and Redevelopment and the Consultant's project manager's supervisor (or designee) to resolve the dispute.

12. ENTIRE AGREEMENT; AMENDMENTS.

This Agreement, together with the specifications in the proposal and referenced parts and attachments, shall constitute the entire agreement and previous communications or agreements pertaining to the subject matter of this Agreement are hereby superseded. Any contractual revisions including cost adjustments and time extensions may be made only by a written amendment to this Agreement, signed by both parties prior to the ending date of this Agreement.

13. EXTRA WORK AND SPECIAL CASES. If the Department desires to have the Consultant perform work or render services in connection with the project, other than provided for by the expressed intent of this Agreement, this will be considered as Extra Work, subject to a change order, or extension to this Agreement, setting forth the nature and scope thereof and the compensation therefor as determined by mutual agreement between the parties. Work under a change order or extension may not proceed unless and until it is authorized by the Department.

14. FORCE MAJEURE. A. The Consultant shall cause all of its work to be performed within the time limits set forth in this Agreement unless performance is delayed by events that constitute a force majeure. For purposes of this Agreement, a "force majeure" is an event which is not foreseeable, is beyond the control of the Consultant and delays performance of any obligations required by this Agreement, including,

but not limited to, delays caused by the Department, delays in obtaining property access or delays in obtaining any necessary permit or license after a complete application is made.

B. The Consultant shall notify the Department in writing no later than 5 calendar days after the discovery of any event which the Consultant contends is a force majeure. Such notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by the Consultant to minimize the delay, and the timetable by which these measures will be implemented. The Consultant shall have the burden of demonstrating that the event is a force majeure. The Department shall promptly provide the Consultant with a written decision as to whether and why the event does or does not constitute a force majeure after receiving notification from the Consultant. If the Consultant does not agree with the findings of the Department project management staff, then a conference with the Department's Director of the Bureau for Remediation and Redevelopment will be arranged with the Consultant to resolve the force majeure issue.

C. If the Department agrees that a delay is attributable to a force majeure, the time period for a performance under this Agreement shall be extended for a reasonable time period attributable to the event constituting a force majeure.

15. GUARANTEED DELIVERY. Failure of the Consultant to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the Consultant liable for all costs in excess of the Agreement price when alternate procurement is necessary. Excess costs shall include the Department's administrative costs.

16. INDEMNIFICATION; LIABILITY. **A.** The Consultant agrees to save, keep harmless, defend and indemnify the State, the Department and all their officers, employees and agents, against any and all liability, claims and costs for injury to or death of any person or persons, and for loss or damage to any property (state or other) caused by or arising out of any willful misconduct, negligent act, error or omission by the Consultant or any of its agents, representatives, subcontractors or employees occurring in connection with or in any way incident to or arising out of performance of this Agreement. This PARAGRAPH does not apply to liability, claims and costs to the extent that they result from the willful misconduct, negligent act, error or omission of the State, the Department or their officers, employees or agents.

B. The Department recognizes and agrees that its employees are subject to liability as provided by Sections 893.82 and 895.46, Wisconsin Statutes.

Therefore, its employee will be liable for their acts under these provisions and will not be acting on behalf of or as agents of the Consultant.

C. The Consultant guarantees that the use of equipment incorporated into the Project will not infringe any United States patent, and likewise that the use of any method in conjunction with the Project will not infringe any United States patent. The Consultant agrees that it will at its own expense defend every law suit which shall be brought against the State of Wisconsin for any alleged infringement of any patent and agrees that it will pay all costs, damages, and profits recoverable in any such suit. The Department agrees to promptly notify the Consultant of any such suit and deliver all papers relating to such suit to the Consultant.

17. INDEPENDENT CONTRACTOR. The Department agrees that the Consultant shall have sole control of the method, hours worked, and time and manner of any performance under this Agreement other than as specifically provided herein. The Department reserves the right only to inspect the job site or premises for the purpose of insuring that the performance is progressing or has been completed in compliance with the Agreement. The Department takes no responsibility for supervision or direction of the performance of the Agreement to be performed by the Consultant or the Consultant's employees or agents. The Department further agrees that it will exercise no control over the selection and dismissal of the Consultant's employees or agents.

18. INSURANCE. The Consultant performing services for the State of Wisconsin shall:

A. Maintain worker's compensation insurance for all employees engaged in the work.

B. Maintain commercial liability and property damage insurance against any claim(s) which might occur in carrying out this Agreement. Minimum coverage shall be \$1,000,000 liability for bodily injury and property damage including products liability and completed operations.

C. Provide motor vehicle insurance for all owned, non-owned, and hired vehicles that are used in carrying out the Agreement. Minimum coverage shall be \$1,000,000 per occurrence combined single limit for automobile liability and property damage.

D. Provide an insurance certificate indicating this coverage, counter-signed by an insurer licensed to do business in Wisconsin, covering the period of the Agreement. The insurance certificate is required to be presented prior to commencement of the Agreement.

E. The State reserves the right to require higher or lower limits where warranted.

19. INVENTIONS, PATENTS, TRADE-MARKS AND COPYRIGHTS.

A. The Consultant hereby assigns to the Department the entire right, title and interest for the entire world in and to all work performed, writings, formulas, designs, models, drawings, photographs, design inventions and other inventions made, conceived or reduced to practice or authored by the Consultant or the Consultant's employees, either solely or jointly with others, while performing this Agreement or with use of information, materials or facilities of the Department received or used by the Consultant during the period in which the Consultant is retained by the Department or its successors under this Agreement or any extensions or renewals of this Agreement.

B. The Consultant shall promptly disclose to the Department all works, writings, formulas, designs, models, drawings, photographs, design inventions and other inventions made, conceived or reduced to practice or authored by the Consultant or the Consultant's employees in the course of the performance of this Agreement.

C. The Consultant shall sign, execute and acknowledge or cause to be signed, executed and acknowledged without cost, but at the expense of the Department, any and all documents and to perform such acts as may be necessary, useful or convenient for the purpose of securing to the Department or its nominees, patent, trademark or copyright protection throughout the world upon all such works, writings, formulas, designs, models, drawings, photographs, design inventions and other inventions, title to which the Department may acquire in accordance with the provisions of this SECTION.

D. The Consultant has acquired or shall acquire from each of its employees the necessary rights to all such works, writings, formulas, designs, models, drawings, photographs, design inventions and other inventions made by such employees within the scope of their employment by the Consultant in performing services under this Agreement. The Consultant shall obtain the cooperation of each such employee to secure to the Department or its nominees the rights to such works, writings, formulas, designs, models, drawings, photographs, design inventions and other inventions as the Department may acquire in accordance with the provisions of this SECTION.

20. LATE PENALTIES. **A.** The Consultant shall be liable for the payment of penalties to the Department of the sums set forth below for each week that the Consultant fails to submit a report or document required under this Agreement's time schedule unless the Department determines that such delay is attributable to a force majeure as defined in SECTION 14., above, or a different schedule is agreed to by the

parties, in writing, before the date the report or document is due. Penalties, if applicable, shall be due and payable by the Consultant within 15 calendar days of receipt of notification from the Department assessing the penalties. These penalties shall accrue in the amount of \$500 for the first week and \$1,000 for each week thereafter, for each report or document which is overdue. The Department may subtract penalties which accrue under this SECTION from payments that are owed to the Consultant under this Agreement.

B. Assessment of penalties under this SECTION does not preclude the Department from pursuing any other remedies or sanctions because of the Consultant's failure to comply with any of the terms of this Agreement, including a suit to enforce the terms of this Agreement.

C. With respect to any individual failure to submit a report or document required under this Agreement's time schedule, the Department may at its sole discretion, in whole or in part, waive its right to penalties otherwise due under this SECTION.

21. NO WAIVER OF CONDITIONS. The failure of either party to insist on strict performance of this Agreement does not constitute a waiver of any of the provisions of this Agreement or a waiver of any default of the other party.

22. NONDISCRIMINATION. In connection with the performance of work under this Agreement, the Consultant agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Section 51.01(5), Wisconsin Statutes, sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Consultant further agrees to take affirmative action to ensure equal employment opportunities. The Consultant agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this nondiscrimination clause. Failure to comply with the conditions of this clause may result in the Consultant being declared an "ineligible" contractor, termination of the Agreement, or withholding of payment.

23. OWNERSHIP OF DOCUMENTS. Upon completion of the services provided for in this Agreement, or upon payment for services as provided

for in SECTION 7., all specifications, charts, sketches, drawings and other documents, whether finished or not, shall become the property of the Department.

24. OWNERSHIP OF WASTES. The Department acknowledges that the Consultant is not, by virtue of this Agreement, the owner of any waste materials generated as a result of the services performed by the Consultant under this Agreement.

25. PAYMENTS. A. The Consultant shall be paid by the Department for the completed work or services rendered under this Agreement at the price set forth elsewhere in the Agreement, and for "Extra Work", if any, at the compensation set forth in the approved orders covering the Extra Work.

B. Such payment shall be full compensation for work performed or services rendered and for all labor, material, supplies, equipment and incidentals necessary to complete the work.

26. PAYMENT TERMS AND INVOICING. Payment shall be considered timely if the payment is mailed, delivered, or transferred by the later of the following:

A. The date specified on a properly completed invoice for the amount specified in the order or Agreement, or

B. Within 30 days after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or Agreement or within 30 days after receipt of an improperly completed invoice or receipt and acceptance of the property or service under the order of Agreement, whichever is later if the Department does not notify the sender of receipt of an improperly completed invoice within 10 working days after it receives the invoice of the reason it is improperly completed.

27. PERIOD OF AGREEMENT. This Agreement shall commence upon its signing by both parties (including approval by the Governor of the State if required) and shall follow the schedule developed in the proposal, during which period all performance as described in this Agreement shall be fully completed to the satisfaction of the Department.

28. PROJECT MANAGEMENT. The Department's project manager for this project is **Scott Inman**, located in the Department's South Central Office in Fitchburg. The Consultant has identified **Kimberly Powell** as its project manager. If either the Consultant or the Department changes its project manager for this project, notification of this change shall be sent to the other party within 10 days of such

a change with the name of the new project manager included.

29. RECORDS, ACCESS. The Consultant shall, for a period of 3 years after completion and acceptance by the Department, maintain books, records, documents and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices. The Consultant shall also maintain the financial information and data used in the preparation or support of the cost submission in effect on the date of execution of this Agreement and a copy of the cost summary submitted to the Department. The Department, its agents and duly-authorized representatives shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit and copying. The Consultant shall provide proper facilities for such access, inspection and copying. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until 3 years after the date of resolution of such dispute, appeal, litigation, claim or exception.

30. REJECTION OF DEFECTIVE MATERIALS. The Department may reject materials and workmanship which are defective or it may require their correction. Rejected workmanship shall be satisfactorily corrected, and rejected materials shall be removed from the Project site without charge to the Department. If the Consultant does not correct such condemned work and remove rejected materials within a reasonable time, fixed by written notice, the Department may remove them and charge the expense to the Consultant.

31. RELEASE OF INFORMATION. The Consultant may not issue press releases or provide information to any third party regarding the Project without the prior written approval of the Department.

32. REQUEST FOR PAYMENT; PROGRESS REPORTS. The Consultant shall submit invoices to the Department on a monthly basis during the progress of the work for partial payment on account, for the work completed and accepted to date. Pay request formats shall match as closely as possible to the cost proposal format. Each category from the cost proposal shall detail, by task, the hours and costs of each staff level. All invoices detailing the Consultant's work and subcontracted work shall be attached. Copies of all staff time sheets or summary time data used to invoice pay requests should be attached to the invoice. Unless

the Department directs otherwise, all receipts for equipment, materials and other expenses shall be attached to the pay request. The pay request along with a monthly progress report shall be sent directly to the Department's project manager.

33. SAFETY. The Consultant shall initiate, maintain and provide coordination of safety precautions and programs in connection with its services. However, the Consultant is not responsible for the elimination or abatement of safety hazards created or otherwise resulting from work at the Project site carried on by other persons or firms directly employed by the Department as separate consultants or contractors. The Department agrees to require any such separate consultants or contractors comply with federal, state and local safety laws and regulations and to comply with all reasonable requests and directions of the Consultant for the elimination or abatement of any safety hazards at the Project site.

34. SCOPE OF SERVICES TO BE PROVIDED. Subject to the terms and conditions set forth in this Agreement, the Department engages the Consultant to furnish the services specifically described in the Consultant's Proposal entitled: **"Proposal for Portage Canal – Segment 2 Construction Oversight and Documentation – Revision 1"** dated March 5, 2020, and for such other tasks as may be mutually agreed upon in writing between the Consultant and the Department. The Consultant's Proposal and the Department's Scope of Work are incorporated into this Agreement by reference and are made a part of this Agreement.

35. SITE ACCESS. Unless the Scope of Work included in Exhibit "A" provides otherwise, the Department shall obtain or provide reasonable access for the Consultant to the Project site when necessary and at any reasonable time requested.

36. DATA. The Department shall attempt to provide the Consultant with all relevant data and information in its possession regarding the Project site. However, in providing such data and information, the Department assumes no responsibility for its accuracy, reliability or completeness.

37. STANDARD OF PERFORMANCE. The Consultant's services shall be performed with the usual thoroughness, skill and competence of the consulting profession, in accordance with the standard for professional services prevailing at the time those services are rendered.

38. SURVIVAL. These General Terms and Conditions shall survive the completion of the services under this Agreement and the termination of this Agreement for any cause.

39. SUCCESSORS AND ASSIGNS. The Department and the Consultant each bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of the other party with respect to all covenants of this Agreement.

40. TAX DELINQUENCY. Consultants which have a delinquent Wisconsin tax liability may have their payments offset by the State.

41. TAXES. The Department is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of all federal tax and Wisconsin sales or use tax on its purchases. The State of Wisconsin has issued tax exempt number ES 40690 to the Department. The Department may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Consultants performing construction activities are required to pay state use tax on the cost of materials.

42. TESTIMONY. The Consultant shall make its employees available to testify at administrative hearings and in court on behalf of the Department regarding the work conducted under this Agreement. Any costs associated with such testimony shall be billed to the Department on an itemized invoice. The hourly rates charged for testifying and for travel to and from the hearing or court proceeding may not exceed the rates listed on the Consultant's Classification Rate Schedule in effect at the time that the testimony is given.

43. TITLES. The headings or titles of SECTIONS of this Agreement are used for convenience and ease of reference and are not intended to limit the scope or intent of the SECTIONS.

44. WARRANTY. With respect to any construction work or construction activities performed under this Agreement, except where a longer warranty period is provided by the manufacturer or supplier of any equipment or materials, the Consultant warrants that for one year the work will be free from defects in material or workmanship and that all construction services and material furnished shall be in accordance with the Department's specifications or the proposal.

This warranty shall survive acceptance and payment and shall not be exclusive. Manufacturers' warranties received by the Consultant which are applicable to any items furnished by the Consultant shall survive acceptance and payment, and shall run to the Department, its successors and assigns, and may not be exclusive. The Consultant shall obtain any warranties which vendors, contractors and subcontractors would give in normal commercial practice. At the Department's option, the Consultant shall either promptly repair or replace defective items and work after receipt of the Department's written notice of a defect.

- END -